




Speech By
Hon. Mark Bailey

MEMBER FOR YEERONGPILLY

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WATER LEGISLATION (DAM SAFETY) AMENDMENT BILL

Second Reading

 **Hon. MC BAILEY** (Yeerongpilly—ALP) (Minister for Main Roads, Road Safety and Ports and Minister for Energy, Biofuels and Water Supply) (4.09 pm): I move—

That the bill be now read a second time.

Firstly, I would like to thank the Public Works and Utilities Committee for its thorough consideration of the Water Legislation (Dam Safety) Amendment Bill 2016. In particular I thank the chair of the committee, the member for Kallangur, Shane King, and all committee members for their work on the inquiry. I also thank committee staff. It is also important to acknowledge the contributions made by the nine organisations which made submissions to the committee during its examination of the bill.

The committee made five recommendations, the first of which is that the bill be passed. The committee recommended that the bill be amended to clarify specific requirements relating to emergency action plans and newly defined terms such as ‘dam hazard event’ and ‘emergency event’ as well as particular terms such as ‘unacceptable risk’ used in reference to new powers for dam owners to reduce the full-supply level of dams for safety reasons. It is also recommended that a no-compensation provision be included in relation to the exercise of these new powers under section 399B of the Water Supply (Safety and Reliability) Act 2008 to protect dam owners from claims for compensation from water users or other third parties where they lower the level of a dam for safety reasons. I will move amendments to address those recommendations during consideration in detail of the bill. The committee’s second recommendation states—

The committee recommends the Minister clarify in his second reading speech if the Department of Energy and Water Supply, as the approval agency for Emergency Action Plans, in fact indemnifies local governments and/or local disaster management groups, as referral agencies, from liability.

I note that in his statement of reservation the member for Southport and deputy chair raised a concern about potential unintended consequences of these amendments which he suggested may inadvertently move some of the burden of liability onto local government authorities and local disaster management groups. I can today confirm that there is certainly no intention to do this. Further, I understand the member’s concern is about ensuring that local governments can give advice on a dam owner’s emergency action plan without any potential for being held liable ‘in the event of a catastrophic or significant dam failure’. In the first instance, dam owners are civilly liable for the safe management and operation of their dams. I reiterate the advice provided to the committee, which is that there is no transfer of liability to disaster management groups or local governments under the amendments. I am advised that no issue of liability could arise merely from an obligation to review and give advice on the consistency of the dam owner’s emergency management plan with the disaster management plan for the area.

In terms of responsibilities between the two groups, however—that is, between local governments and disaster groups—the disaster management groups have less responsibility under the amendments than they currently do. The amended process moves the responsibility for reviewing emergency action plans from the chairperson of the local or district disaster management group to the relevant local government for the plan and makes it mandatory rather than optional for the local government to provide advice. This change reflects the Inspector-General Emergency Management's findings that very few emergency action plans to date have been reviewed by local or district disaster management groups and have therefore been approved without the benefit of their input. The intent of these provisions is to provide better collaboration between dam owners and disaster management groups and improve integration of dam safety into the all-hazards emergency management framework. Assessment and approval of the emergency action plan still resides with the dam safety regulator: the chief executive of the Department of Energy and Water Supply. I now table the government's response to the committee report.

Tabled paper: Public Works and Utilities Committee: Report No. 35, 55th Parliament—Water Legislation (Dam Safety) Amendment Bill 2016, government response [\[667\]](#).

I will now outline the key elements of the bill. The bill clarifies the responsibility of dam owners to warn the public during dam related emergencies and simplifies how low-risk dams will be regulated. This bill is part of the government's response to the Inspector-General Emergency Management's review of flood release communications and warnings issued by SunWater and Seqwater during the two severe weather events in early 2015: Tropical Cyclone Marcia and the 1 May rain deluge. I asked the Inspector-General to undertake that review in 2015 because as portfolio minister I recognised shortcomings in how both entities communicated with the community during those events. The Inspector-General Emergency Management Review found that the community expects they will be notified as soon as possible when issues emerge and not merely notified that water is to be released from a dam. The community also expects that they will be warned about the likely impact of dam releases and how they should respond. While recognising that dam operations are only part of the picture of any flood event, the Inspector-General recommended that the government review the legislative provisions and guidelines for emergency planning to enhance effective communications. This was one of eight recommendations and 30 findings in the Inspector-General Emergency Management's 146-page report.

The government has put in place a range of operational improvements in the capabilities and operations of the Department of Energy and Water Supply, SunWater and Seqwater over the last two years as immediate responses to other recommendations in the Inspector-General's report. The department has incident management expertise and works with dam owners and disaster management groups to help both understand their roles and responsibilities. Seqwater and SunWater have already made substantial improvements in how they deliver notifications and warnings to the community and in how they engage with disaster management groups and emergency management agencies.

I want to express here my sympathy for all Queenslanders who were affected by destructive Tropical Cyclone Debbie and the subsequent rain depression that caused widespread flooding from North Queensland to the south-east of our state and indeed into northern New South Wales. I also want to acknowledge the work of both SunWater and Seqwater during this emergency event, which was extremely challenging for them and the state emergency management system to respond to. I recognise that some residents in the community of Eton, south of Mackay, feel that releases from Kinchant Dam during the flood event caused flooding or aggravated flooding downstream of the dam. I visited the area soon after with the member for Mirani and listened to local concerns.

Many residents consider that the warning messages were inadequate and ineffective. That is why I have asked the Chief Scientist to undertake an independent assessment of the severe flooding experienced by communities on the Sandy Creek flood plain south-west of Mackay during Tropical Cyclone Debbie in March of this year to make sure that everything that could have been done was done. The assessment will investigate both the hydrology of the flood and communications by agencies during the flood event. I have expressly asked Professor Miller to ensure that the community is consulted and given an opportunity to relay their experiences of the flood. The Chief Scientist's final report is due on 30 June 2017, and I look forward to receiving her findings.

Many Queenslanders are affected by disasters, and we must continue to learn from each event and improve our response and our practices. I note the Inspector-General Emergency Management has also been tasked with undertaking a review of the effectiveness of Queensland's disaster management system in the wake of Tropical Cyclone Debbie. Should either of these reviews suggest that further improvements to our dam safety arrangements would be prudent, they will of course be considered.

The bill clarifies that dam owners are responsible for warning people who are at risk or whose property is at risk from water spilling or being released from a dam during a flood, as well as if there is a risk that the dam may fail. This goes beyond the current requirement to just notify people about releases. The bill also makes it clearer that emergency action plans are to provide an agreed framework for responding to dam related events and integrating dam owner activities into existing disaster management arrangements in their area. Dam owners, disaster management groups and local governments must all work together to identify hazards and develop coordinated responses if those hazards arise.

The bill improves the approval processes for emergency action plans by requiring local government consideration of the plans and by introducing time frames for the department's approval process to provide certainty to dam owners and other stakeholders about the status of plans.

The bill makes several other administrative improvements which are not directly related to the Inspector-General's review. The first of those is to better focus the dam safety regulatory framework on public safety issues and reduce regulatory overlap for dams that pose only a limited risk to people who live or work at the same place as the dam. These circumstances are covered by existing protections under work health and safety frameworks. This change may result in a number of dams which are currently referable, meaning regulated under the dam safety framework, no longer being covered by the regulations under the Water Supply (Safety and Reliability) Act 2008.

It is important to remember that dam failure is rare and that the risks posed by dams at a workplace or on farms can be very small compared to other occupational risks. In these cases, the government recognises that there are more significant risks that need to be managed and that the focus should be on managing those risks.

The bill also provides relief for owners of dams which are not currently referable but which might be identified as posing a potential risk to two or more people if the dam were to fail. At the moment, the chief executive of the department can require a dam owner to have an assessment undertaken of the impact of their dam failing if the chief executive believes that the dam would pose a risk to two or more people were it to fail. In these circumstances the dam owner has no choice and must engage an engineer to undertake a failure impact assessment, which can be costly. This bill provides an option for those dam owners to accept the chief executive's assessment and hence avoid the costs of a failure impact assessment. However, it does not affect their existing right to commission their own independent assessment and to give that to the chief executive for approval. If the assessment is of a sufficient standard, the chief executive would accept the findings as to whether the dam would have a population at risk if it were to fail.

The bill will also provide dam owners with appropriate powers to manage the safety of their dams and, as a consequence, the safety of downstream communities. Currently, dam owners would need to negotiate with regulators before deciding to lower the level of a dam below the full-supply level and consider the implications of this on water security. There have been a number of instances where dam owners have raised short-term safety concerns with their dam operating at the full-supply level. The bill provides an express head of power for dam owners to reduce the full-supply level of their dam where, based on the advice of a registered professional engineer, there is an unacceptable risk of a dam failure if the dam operates at the full-supply level. This new power will enable the dam owner to take decisive and effective action to address short-term safety risks without the need to balance safety concerns against water security.

However, a number of submissions to the committee raised issues with the potential of these powers to expose dam owners to liability risks and claims for compensation from third parties. The committee recommended that the bill be amended to clarify the terms 'unacceptable risk' and 'acceptable risk' by reference to the Queensland dam safety guidelines and that a no-compensation clause be added for new section 399B inserted by the bill. The Queensland guidelines on acceptable flood capacity provide guidance on tolerable risks and include upgrade schedules for completion of necessary works by 2035 in order to reduce long-term risks such as spillway inadequacy below tolerable risk levels. Long-term risks above the tolerable risk limits are considered acceptable if they satisfy these schedules.

Short-term risks arising from emergent circumstances such as embankment instabilities or concentrated leaks are not considered to be acceptable long-term risks and need to be investigated and addressed in much shorter time frames. My department will amend the dam safety guidelines to clarify that these shorter term risks are outside the limits of acceptable risk and should be addressed independently of scheduled upgrades. Providing clarity on what constitutes an unacceptable risk within the Queensland guidelines on acceptable flood capacity will also ensure dam owners are not applying different industry standards or interpretations when exercising these new powers to reduce dam levels. As I foreshadowed, I will be moving amendments during consideration in detail to address these issues.

The bill also streamlines the process the minister must follow to declare a temporary full-supply level for a prescribed flood mitigation dam, which currently only includes Wivenhoe, North Pine and Somerset dams. Finally, the bill gives dam and weir owners the power to erect warning signs on public land downstream of the infrastructure in response to a recommendation of the coronial inquest into the tragic death of Nelani Koefer. I commend the bill to the House.