

Guideline: Rights and Obligations of a Division 3 Dam Works Permit Holder and/or Dam Owner

When does a permit take effect?

Where the Minister grants a Division 3 permit, it takes effect:

- at the end of 14 days from the day that the last notice of the granting of the permit was served on a person who has a right of appeal; or
- if the permits specifies a day on which it is to take effect, on the day so specified; unless
- where an appeal or review has been instituted against the Minister's decision to grant a permit, the permit does not take effect until the determination or abandonment of the appeal or review.

Does a Division 3 permit lapse?

A permit is in force from the date it took effect until whichever occurs first –

- the date specified in the permit as the date on which the permit will expire; or
- the date on which the Minister notified the permit holder that the notice of completion has been accepted.

Can the period of Division 3 permit be extended?

A permit holder may apply to the Minister to extend the time for which a permit is in force, however this is to be no later than one month before the expiry of the Division 3 permit. The Minister may extend the time for which a permit is in force for a period not exceeding 2 years.

Can a permit be corrected?

The Minister may correct a mistake in a permit if the mistake is –

- a clerical mistake or an error arising from any accidental slip or omission; or
- an evident material miscalculation of figures or an evident material mistake in the description of any person, land or other property referred to in the permit.

Can a permit holder apply to amend a permit?

Upon application by the permit holder, the Minister may grant an amendment to the permit if the Minister is satisfied that the amendment would not substantially alter⁶ the dam works to which the permit applies and does not increase the risk to public safety.

Can a permit holder apply to transfer a permit?

The holder of a Division 3 permit may apply to the Minister to transfer the permit to another person. If the applicant is not the owner of the land on which the dam works specified in the permit are being, or are to

⁶ **Substantial alterations** include, but are not limited to, alterations that increase the size of the footprint of the dam or place the dam in a higher consequence category.

be, undertaken – the application must be accompanied by the written permission of the owner of the land to the making of the application.

Can the Minister specify requirements regarding the operation of a dam?

The Minister may issue a Dam Operating Notice in relation to the operation of a dam to ensure that it is operated in such a manner in order to–

- a) ensure that there are no significant adverse impacts on other water users; or
- b) prevent any pollution of water; or
- c) protect the environment, including the riverine and riparian environment; or
- d) prevent the inundation of land not owned by the dam owner.

A Dam Operating Notice will generally be issued at the time an application for a Division 3 permit is granted and the permit issued, but may be issued at any other time and whether or not a Division 3 permit is in force. The decision to issue a Dam Operating Notice is appealable.

What other legal obligations may be related to dam works?

A dam works permit under the *Water Management Act 1999* does not absolve a permit holder from their legal obligations under the *Water Management Act 1999* or any other Act. For example, a person holding a dam works permit may need to also:

- apply for an authority to take water into the dam, under the *Water Management Act 1999*; or
- apply for a permit under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) if the dam works may impact on a matter of national environmental significance; or
- apply for a permit under the *Aboriginal Relics Act 1975*, if the dam works are going to interfere with an Aboriginal relic; or
- obtain a certified Forest Practices Plan under the *Forest Practices Act 1985* to harvest more than six tree ferns (*Dicksonia antarctica*); or
- undertake action, under the *Weed Management Act 1999*, against declared weed species.

Off-site activities associated with the dam works may also require authorisation or permits under other legislation. This may include access to the site (e.g. development or upgrading of roads) or the permitting of an off-site quarry (borrow pit). The permit holder will need to ensure that the appropriate authorisations, for off-site activities, have been obtained from the relevant agency or local council, prior to commencing dam works.

The above limited examples of potential legal obligations should not be misconstrued as an exhaustive list. The onus is on the applicant or permit holder to make themselves aware of their obligations under the *Water Management Act 1999* or any other Act.

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Who is the ‘dam owner’ and what are their legal obligations?

In the case of a dam under construction, the dam owner is –

- the permit holder under which the dam is being constructed; and
- any person who owns the land on which dam works in relation to the dam are being, or are to be, undertaken.

In the case of a dam, the dam owner is –

- the person who owns the dam; or
- any person who owns land that may be covered by water when the dam is at maximum operating level (other than because of flood discharge) or, if there is a controlled spillway in relation to the dam, when water is at the spillway crest level.

A dam owner is responsible for the dam and its safety in accordance with the requirements of *Water Management Act 1999*. If a person is found guilty of an offence under the *Water Management Act 1999* the Minister may require a dam owner to take a specified action, whether or not the person so required to take action is the person who is found guilty of the offence.

Notice of Commencement

It is a requirement that a Notice of Intent to Commence Dam Works must be submitted to the Department before dam works commence. Dam works must not commence prior to the nominated start date on the notice, unless otherwise authorised by the Department. A Notice of Intent to Commence Dam Works is available at: <http://dpiwwe.tas.gov.au/water/water-management-forms>

Must I give notice when dam works are complete?

It is a requirement that before the expiration of a Division 3 Permit, and as soon as practicable after the dam works have been completed, the holder of the permit must submit to the Department a Notice of Completion of Dam Works, available at: <http://dpiwwe.tas.gov.au/water/water-management-forms>

The Notice of Completion includes a Works- as-Executed Report. The *Water Management (Safety of Dams) Regulations 2015* require that a person or persons undertaking a Works as Executed Report must do so in accordance with relevant competency standards as required by the consequence category of the dam and the height of the dam. The Works-as-Executed Report must be completed by a person with the minimum qualifications set out in the *Water Management (Safety of Dams) Regulations 2015*.

Fees will be incurred for the Department's assessment of the Works-as-Executed Report Refer to the guide '**Dam Works Fee Summary**'.