

Guideline: Rights and Obligations of a Division 4 Dam Works Permit Holder and/or Dam Owner

When does a Division 4 Permit take effect?

Where a Notice of Intention to Undertake Dam Works under a Division 4 Permit has been submitted to the Minister, a Division 4 permit takes effect 14 days after the day on which a notice and relevant fee is received by the Department.

However, where the Minister has received a notice of intention to undertake dam works under a Division 4 Permit, the Minister may issue a notice directing the person to stop work and to apply for a Division 3 permit or to undertake specific work or activity to the Minister's satisfaction. These measures will enable the Minister to ensure public safety and environmental safeguards are in place.

Are there any conditions of a Division 4 Permit?

All Division 4 dam works must be constructed in accordance with the 'Division 4 Dam Works Code 2015' available at <http://dpipwe.tas.gov.au/water/dams/dam-works-codes>

What other legal obligations may be related to dam works?

In undertaking any dam works, Division 4 permit holders must also be aware of their obligations under the:

- *Water Management Regulations 2009*; and
- *Water Management (Safety of Dams) Regulations 2015*; and
- *Water Management (Division 4 permit conditions) Order 2015*.

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 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 is not a complete 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.

Does a Division 4 permit lapse?

A permit is in force from the date on which it is taken to be issued and ending–

- on the expiry of the period of 2 years;
- on the day on which the Minister notifies the permit holder that the notice of completion has been accepted;
- on the day on which the Minister issues a notice, to the permit holder, to direct the permit holder to apply for a Division 3 permit.

What are the dam safety obligations?

The *Water Management (Safety of Dams) Regulations 2015* prescribes the activities and required levels of competency in relation to the safety of dams that must be undertaken for dam works undertaken under a Division 4 permit.

Do I need to keep records in relation to the dam works?

In accordance with the requirements set out in the *Water Management Regulations 2009*, a person who is, or has been entitled to a Division 4 permit in relation to dam works must keep the following records and information for a period of 5 years commencing on the day on which the dam works are completed:

- (a) any surveys that relate to the dam works;
- (b) any design plans in relation to the dam works;
- (c) any reports, in relation to the dam works, that are obtained by the person;
- (d) any other information, contained in a document (including an electronic document) that has been prepared or obtained by the person and is relevant in determining whether the person was entitled to a Division 4 permit in relation to the dam works.

Any relevant records and information must be provided to the authorised officer when requested.

Must I give notice when dam works are complete?

It is a requirement that, within 30 days after the dam works have been completed, the permit holder must submit to the Department a Notice of Completion of Dam Works. The approved form is 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 Works as Executed Reports must do so in accordance with relevant competency standards as required by the consequence category of the dam and the height of the dam wall. In the case of dams assessed as a Very Low Consequence Category, a Works- as-Executed Report may be completed by any person. In the case of dams assessed as a Low Consequence Category, a Works- as-Executed Report must be completed by a person with Class 2 Competency.

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

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.