

Utilities (Technical Regulation) (Listed Dams) Determination 2018

Disallowable Instrument DI2018–234

made under the

Utilities (Technical Regulation) Act 2014, section 69 (listing of certain dams)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Utilities (Technical Regulation) (Listed Dams) Determination 2018* as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the disallowable instrument and to help inform debate on it. It does not form part of the disallowable instrument and has not been endorsed by the Assembly.

The explanatory statement must be read in conjunction with the disallowable instrument. It is not, and is not meant to be, a comprehensive description of the disallowable instrument. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview

The Technical Regulator has determined 16 dams owned by Icon Water and 15 dams owned by ACT Government as ‘listed dams’ under section 69 of the *Utilities (Technical Regulation) Act 2014* (the Act).

Background

The Act commenced on 1 March 2015. Part 8 of the Act introduces a uniform framework for dam safety regulation in the Territory. Section 58 of the Act requires all existing or proposed dams in the Territory that are more than 5m high or have a water storage capacity of more than 250ML to be included in a public dams register (‘registrable dams’). A dams register is maintained in accordance with s58 of the Act and currently includes 40 dams. The dams register is accessible on the [Access Canberra website](#).

Section 59 of the Act states that the Technical Regulator must determine the ‘required information’ to be provided for registrable dams. The required information was determined in May 2015 (NI2015-188) and includes a consequence category assessment made by the dam owner. This assessment provides guidance on the risk of a dam to the community in the event of the failure of the dam and is made according to *ANCOLD Guidelines on Dam Safety Management* (2003).

Section 69 of the Act requires the Technical Regulator to consider the information provided in relation to registrable dams and determine a list of the dams that present a risk of significant adverse effects on the community in the event of the failure of the dam ('listed dams'). All listed dams must comply with the *ACT Dam Safety Code 2018* (the Code).

Icon Water and relevant ACT Government agencies operating registrable dams have provided the Technical Regulator with an assessment of the consequence category of each dam. A 'Significant' consequence category indicates that the consequence of failure of a dam could result in loss of life and cause minor damage. 'High C', 'High B', 'High A' and 'Extreme' categories indicate correspondingly more severe consequences.

It must be noted that the risk of adverse effects in the case of failure is not at all related to the risk of failure. A dam with an associated high risk of adverse impacts in the case of failure can be, and usually is, a safe dam, that is, its risk of failure is very low.

The following 16 Icon Water dams are assessed as follows:

	Dam Name	Consequence Category
1	Aranda WS Reservoir	High C
2	Bendora Dam	High A
3	Campbell Water Supply Reservoir	High C
4	Corin Dam	Extreme
5	Cotter Dam	Extreme
6	Cotter Saddle Dam 1	High A
7	Cotter Saddle Dam 2	High A
8	Googong Dam	Extreme
9	Googong Saddle Dam	Extreme
10	Higgins Water Supply Reservoir	High C
11	Kambah Water Supply Reservoir	High C
12	Lower Molonglo Water Quality Control Centre Bypass Dam	Low
13	Mugga Water Supply Reservoir	High C
14	O'Connor Water Supply Reservoir	High C
15	Spence Water Supply Reservoir	High C
16	Stromlo Catch Dam	Significant

The following 15 dams operated by ACT Government are assessed as follows:

1	Coombs A	High C
2	Coombs B (Holdens Creek)	High C
3	Cravens Creek	High C
4	Ginninderra Dam	Extreme
5	Gungahlin Dam	Extreme
6	Isabella Weir	High B (Augmented)
7	Jerrabomberra Retarding Basin	Significant
8	Lower Stranger Pond	Significant
9	Point Hut Dam	Significant
10	Southwell Park Retarding Basin	Significant
11	Tuggeranong Dam	Significant

12	Upper Stranger Pond	Significant
13	Upper Deep Creek Dam	High C
14	Wrights retardation basin (Condor)	High
15	Yerrabi Dam	Extreme

The disallowable instrument determines the above dams to be listed dams.

All of the above dams have been assessed as being in the ‘Significant’ consequence category or higher except for the Lower Molonglo Water Quality Control Centre Bypass Dam. Dams with a consequence category of ‘Significant’ or higher are those dams where failure could result in loss of life and cause minor to major damage. Therefore it is appropriate for these dams to be listed under s69 of the Act.

Failure of the Lower Molonglo Water Quality Control Centre Bypass Dam has a ‘Low’ consequence category in dam safety terms. However failure of this dam would result in significantly increased likelihood that the Lower Molonglo Water Quality Control Centre (LMWQCC) could breach its EPA licence for discharges to the Molonglo River during the period required to repair or replace the dam. This could have environmental and reputational implications for Icon Water and the ACT Government. Accordingly it is appropriate that this 30 metre high dam continue as a listed dam under s69 of the Act.

Section 72 of the Act states that the Technical Regulator must prepare a technical code to identify and regulate the safety of listed dams. The Code ([DI2018-202](#)) was approved by Minister Gentleman on 15 June 2018, and requires compliance with the *ANCOLD Guidelines on Dam Safety Management*. Under s75 of the Act the owners of listed dams must comply with the Code.

There is a public interest purpose in listing these dams, as it provides information to the community, developers and other relevant government agencies about the location of higher risk consequence category dams.

Regulatory Impact Statement

A Regulatory Impact Statement (RIS) is not required for this disallowable instrument as it is unlikely to impose appreciable costs on the community (section 34(1) of the Legislation Act). Further, in accordance with section 36(1)(b) of the Legislation Act, a RIS is not necessary as the instrument does not operate to the disadvantage of anyone by adversely affecting the person’s rights or imposing liabilities on the person. Specific regulatory requirements are imposed by the Code, which is subject to a RIS.

The determination is consistent with the Legislative Assembly’s Scrutiny of Bills Committee Terms of Reference. In particular, the determination:

- a) is in accordance with the general objects of the Act under which it is made.
- b) does not unduly trespass on rights previously established by law, as it does not affect any person’s rights
- c) merely serves to give effect to an aspect of the previously enacted regulatory regime.

Outline of Provisions

Clause 1 Name of Instrument

This section provides the name of the instrument.

Clause 2 Commencement

Clause 2 states that the instrument commences on the day after it is notified.

Clause 3 Determination

Clause 3 is the Technical Regulator's determination of listed dams as specified in the schedule. It determines 31 Icon Water and ACT Government dams as listed dams.

Clause 4 Revocation

Clause 4 revokes the previous determination of listed dams (DI2015-44).