

Utilities (Technical Regulation) (Listed Dams) Determination 2023

Disallowable Instrument DI2023– 203

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 2023* 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

In the *Utilities (Technical Regulation) (Listed Dams) Determination 2019* (DI2019-205), the Technical Regulator determined:

- 16 dams owned by Icon Water
- 16 dams owned by ACT Government
- 2 Dams owned by Queanbeyan-Palerang Regional Council (QPRC)

as ‘listed dams’ under section 69 of the *Utilities (Technical Regulation) Act 2014* (*the Act*).

This determination revises the ‘listed dams’ of the two previous determinations, as follows:

- 15 dams owned by Icon Water
- 15 dams owned by ACT Government
- 2 Dams owned by Queanbeyan-Palerang Regional Council (QPRC)

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 44 dams. The dams register is accessible at <https://www.accesscanberra.act.gov.au/s/public-registers>.

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 (*Utilities (Technical Regulation) Dams Register – Required Information Determination 2015 (No 1)* (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, ACT Government agencies and QPRC 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 to major damage. 'High C', 'High B', 'High A' and 'Extreme' categories indicate correspondingly more severe consequences.

The Technical Regulator has also determined that dams with an embankment height equal to or exceeding 10 m should be a listed dam under section 69; even though the consequence category may be lower than Significant. This action is taken to bring the ACT broadly in line with regulation of dams undertaken by other eastern Australian jurisdictions.

It must be noted that the risk of adverse effects in the case of failure is not 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 dam where the risk of failure has been categorised as very low.

The consequence categories of the listed dams are included in the instrument as information only.

27 listed dams have been assessed as being in the 'Significant' consequence category or higher. 5 listed dams have been assessed as being in the 'Low' or 'Very low' consequence category but have an embankment height greater than or equal to 10m. Only one of these dams (North Weston Lower Pond) was not previously a listed dam. 3 dams have been delisted due to an accepted revised consequence category.

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 *Utilities (Technical Regulation) (ACT Dam Safety Code) Approval 2018 (DI2018-202) (the Code)* 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.

A regulatory impact statement (RIS) is not required for this disallowable instrument as it is unlikely to impose appreciable costs on the community or a part of the community (section 34(1) of the *Legislation Act 2001*). 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.

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,
- b) does not unduly trespass on rights previously established by law,
- c) does not make rights, liberties and/or obligations upon non-reviewable decisions,
- d) only contains a matter that is appropriately dealt with in a disallowable instrument,
- e) merely serves to give effect to an aspect of the previously enacted regulatory regime.

This instrument does not engage any human rights.