Australian Capital Territory

Water and Sewerage Amendment Regulation 2026 (No 1)

Subordinate law SL2026–2

made under the

Water and Sewerage Act 2000, s 49 (Regulation-making power)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Water and Sewerage Amendment Regulation 2026 (No 1)* (the ***regulation***) as made by the Executive. It has been prepared to assist the reader of the regulation and to help inform any debate on it. It does not form part of the regulation and has not been endorsed by the Legislative Assembly (the ***Assembly***).

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

OVERVIEW

The regulation is made under section 49 of the *Water and Sewerage Act 2000* (the ***Act***). Together the regulation and the Act regulate the supply of plumbing and sanitary drainage services in the ACT.

The regulation makes amendments to the *Water and Sewerage Regulation 2001* to remove the mandatory requirement for installing separated grey water piping in a new house or an extension to an existing house. Installing separate grey water piping provides homeowners with the infrastructure needed to connect a grey water system in the future, if they choose. However, the piping only becomes functional it is connected to an optional filtration system to ensure the safe capture, treatment and reuse of grey water. Although it will not be mandatory to install separated grey water piping, provisions remain in the regulation to assist homeowners and industry to comply with the requirements necessary to maintain grey water use systems already in place or to install separated grey water piping, should they choose to install it.

This change is part of the ACT Government's first tranche of reforms under the construction productivity agenda. This agenda has a focus on implementing reforms that reduce regulatory burden, streamline approval processes, support innovation and improve workforce flexibility in the building and planning system. This particular

reform reduces costs for homeowners and reduces the regulatory burden for industry, supporting housing affordability and construction productivity.

The requirement for the mandatory installation of separated grey water piping was first introduced in 2005 by the *Water and Sewerage Amendment Regulations 2004 (No 1)*. It aimed to make the future installation of grey water systems easier and more affordable, thereby reducing reliance on potable water and supporting Canberra's long-term water security. At the time, Australia was in the middle of the millennium drought and Canberra was experiencing its third Summer of water restrictions. The drought came to an end in 2010 and water restrictions were lifted. Activation rates have been far lower than originally anticipated. The mandatory requirement imposes costs on building homes, causes practical impacts on builders and homeowners, and contributes to unused infrastructure with environmental impacts.

CONSULTATION ON THE PROPOSED APPROACH

This reform reflects government and industry collaboration to progress the ACT's construction productivity agenda. In developing the regulation, the government consulted with key stakeholders on the implementation framework for the reform. A key external stakeholder consulted was the Master Plumbers Association ACT, who originally proposed the reform. Internal stakeholders included Access Canberra and the Office for Water within the City and Environment Directorate. The Human Rights and Social Policy, and Criminal Law teams, within the Legislation, Policy and Programs Branch of the Justice and Community Safety Directorate, were also consulted on human rights impacts and the removal of the offence provision.

REGULATORY IMPACT STATEMENT (RIS)

Section 34 of the *Legislation Act 2001* provides that if a proposed subordinate law or disallowable instrument (the ***proposed law***) is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law must arrange for a RIS to be prepared for the proposed law.

A RIS is not required for this instrument as it is unlikely to impose appreciable costs on the community. The introduction of this reform is expected to contribute to cost savings for new house builds and reduce the regulatory burden on industry.

OFFENCES AND PENALITIES

This regulation removes a strict liability offence as it is no longer a mandatory requirement to install separated grey water piping.

CONSISTENCY WITH HUMAN RIGHTS

Section 28 of the *Human Rights Act 2004* (the ***HRA***) provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Relevant factors to consider under this section includes (a) the nature of the right, (b) importance of the purpose, (c) nature/extent of the

limitation, (d) relationship between the limitation and its purpose and (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

Having regard to these factors, any potential impacts arising from this regulation are considered reasonable, proportionate and compatible with the HRA. An assessment under section 28 has been undertaken, as follows.

Rights engaged

This regulation removes the mandatory requirement to install separated grey water piping in new houses. As such, it may be considered a retrogressive step that engages and limits the following human right under the HRA:

- Section 27C – Right to a Healthy Environment.

Nature of the right and the limitation (s28 (2) (a) and (c))

Clause 5 removes the mandatory installation of separated grey water piping in new houses and in extensions to existing houses. This was originally intended to support water security and sustainability by providing infrastructure that allows homeowners to easily install grey water use systems. While grey water readiness can reduce potable water demand, wastewater loads, and supports long-term sustainability; removing the mandate only indirectly affects immediate uptake and future water security. Therefore this measure amounts to a minimal limitation on section 27C of the HRA for the following reasons:

- The amendment does not prohibit the use of separated grey water piping or grey water systems. A voluntary pathway remains available to allow homeowners and industry to install such systems where they consider them appropriate.

- Households retain the capacity to achieve water-efficiency outcomes through alternative means such as voluntary grey water systems, albeit at much greater expense if needing to retrofit, and other existing measures (for example, installing rainwater tanks or diverting washing machine water for garden use via a hose).

- The regulation removes compulsion but preserves choice without removing the ability, therefore any impact on environmental outcomes is indirect, diffuse, and limited in extent when assessed against section 28 (2) (c) of the HRA.

- The amendment identified in clause 5 only provides a sustainability benefit if the homeowner installs a grey water system.

The right to a healthy environment includes multiple substantive elements, including a safe climate and access to clean water. This right is necessary for the enjoyment of other human rights, including the right to life and the right to health. It requires safeguarding environmental conditions for the present generation while also ensuring ecological sustainability and stability for future generations.

Removing the mandatory measure removes one method that supports long-term sustainable water management and in doing so may be considered a retrogressive step. The nature and extent of this retrogressive step removes the ability for owners of future new houses to easily and cost effectively install a grey water system as water scarcity becomes more pressing and droughts become more often and longer lasting. However, this measure is necessary despite being seen as retrogressive due to the following reasons:

- Although the introduction of the mandatory requirement was to help incentivise the uptake of grey water use systems, this policy objective has not been realised and thereby created a cost that outweighs the benefits.

- an environmental sustainability benefit is only enlivened if the homeowner chooses to install the grey water system itself, and evidence shows that this uptake has been very low.

- there are more efficient and lower-cost measures available that homeowners can implement to use greywater regardless of a separate grey water piping being installed (e.g draining laundry water by a hose into the garden).

Although this measure will likely lead to less protection of the right to a healthy environment, it is considered very minor considering the uptake of grey water systems has been limited to 0.2-1% of new homes. There is little evidence to suggest that uptake will be any different with the removal of the piping duplication requirement. Anecdotally, only very environmentally conscious homeowners install grey water recycling systems, so they are likely to continue to install them at the same rate.

There is also health concerns related to grey water. In most cases, the only source of greywater is the laundry. All other sources present health problems. Even laundry water, unfiltered poses environmental problems including phosphate build up and faecal matter such as through nappies.

Although this measure may indirectly affect the uptake and installation of grey water use systems in the future, it is a necessary step due to the reasons outlined above.

For completeness, section 28 requires that any limit be reasonable and demonstrably justified, having regard to the nature of the right and "the nature and extent of the limitation" (among other factors). The analysis above addresses those elements for this section.

Legitimate purpose (s28 (2) (b))

The purpose of this reform is to improve housing affordability through the removal of a mandatory requirement that, based on implementation experience, has not achieved the original policy intent of encouraging homeowners to install a grey water system using the mandatory separated grey water piping infrastructure.

The current framework imposes significant costs for minimal environmental uptake. Removing the mandatory requirement supports housing affordability and construction productivity by reducing building costs and reduce regulatory burden. Improving

housing affordability is essential to ensure Canberrans have fair and equitable access to well-located homes. Strengthening construction productivity enables the building sector to deliver new housing more efficiently and at lower cost. Together, these outcomes support the ACT Government's commitment to deliver 30,000 new homes by 2030. This constitutes a legitimate and important purpose within the meaning of section 28 (2) (b) of the HRA.

The original RIS which supported the introduction of the mandatory requirement in 2005, assumed that making houses grey water ready would overcome post-build cost barriers and thereby drive uptake; however, uptake has remained extremely low resulting in disproportionate costs relative to environmental gains.

The reform therefore aims to:

- Reduce unnecessary, compulsory costs for building by ending a mandate that does not deliver its intended benefits.

- Lower regulatory burden for industry and support construction productivity.

- Support housing affordability.

A macroeconomic analysis undertaken by the relevant ACT Government policy team has found that in practice, the mandate has not delivered the intended uptake, environmental benefits or cost-effectiveness:

- The RIS estimated an uptake rate of 20% of new houses installing grey water systems would be required to "break even" in terms of costs to benefits. This assumption has not been realised, with an estimated uptake of approximately 0.12% to 1% (2.5 – 20 systems a year).

- Based on the estimate of annual grey water system installations of 2.5-20 per year, this policy is estimated to have had a large economy-wide cost for negligible uptake, as seen in the following figures:
    - Cost to the ACT economy of $66,480,685 to $67,828,185 ($2025) to install separated grey water piping in all new houses.
    - Equating to a cost of $1,477,348 - $171,716 per grey water use system installed using the grey water piping (based on 2.5-20 systems being installed per year, since the introduction of the mandatory requirement).
    - Saved 18,623 – 161,948 kilolitres of water.
    - Saved the ACT economy $47,763 - $414,585 in water bills.

- High system and maintenance costs deter use: Systems range in price from $1,500 for a simple diverter system to $20,000 for a treatment and storage system.

- Annual maintenance costs of approximately $350 per annum tend to far exceed the savings a household can make on their water bill (typically around $100 per annum).

- Direct affordability impacts - Removing the mandate is expected to reduce the cost of building a new home by ~$1,550, with immediate affordability and productivity benefits.

These figures highlight the disproportionate cost relative to the water savings achieved. Furthermore, the mandatory requirement yields negligible environmental gains due to the installation of materials and duplicative infrastructure that is not used (eg additional PVC sewerage pipe).

Rational connection between the limitation and the purpose (s28 (2) (d))

This change is rationally connected to its purpose by removing a mandatory requirement where the cost and regulation has not delivered the intended outcome of uptake of grey water reuse systems.

There is a clear and non-arbitrary relationship between the measure and the stated aims. Removing a uniform mandate for the installation of separate grey water piping lowers building costs by eliminating a compulsory fixture; reduces prescriptiveness in the technical specifications of new homes; and opens space for alternative water-efficiency solutions. There are a range of complementary policy alternatives that have been introduced since the mandatory requirement for separated grey water piping, which support water security and water source diversification. These include but are not limited to:

- Embedding water sensitive urban design requirements in the planning system, including the installation of a rainwater tank.

- Encouraging rainwater harvesting, smart irrigation, and water-efficient appliances offers practical and widely adopted solutions.

- The Water Efficiency Labelling and Standards (WELS) scheme – which helps consumers choose water efficient household products.

- An increasing focus on centralised water recycling and stormwater harvesting as more scalable and manageable alternatives.

- Additional regulatory levers regarding temporary water restrictions that can be introduced to achieve rapid reductions when required and the introduction of permanent water restrictions helps maintain lower baseline water use over time.

Evidence shows that the actual uptake of greywater systems in the ACT has been extremely low, estimated at only 0.12–1% of new homes, or approximately 2.5–20 systems per year. This means that although separated grey water piping is mandatory and available for use, homeowners are choosing not to connect this piping to grey water use systems. This low uptake is driven by factors such as high installation and ongoing maintenance costs, operational problems, potential health risks, smaller blocks and gardens, and smaller volumes of grey water being produced due to complementary water efficiency measures. Given this pattern, transitioning to a

voluntary model is unlikely to materially reduce water savings across the Territory or undermine the ACT's long-term water-resilience strategy. In practice, the mandatory requirement has not resulted in widespread use of greywater systems and therefore has not contributed meaningfully to potable-water demand reduction.

Furthermore, requiring builders to install greywater infrastructure that is almost never used imposes both financial and environmental costs. The proposal is expected to reduce the cost of constructing a new home by approximately $1,550, avoiding the installation of unused piping and associated materials. Removing a requirement that produces minimal immediate environmental benefit but imposes cost, supports a more efficient regulatory framework aligned with actual outcomes.

A key objective of the ACT Water Strategy: 2025-45 is to ensure the sustainable and efficient use of water resources. The disproportionate cost relative to water savings, low uptake of grey water systems and the negative environmental impacts caused by unused building materials is not considered an efficient or sustainable use of resources especially noting that there are a range of complimentary policy alternatives that have been introduced since the mandatory requirement for separated grey water piping.

In this context, the limitation on the right to a healthy environment is rationally connected to a legitimate and evidence-based policy aim: ensuring that regulatory interventions remain effective, proportionate, and aligned with contemporary water-efficiency strategies that deliver greater practical environmental benefit than the existing mandate.

Proportionality (s 28 (2) (e))

The reform does not prohibit the use of grey water, nor does it remove other environmental management tools available to government or industry.

The purpose of this measure is to remove the mandatory grey water piping requirement due to its low uptake and high costs since the mandatory requirement was introduced. Evidence shows that despite the requirement being in place for nearly two decades, only a small number of households have activated their greywater systems with the majority remaining unused and effectively redundant. In considering alternatives, the Government examined whether increased public awareness such as highlighting water scarcity issues or promoting the potential cost benefits of grey water reuse could improve uptake. The Government considered that awareness alone would be ineffective due to the underlying practical and financial barriers to activation. Other alternatives included removing the grey water provisions entirely however this risked undermining the ACT's long term water resilience strategy. The removal of the mandatory requirement whilst maintaining voluntary pathway to encourage grey water use is the least restrictive means reasonably available to achieve the purpose of this measure.

This reform represents a proportionate and evidence-based response to the very low uptake and limited practical utilisation of grey water systems in new homes. It forms part of a broader tranche of measures intended to streamline development processes and support more efficient and affordable housing delivery. By removing an under-used and costly mandatory requirement, the reform supports the government's

objective of facilitating increased housing supply and lowering construction costs for the community. The Office of Water who is responsible for managing water wisely in the ACT, has indicated its support for the proposed change.

Under section 28 of the HRA, human rights may only be subject to reasonable limits that can be demonstrably justified in a free and democratic society. Applied here, the purpose of the limitation, the reduction of unnecessary construction costs, improved efficiency in development, and avoidance of technological lock-in, and thereby advancing housing affordability is of substantial importance in the current housing affordability and supply context. Moderating build costs and enabling compliance flexibility are legitimate public interests that support the delivery of more affordable housing.

The nature and extent of the immediate limitation on section 27C (right to a clean, healthy and sustainable environment) is comparatively modest. The reform does not prohibit the use of grey water, nor does it remove other environmental management tools available to government or industry. In the longer term, the limitation means that there will be fewer homes that can more easily retrofit grey water recycling systems. However, the likelihood of this becoming a significant limitation is considered low, due to the same reasons that low retrofit is occurring now.

Taken together, the importance of the objectives, the narrow scope of the limitation, and the retention of alternative pathways to support environmental outcomes indicate that the measure is a proportionate and reasonable limit on the right to a healthy environment and is necessary despite being retrogressive.

CLAUSE NOTES

Clause 1 Name of the regulation

This clause provides that the name of the regulation is the *Water and Sewerage Amendment Regulation 2026 (No 1)*.

Clause 2 Commencement

This clause provides for the commencement of regulation. The regulation commences on the day after its notification day.

Clause 3 Legislation amended

This clause provides that the regulation amends the *Water and Sewerage Regulation 2001*.

Clause 4 Section 5A, note 1, dot points

This clause substitutes section 5A, note 1, dot points as a result of the removal of section 16A referenced in clause 5.

This clause provides notes about how the Criminal Code applies to the following:

- s 16B (Preservation of separated sanitary drainage for grey water)
- s 16C (Overflow from grey water disposal system)
- s 16D (Retrofitting backflow prevention devices)
- s 24A (Building in separated rainwater supply device)
- s 24B (Installing rainwater supply service).

Clause 5 Section 16A

This clause omits section 16A (Building-in separated sanitary drainage for grey water) in the *Water and Sewerage Regulation 2001*. This section requires the mandatory installation of separate grey water piping in situations where a new house is being constructed or an extension to an existing house.

Sections 16B, 16C and 16D are maintained to preserve pre-existing separated grey water piping and regulate instances/support compliance where a grey water use system is installed voluntarily.

Section 16B (Preservation of separated sanitary drainage for grey water) is maintained to protect existing grey water pipes from contamination by connection to sanitary fixtures that can produce non-grey water sewage. It is an offence to not comply with this provision.

Section 16C (Overflow from grey water disposal system) is also maintained to reduce the risk of uncontrolled discharge of sewerage into the environment arising from overflow, blockage or malfunction of a grey water disposal system where a grey water system is installed. It is an offence to not comply with this provision.

Section 16D (Retrofitting backflow prevention devices) is also maintained to require backflow prevention devices to protect water supply plumbing from sewerage contamination, where a grey water system is installed. It is an offence to not comply with this provision.