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REGULATORY IMPACT STATEMENT

Utilities (Technical Regulation) (ACT Dam Safety Code) Approval 2018

Disallowable Instrument DI2018-202

Technical Regulator

Environment, Planning and Sustainable Development Directorate

April 2018



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Purpose

The purpose of this Regulatory Impact Statement (RIS) is to provide information about the regulatory impact of the Utilities (Technical Regulation) (ACT Dam Safety Code) Approval 2018 (the Code), made under the *Utilities (Technical Regulation) Act 2014* (the Act).

Policy Problem

Section 69 of the (the Act requires the Technical Regulator to consider the risk to the community if a registerable dam fails, and to determine a list of dams that present a risk of significant adverse effects on the community in the event of a dam failure (listed dams).

Section 72 of the Act requires the Technical Regulator to prepare a Technical Code which provides for the regulation of listed dams.

The policy problem in the ACT in relation to listed dams is to appropriately regulate listed dams that present a risk of significant adverse effects on the community in the event of a dam failure.

The ACT Dam Safety Code 2018 (the Code) provides a consistent risk based methodology for confirming which ACT dams should be listed by the Technical regulator, and then sets the regulatory regime that dam owners' are to follow in order to ensure that the community risk represented by the dams is as low as reasonably possible. The regulatory regime of the Code completes the policy work required in relation to dams that present a risk of significant adverse effects to the community in the event of a dam failure.

The Authorising Law

The Code is made and approved under Division 8.4 of the Act. The Act is an Act that relates to the safe, reliable and efficient delivery of regulated utility services one of which is the ownership of listed dams in the ACT. Other major utility services regulated under the Act include electricity, gas, water and sewerage services.

Objectives of the ACT Dam Safety Code 2018

The objective of the Code is to protect the community by regulating all phases of ownership of listed dams, thereby providing the community with confidence that these dams are managed to an appropriate standard and that the risk they represent is as low as reasonably possible.



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The Code in turn has been prepared using the Australian Committee on Large Dams (ANCOLD) guidelines as its technical basis. The ANCOLD guidelines have also been adopted by all other eastern states of Australia as their technical basis for the regulation of dam safety.

Each regulated utility is fully responsible for the safety of each registrable or listed dam that it owns, leases, subleases and/or proposes to develop. The Code requires owners to implement a regime of surveillance and maintenance to ensure that the objects of the Act are met by listed dam owners.

Consistency of the Code with the UTR Act and the Utilities Act

The Code is a technical code recommended by the Technical Regulator for approval by the Minister under Section 73 of the Act. The Code was prepared by the Technical Regulator and was provided to the Independent Competition and Regulatory Commission (ICRC) and the affected regulated utility services for consultation as required Section 72 of the Act.

The Code is consistent with the objects of the Act as described at Section 6 of the Act. The objects of the Act being to ensure the safe, reliable and efficient delivery of regulated utility services in a manner that provides for the safety of the public, utility staff, contractors and property in the vicinity of the regulated dams.

Consideration of Alternative Options

Section 72 of the Act requires the Technical Regulator to prepare a draft technical code for listed dams. The Code submitted for approval by Minister meets the requirements of and is consistent with the objects the Act.

The ANCOLD guidelines are recognised nationally as best practice for the design, construction, operation and maintenance of dams in Australia. ANCOLD is affiliated with the International Committee on large Dams (ICOLD), and draws on ICOLD to ensure that its standards also represent international practice. ICOLD draws members from 90 countries including all major countries of the western world. No other technical standards for dams are recognised in such a manner either internationally or across Australia. Therefore it is appropriate to adopt the ANCOLD Guidelines as the basis for the Code. It is not possible to identify another set of standards for dams which would be familiar to dam professionals in Australia. Therefore it is not appropriate to consider an alternative to the ANCOLD guidelines. Due to the complexity of issues involved in dam ownership it is not appropriate for the ACT to attempt to develop its own guidelines.

Cost/Benefit Analysis of Implementing the Code



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The ANCOLD guidelines on which the Code have been developed provide assurance that societal or community risk presented by dams is acceptable to the communities in which they are located. This is consistent with the objects of the Act. ANCOLD guidelines assess the risk presented by dams as:

1. Risks that are unacceptable, except in exceptional circumstances; or
2. Risks that are tolerable if they satisfy the ALARP principle (as low as reasonably possible); or
3. Risks that are acceptable.

In between dams that present an acceptable risk and those that present an unacceptable risk are those where the risk is tolerable if the ALARP principle is satisfied. The Code sets out requirements so that only dams that present an acceptable risk to the community or those where the risk is tolerable are permitted in the ACT.

In assessing if the ALARP principle is satisfied for a particular dam it is the responsibility of the dam owner to demonstrate to the Technical Regulator that further safety improvements to a dam would not meet the ALARP principle (i.e. that the cost of further reducing risk to the community presented by a dam is not proportionate to the reduction in risk achieved). This responsibility is a continuing one for the full asset life of the dam.

The specific regulatory costs imposed on dam owner by the Code, and which are separate to the responsibility of a dam owner to comply with good practice in dam ownership are small. The obligations are limited to reporting to the Technical Regulator that desirable community safety outcomes are achieved over the full asset life of a dam. This reporting obligation is small and clearly provides significant community benefit.

Consultation with affected Regulated Utilities and the ICRC

The affected regulated utilities include Icon Water, Transport Canberra and City Services and Queanbeyan Palerang Regional Council. Consultation has been undertaken with the aforementioned regulated utilities and the ICRC, as required by Section 72 of the Act. These parties are aware of the requirements and implications of the Code for their businesses.

A transition period of up to five years is included in the Code. Under this provision owners of existing dams have a period varying between three and five years to demonstrate compliance with the Code. It is however expected that the affected utilities will commence work towards achieving compliance shortly after approval of the Code.



Consistency of the Code with the Scrutiny of Bills Committee Principles

The Code is consistent with the Legislative Assembly's Scrutiny of Bills Committee's terms of reference. The Scrutiny of Bills Committee's terms of reference require it to consider whether (among other things) any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including regulation, rule or by-law):

- is in accord with the general objects of the Act under which the instrument is made;
- does not unduly trespass on rights previously established by law; and
- does not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

As described above, the Code is in accordance with the objects of the Act under which it is made. The Code provides for the technical regulation of dams. The Code supports the objects of the Act by requiring the safe management of dams that pose a significant safety risk to the community in the event of failure.

The Code does not unduly trespass on rights previously established by law. The Code is made as a technical code under the Act and replaces a previous code made under the *Utilities Act 2000*. The Code has been provided to the affected regulated utilities for consultation as required by the Act.

The Code creates obligations on the affected regulated utilities to maintain dams in accordance with ANCOLD Guidelines. However, it does not create any decision making functions, obligations or rights which are unduly dependent on non-reviewable decisions.

The technical regulation of utilities is a matter which is expressly considered in the Act. A process for technical regulation is provided for by the creation and approval of technical codes. Technical codes are important to give effect to the objects of the Act, and are an appropriate and necessary measure to provide for the technical regulation of important utility services to ensure safe and reliable networks.

The technical requirements and obligations imposed by the Code are essentially about ensuring that regulated utility services operate in accordance with the objects of the UTR Act. Placing these requirements in a technical code made under the UTR Act is a necessary means to achieve the goal of the technical regulation framework. Therefore, the Code requirements are justifiable, proportional and appropriate and have been discussed and supported by the relevant regulated utilities.