

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

Disallowable instrument DI2018–202

made under the

Utilities (Technical Regulation) Act 2014, section 73 (Technical codes for listed dams—approval)

EXPLANATORY STATEMENT

Background

Under section 73 of the *Utilities (Technical Regulation) Act 2014*, the Minister has approved a technical code for listed dams as recommended by the technical regulator.

The ACT Dam Safety Code 2018 (the Code) applies to listed dams as determined under section 69 of the Act.

In approving the Code under section 73, the Minister is satisfied on reasonable grounds that the content and consultation requirements have been met. The Code is consistent with the objects of the Act and is not inconsistent with any other applicable technical codes.

Overview

The purpose of the Code is to identify and regulate the safety of dams that have the potential for a failure which could have a significant adverse effect on the community.

In order to achieve this purpose, the Code requires regulated utilities, being owners of listed dams, to:

- (1) design, construct, modify, operate and maintain listed dams in accordance with currently accepted engineering standards.
- (2) have appropriate dam safety management programs in place for all listed dams, and fully implement program requirements.
- (3) demonstrate to the technical regulator the safety of listed dams at regular intervals.

The Code adopts the Australian Committee on Large Dams (ANCOLD) Guidelines as the basis for dam safety. The ANCOLD guidelines are accepted by professionals in

Australia as outlining requirements for good practice in dam ownership, and are referenced as the basis for the regulation of dam safety in all eastern states of Australia.

The Code provides for a transition period during which dam owners must put in place complying dam safety monitoring plans for all their listed dams.

In accordance with section 72 of the Act, the Technical Regulator consulted the Independent Competition and Regulatory Commission and the relevant regulated utilities to prepare this Code.

Regulatory Impact Statement

A Regulatory Impact Statement for this instrument has been prepared in accordance with section 34(1) of the *Legislation Act 2001*.

Human Rights

As a public safety initiative, the Code positively supports the human right to life as set out in section 9 of the *Human Rights Act 2004*. The Code regulates dams with the potential for a failure which could have a significant adverse effect on the community. In requiring dam surveillance, maintenance and safety programs to be in place, the Code positively supports the human right to life by regulating a potentially significant adverse impacts on the community if a failure was to occur.

In regulating listed dams owned by private companies or the Territory, the Code does not place limitations on any human rights.

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 made under a ministerial power found in the Act;
- is in accordance 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.

Outline of Provisions

Section 1 – Name of Instrument

This clause names the instrument as the *Utilities (Technical Regulation) (ACT Dam Safety Code) Approval 2018*.

Section 2 – Commencement

This clause states that the instrument commences on the day after its notification day.

Section 3 – Approval

This clause provides for the Minister’s approval of the Code as set out in the schedule attached to the instrument.

Section 4 – Public Access

This clause provides details of the availability of the Code for public inspection.

Section 5 - Revocation

This clause provides for the revocation of the previous *Utilities (Dam Safety Code) Determination 2014* (DI2014-292).