

Australian Capital Territory

Utilities (Licensing) Exemption 2023 (No 2)

Disallowable instrument DI2023–51

made under the

Utilities Act 2000, section 22 (Exemption)

EXPLANATORY STATEMENT

This explanatory statement relates to the Utilities (Licensing) Exemption 2023 (No 2) disallowable instrument (the instrument). It has been prepared to assist the reader of the instrument. It does not form part of the instrument and has not been endorsed by the Assembly. The Statement must be read in conjunction with the instrument. It is not, and is not meant to be, a comprehensive description of the 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.

According to section 21 of the *Utilities Act 2000* (the Act), a person must not provide a utility service except in accordance with a licence. Section 22 of the Act allows the Minister to exempt a person from the requirement to hold a licence in relation to a utility service. An exemption may be subject to conditions stated in the instrument of exemption.

The exemption is given to the Australian Capital Territory, as represented by the Directorate which has responsibility for a stormwater utility service (the Directorate). The Directorate will manage and operate the stormwater reuse scheme after the West Belconnen Joint Venture (WBJV) constructs the stormwater infrastructure in the Ginninderry Estate in West Belconnen. This disallowable instrument provides an exemption to the Directorate from holding a utility licence to manage and operate the stormwater reuse and to distribute non-drinking water from the stormwater network. The Directorate responsible for a stormwater utility service is the Transport Canberra and City Service Directorate at the time of notification. In the *Utilities (Licensing) Exemption 2023 (No 1)* WBJV is given an exemption from the requirement to hold a utility licence to design and build the stormwater infrastructure.

Under the exemption, the Directorate must comply with the *Utilities (Technical Regulation) Act 2014* (the UTR Act) including technical codes under the UTR Act. The Directorate is required to hold an operating certificate under section 46 of the UTR Act prior to operating a stormwater utility. As the Directorate will distribute stormwater for use, the Directorate is also subject to industry codes under the Act such as the *Utilities (Consumer Protection Code) Determination 2020*.

In order to ensure its compliance with regulatory requirements, the Directorate is required to allocate additional personnel to manage and operate the stormwater utility service.

In accordance with section 36(1) (b) of the *Legislation Act 2001* a Regulatory Impact Statement is unnecessary as the disallowable instrument provides for a matter that does not operate to the disadvantage of anyone by affecting the person's rights, or imposing liabilities on the person. The instrument also does not impose appreciable costs on the community, or a part of the community.

This Instrument does not engage any rights contained in the *Human Rights Act 2004*.