

SWIMMING POOLS ACT 1992 No. 49

NEW SOUTH WALES



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DICTIONARY OF WORDS AND EXPRESSIONS

allotment	movable dwelling
area	new swimming pool
barrier	occupier of premises
dividing fence	owner of premises
exercise a function	public authority
existing swimming pool	residential building
function	spa pool
inspector	swimming pool
local authority	

SWIMMING POOLS ACT 1992 No. 49

NEW SOUTH WALES



Act No. 49, 1992

An Act to require access to private swimming pools to be effectively restricted; to repeal the Swimming Pools Act 1990; and for other purposes. [Assented to 10 July 1992]

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

INTRODUCTION TO THIS PART

This Part contains provisions which are helpful to the understanding of the Act as a whole, as well as some machinery provisions. This Part also defines the kinds of swimming pools to which it applies and sets out the general duties of a local authority in connection with swimming pools.

Short title

1. This Act may be cited as the Swimming Pools Act 1992.

Commencement

2. This Act commences on 1 August 1992 or on such earlier day as may be appointed by proclamation.

Definitions

3. (1) In this Act, the words and expressions appearing in the Dictionary at the end of this Act have the meanings given to them in that Dictionary.

(2) The diagrams in Schedule 1 form part of this Act.

(3) Introductions and notes are for explanatory purposes only and do not form part of this Act.

To which swimming pools does this Act apply?

4. This Act applies to swimming pools (both outdoor and indoor) that are situated, or proposed to be constructed or installed, on premises on which a residential building, a movable dwelling, a hotel or a motel is located, but does not apply to swimming pools that are situated, or proposed to be constructed or installed, on any premises occupied by the Crown or by a public authority.

What general duties does a local authority have concerning swimming pools?

5. Each local authority is required:
- (a) to take such steps as are appropriate to ensure that it is notified of the existence of all swimming pools to which this Act applies that are within its area; and
 - (b) to promote awareness within its area of the requirements of this Act in relation to swimming pools.

PART 2—ACCESS TO SWIMMING POOLS**INTRODUCTION TO THIS PART**

This Part sets out requirements with which swimming pools must comply before they are considered to be safe. These requirements vary:

- as between residential buildings, movable dwellings, hotels and motels; and
- as between outdoor swimming pools and indoor swimming pools.

Certain exemptions apply automatically to existing swimming pools, to swimming pools situated on large properties and to swimming pools situated on waterfront properties. Local authorities are given the discretion to grant other exemptions where compliance with the requirements would be impracticable or unreasonable in particular cases. The door or gate giving access to a swimming pool is required to be kept securely closed when the door or gate is not in actual use and a warning sign is required to be erected near any swimming pool.

Division 1—Outdoor swimming pools for dwelling-houses etc.**To which swimming pools does this Division apply?**

6. This Division applies to outdoor swimming pools that are situated, or proposed to be constructed or installed, on premises on which a residential building is located.

General requirements for outdoor swimming pools

7. (1) The owner of the premises on which a swimming pool is situated must ensure that the swimming pool is at all times surrounded by a child-resistant barrier:

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- (a) that separates the swimming pool from any residential building situated on the premises and from any place (whether public or private) adjoining the premises; and
- (b) that is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations.

Maximum penalty: 10 penalty units.

(2) The diagrams in Part 1 of Schedule 1 illustrate the provisions of this section,

NOTE: Section 7 should be read in conjunction with the other provisions of Part 2 including, in particular:

- section 8 (which concerns existing swimming pools and new swimming pools situated on very small properties); and
- section 9 (which concerns properties with an area of 2 hectares or more); and
- section 10 (which concerns waterfront properties); and
- section 18 (which allows the owner of premises to decide the exact location of a required child-resistant barrier); and
- section 19 (which allows a wall of a residential building to form the whole or any part of a required child-resistant barrier); and
- section 22 (which allows a local authority to grant exemptions from barrier requirements that are impracticable or unreasonable in particular cases).

Exemption for all existing swimming pools and exemption for new swimming pools on very small properties

8. (1) This section applies to existing swimming pools and also applies to new swimming pools that are situated, or proposed to be constructed or installed, on premises having an area of less than 230 square metres.

NOTE: 230 square metres is the smallest area on which a dwelling-house may currently be erected.

(2) The child-resistant barrier surrounding the swimming pool is not required to separate the swimming pool from any residential building situated on the premises so long as the means of access to the swimming pool from the building are at all times restricted in accordance with the standards prescribed by the regulations.

(3) The diagrams in Part 2 of Schedule 1 illustrate the provisions of this section.

Exemption for swimming pools on large properties

9. (1) This section applies to both new and existing swimming pools.

(2) A swimming pool that is situated on premises having an area of 2 hectares or more is not required to be surrounded by a child-resistant barrier so long as the means of access to the swimming pool from any residential building situated on the premises are at all times restricted in accordance with the standards prescribed by the regulations.

(3) The diagram in Part 3 of Schedule 1 illustrates the provisions of this section.

(4) A reference in this section to a residential building does not include a reference to a structure (such as a garage or shed) that is ancillary to the building if the structure is not itself used for residential purposes.

Exemption for swimming pools on waterfront properties

10. (1) This section applies to both new and existing swimming pools.

(2) A swimming pool that is situated on premises having frontage to any large body of water (such as a permanently flowing creek, a river, a canal, a pond, a lake, a reservoir, an estuary, the sea or any other body of water, whether natural or artificial) is not required to be surrounded by a child-resistant barrier so long as the means of access to the swimming pool from any residential building situated on the premises are at all times restricted in accordance with the standards prescribed by the regulations.

(3) The diagram in Part 4 of Schedule 1 illustrates the provisions of this section.

(4) A reference in this section to a residential building does not include a reference to a structure (such as a garage or shed) that is ancillary to the building if the structure is not itself used for residential purposes.

Division 2—Outdoor swimming pools for movable dwellings, hotels and motels**To which swimming pools does this Division apply?**

11. This Division applies to outdoor swimming pools that are situated, or proposed to be constructed or installed, on premises on which a movable dwelling, a hotel or a motel is located.

General requirements for outdoor swimming pools

12. The owner of the premises on which a swimming pool is situated must ensure that the swimming pool is surrounded at all times by a child-resistant barrier:

- (a) that separates the swimming pool from any movable dwelling, hotel or motel situated on the premises and from any place (whether public or private) adjoining the premises; and
- (b) that is located immediately around the swimming pool; and
- (c) that contains within its bounds no structure apart from the swimming pool and such other structures (such as diving boards and pool filtration plants) as are wholly ancillary to the swimming pool; and
- (d) that is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations.

Maximum penalty: 10 penalty units.

NOTE: Section 12 should be read in conjunction with the other provisions of Part 2 including, in particular:

- section 13 (which concerns existing swimming pools); and
- section 18 (which allows the owner of premises to decide the exact location of a required child-resistant barrier); and
- section 19 (which allows a wall of a hotel or motel to form the whole or any part of a required child-resistant barrier); and
- section 22 (which allows a local authority to grant exemptions from barrier requirements that are impracticable or unreasonable in particular cases).

Exemption for existing swimming pools

13. (1) This section applies to existing swimming pools.

- (2) The child-resistant barrier surrounding the swimming pool:
- (a) is not required to be located immediately around the swimming pool; and
 - (b) may contain within its bounds structures of the kind that, but for this section, would be required to be excluded by section 12 (c).

Division 3—Indoor swimming pools

General requirements for indoor swimming pools

14. The owner of any premises in which an indoor swimming pool is situated must ensure that the means of access to the swimming pool are at all times restricted in accordance with the standards prescribed by the regulations.

Maximum penalty: 10 penalty units.

Division 4—General

Maintenance of child-resistant barrier in good repair

15. (1) Despite any other provision of this Act, the occupier of any premises on which a child-resistant barrier:

- (a) is required by this Act to be installed in relation to a swimming pool; or
- (b) is, at the commencement of this Act or at any later time, installed in relation to a swimming pool, whether or not it is required by this Act to be installed,

must, so long as the swimming pool exists, maintain the barrier in existence and in a good state of repair as an effective and safe barrier.

Maximum penalty: 10 penalty units.

(2) The regulations may prescribe standards of maintenance for the purposes of this section.

(3) A person who complies with the standards prescribed by the regulations is taken to have complied with this section.

Access to swimming pools must be kept securely closed

16. The occupier of any premises in or on which a swimming pool is situated must ensure that all doors and gates providing access to the swimming pool are kept securely closed at all times when they are not in actual use.

Maximum penalty: 10 penalty units.

Warning notices must be erected near swimming pools

17. (1) The occupier of any premises in or on which a swimming pool is situated must ensure that there is at all times maintained, in a prominent position in the immediate vicinity of the swimming pool, a sign erected in accordance with the regulations and bearing the notice required by the regulations.

Maximum penalty: 1 penalty unit.

(2) The regulations may make provision for or with respect to the erection, display and maintenance of other signs, and the notices to be borne by those signs, by the occupier of any premises in or on which a swimming pool is situated.

(3) Failure to comply with the requirements of this section or of a regulation which is expressed to be made for the purposes of this section does not give rise to any civil liability that would not exist apart from this section.

Owner may decide where required child-resistant barrier is to be located

18. The owner of any premises in or on which an outdoor swimming pool is situated may, subject to the other provisions of this Part, determine where any child-resistant barrier required by this Part is to be located.

House wall may be used as part of required child-resistant barrier

19. A child-resistant barrier that is formed by, or that includes, a wall of a residential building, hotel or motel is regarded, for the purposes of sections 7 and 12, as separating any outside swimming pool from the residential building, hotel or motel so long as:

- (a) the wall contains no door, window or other opening through which access may at any time be gained to the swimming pool; and
- (b) the wall, is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations; and
- (c) the remainder of the barrier complies with section 7 or 12, as the case requires.

Exemption for spa pools

20. A spa pool is not required to be surrounded by a child-resistant barrier so long as access to the water contained in the spa pool is restricted, in accordance with the standards prescribed by the regulations, at all times when the spa pool is not in actual use.

Multiple swimming pools in close proximity

21. For the purposes of this Part, 2 or more swimming pools that are situated on the same premises and in close proximity to each other are taken to be one swimming pool.

Local authority may grant exemptions from barrier requirements that are impracticable or unreasonable in particular cases

22. (1) The local authority may, on application made by the owner of any premises in or on which a swimming pool is situated, exempt the swimming pool from all or any of the requirements of this Part if it is satisfied, in the particular circumstances of the case:

- (a) that it is impracticable or unreasonable (because of the physical nature of the premises, because of the design or construction of the swimming pool or because of special circumstances of a kind recognised by the regulations as justifying the granting of an exemption) for the swimming pool to comply with those requirements; or
- (b) that alternative provision, no less effective than those requirements, exists for restricting access to the swimming pool.

(2) An exemption may be granted unconditionally or subject to such conditions as the local authority considers appropriate to ensure that effective provision is made for restricting access to the swimming pool concerned or the water contained in it.

(3) A person is not guilty of an offence under this Part:

- (a) if the swimming pool concerned is the subject of an exemption under this section; and
- (b) if the conditions (if any) to which the exemption is subject are being complied with.

(4) For the purposes only of any appeal proceedings arising in connection with an application under this section, the local authority is taken to have refused the application if it has not finally determined the application within 6 weeks after the application was made.

Local authority may order compliance with this Part

23. (1) The local authority may, by order in writing served on the owner of any premises in or on which a swimming pool is situated, direct the owner to take, within such reasonable time as is specified in the

direction, such measures as are so specified to ensure that the swimming pool or premises comply with the requirements of this Part or of a condition of an exemption granted under section 22.

(2) Such a direction is of no effect to the extent to which it purports to impose requirements more onerous than the requirements of this Part or of a condition of an exemption granted under section 22.

(3) A person on whom a direction is served must not fail to comply with the requirements of the direction.

Maximum penalty: 10 penalty units.

(4) A direction does not cease to have effect merely because there is a change in the ownership of the premises to which the direction relates, but applies to the new owner in the same way as it applied to the old.

Local authority must grant certificate of compliance if swimming pool complies with this Part

24. (1) The owner of any premises on which a swimming pool is situated may apply to the local authority for a certificate of compliance with respect to the swimming pool.

(2) If satisfied that the swimming pool complies with the requirements of this Part, the local authority must issue to the applicant a certificate to the effect that, as at the date on which it is issued, the swimming pool complies with those requirements.

(3) The issue of a certificate under this section does not prevent the local authority from later giving a direction under section 23 in respect of the swimming pool concerned.

(4) For the purposes only of any appeal proceedings arising in connection with an application under this section, the local authority is taken to have refused the application if it has not finally determined the application within 6 weeks after the application was made.

What defences are there to proceedings for offences under this Part?

25. (1) In any proceedings for an offence under this Part, it is a sufficient defence if the owner of the premises concerned establishes:

- (a) that the owner was not the occupier of the premises when the alleged offence occurred; and

- (a) that the owner had taken all reasonable steps to ensure that the alleged offence would not occur; and
- (b) that the owner was not aware of, and could not reasonably be expected to have been aware of, the facts giving rise to the alleged offence.

(2) In any proceedings for an offence under this Part, it is a sufficient defence if the owner of the premises concerned establishes:

- (a) that a certificate has been issued under section 24 in respect of the swimming pool the subject of the alleged offence; and
- (b) that, since the certificate was issued, no direction under section 23 has been given in respect of the swimming pool; and
- (c) that the child-resistant barrier or other means of restricting access to the swimming pool is the same, and is in substantially the same condition, as that in respect of which the certificate was issued.

(3) In any proceedings for an offence under this Part, it is a sufficient defence if the owner of the premises concerned establishes that, when the alleged offence occurred:

- (a) the swimming pool was unassembled; or
- (b) the swimming pool was in the course of construction, installation, alteration or renovation and:
 - the swimming pool was empty of water or was filled with water to a depth of less than 300 millimetres; or
 - appropriate measures had, in the circumstances, been taken for restricting access to the swimming pool.

What appeals may be made against the decisions of a local authority?

26. (1) An appeal lies to the Land and Environment Court against the following decisions of a local authority:

- (a) a decision to refuse to grant an exemption under section 22 in accordance with the terms of the relevant application;
- (b) a decision to impose a condition on an exemption under section 22;
- (c) a decision to give a direction under section 23;
- (d) a decision to refuse to grant a certificate of compliance under section 24.

(2) Such an appeal must be made within 28 days after the date on which the decision was made or is taken to have been made.

PART 3—ENFORCEMENT**INTRODUCTION TO THIS PART**

This Part provides for the appointment of inspectors and for the functions that inspectors may exercise. These functions include a power of entry to premises that, in the case of residential premises, may be exercised only with the consent of the occupier or under the authority of a search warrant. This Part also enables a local authority to seek an order from the Land and Environment Court to remedy or restrain any breach of the Act.

Inspectors may be appointed

27. (1) Each local authority may appoint:

- (a) any of its employees; and
- (b) with the approval of the Director-General of the Department of Local Government and Co-operatives—any other persons,

to be inspectors for the purposes of this Act.

(2) A local authority must issue a certificate of identification, in the form prescribed by the regulations, to each inspector appointed by it.

(3) A police officer is, by virtue of his or her office as such, an inspector for the purposes of this Act.

(4) An inspector has such functions as are conferred or imposed on inspectors by or under this Act.

(5) An inspector appointed by a local authority may not exercise any functions under this Act outside the local authority's area.

Inspectors may exercise certain powers of entry

28. (1) An inspector:

- (a) may enter any premises in or on which he or she suspects that a swimming pool is situated; and
- (b) may examine the premises and, in particular, any swimming pool, and any barrier or other means of restricting access to any swimming pool, situated in or on the premises.

(2) An inspector may not enter such part of any building as is used for residential purposes, or any movable dwelling, otherwise than with the consent of the occupier of the building or dwelling or under a search warrant issued under section 29.

(3) Before exercising the functions conferred by this section in respect of any premises, an inspector must seek the consent of the occupier of the premises to the inspector's exercise of those functions.

(4) If an inspector is unable to obtain the consent of the occupier of the premises, the inspector may exercise those functions (in respect only of that portion of premises not comprising such part of a building as is used for residential purposes and not comprising a movable dwelling):

- (a) after 24 hours have elapsed since the inspector has served notice on the occupier of his or her intention to exercise those functions; and
- (b) between 9.00 a.m. and sunset.

(5) An inspector (other than a police officer) who is exercising the functions conferred by this section in respect of any premises is required, on demand made by any person in or on the premises, to produce his or her certificate of identification for inspection by that person.

Search warrants may be issued by authorised justices

29. (1) An inspector may apply to an authorised justice for a search warrant if the inspector has reasonable grounds for believing that an offence against this Act is being or has been committed in or on any premises.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:

- (a) to enter the premises; and
- (b) to search the premises for evidence of an offence against this Act.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a police officer:

- (a) may accompany an inspector executing a search warrant issued under this section; and
- (b) may take all reasonable steps to assist the inspector in the exercise of the inspector's functions under this section.

(5) In this section:

“authorised justice” has the same meaning as it has in the Search Warrants Act 1985.

Land and Environment Court may order compliance

30. (1) A local authority may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act.

(2) If satisfied that a breach of this Act has been committed or will, unless restrained by order of the court, be committed, the Land and Environment Court may make such order as it considers appropriate to remedy or restrain the breach.

(3) Such an order may require the erection or installation of such structures (such as fencing, doors, gates or locks, latches or other safety devices) in compliance with the requirements of this Act, or may require the taking of such other action, as is specified in the order.

PART 4—MISCELLANEOUS**INTRODUCTION TO THIS PART**

This Part contains provisions consequential on or ancillary to the operation of this Act. The provisions deal with:

- the establishment of a Pool Fencing Advisory Committee to consider data on drownings and near drownings
- inconsistencies between this Act and other Acts
- the apportionment of the expenses of constructing dividing fences
- service of notices under this Act
- the issuing of penalty notices for offences against this Act
- the manner in which proceedings for offences against this Act are to be dealt with
- the exclusion of certain liabilities
- the making of regulations
- other machinery matters

Pool Fencing Advisory Committee

31. (1) There is to be established a committee, to be known as the Pool Fencing Advisory Committee, consisting of 5 members, of whom:

- (a) one is to be a member nominated for the time being by the Australian Bureau of Statistics; and

- (b) one is to be a member nominated for the time being by the Epidemiology and Health Services Evaluation Branch of the Department of Health; and
- (c) one is to be a member nominated for the time being by the Child Accident Prevention Foundation of Australia; and
- (d) one is to be a member nominated for the time being by the Department of Psychology of the University of Sydney; and
- (e) one is to be a member appointed by the Minister.

(2) The Minister may appoint a person to any position in the Committee if a person is not duly nominated to that position under subsection (1).

(3) The Committee is to meet from time to time for the purpose of:

- (a) considering data on drownings and near drownings both past and current; and
- (b) analysing the data and advising the Minister as to its findings; and
- (c) recommending to the Minister appropriate amendments to this Act in the light of its findings, with particular regard to isolation fencing.

(4) The regulations may make provision with respect to the constitution and procedure of the Committee.

What happens if other Acts are inconsistent with this Act?

32. (1) In the event of an inconsistency between:

- (a) the provisions of this Act; and
- (b) the provisions of any other Act or law, or of any agreement, covenant or instrument,

the provisions of this Act are to prevail, but to the extent only of the inconsistency.

(2) Without limiting the generality of subsection (1), the owner of an existing swimming pool is not required to obtain any approval under Part 11 of the Local Government Act 1919 in respect of the construction, alteration, repair, replacement or maintenance of a child-resistant fence in accordance with the requirements of this Act.

How are the expenses of constructing dividing fences to be apportioned?

33. (1) The expenses of constructing, altering, repairing, replacing or maintaining a dividing fence are, to the extent to which they are attributable to work done for the purpose of complying with the requirements of this Act in respect of a swimming pool, to be borne:

- (a) by the owner of the premises on which the swimming pool is situated; or
- (b) if swimming pools are situated on more than one of the premises bounded by the dividing fence—by the owners of each of those premises in appropriate proportions.

(2) This section prevails over any provision of the Dividing Fences Act 1991 to the contrary.

Service of notices

34. Any notice that is authorised or required by or under this Act to be served on the owner or occupier of any premises may be served:

- (a) personally; or
- (b) by means of a letter addressed to the owner or occupier and sent by post to the premises; or
- (c) by means of a letter addressed to the owner or occupier and left at the premises with a person who appears to be of or above the age of 16 years and to reside or to be employed at the premises; or
- (d) by means of a letter addressed to the owner or occupier and affixed to some conspicuous part of the premises.

Penalty notices for certain offences

35. (1) An inspector may serve a penalty notice on a person if it appears to the inspector that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations for the purposes of this section.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.

(3) If the penalty prescribed for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.

(4) Payment in accordance with this section is not to be regarded as an admission of liability for the purposes of, nor is in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(5) The regulations:

- (a) may prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
- (b) may prescribe the penalty payable for the offence if dealt with under this section; and
- (c) may prescribe different penalties for different offences or classes of offences.

(6) The penalty prescribed for an offence is not to exceed 2 penalty units.

(7) This section does not limit the operation of this or any other Act in relation to proceedings that may be taken in respect of offences.

How are proceedings for offences to be dealt with?

36. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Liability

37. No matter or thing done by a member of a local authority, by an inspector or by a person acting under the direction of a local authority subjects the member, inspector or person so acting personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purpose of executing this Act.

Regulations

38. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:

- (a) the use of land surrounding or adjoining child-resistant barriers required by this Act; and
- (b) the functions of inspectors; and

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- (c) the fees payable under this Act; and
- (d) the forms to be used for the purposes of this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

(3) A regulation may apply, adopt or incorporate the provisions of any standard, code or rule, as in force for the time being.

Repeal of Swimming Pools Act 1990 No. 31

39. The Swimming Pools Act 1990 is repealed.

Amendment of other Acts

40. Each Act referred to in Schedule 2 is amended as set out in that Schedule.

Savings, transitional and other provisions

41. Schedule 3 has effect.

SCHEDULE 1—DIAGRAMS

(Sec. 3)

Part 1—Outdoor pools for residential buildings

(Sec. 7)

Diagram 1

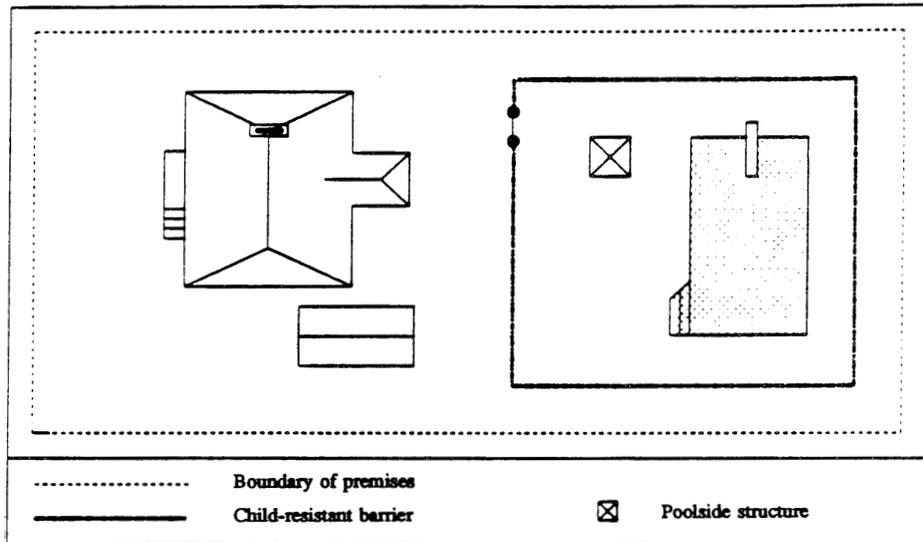
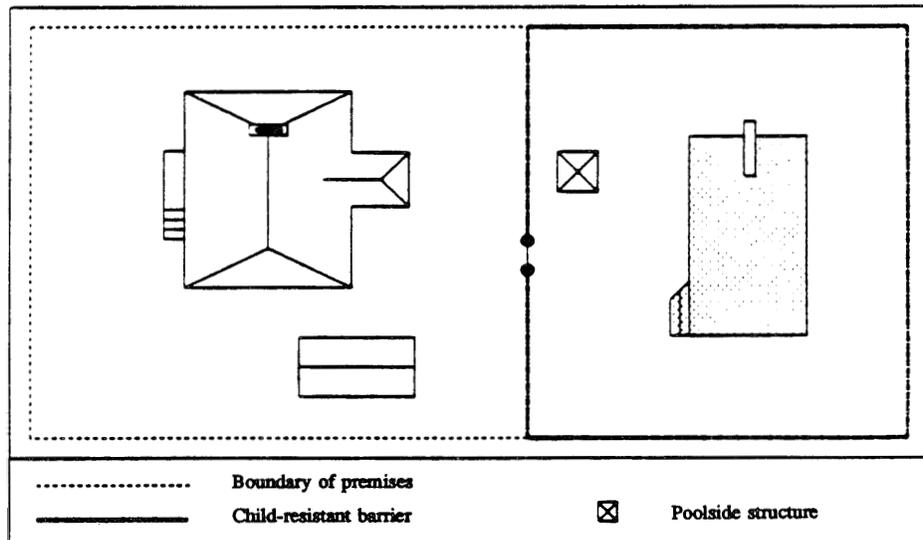
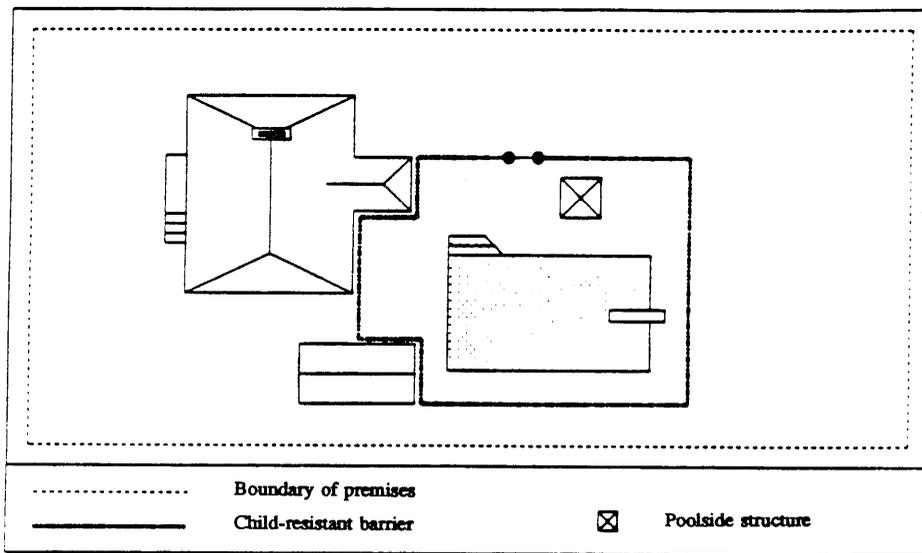


Diagram 2



SCHEDULE 1—DIAGRAMS—continued

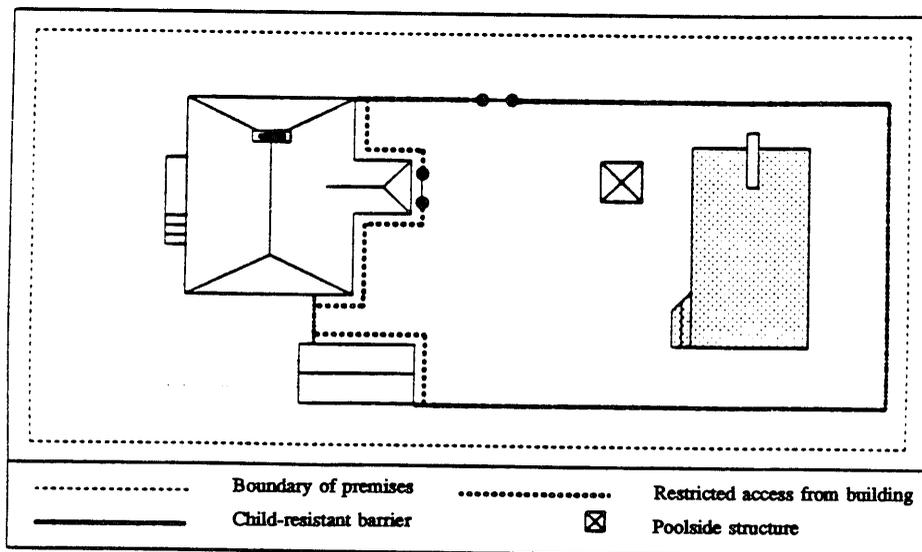
Diagram 3



Part 2—Existing swimming pools and new swimming pools on very small properties

(Sec. 8)

Diagram 4

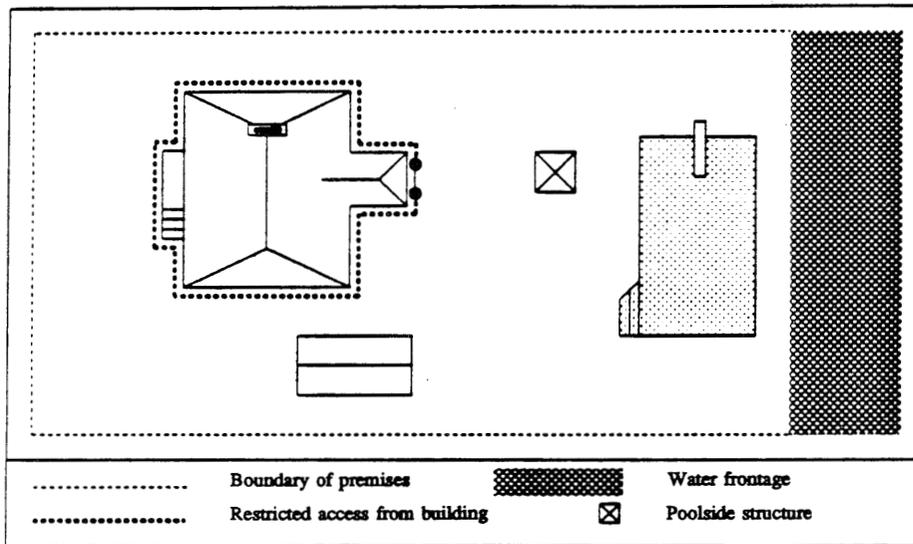


SCHEDULE 1—DIAGRAMS—*continued*

Part 4—Swimming pools on waterfront properties

(Sec. 10)

Diagram 7



SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 40)

Justices Act 1902 No. 27**Section 100I (Penalty notices):**

From paragraph (a) of the definition of “penalty notice” in section 100I (l), omit “Swimming Pools Act 1990, section 28;”, insert instead “Swimming Pools Act 1992, section 35;”.

Land and Environment Court Act 1979 No. 204**(1) Section 18 (Class 2—local government and miscellaneous appeals):**

After section 18 (c2), insert:

(c3) appeals under section 26 of the Swimming Pools Act 1992;

(2) Section 20 (Class 4—environmental planning and protection civil enforcement):

After section 20 (1) (db), insert:

(dc) proceedings under section 30 of the Swimming Pools Act 1992;

(3) Schedule 2:

At the end of the Schedule, insert:

Appeals under section 26 of the Swimming Pools Act 1992.

Local Government Act 1919 No. 41**Section 289 (Various powers of the council):**

From section 289 (m), omit “the Swimming Pools Act 1990”, insert instead “the Swimming Pools Act 1992”.

Search Warrants Act 1985 No. 37**Section 10 (Definitions):**

Omit “section 19 of the Swimming Pools Act 1990”, insert instead “section 29 of the Swimming Pools Act 1992”.

Swimming Pools Act 1992 No. 49

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 41)

Part 1—Preliminary**Regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act

(2) Such a provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

Part 2—Provisions consequent on the enactment of the Swimming Pools Act 1992**Definition**

2. In this Part:

“the repealed Act” means the Swimming Pools Act 1990.

Existing swimming pools

3. During the period beginning on the commencement of this Act and ending on 31 December 1992, the owner of any premises on which an existing swimming pool (whether outdoor or indoor) is situated:

- (a) is not guilty of an offence against section 7, 12 or 14 merely because the swimming pool fails to comply with the requirements of this Act; and
- (b) is not guilty of an offence against section 23 merely because the owner fails to comply with a direction under that section with respect to the swimming pool.

Warning notices

4. During the period beginning on the commencement of this Act and ending on 31 December 1992, the occupier of any premises on which a swimming pool (whether new or existing and whether outdoor or indoor) is situated:

Swimming Pools Act 1992 No. 49

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

- (a) is not guilty of an offence against section 17 merely because a sign is not erected in accordance with the requirements of that section; and
- (b) is not guilty of an offence against section 23 merely because the occupier fails to comply with a direction under that section with respect to the erection of a sign in connection with the swimming pool.

Directions

5. A direction given under section 13 of the repealed Act is taken to be a direction given under section 23 of this Act except that any such direction is of no effect to the extent to which it purports to impose requirements that could not be imposed under section 23 of this Act.

Exemptions

6. (1) An exemption granted under section 14 of the repealed Act is taken to be an exemption granted under section 22 of this Act.

(2) A decision refusing to grant an exemption under section 14 of the repealed Act is taken to be a decision refusing to grant an exemption under section 22 of this Act.

(3) A decision to impose a condition on an exemption under section 14 of the repealed Act is taken to be a decision to impose a condition on an exemption under section 22 of this Act.

Certificates of compliance

7. (1) A certificate of compliance issued under section 15 of the repealed Act is taken to be a certificate of compliance issued under section 24 of this Act.

(2) A decision refusing to issue a certificate of compliance under section 15 of the repealed Act is taken to be a decision refusing to issue a certificate of compliance under section 24 of this Act.

Inspectors

8. (1) An inspector appointed under section 17 of the repealed Act is taken to be an inspector appointed under section 27 of this Act.

(2) A certificate of identification issued under section 17 of the repealed Act is taken to be a certificate of identification issued under section 27 of this Act.

Search warrants

9. A search warrant issued under section 19 of the repealed Act is taken to be a search warrant issued under section 29 of this Act.

Swimming Pools Act 1992 No. 49

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***Recovery of local authority's costs of carrying out certain work**

10. (1) A local authority may, with the consent of the owner of the premises concerned, complete any work that it had, before the commencement of this Act, commenced to carry out under section 20 of the repealed Act as if that section were still in force.

(2) The provisions of section 20 (3) and (4) of the repealed Act continue to apply to any expenses incurred by a local authority in carrying out work under section 20 of that Act (including the expenses of any work completed under subclause (1) and any costs referred to in clause 5 of Schedule 2 to that Act) as if those provisions were still in force.

Appeals

11. (1) The Appeal Board established under section 21 of the repealed Act is abolished.

(2) Any appeal that had been made under section 23 of the repealed Act before the commencement of this Act but that had not been determined before that commencement is taken to have lapsed.

(3) Any fee lodged in connection with such an appeal is to be refunded to the appellant.

(4) Nothing in this clause prevents an appeal from being made under this Act with respect to any matter the subject of an appeal referred to in subclause (2).

(5) An appeal under this Act with respect to any such matter must be made within 28 days after the commencement of this Act.

Penalty notices

12. A penalty notice served under section 28 of the repealed Act is taken to be a penalty notice served under section 35 of this Act.

Recovery of expenses under the Dividing Fences Act 1991

13. (1) Section 33 applies to expenses incurred before the commencement of that section in respect of the construction, alteration, repair, replacement or maintenance of a dividing fence referred to in that section but does not apply to expenses so incurred before 1 August 1990.

(2) The reference in section 33 to the Dividing Fences Act 1991 includes a reference to the Dividing Fences Act 1951 in relation to those matters to which the latter Act applies.

*Swimming Pools Act 1992 No. 49*SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***Regulations**

14. The Swimming Pools Regulation 1990 continues to have effect as, and is taken to be, a regulation under this Act.

DICTIONARY OF WORDS AND EXPRESSIONS

(Sec. 3)

allotment includes, where 2 or more adjoining allotments are in the same ownership, the aggregation of the adjoining allotments.

area means:

- (a) the local government area of a council within the meaning of the Local Government Act 1919; or
- (b) the Western Division within the meaning of the Crown Lands Act 1989; or
- (c) Lord Howe Island.

barrier means a fence or a wall, and includes any gate or door set in the fence or wall, and also includes any other structure or thing declared by the regulations to be a barrier for the purposes of this Act.

dividing fence has the same meaning as it has in the Dividing Fences Act 1991.

exercise a function includes, where the function is a duty, to perform the duty.

existing swimming pool means a swimming pool whose construction or installation had been begun or completed before 1 August 1990.

NOTE: 1 August 1990 was the date on which the Swimming Pools Act 1990 commenced.

function includes a power, authority and duty.

inspector means an inspector appointed under section 27.

local authority means:

- (a) in relation to premises that are situated within a local government area within the meaning of the Local Government Act 1919—the council of that area; or

 DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

- (b) in relation to premises that are situated within the Western Division within the meaning of the Crown Lands Act 1989—the Western Lands Commissioner; or
- (c) in relation to premises situated on Lord Howe Island—the Lord Howe Island Board.

movable dwelling has the same meaning as it has in Division 5B of Part 10 of the Local Government Act 1919.

new swimming pool means a swimming pool whose construction or installation was begun on premises on or after 1 August 1990.

NOTE: 1 August 1990 was the date on which the Swimming Pools Act 1990 commenced.

occupier of premises includes any person who is for the time being in charge of the premises and, if there are 2 or more occupiers of the premises, includes any one of the occupiers.

owner of premises has the same meaning as “owner”, in relation to land, in the Local Government Act 1919 and, if there are 2 or more owners of the premises, includes any one of the owners.

public authority means a public authority constituted by or under an Act, a local authority, a Government Department or a statutory body representing the Crown.

residential building means a building (such as a dwelling-house, residential flat building or boarding-house) that is solely or principally used for residential purposes, and includes any structure (such as a garage or shed) that is ancillary to such a building, but does not include:

- (a) a building that merely forms part of a complex of buildings (such as a school or recreational centre) that is principally used for non-residential purposes; or
- (b) a movable dwelling, a hotel or a motel.

spa pool includes any excavation, structure or vessel in the nature of a spa pool, flotation tank, tub or the like.

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

swimming pool means an excavation, structure or vessel:

- (a) that is capable of being filled with water to a depth of 300 millimetres or more; and
- (b) that is solely or principally used, or that is designed, manufactured or adapted to be solely or principally used, for the purpose of swimming, wading, paddling or any other human aquatic activity,

and includes a spa pool, but does not include a spa bath, anything that is situated within a bathroom or anything declared by the regulations not to be a swimming pool for the purposes of this Act.

*[Minister's second reading speech made in—
Legislative Assembly on 30 April 1992
Legislative Council on 7 May 1992]*