



New South Wales

Swimming Pools Amendment Act 2009 No 107

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New South Wales

Swimming Pools Amendment Act 2009 No 107

Act No 107, 2009

An Act to amend the *Swimming Pools Act 1992* to make further provision with respect to ensuring access to private swimming pools is effectively restricted; and for other purposes. [Assented to 14 December 2009]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Swimming Pools Amendment Act 2009*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Swimming Pools Act 1992 No 49

[1] Part 1 Preliminary

Omit the Introduction to the Part.

[2] Section 3 Definitions

Omit the section. Insert instead:

3 Definitions

(1) In this Act:

area means:

- (a) the area of a council within the meaning of the *Local Government Act 1993*, or
- (b) the Western Division within the meaning of the *Crown Lands Act 1989*, or
- (c) Lord Howe Island.

authorised officer means an authorised officer appointed under section 27.

barrier means a fence or a wall, and includes:

- (a) any gate or door set in the fence or wall, and
- (b) 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 perform a duty.

function includes a power, authority and duty.

local authority means:

- (a) in relation to premises that are situated within an area within the meaning of the *Local Government Act 1993*—the council of that area, or
- (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.

moveable dwelling has the same meaning as it has in the *Local Government Act 1993*.

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” has in relation to land in the *Local Government Act 1993* 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 any such 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 moveable dwelling, a hotel or a motel, or
- (c) a shed that is ancillary to a swimming pool and the primary purpose of which is to store equipment that is used in connection with the swimming pool (but not a shed of a kind prescribed by the regulations), or
- (d) a building or structure of a kind prescribed by the regulations.

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

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.

- (2) Diagrams included in Schedule 1 form part of this Act.
- (3) Notes included in this Act do not form part of this Act.

[3] Section 5 General duties of local authorities regarding swimming pools

Insert at the end of section 5 (b):

, and

- (c) to investigate complaints about breaches of this Act in accordance with section 29A.

[4] Sections 7 (1), 12, 14, 15 (1), 16 and 23 (3)

Omit “10 penalty units” wherever occurring. Insert instead “50 penalty units”.

[5] Part 2 Access to swimming pools

Omit the Introduction to the Part.

[6] Section 7 General requirements for outdoor swimming pools

Omit the note. Insert instead:

Note. Section 7 should be read in conjunction with the other provisions of this Part, in particular sections 8, 9, 10, 18, 19 and 22.

[7] Section 8 Exemption for swimming pools constructed before August 1990 and existing swimming pools on small properties

Omit section 8 (1) (but not the note to that subsection). Insert instead:

- (1) This section applies to the following swimming pools:
- (a) swimming pools the construction or installation of which commenced before 1 August 1990,
 - (b) swimming pools the construction or installation of which commenced before 1 July 2010 and that are situated on premises having an area of less than 230 square metres.

[8] Sections 9 (1), 10 (1) and 13 (1)

Omit the subsections. Insert instead:

- (1) This section applies to swimming pools the construction or installation of which commenced before 1 July 2010.

[9] Section 12 General requirements for outdoor swimming pools

Omit the note. Insert instead:

Note. Section 12 should be read in conjunction with the other provisions of this Part, in particular sections 13, 18, 19 and 22.

[10] Section 15 Child-resistant barrier must be in good repair

Insert “child-resistant” after “effective and safe” in section 15 (1).

[11] Section 17 Warning notices must be erected near swimming pools

Omit “1 penalty unit” from section 17 (1). Insert instead “5 penalty units”.

[12] Section 19 House wall may be used as part of required child-resistant barrier

Omit “door, window or other” from section 19 (a).

[13] Section 19 (2)

Insert at the end of section 19:

- (2) The regulations may prescribe circumstances in which an opening in a wall is or is not to be regarded as an opening through which access may at any time be gained to a swimming pool for the purposes of subsection (1) (a).

[14] Section 23 Local authority may order compliance with Part

Insert after section 23 (4):

- (5) A direction may not be served under this section unless the local authority has, at least 14 days before, served on the owner of the premises a notice of intention to serve the direction.
- (6) A local authority may serve a direction under this section without serving a notice under subsection (5) if it considers that the safety of a person would be at risk if the requirements of the direction were not carried out as soon as possible.

[15] Section 23A

Insert after section 23:

23A Compliance with direction of local authority

- (1) An authorised officer, or a person acting under the direction of a local authority, may carry out some or all of the requirements of a direction given by the local authority under section 23 if:
 - (a) the person to whom the direction is given fails to comply with the direction within the time specified in the direction, or
 - (b) the local authority considers that the requirements of the direction need to be carried out urgently as there is a significant risk to public safety.
- (2) Before any requirement of a direction is carried out under this section, a local authority or authorised officer must serve on the occupier of the premises a notice of intention to carry out the requirement.

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- (3) An authorised officer, or a person acting under the direction of a local authority, may enter any premises (other than part of any building, or moveable dwelling, used for residential purposes) in order to exercise functions under this section.
 - (4) Before entering premises under this section, a local authority or authorised officer must seek the consent of the occupier of the premises to the entry.
 - (5) If the consent of the occupier of the premises is not able to be obtained, the authorised officer or person acting under the direction of the local authority may only enter the premises:
 - (a) after 24 hours have elapsed since the consent of the occupier was sought, and
 - (b) between 9.00 am and sunset.
 - (6) If an authorised officer, or a person acting under the direction of a local authority, carries out some or all of the requirements of a direction in accordance with this section, the reasonable costs of carrying out those requirements may be recovered as a debt by the local authority in a court of competent jurisdiction from the person to whom the direction was given.

[16] Section 25 Defences to offences under Part

Renumber the bullet point paragraphs in section 25 (3) (b) as subparagraphs (i) and (ii), respectively.

[17] Part 3 Enforcement

Omit the Introduction to the Part.

[18] Section 27 Authorised officers may be appointed

Omit “Local Government and Co-operatives” from section 27 (1) (b).

Insert instead “Premier and Cabinet or other officer of the Department designated by the Director-General”.

[19] Sections 27 (1) and (4) and 38 (1) (b)

Omit “inspectors” wherever occurring. Insert instead “authorised officers”.

[20] Sections 27 (2)–(5), 28 (1)–(4), 35 (1) and 37

Omit “inspector” and “inspector’s” wherever occurring.

Insert instead “authorised officer” and “authorised officer’s”, respectively.

[21] Section 27 (2)

Omit “, in the form prescribed by the regulations,”.

[22] Section 27 (6)

Insert after section 27 (5):

- (6) An authorised officer (other than a police officer) who is exercising functions conferred by this Act in respect of any premises must, on demand made by any person in or on the premises, produce his or her certificate of identification for inspection by that person.

[23] Section 28 Authorised officers may exercise certain powers of entry

Omit section 28 (5).

[24] Sections 29 and 29A

Omit section 29. Insert instead:

29 Search warrants

- (1) An authorised officer may apply to an issuing officer for a search warrant if the applicant has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened on premises.
- (2) An issuing officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant, when accompanied by a police officer, and any other person named in the warrant:
 - (a) to enter the premises concerned, and
 - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:
issuing officer means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

29A Investigation of complaint

- (1) This section applies to a complaint made to a local authority in writing that alleges a contravention of this Act.

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- (2) The local authority must, as far as is practicable, commence investigation of the complaint within 72 hours (or such other period as may be prescribed by the regulations) after it is received.
 - (3) The local authority may investigate the complaint as it thinks fit.
 - (4) An authorised officer may, in accordance with section 28, enter and examine premises for the purposes of investigating the complaint.
 - (5) Before premises are entered under subsection (4), the local authority is to take such steps as are reasonable:
 - (a) to notify the owner or occupier of the premises about the complaint, and
 - (b) to arrange to carry out the examination at a time that is convenient to the owner or occupier.
 - (6) The local authority may decline to investigate a complaint that it considers to be vexatious, misconceived, frivolous or lacking in substance.
 - (7) The local authority is to notify the complainant in writing if it declines to investigate the complaint.

[25] Part 4 Miscellaneous

Omit the Introduction to the Part.

[26] Section 31 Pool Fencing Advisory Committee

Omit the section.

[27] Section 32 Relationship with other Acts

Omit “an existing swimming pool” from section 32 (2).

Insert instead “a swimming pool the construction or installation of which commenced before 1 August 1990”.

[28] Section 34 Service of notices

Insert after section 34 (b):

- (b1) by means of facsimile transmission to the facsimile number of the owner or occupier or by means of email to an email address provided by the owner or occupier as an address for service of notices under this Act, or

[29] Section 35 Penalty notices for certain offences

Omit “2 penalty units” from section 35 (6). Insert instead “5 penalty units”.

[30] Sections 39 and 41

Omit the sections.

[31] Schedule 1 Diagrams

Omit the heading to Part 2. Insert instead:

**Part 2 Swimming pools constructed before
August 1990 and existing swimming pools
on small properties**

[32] Schedule 1, Parts 3 and 4

Omit “Swimming pools” from the headings to the Parts.

Insert instead “Existing swimming pools”.

[33] Schedule 3 Savings, transitional and other provisions

Omit “(Section 41)”.

[34] Schedule 3, clause 1 (1)

Insert at the end of the subclause:

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[35] Schedule 3, clauses 3–5 and 9–14

Omit the clauses.

[36] Schedule 3, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on the enactment
of the Swimming Pools Amendment Act
2009**

15 Authorised officers

A person who was an inspector in respect of a local authority immediately before the commencement of Schedule 1 [19] to the *Swimming Pools Amendment Act 2009* is, on that commencement, taken to have been appointed as an authorised officer by the local authority in accordance with section 27 of the Act.

16 Abolition of Pool Fencing Advisory Committee

- (1) The Pool Fencing Advisory Committee is abolished.
- (2) Any person holding office as a member of that Committee immediately before its abolition:
 - (a) ceases to hold office, and
 - (b) is not entitled to any compensation because of the loss of that office.

[37] Dictionary

Omit the Dictionary.

[Second reading speech made in Legislative Council on 11 November 2009
Agreement in principle speech made in Legislative Assembly on 27 November 2009]

BY AUTHORITY