

1990 - No. 448

**SWIMMING POOLS ACT 1990 - REGULATION**  
(Swimming Pools Regulation 1990)

NEW SOUTH WALES



*[Published in Gazette No. 82 of 29 June 1990]*

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Swimming Pools Act 1990, has been pleased to make the Regulation set forth hereunder.

JOE SCHIPP  
Minister for Local Government.

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**PART 1 - PRELIMINARY**

**Citation**

1. This Regulation may be cited as the Swimming Pools Regulation 1990.

**Commencement**

2. This Regulation commences on 1 August 1990.

**Definitions**

3. (1) In this Regulation:

"**approved**" means approved for the time being by the Secretary of the Department of Local Government;

"**AS 1926**" means the standard published by the Standards Association of Australia, numbered AS 1926-1986 and entitled "Fences and Gates for Private Swimming Pools", as in force on 4 August 1986;

"**the Act**" means the Swimming Pools Act 1990.

(2) In this Regulation, a reference to a numbered form is a reference to a form so numbered set out in Schedule 2.

## **PART 2 - ACCESS TO SWIMMING POOLS**

### **Division 1 - New swimming pools**

#### **Application**

4. This Division applies to new swimming pools (that is, swimming pools whose construction or installation is begun on or after 1 August 1990).

#### **Outdoor swimming pools**

5. For the purposes of section 7 of the Act, the prescribed standards in relation to a fence surrounding an outdoor swimming pool, and in relation to any gate that forms part of such a fence, are the standards set out in AS 1926.

#### **Indoor swimming pools**

6. For the purposes of section 8 of the Act, the prescribed standards for restricting access to an indoor swimming pool are the standards set out in Schedule 1.

### **Division 2 - Existing swimming pools**

#### **Application**

7. This Division applies to existing swimming pools (that is, swimming pools whose construction or installation had been completed, or was in progress, before 1 August 1990).

#### **Outdoor swimming pools**

8. For the purposes of section 10 of the Act, and of clause 2 (4) of Schedule 2 to the Act, the prescribed standards in relation to a fence

surrounding an outdoor swimming pool, and in relation to any gate that forms part of such a fence, are the standards set out in AS 1926.

**Indoor swimming pools**

9. For the purposes of section 11 of the Act, the prescribed standards for restricting access to an indoor swimming pool are the standards set out in Schedule 1.

**Division 3 - General**

**Directions under s. 13 of the Act**

10. A notice by which a relevant authority imposes requirements on a person pursuant to a direction given under section 13 of the Act, or varies a direction so given, must state that the owner of the premises to which the direction relates is entitled to appeal to the Appeal Board from the decision concerned.

**Exemptions under s. 14 of the Act**

11. (1) A relevant authority may impose a fee of up to \$40 on an application for an exemption under section 14 of the Act.

(2) Any application made to a relevant authority under section 14 of the Act is to be in the form determined by that authority.

(3) A relevant authority that:

(a) refuses to grant an exemption under section 14 of the Act in respect of a swimming pool or revokes an exemption so granted; or

(b) imposes conditions on an exemption under section 14 of the Act in respect of a swimming pool or varies a condition so imposed,

must cause notice of its decision to be served on the owner of the premises in or on which the swimming pool is situated.

(4) Such a notice must state that the owner of the premises is entitled to appeal to the Appeal Board from the decision concerned.

**Certificates of compliance under s. 15 of the Act**

12. (1) A relevant authority may impose a fee of up to \$100 on an application for a certificate of compliance under section 15 of the Act.

(2) Any application made to a relevant authority under section 15 of the Act is to be in the form determined by that authority.

(3) A relevant authority that refuses to issue a certificate under section 15 of the Act in respect of a swimming pool must cause notice of its decision to be served on the owner of the premises in or on which the swimming pool is situated.

(4) Such a notice must state that the owner of the premises is entitled to appeal to the Appeal Board from the decision concerned.

### **PART 3 - ENFORCEMENT**

#### **Certificates of identification**

13. For the purposes of section 17 of the Act, the prescribed form is Form 1.

### **PART 4 - APPEALS**

#### **Appeals**

14. (1) An appeal:

- (a) must be in the approved form; and
- (b) must be accompanied by a fee of \$200; and
- (c) must be accompanied by copies of any application made to, and any notice received from, the relevant authority in relation to the subject-matter of the appeal; and
- (d) must be lodged with the Chairperson at the office of the Secretary of the Department of Local Government within 3 months after the decision to which it relates was made.

(2) A copy of the appeal must be lodged at the office of the relevant authority within 7 days after the appeal is made.

#### **Responses**

15. (1) A relevant authority may respond to an appeal.

(2) A response:

- (a) must be in the approved form; and
- (b) must be lodged with the Chairperson at the office of the Secretary of the Department of Local Government within 1 month after the appeal is made.

(3) A copy of the response must be served on the applicant within 7 days after the response is made.

### **Hearings**

**16. (1)** An Appeal Panel:

- (a) may hear and determine an appeal on the basis of the documentation accompanying the appeal and of any response made to the appeal; or
- (b) may hear and determine an appeal on the basis of representations made at the hearing by the parties to the appeal,

as it considers appropriate.

(2) If an Appeal Panel decides to hear representations made by the parties to an appeal, it must cause notice to be given to the parties of the date, time and place fixed for the hearing.

(3) At any hearing in respect of which an Appeal Panel has indicated that it will hear representations made by the parties to an appeal, each of the parties is entitled to be represented by a barrister, solicitor or agent.

### **Evidence at hearings**

17. An Appeal Panel is not bound to observe the rules of law governing the admission of evidence, but may inform itself on any matter in such manner as it considers appropriate.

### **Determinations**

18. (1) Each member of an Appeal Panel has one vote.

(2) A majority of the votes of the members of an Appeal Panel constitutes the decision of the Appeal Panel on any matter before it.

### **Notice of determination**

19. An Appeal Panel must cause notice of its determination of an appeal, together with its reasons for the determination, to be given to:

- (a) each of the parties to the appeal; and
- (b) the Chairperson,

as soon as practicable after the determination is made.

**PART 5 - MISCELLANEOUS**

**Penalty notices**

**20. (1)** For the purposes of section 28 of the Act:

- (a) each offence referred to in Column 1 of the Table to this clause is a prescribed offence; and
- (b) the penalty specified in Column 2 of that Table opposite each such offence is the prescribed penalty for that offence.

**(2)** A penalty notice under section 28 of the Act is to be in the approved form.

TABLE

Column 1	Column 2
Prescribed offence	Prescribed penalty (Penalty units)
An offence against s. 7 of the Act	2
An offence against s. 8 of the Act	2
An offence against s. 18 of the Act	2
An offence against s. 11 of the Act	2
An offence against s. 12 of the Act	2
An offence against s. 13 (5) of the Act	2

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**SCHEDULE 1 - INDOOR SWIMMING POOLS**

(Cl. 6 and 9)

**General**

1. The part of the building in which an indoor swimming pool is situated must be isolated from every other part of the building, and from the outside of the building, by construction no less inferior than that required for fences by AS 1926.

**Doors and gates**

2. Any door or gate giving access to the part of the building in which an indoor swimming pool is situated must operate in a manner, and be of a construction, no less inferior than that required for gates by AS 1926.

**Windows etc.**

3. (1) Any window or other opening (not being a door or a gate) between the part of the building containing an indoor swimming pool and any other part of the building, or between that part of the building and the outside of the building, must comply with the requirements of subclause (2), (3) or (4).

(2) The window or other opening must be totally enclosed by a grille in such a way that there are no openings large enough to allow a round bar of diameter 105 millimetres to pass through, and any such grille must be of a construction no less inferior than that required for fences by AS 1926.

(3) The window, or the covering of any other opening, must be fixed in such a way that it will not open sufficiently far to create a gap that will allow a round bar of diameter 105 millimetres to pass through.

(4) The window or other opening must be located at such a height that:

- (a) the distance from the floor to the lowest opening panel is at least 1.2 metres; and
- (b) there are no footholds wider than 10 millimetres within 1.1 metres below the lowest opening panel.

**SCHEDULE 2 - FORMS**

**Form 1**

(C1.13)

**CERTIFICATE OF IDENTIFICATION**

(Swimming Pools Act 1990)

This certifies that .....whose photograph and signature appear  
*(insert name of inspector)*  
hereunder, is an inspector for ..... for the purposes of  
*(insert name of relevant authority)*  
the Swimming Pools Act 1990.

.....  
*(signature of inspector)*

(affix  
photograph  
here)

L.s.

*(affix seal of authority)*

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SCHEDULE 1 - INDOOR SWIMMING POOLS

SCHEDULE 2 - FORMS

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**EXPLANATORY NOTE**

The object of this Regulation is to make provisions necessary or convenient for carrying out or giving effect to the Swimming Pools Act 1990. Apart from machinery provisions, the Regulation deals mainly with:

- (a) the standards to be complied with in relation to fencing and other means of restricting access to swimming pools; and
  - (b) the procedures for the making and determination of appeals under the Act; and
  - (c) the offences that may be dealt with by way of penalty notice and the penalties that may be imposed in respect of offences so dealt with.
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