



New South Wales

Swimming Pools Regulation 1998

under the

Swimming Pools Act 1992

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Swimming Pools Act 1992*.

ERNIE PAGE, M.P.,

Minister for Local Government

Explanatory note

The object of this Regulation is to repeal and remake, with minor modifications, the provisions of the *Swimming Pools Regulation (No 2) 1992*. The new Regulation contains provisions with respect to the following matters:

- (a) standards of design and construction for fences for outdoor swimming pools (clauses 5 and 7),
- (b) standards of restricting access to outdoor swimming pools in cases where fencing is not required (clause 6),
- (c) standards of restricting access to indoor swimming pools (clause 8),
- (d) standards of warning notices to be displayed in connection with swimming pools (clause 9),
- (e) standards of design and construction for certain walls that are used in place of fencing (clause 10),
- (f) standards of restricting access to spa pools (clause 11),
- (g) applications for exemptions under section 22 of the Act (clause 12),
- (h) directions under section 23 of the Act (clause 13),
- (i) certificates of compliance under section 24 of the Act (clause 14),

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Explanatory note

- (j) the form of certificates of identification under section 27 of the Act (clause 15 and Schedule 1),
- (k) the constitution and procedure of the Pool Fencing Advisory Committee (clause 16),
- (l) penalty notices under section 35 of the Act (clause 17).

This Regulation refers to certain relevant standards and guidelines that relate to fencing and notice requirements. In particular, this Regulation refers to Australian Standard AS 1926-1986 *Fences and Gates for Private Swimming Pools*.

This Regulation is made under the *Swimming Pools Act 1992*, including section 38 (the general regulation-making power).

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

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Clause 1 Swimming Pools Regulation 1998

Part 1 Preliminary

Swimming Pools Regulation 1998

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Swimming Pools Regulation 1998*.

2 Commencement

This Regulation commences on 1 September 1998.

3 Notes

The explanatory note and table of contents of this Regulation do not form part of this Regulation.

4 Definitions

(1) In this Regulation:

AS 1926 means the standard published by the Standards Association of Australia, numbered AS 1926–1986 and titled *Fences and Gates for Private Swimming Pools*, as published on 4 August 1986.

child-safe means:

- (a) in the case of a door—being of substantial construction and (when the door is locked, latched, bolted, chained or otherwise secured) having no opening below 1.5 metres above finished floor level (either in the door or between the door and the doorway) through which it is possible to pass a standard test bar, and
- (b) in the case of a window—being of substantial construction and being so fixed (by means of a keyed locking device or other child-resistant device) that it has no opening through which it is possible to pass a standard test bar, and

- (c) in the case of a wall—being of substantial construction, having vertical sides and having a height of at least 1.2 metres and (in the case of a wall which has above its top a gap of 105 millimetres or more) having no footholds wider than 10 millimetres within 1.1 metres of the top of the wall, and
- (d) in any other case—being of substantial construction and having no opening through which it is possible to pass a standard test bar.

Department means the Department of Local Government.

Director-General means the Director-General of the Department.

standard test bar means a round bar having a diameter of 105 millimetres, plus or minus 1 millimetre.

the Act means the *Swimming Pools Act 1992*.

- (2) In this Regulation, a reference to finished floor level, in relation to a door or window, is a reference to the finished floor level or finished ground level at the base of the door or window.
- (3) In this Regulation, a reference to a numbered form is a reference to a form so numbered set out in Schedule 1.

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Clause 5 Swimming Pools Regulation 1998

Part 2 Access to swimming pools
Division 1

Part 2 Access to swimming pools

Division 1 Outdoor swimming pools for dwelling-houses etc

5 General requirements: sec 7

- (1) For the purposes of section 7 (1) (b) of the Act, the prescribed standards in accordance with which a child-resistant barrier surrounding a swimming pool is to be designed, constructed, installed and maintained are the standards set out in AS 1926.
- (2) A child-resistant barrier is taken to comply with the standards set out in AS 1926 so long as it complies with the minimum requirements of those standards.
- (3) To the extent to which it is formed by, or includes, a dividing fence, a child-resistant barrier is not required to comply with such of the provisions of Clause 2.3 of AS 1926 as require there to be a clear span of 1.2 metres to finished ground level within the outside quadrant referred to in that Clause.

6 Exemptions: secs 8, 9, 10

- (1) For the purposes of sections 8 (2), 9 (2) and 10 (2) of the Act, the prescribed standards in accordance with which access to a swimming pool from a residential building is to be restricted are as provided by this clause.
- (2) In relation to each doorway giving access to the swimming pool:
 - (a) the door (or, if there is a security door in addition to another door, either of those doors) must be a child-safe door and must be kept child-safe by means of a lock, latch, bolt, chain or other child-resistant device located at least 1.5 metres above finished floor level, and
 - (b) there must not, on the door or on the door frame, be any footholds wider than 10 millimetres between the release mechanism of the door and any point 100 millimetres above finished floor level.

- (3) A lock, latch, bolt, chain or other child-resistant device located less than 1.5 metres above finished floor level is taken not to be a foothold for the purposes of subclause (2) (b).
- (4) In relation to each window giving access to the swimming pool:
 - (a) the bottom of the lowest opening panel of the window must (when measured in the closed position) be at least 1.2 metres above finished floor level, and
 - (b) there must not be any footholds wider than 10 millimetres between the bottom of the lowest opening panel of the window and any point within 1.1 metres below the bottom of that panel.
- (5) Subclause (4) does not apply to a child-safe window or to a window that is totally enclosed by a child-safe grille or by a fixed child-safe flyscreen.

Division 2 Outdoor swimming pools for moveable dwellings, hotels and motels

7 General requirements: sec 12

- (1) For the purposes of section 12 (d) of the Act, the prescribed standards in accordance with which a child-resistant barrier surrounding a swimming pool is to be designed, constructed, installed and maintained are the standards set out in AS 1926.
- (2) A child-resistant barrier is taken to comply with the standards set out in AS 1926 so long as it complies with the minimum requirements of those standards.
- (3) To the extent to which it is formed by, or includes, a dividing fence, a child-resistant barrier is not required to comply with such of the provisions of Clause 2.3 of AS 1926 as require there to be a clear span of 1.2 metres to finished ground level within the outside quadrant referred to in that Clause.

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Clause 8 Swimming Pools Regulation 1998

Part 2 Access to swimming pools
Division 3

Division 3 Indoor swimming pools

8 General requirements: sec 14

- (1) For the purposes of section 14 of the Act, the prescribed standards in accordance with which access to a swimming pool is to be restricted are as provided by this clause.
- (2) In relation to each doorway giving access to the swimming pool:
 - (a) the door (or, if there is a security door in addition to another door, either of those doors) must be a child-safe door and must be kept child-safe by means of a lock, latch, bolt, chain or other child-resistant device located at least 1.5 metres above finished floor level, and
 - (b) there must not, on the door or on the door frame, be any footholds wider than 10 millimetres between the release mechanism of the door and any point 100 millimetres above finished floor level.
- (3) A lock, latch, bolt, chain or other child-resistant device located less than 1.5 metres above finished floor level is taken not to be a foothold for the purposes of subclause (2) (b).
- (4) In relation to each window giving access to the swimming pool:
 - (a) the bottom of the lowest opening panel of the window must (when measured in the closed position) be at least 1.2 metres above finished floor level, and
 - (b) there must not be any footholds wider than 10 millimetres between the bottom of the lowest opening panel of the window and any point within 1.1 metres below the bottom of that panel.
- (5) Subclause (4) does not apply to a child-safe window or to a window that is totally enclosed by a child-safe grille or by a fixed child-safe flyscreen.

Division 4 General**9 Warning notices: sec 17**

For the purposes of section 17 (1) of the Act, the sign referred to in that subsection:

- (a) must be erected in accordance with the provisions relating to instructional posters of the document entitled *Policy Statement No 9.4.1: Guidelines for the Preparation of Posters on Resuscitation*, published in July 1995 by the Australian Resuscitation Council, a copy of which document is deposited in the head office of the Department, and
- (b) must bear a notice that contains the words "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL", together with details of resuscitation techniques (for children, infants and adults) set out in accordance with the relevant provisions of the document entitled *Cardio Pulmonary Resuscitation* published by the Australian Resuscitation Council, and as reprinted in 1989, a copy of which document is deposited in the head office of the Department, and
- (c) must be maintained in a clearly legible condition.

10 Design etc of walls of residential buildings etc: sec 19

For the purposes of section 19 (b) of the Act. the prescribed standards in accordance with which a wall is to be designed, constructed, installed and maintained are that the wall is to be child-safe.

11 Exemption for spa pools: sec 20

For the purposes of section 20 of the Act, the prescribed standards in accordance with which access to the water in a spa pool is to be restricted are that the spa pool must be covered or secured by a child-safe structure (such as a door, lid, grille or mesh) that is fastened to the spa pool by a child-resistant device.

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Clause 12 Swimming Pools Regulation 1998

Part 2 Access to swimming pools
Division 4

12 Other exemptions: sec 22

- (1) A local authority may impose a fee of up to \$50 on an application for an exemption under section 22 of the Act.
- (2) An application made to a local authority under section 22 of the Act is to be in the form approved by that authority.
- (3) The form must contain a statement to the effect that:
 - (a) the applicant is entitled to appeal to the Land and Environment Court against the local authority's refusal of the application, and
 - (b) the local authority's failure to determine the application within 6 weeks after it is made is taken, for the purposes of any such appeal, to be a refusal of the application.
- (4) A local authority:
 - (a) that refuses to grant an exemption under section 22 of the Act in respect of a swimming pool, or
 - (b) that imposes conditions on an exemption under section 22 of the Act in respect of a swimming pool,must cause notice of the decision to be served on the owner of the premises in or on which the swimming pool is situated.
- (5) Such a notice:
 - (a) must give reasons for the decision, and
 - (b) must state that the owner of the premises is entitled to appeal to the Land and Environment Court from the decision.
- (6) For the purposes of section 22 (1) (a) of the Act, the fact that an adult occupier of the premises in or on which a swimming pool is situated would (because of a physical disability or impairment of the occupier) be significantly impeded in gaining access to the swimming pool if the requirements of Part 2 of the Act were complied with is a special circumstance that justifies the granting of an exemption from those requirements.

13 Directions by local authorities: sec 23

A local authority that gives a direction under section 23 of the Act to the owner of any premises must include in the direction:

- (a) the reasons for its decision to give the direction, and
- (b) a statement to the effect that the owner of the premises is entitled to appeal to the Land and Environment Court from the decision.

14 Certificates of compliance: sec 24

- (1) A local authority may impose a fee of up to \$50 on an application for a certificate of compliance under section 24 of the Act.
- (2) An application made to a local authority under section 24 of the Act is to be in the form approved by that authority.
- (3) The form must contain a statement to the effect that:
 - (a) the applicant is entitled to appeal to the Land and Environment Court against the local authority's refusal of the application, and
 - (b) the local authority's failure to determine the application within 6 weeks after it is made is taken, for the purposes of any such appeal, to be a refusal of the application.
- (4) A local authority that refuses to issue a certificate under section 23 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.
- (5) Such a notice:
 - (a) must give reasons for the decision, and
 - (b) must state that the owner of the premises is entitled to appeal to the Land and Environment Court from the decision.

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Clause 15 Swimming Pools Regulation 1998

Part 3 Miscellaneous

Part 3 Miscellaneous

15 Certificates of identification: sec 27

Form 1 is the prescribed form of certificate for the purposes of section 27 of the Act.

16 Pool Fencing Advisory Committee: sec 31

The constitution, rules and procedure of the Pool Fencing Advisory Committee are to be as approved by the Minister.

17 Penalty notices: sec 35

- (1) For the purposes of section 35 of the Act:
 - (a) each offence referred to in the Table to this clause is a prescribed offence, and
 - (b) the penalty specified in that Table in respect of each such offence is the prescribed penalty for that offence.
- (2) A penalty notice under section 35 of the Act is to be in the form approved by the Director of the New South Wales Infringement Processing Bureau.

Table

Offence	Penalty
An offence under section 7 (1) of the Act	\$220
An offence under section 12 of the Act	\$220
An offence under section 14 of the Act	\$220
An offence under section 15 (1) of the Act	\$220
An offence under section 16 of the Act	\$220
An offence under section 17 (1) of the Act	\$33
An offence under section 23 (3) of the Act	\$220

18 Repeal

- (1) The *Swimming Pools Regulation (No 2) 1992* is repealed.

- (2) Any act, matter or thing that, immediately before the commencement of this Regulation, had effect under the *Swimming Pools Regulation (No 2) 1992* is taken to have effect under this Regulation.

19 Transitional provision

A person does not commit an offence under section 17 (1) of the Act for failing to comply with clause 9 (c) until 12 months after the commencement of this Regulation.

Schedule 1 Form

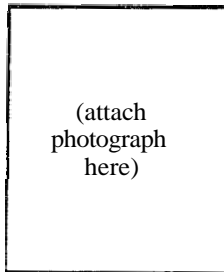
(Clause 15)

Form 1

Certificate of identification

(Swimming Pools Act 1992)

This certifies that ¹..... whose photograph and signature appear hereunder, is an inspector for ² for the purposes of the Swimming Pools Act 1992.



.....
(signature of inspector)
(seal of authority)

The holder of this certificate is empowered, by section 28 of the Swimming Pools Act 1992, to enter any premises in or on which he or she suspects that a swimming pool is situated and to examine the premises and, in particular, any swimming pool (and any barrier or other means of restricting access to any swimming pool) situated on the premises.

This power may be exercised with the consent of the occupier of the premises or, if that consent cannot be obtained, at any time (between 9.00 a.m. and sunset) after 24 hours' notice of the proposed exercise of the power has been given to the occupier of the premises.

The holder of this certificate is not empowered to enter such part of any building as is used for residential purposes, or any moveable dwelling, otherwise than with the consent of the occupier of the building or dwelling or under a search warrant.

Notes.

1 Insert name of inspector.

2 Insert name of local authority.