

Act 1992 No. 49

SWIMMING POOLS BILL 1992*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to require all swimming pools, whenever constructed or installed, to comply with certain safety standards concerning fencing and other means of restricting access except where expressly exempted by the proposed Act; and
- (b) to provide for the enforcement of the proposed requirements; and
- (c) to allow appeals to be made from certain decisions of local authorities with respect to the proposed requirements; and
- (d) to enact other provisions of a minor, consequential or ancillary nature.

The Bill also repeals the Swimming Pools Act 1990, makes consequential amendments to various other Acts and enacts provisions of a savings and transitional nature.

References in this Bill to monetary penalties are expressed in penalty units. Under section 56 of the Interpretation Act 1987, 1 penalty unit is currently equivalent to \$100.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 August 1992 or on an earlier day appointed by proclamation.

Clause 3 gives effect to the Dictionary of words and expressions at the end of the proposed Act and contains other provisions relevant to the understanding of the proposed Act.

* Amended in committee—see table at end of volume.

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

Clause 5 provides that each local authority has a duty to take appropriate steps to ensure that it is notified of the existence of all swimming pools within its area and to promote awareness within its area of the requirements of the proposed Act in relation to swimming pools.

PART 2—ACCESS TO SWIMMING POOLS

Division 1—Outdoor Swimming pools for dwelling-houses etc.

Clause 6 applies the proposed Division to outdoor swimming pools situated on premises on which a residential building is located.

Clause 7 requires the owner of any premises on which a swimming pool is situated to ensure that the swimming pool is surrounded by a child-resistant barrier:

- (a) that separates it from any residential building on the premises and from any neighbouring premises; and
- (b) that is designed, constructed, installed and maintained in accordance with standards to be prescribed by the regulations.

Contravention of the proposed section will be punishable by a maximum fine of 10 penalty units.

Clause 8 exempts existing swimming pools and swimming pools on very small properties from the requirement that the child-resistant barrier must separate the swimming pool from any residential building on the same premises so long as the means of access to the swimming pool from the residential building are restricted in accordance with standards to be prescribed by the regulations.

Clause 9 exempts swimming pools situated on large properties (properties having an area of 2 hectares or more) from the barrier requirements so long as the means of access to the swimming pool from any residential building on the property are restricted in accordance with standards to be prescribed by the regulations.

Clause 10 exempts swimming pools situated on waterfront properties from the barrier requirements so long as the means of access to the swimming pool from any residential building on the property are restricted in accordance with standards to be prescribed by the regulations.

Division 2—Outdoor swimming pools for movable dwellings, hotels and motels

Clause 11 applies the proposed Division to outdoor swimming pools situated on premises on which a movable dwelling, a hotel or a motel is located.

Clause 12 requires the owner of any premises on which a swimming pool is situated to ensure that the swimming pool is surrounded by a child-resistant barrier:

- (a) that separates it from any movable dwelling, hotel or motel situated on the premises and from any adjoining premises; and
- (b) that is located immediately around the swimming pool; and

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- (c) that contains within its bounds no structure other than structures wholly ancillary to the swimming pool; and
- (d) that is designed, constructed, installed and maintained in accordance with standards to be prescribed by the regulations.

Contravention of the proposed section will be punishable by a maximum fine of 10 penalty units.

Clause 13 exempts existing swimming pools from the requirements of proposed section 12 (b) and (c).

Division 3—Indoor swimming pools

Clause 14 requires the owner of any premises in which an indoor swimming pool is situated to ensure that the means of access to the swimming pool are restricted in accordance with standards to be prescribed by the regulations.

Contravention of the proposed section will be punishable by a maximum fine of 10 penalty units.

Division 4—General

Clause 15 requires the occupier of any premises in or on which a swimming pool is situated to ensure that any door or gate giving access to the swimming pool is kept securely closed at all times when it is not in actual use.

Contravention of the proposed section will be punishable by a maximum fine of 10 penalty units.

Clause 16 requires the occupier of any premises in or on which a swimming pool is situated to ensure that a notice containing a warning in a form prescribed by the regulations is prominently displayed in the immediate vicinity of the swimming pool.

Contravention of the proposed section will be punishable by a maximum fine of 1 penalty unit but will not give rise to any civil liability that would not already exist.

Clause 17 entitles the owner of any premises to determine where any barrier required by the proposed Part is to be located.

Clause 18 ensures that the wall of a residential building, a hotel or a motel may form part of any required barrier so long as there are no openings in the wall and so long as the wall is designed, constructed, installed and maintained in accordance with standards to be prescribed by the regulations.

Clause 19 exempts a spa pool from the barrier requirements of the proposed Part so long as access to the water contained in the spa pool is restricted in accordance with standards to be prescribed by the regulations.

Clause 20 allows 2 or more swimming pools that are situated on the same premises and in close proximity to each other to be treated as if they were a single swimming pool.

Clause 21 enables a local authority to exempt a swimming pool from the requirements of the proposed Part if it is satisfied that it is impracticable or unreasonable for the swimming pool to comply with those requirements or that no less effective alternative provision has been made for restricting access to the swimming pool or the water contained in it.

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Clause 22 enables a local authority to direct the owner of any premises in or on which a swimming pool is situated to take specified measures to ensure that the swimming pool complies with the requirements of the proposed Part. Such a direction will not be permitted to impose requirements more onerous than those imposed by the proposed Part.

Contravention of such a direction will be punishable by a maximum fine of 10 penalty units.

In cases of change of ownership of premises, a direction will bind the new owner in the same way as it bound the old.

Clause 23 requires a local authority to issue a certificate of compliance in respect of a swimming pool that complies with the requirements of the proposed Part.

Clause 24 affords certain defences to an owner of premises who is prosecuted for an offence arising under the proposed Part. To establish a defence, the owner will be required to prove that he or she was not occupying the premises, that he or she had taken all reasonable steps to ensure that such an offence would not occur and that he or she was not aware of the facts giving rise to the offence. Alternatively, the owner will be required to produce a certificate of compliance and to prove that the barrier or other means of 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. Alternatively, the owner will be required to establish that the swimming pool was unassembled or in the course of construction, installation, alteration or renovation and was empty of water or otherwise made safe.

Clause 25 provides that an appeal to the Land and Environment Court lies against the decisions of a local authority under proposed sections 21, 22 and 23. Such an appeal will be determined by an assessor.

PART 3—ENFORCEMENT

Clause 26 provides for the appointment of inspectors for the purposes of the proposed Act. A police officer will, by virtue of his or her office as such, be an inspector.

Clause 27 gives an inspector certain powers of entry in respect of premises that he or she suspects contain a swimming pool. Those powers will not authorise an inspector to enter a movable dwelling or such part of a building as is used for residential purposes. An inspector will be required to give the occupier of premises at least 24 hours' notice of his or her intention to enter the premises and may enter the premises only between 9 a.m. and sunset. An inspector (other than a police officer) will also be required to produce his or her certificate of identification to any person in the premises who requests its production.

Clause 28 enables an inspector to apply for, and an authorised justice to issue, a search warrant if it appears that an offence against the proposed Act is being or has been committed on any premises. The issue and execution of such a warrant will be governed by the provisions of the Search Warrants Act 1985.

Clause 29 enables a local authority to apply for, and the Land and Environment Court to issue, an order to remedy or restrain any breach of the proposed Act.

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PART 4—MISCELLANEOUS

Clause 30 ensures that in the event of an inconsistency between the provisions of any other Act or law, or of any agreement, covenant or instrument, and the requirements of the proposed Act, the requirements of the proposed Act are to prevail, but to the extent only of the inconsistency. The clause further ensures that a building approval will not be necessary for the construction or alteration of a fence to surround an existing pool in accordance with the requirements of the proposed Act.

Clause 31 provides for the apportionment of expenses in constructing or maintaining a child-resistant barrier that forms part of a dividing fence.

Clause 32 provides for the service of notices authorised or required to be served on the owner or occupier of any premises.

Clause 33 provides for the issue of penalty notices for offences against the proposed Act or the regulations. The maximum fine that will be capable of being imposed by means of a penalty notice will be 2 penalty units.

Clause 34 requires proceedings for an offence against the proposed Act or the regulations to be dealt with summarily before a Local Court.

Clause 35 exempts certain persons from personal liability for matters or things done by them in good faith for the purpose of executing the proposed Act.

Clause 36 enables the Governor to make regulations for the purposes of the proposed Act. A regulation will be able to create offences punishable by fines of up to 5 penalty units and will be able to adopt any standard, code or rule, as in force for the time being.

Clause 37 repeals the Swimming Pools Act 1990.

Clause 38 gives effect to a Schedule of consequential amendments to other Acts.

Clause 39 gives effect to a Schedule of savings, transitional and other provisions.

SCHEDULE 1—DIAGRAMS

Schedule 1 contains a series of diagrams that illustrate the kinds of child-resistant barriers that must be maintained in relation to some of the circumstances set out in the proposed Act.

SCHEDULE 2—AMENDMENT OF OTHER ACTS

Schedule 2 amends the following Acts:

- Justices Act 1902
- Land and Environment Court Act 1979
- Local Government Act 1919
- Search Warrants Act 1985

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Schedule 3 enacts certain savings, transitional and other provisions. The proposed Schedule comprises 2 Parts.

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Part 1 contains a provision concerning the making of regulations of a savings or transitional nature.

Part 2 contains the provisions concerning:

- the definition of “repealed Act” for the purposes of the proposed Part
- existing swimming pools
- warning notices
- directions under section 13 of the repealed Act
- exemptions under section 14 of the repealed Act
- certificates of compliance under section 15 of the repealed Act
- inspectors appointed under section 17 of the repealed Act
- search warrants issued under section 19 of the repealed Act
- the recovery of a local authority’s costs under section 20 of the repealed Act
- appeals under section 23 of the repealed Act
- penalty notices under section 28 of the repealed Act
- the recovery of expenses incurred since 1 August 1990 in respect of the construction of certain dividing fences
- the continuation of the Swimming Pools Regulation 1990

The provision concerning existing swimming pools (clause 3) will allow a lead—in time of 5 months (from 1 August 1992 until 31 December 1992) before the requirements of the proposed Act, or of directions under proposed section 22, become mandatory with respect to the fencing of existing swimming pools.

The provision concerning warning notices (clause 4) will allow a lead—in time of 5 months (from 1 August 1992 until 31 December 1992) before the requirements of proposed section 16, or of directions under proposed section 22, become mandatory with respect to warning notices.

DICTIONARY OF WORDS AND EXPRESSIONS

The Dictionary defines the following 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	
