



New South Wales

Swimming Pools Amendment Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Swimming Pools Act 1992* as follows:

- (a) to increase the maximum penalty for offences under that Act,
- (b) to remove automatic exemptions under that Act in respect of child-resistant barriers for swimming pools constructed or installed after 1 July 2010 on very small, large or waterfront properties,
- (c) to permit the regulations to prescribe the circumstances in which an opening in a wall (that is part of a child-resistant barrier) is taken to enable access to be gained to a swimming pool at any time,
- (d) to require a local authority to give notice before giving a direction under that Act and to enable a local authority to carry out the requirements of such a direction if there is a failure to comply or a significant risk to public safety,
- (e) to require local authorities to investigate certain complaints,
- (f) to abolish the Pool Fencing Advisory Committee,
- (g) to make a number of minor and statute law revision amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Swimming Pools Act 1992 No 49

Schedule 1 [2] moves definitions that were in a Dictionary at the back of the *Swimming Pools Act 1992* (the *Principal Act*) to the front of that Act and, as a consequence of other amendments proposed in the Bill, definitions of *allotment*, *existing swimming pool*, *inspector* and *new swimming pool* have been omitted and a definition of *authorised officer* has been included. A standard definition of *exercise* is to replace a definition of *exercise a function* and the definition of *residential building* has been amended to provide that a shed is not a residential building if it is ancillary to a swimming pool and its primary purpose is the storage of equipment that is used in connection with the swimming pool. That definition has also been amended to enable regulations to prescribe other buildings and structures as not being residential buildings. **Schedule 1 [27] and [37]** make consequential amendments.

Schedule 1 [4] increases the maximum penalty for a number of offences under the Principal Act from 10 penalty units (\$1,100) to 50 penalty units (\$5,500).

Schedule 1 [7] and [8] remove exemptions from the requirements for a child-resistant barrier in relation to swimming pools on very small properties (having an area of less than 230 square metres), large properties (having an area no less than 2 hectares) and waterfront properties. Any swimming pool that is constructed or installed on any such property after 1 July 2010 will no longer be able to rely on these exemptions. However, the exemption will continue to apply in respect of a swimming pool on any such property if the construction or installation of the pool was commenced before that date. **Schedule 1 [31] and [32]** make consequential amendments.

Schedule 1 [10] clarifies that the obligation to maintain a barrier to a swimming pool means that the barrier should be maintained so that it is an effective and safe child-resistant barrier.

Schedule 1 [11] increases the maximum penalty for failure to maintain a warning notice in the immediate vicinity of a swimming pool from 1 penalty unit (\$110) to 5 penalty units (\$550).

Schedule 1 [12] provides that a wall of a residential building or a hotel or motel may not be used as part of a child-resistant barrier to a swimming pool if the wall contains an opening through which access may be gained to the swimming pool at any time. **Schedule 1 [13]** provides that the regulations may prescribe circumstances in which

such 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.

Schedule 1 [14] provides that a local authority may not serve a direction on an owner of premises under section 23 of the Principal Act unless the local authority has, at least 14 days before, served on the owner a notice of intention to serve the direction. However, a local authority may serve a direction without serving a notice 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.

Schedule 1 [15] permits an authorised officer, or a person acting under the direction of a local authority, to enter premises and carry out some or all of the requirements of a direction given by the local authority if the person to whom the direction is given fails to comply with the direction within the time specified in the direction or if 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. Before any requirement of a direction is carried out, a local authority or authorised officer must serve on the occupier of the premises a notice of intention to carry out the requirement. Also, before entering premises, a local authority or authorised officer must seek the consent of the occupier of the premises to the entry. The local authority may recover, from the person to whom the direction was given, the reasonable costs of carrying out the requirements of the direction.

Schedule 1 [19] and [20] rename inspectors as authorised officers in line with the title of such persons under other legislation. **Schedule 1 [36]** inserts a savings and transitional provision that provides for persons who are currently appointed as inspectors in respect of a local authority to be taken to be authorised officers appointed in respect of the local authority. **Schedule 1 [21]** omits a requirement that the certificate of identification issued to authorised officers by a local authority be in a prescribed form. This would enable a single identification document to be issued in respect of a person who is an authorised officer of a local authority under other legislation.

Schedule 1 [22] requires an authorised officer to produce his or her certificate of identification on demand when carrying out functions under the Principal Act on premises. **Schedule 1 [23]** makes a consequential amendment.

Schedule 1 [24] replaces the search warrant provision of the Principal Act with a standard provision and also inserts proposed section 29A. Proposed section 29A requires a local authority to investigate any written complaint it receives that alleges a contravention of the Principal Act unless the complaint is vexatious, misconceived, frivolous or lacking in substance. Investigation of the complaint is to be commenced, as far as is practicable, within 72 hours (or such other period as may be prescribed by the regulations). An authorised officer is permitted to enter premises to make an examination in relation to the complaint. However, before doing so, the local authority is to notify the owner or occupier of the premises about the complaint and arrange to carry out the examination at a time that is convenient to the owner or occupier. **Schedule 1 [3]** makes a consequential amendment.

Swimming Pools Amendment Bill 2009

Explanatory note

Schedule 1 [26] and [36] abolish the Pool Fencing Advisory Committee.

Schedule 1 [28] permits notices under the Principal Act to be served by facsimile or email.

Schedule 1 [29] increases the maximum penalty that may be prescribed in respect of an offence that is dealt with by way of a penalty notice from 2 penalty units (\$220) to 5 penalty units (\$550).

Schedule 1 [34] permits the regulations to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [1], [5], [6], [9], [16]–[18], [25], [30], [33] and [35] make a number of minor amendments including omitting unnecessary notes and redundant provisions, inserting numbering, editing notes and updating a reference to a Department.

First print



New South Wales

Swimming Pools Amendment Bill 2009

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Swimming Pools Act 1992 No 49	3



New South Wales

Swimming Pools Amendment Bill 2009

No. , 2009

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Swimming Pools Amendment Act 2009</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

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*.

<i>occupier of premises</i> 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.	1 2 3
<i>owner of premises</i> has the same meaning as “owner” has in relation to land in the <i>Local Government Act 1993</i> and, if there are 2 or more owners of the premises, includes any one of the owners.	4 5 6 7
<i>public authority</i> means a public authority constituted by or under an Act, a local authority, a Government Department or a statutory body representing the Crown.	8 9 10
<i>residential building</i> 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:	11 12 13 14 15
(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	16 17 18
(b) a moveable dwelling, a hotel or a motel, or	19
(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	20 21 22 23
(d) a building or structure of a kind prescribed by the regulations.	24 25
<i>spa pool</i> includes any excavation, structure or vessel in the nature of a spa pool, flotation tank, tub or the like.	26 27
<i>swimming pool</i> means an excavation, structure or vessel:	28
(a) that is capable of being filled with water to a depth of 300 millimetres or more, and	29 30
(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,	31 32 33 34
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.	35 36 37 38
(2) Diagrams included in Schedule 1 form part of this Act.	39
(3) Notes included in this Act do not form part of this Act.	40

[3] Section 5 General duties of local authorities regarding swimming pools	1
Insert at the end of section 5 (b):	2
, and	3
(c) to investigate complaints about breaches of this Act in accordance with section 29A.	4 5
[4] Sections 7 (1), 12, 14, 15 (1), 16 and 23 (3)	6
Omit “10 penalty units” wherever occurring. Insert instead “50 penalty units”.	7
[5] Part 2 Access to swimming pools	8
Omit the Introduction to the Part.	9
[6] Section 7 General requirements for outdoor swimming pools	10
Omit the note. Insert instead:	11
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.	12 13
[7] Section 8 Exemption for swimming pools constructed before August 1990 and existing swimming pools on small properties	14 15
Omit section 8 (1) (but not the note to that subsection). Insert instead:	16
(1) This section applies to the following swimming pools:	17
(a) swimming pools the construction or installation of which commenced before 1 August 1990,	18 19
(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.	20 21 22
[8] Sections 9 (1), 10 (1) and 13 (1)	23
Omit the subsections. Insert instead:	24
(1) This section applies to swimming pools the construction or installation of which commenced before 1 July 2010.	25 26
[9] Section 12 General requirements for outdoor swimming pools	27
Omit the note. Insert instead:	28
Note. Section 12 should be read in conjunction with the other provisions of this Part, in particular sections 13, 18, 19 and 22.	29 30
[10] Section 15 Child-resistant barrier must be in good repair	31
Insert “child-resistant” after “effective and safe” in section 15 (1).	32

[11] Section 17 Warning notices must be erected near swimming pools	1
Omit “1 penalty unit” from section 17 (1). Insert instead “5 penalty units”.	2
[12] Section 19 House wall may be used as part of required child-resistant barrier	3
Omit “door, window or other” from section 19 (a).	4
[13] Section 19 (2)	5
Insert at the end of section 19:	6
(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).	7
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[14] Section 23 Local authority may order compliance with Part	12
Insert after section 23 (4):	13
(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.	14
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	16
(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.	17
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[15] Section 23A	21
Insert after section 23:	22
23A Compliance with direction of local authority	23
(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:	24
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	26
(a) the person to whom the direction is given fails to comply with the direction within the time specified in the direction,	27
or	28
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(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.	30
	31
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(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.	33
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	36

(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.	1 2 3 4
(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 6 7
(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:	8 9 10
	(a) after 24 hours have elapsed since the consent of the occupier was sought, and	11 12
	(b) between 9.00 am and sunset.	13
(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.	14 15 16 17 18 19
[16]	Section 25 Defences to offences under Part	20
	Renumber the bullet point paragraphs in section 25 (3) (b) as subparagraphs (i) and (ii), respectively.	21 22
[17]	Part 3 Enforcement	23
	Omit the Introduction to the Part.	24
[18]	Section 27 Authorised officers may be appointed	25
	Omit “Local Government and Co-operatives” from section 27 (1) (b).	26
	Insert instead “Premier and Cabinet or other officer of the Department designated by the Director-General”.	27 28
[19]	Sections 27 (1) and (4) and 38 (1) (b)	29
	Omit “inspectors” wherever occurring. Insert instead “authorised officers”.	30
[20]	Sections 27 (2)–(5), 28 (1)–(4), 35 (1) and 37	31
	Omit “inspector” and “inspector’s” wherever occurring.	32
	Insert instead “authorised officer” and “authorised officer’s”, respectively.	33

[21] Section 27 (2)	1
Omit “, in the form prescribed by the regulations,”.	2
[22] Section 27 (6)	3
Insert after section 27 (5):	4
(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.	5 6 7 8 9
[23] Section 28 Authorised officers may exercise certain powers of entry	10
Omit section 28 (5).	11
[24] Sections 29 and 29A	12
Omit section 29. Insert instead:	13
29 Search warrants	14
(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.	15 16 17 18
(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:	19 20 21 22 23
(a) to enter the premises concerned, and	24
(b) to search the premises for evidence of a contravention of this Act or the regulations.	25 26
(3) Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to a search warrant issued under this section.	27 28 29
(4) In this section:	30
<i>issuing officer</i> means an authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> .	31 32
29A Investigation of complaint	33
(1) This section applies to a complaint made to a local authority in writing that alleges a contravention of this Act.	34 35

(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.	1 2 3 4
(3)	The local authority may investigate the complaint as it thinks fit.	5
(4)	An authorised officer may, in accordance with section 28, enter and examine premises for the purposes of investigating the complaint.	6 7 8
(5)	Before premises are entered under subsection (4), the local authority is to take such steps as are reasonable:	9 10
(a)	to notify the owner or occupier of the premises about the complaint, and	11 12
(b)	to arrange to carry out the examination at a time that is convenient to the owner or occupier.	13 14
(6)	The local authority may decline to investigate a complaint that it considers to be vexatious, misconceived, frivolous or lacking in substance.	15 16 17
(7)	The local authority is to notify the complainant in writing if it declines to investigate the complaint.	18 19
[25]	Part 4 Miscellaneous	20
	Omit the Introduction to the Part.	21
[26]	Section 31 Pool Fencing Advisory Committee	22
	Omit the section.	23
[27]	Section 32 Relationship with other Acts	24
	Omit “an existing swimming pool” from section 32 (2).	25
	Insert instead “a swimming pool the construction or installation of which commenced before 1 August 1990”.	26 27
[28]	Section 34 Service of notices	28
	Insert after section 34 (b):	29
(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	30 31 32 33
[29]	Section 35 Penalty notices for certain offences	34
	Omit “2 penalty units” from section 35 (6). Insert instead “5 penalty units”.	35

Swimming Pools Amendment Bill 2009

Schedule 1 Amendment of Swimming Pools Act 1992 No 49

[30] Sections 39 and 41	1
Omit the sections.	2
[31] Schedule 1 Diagrams	3
Omit the heading to Part 2. Insert instead:	4
Part 2 Swimming pools constructed before August 1990 and existing swimming pools on small properties	5
	6
	7
[32] Schedule 1, Parts 3 and 4	8
Omit “Swimming pools” from the headings to the Parts.	9
Insert instead “Existing swimming pools”.	10
[33] Schedule 3 Savings, transitional and other provisions	11
Omit “(Section 41)”.	12
[34] Schedule 3, clause 1 (1)	13
Insert at the end of the subclause:	14
<i>Swimming Pools Amendment Act 2009</i>	15
[35] Schedule 3, clauses 3–5 and 9–14	16
Omit the clauses.	17
[36] Schedule 3, Part 3	18
Insert after Part 2:	19
Part 3 Provisions consequent on the enactment of the Swimming Pools Amendment Act 2009	20
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	22
15 Authorised officers	23
A person who was an inspector in respect of a local authority immediately before the commencement of Schedule 1 [19] to the <i>Swimming Pools Amendment Act 2009</i> 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.	24
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16	Abolition of Pool Fencing Advisory Committee	1
	(1) The Pool Fencing Advisory Committee is abolished.	2
	(2) Any person holding office as a member of that Committee immediately before its abolition:	3
	(a) ceases to hold office, and	4
	(b) is not entitled to any compensation because of the loss of that office.	5
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		7
[37]	Dictionary	8
	Omit the Dictionary.	9