

SWIMMING POOLS BILL 1990

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 (different provision being made in relation to new and existing swimming pools); and
- (b) to provide for the enforcement of the proposed requirements; and
- (c) to allow appeals to be made from certain decisions regarding the imposition of higher safety standards, regarding exemptions from compliance with the required standards and regarding certificates of compliance; and
- (d) to enact other provisions of a minor, consequential or ancillary nature; and
- (e) to make consequential amendments to the Justices Act 1902, the Land and Environment Court Act 1979, the Liquor Act 1982, the Local Government Act 1919 and the Search Warrants Act 1985.

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 to the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain expressions (in particular, "relevant authority", "residential building" and "swimming pool") for the purposes of the proposed Act. A relevant authority will generally be a local government council.

Clause 4 provides that the proposed Act applies to swimming pools situated in or on premises on which a residential building or movable dwelling is situated, but does not apply to premises occupied by the Crown or by a public authority.

Clause 5 provides that each relevant 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 - New swimming pools

Clause 6 applies the proposed Division to new swimming pools (that is, swimming pools whose construction or installation is begun after the commencement of the clause).

Clause 7 requires the owner of any premises in or on which a new outdoor swimming pool is situated to ensure that the swimming pool (together with its immediate surroundings) is surrounded by a fence that separates it from all other parts of the premises, and from adjoining or adjacent premises, and that is designed, constructed and installed 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 requires the owner of any premises in or on which a new 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 2 - Existing swimming pools

Clause 9 applies the proposed Division to existing swimming pools (that is, swimming pools whose construction or installation had been completed, or was in progress, before the commencement of clause 6). Certain transitional provisions concerning existing swimming pools are contained in clause 2 of Schedule 2.

Clause 10 requires the owner of any premises in or on which an existing outdoor swimming pool is situated to ensure that the swimming pool is surrounded by a fence that separates it from any residential building on the premises, and from any adjacent or adjoining premises, and that is designed, constructed and installed 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 11 requires the owner of any premises in or on which an existing 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.

Swimming Pools 1990

Division 3 - General

Clause 12 requires the occupier of any premises in or on which a swimming pool is situated to ensure that any security gate or other means of access to the swimming pool is kept securely closed at all times when the gate or other means of access is not in actual use. Contravention of the proposed section will be punishable by a maximum fine of 10 penalty units.

Clause 13 enables a relevant authority to direct the owner of any premises in or on which a swimming pool is situated to take measures to improve the means of restricting access to the swimming pool. Such a direction will be capable of being revoked or varied only if some significant physical change occurs in the immediate vicinity of the swimming pool or if the relevant authority and the owner agree. 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 14 enables a relevant authority to exempt a swimming pool from the requirements of proposed Division 1 or 2 if it is satisfied that it is impracticable or inappropriate for the swimming pool to comply with those requirements and that no less effective alternative provision has been made for restricting access to the swimming pool or the water contained in it. Such an exemption will be capable of being revoked or varied only if some significant physical change occurs in the immediate vicinity of the swimming pool or to the swimming pool or if the relevant authority and the owner agree.

Clause 15 enables a relevant authority to issue a certificate of compliance in respect of a swimming pool.

Clause 16 affords certain defences to an owner of premises who is prosecuted for an offence arising under proposed Part 2. 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 fence 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 again, 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.

PART 3 - ENFORCEMENT

Clause 17 provides for the appointment of inspectors for the purposes of the proposed Act. A member of the Police Force will, by virtue of his or her office as such, be an inspector.

Clause 18 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

Swimming Pools 1990

the premises only during normal business hours. An inspector (other than a member of the Police Force) will also be required to produce his or her certificate of identification to any person in the premises who requests its production.

Clause 19 enables an inspector to apply for, and an authorised justice to grant, a search warrant where it appears that an offence against the proposed Act is being or has been committed in or on any premises. The issue and execution of such a warrant will be governed by the provisions of the Search Warrants Act 1985.

Clause 20 enables a relevant authority to enter premises and carry out such work as is necessary to implement the requirements of a direction referred to in clause 13 if those requirements have not been complied with within the time allowed by the direction. A relevant authority will be required to give the owner (and, if the owner is not also the occupier, the occupier) of the premises concerned at least 14 days' notice of its intention to exercise its powers under the proposed section. A relevant authority will be empowered to recover from the owner of the premises the costs incurred by it in carrying out work under the proposed section. In cases of change of ownership of premises, the new owner will become subject to any debt to which the old owner was subject under the proposed section.

PART 4 - APPEALS

Clause 21 establishes an Appeal Board consisting of persons appointed by the Minister. The members are to comprise officers of the Department of Local Government, persons nominated by the Australian Institute of Building Surveyors, the Australian Institute of Environmental Health and the Fence Industry Association of Australia Incorporated and persons appointed to represent the general public. One of the Departmental members is to be appointed Chairperson of the Appeal Board.

Clause 22 provides for the constitution of an Appeal Panel for the purposes of hearing and determining an appeal. Such a Panel is to be constituted by 3 members of the Appeal Board (including a person from the Department of Local Government, a person representing the general public and one other person). The Departmental officer is to preside at the hearing. Two or more Appeal Panels may be constituted at the same time.

Clause 23 enables a person to appeal from the requirements of a direction referred to in clause 13 and from any decision in relation to an exemption referred to in clause 14 or a certificate of compliance referred to in clause 15.

Clause 24 requires an appeal to be heard and determined in accordance with procedures to be prescribed by the regulations and practice directions to be given by the Chairperson of the Appeal Board, and provides that an Appeal Panel's decision on an appeal is to be final.

PART 5 - MISCELLANEOUS

Clause 25 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 to the extent only of the inconsistency. The clause further ensures that a

Swimming Pools 1990

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 26 provides for the apportionment of expenses in constructing or maintaining a pool safety fence that forms part of a dividing fence.

Clause 27 provides for the service of notices authorised or required to be served on the owner or occupier of any premises.

Clause 28 provides for the issue of penalty notices for offences against the proposed Act. The maximum fine that will be capable of being imposed by means of a penalty notice will be 2 penalty units.

Clause 29 requires proceedings for an offence against the proposed Act to be dealt with summarily before a Local Court.

Clause 30 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 31 enables the Governor to make regulations for the purposes of the proposed Act and provides that a regulation may adopt any standard, code or rule, as in force for the time being.

Clauses 32-36 effect consequential amendments to the Justices Act 1902, the Land and Environment Court Act 1979, the Liquor Act 1982, the Local Government Act 1919 and the Search Warrants Act 1985.

Clause 37 is a formal provision that gives effect to a schedule of savings, transitional and other provisions.

**SCHEDULE 1 - PROVISIONS WITH RESPECT TO THE MEMBERS
OF THE APPEAL BOARD**

Schedule 1 enacts provisions with respect to the members of the Appeal Board, including provisions concerning:

- (a) a definition of "non-Government member" for the purposes of the proposed Schedule (clause 1); and
- (b) the term of office of a non-Government member (clause 2); and
- (c) the remuneration of a non-Government member (clause 3); and
- (d) the circumstances that give rise to a vacancy in the office of a non-Government member (clause 4); and
- (e) the filling of a vacancy in the office of a non-Government member (clause 5).

SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

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

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

Swimming Pools 1990

Part 2 contains provisions concerning:

- (a) existing swimming pools (clause 2); and
- (b) directions under section 288C of the Local Government Act 1919 (clause 3);
and
- (c) appeals under section 288C of the Local Government Act 1919 (clause 4);
and
- (d) the recovery of costs under section 288C of the Local Government Act 1919
(clause 5); and
- (e) the recovery of expenses under the Dividing Fences Act 1951 (clause 6).

The provision concerning existing swimming pools (clause 2) will allow a lead-in time of 2 years before the requirements of proposed sections 10 and 11, or of directions under proposed section 13, become mandatory. A relevant authority will, in certain circumstances and subject to certain conditions, have a discretionary power to extend that lead-in time by up to 3 years in relation to an existing outdoor swimming pool so as to allow any necessary upgrading of pool safety fencing to be completed.
