

Swimming Pools Regulation 2008

[2008-399]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
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New South Wales

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Swimming Pools Regulation 2008



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Swimming Pools Regulation 2008*.

2 Commencement

This Regulation commences on 1 September 2008.

Note

This Regulation replaces the *Swimming Pools Regulation 1998* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

AS 1926.1—2007 means the provisions of AS 1926.1—2007 *Swimming Pool Safety, Part 1: Safety barriers for swimming pools* as published by Standards Australia on 12 July 2007, other than clause 2.10.

Building Code of Australia means the document published by or on behalf of the Australian Building Codes Board under the title *Building Code of Australia*, as in force from time to time.

Department means the Division of Local Government within the Department of Premier and Cabinet.

the Cardiopulmonary Resuscitation Guideline means the document entitled *Guideline 7: Cardiopulmonary Resuscitation* published in February 2006 by the Australian Resuscitation Council.

testing apparatus means a cylindrical test object having a diameter of 105 millimetres, plus or minus 1 millimetre, and having at least one solid flat-faced end.

the Act means the *Swimming Pools Act 1992*.

(2) Notes included in this Regulation do not form part of this Regulation.

4 References to compliance with AS 1926.1—2007 or Building Code of Australia

For the purposes of this Regulation, a child-resistant barrier, window or doorway is taken to comply with the standards set out in a clause in AS 1926.1—2007 or the *Building Code of Australia* so long as it complies with the minimum requirements for that clause.

Part 2 Restriction of access to swimming pools

Note—

This Part prescribes standards for the restriction of access to new swimming pools. Clause 23 deals with swimming pools completed before 1 September 2008.

Division 1 Restriction of access to outdoor swimming pools

5 General requirements for outdoor swimming pools

- (1) For the purposes of sections 7 (1) (b) and 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 the *Building Code of Australia*.
- (2) This clause is subject to clause 18BB.

6 Standards required for certain swimming pools to be exempt from requirement to separate swimming pool from residential building

- (1) For the purposes of section 8 (2) of the Act, the prescribed standards in accordance with which the means of access to a swimming pool from a residential building are to be restricted are that:
 - (a) each doorway, and each opening portion of a window, that gives access to the swimming pool is to be designed, constructed, installed and maintained in accordance with the standards set out in AS 1926.1—2007, and
 - (b) in relation to each opening portion of a window giving access to the swimming pool—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.
- (2) Subclause (1) (b) does not apply to a window that is:
 - (a) of substantial construction and is 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 testing apparatus, or
 - (b) totally enclosed by a grille (including a fixed grille) that is of substantial construction and is 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

testing apparatus.

7 Standards required for swimming pools on large or waterfront properties to be exempt from requirement to surround swimming pool

For the purposes of sections 9 (2) and 10 (2) of the Act, the prescribed standards in accordance with which the means of access to a swimming pool from a residential building are to be restricted are the standards set out in AS 1926.1—2007.

Division 2 Restriction of access to indoor swimming pools

8 General requirements for indoor swimming pools

- (1) For the purposes of section 14 of the Act, the prescribed standards in accordance with which the means of access to an indoor swimming pool is to be restricted are that each doorway, and each opening portion of a window, giving access to the swimming pool must be designed, constructed, installed and maintained in accordance with the *Building Code of Australia*.
- (2) This clause is subject to clause 18BB.

Division 3 Restriction of access to spa pools

9 Standards required to be exempt from requirement to surround spa pool

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

- (a) of substantial construction and having no opening through which it is possible to pass a testing apparatus, and
- (b) fastened to the spa pool by a device that is itself of substantial construction and having no opening through which it is possible to pass a testing apparatus.

Part 3 Warning notices

10 Contents of warning notices

- (1) For the purposes of section 17 (1) of the Act, the sign referred to in that subsection must bear a notice that contains all of the following:
 - (a) the words:
 - (i) “YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL”, and
 - (ii) “POOL GATES MUST BE KEPT CLOSED AT ALL TIMES”, and

- (iii) "KEEP ARTICLES, OBJECTS AND STRUCTURES AT LEAST 900 MILLIMETRES CLEAR OF THE POOL FENCE AT ALL TIMES",
 - (b) a simple flow sequence (which may be the flow sequence depicted in the Cardiopulmonary Resuscitation Guideline) containing details of resuscitation techniques (for infants, children and adults):
 - (i) that are set out in accordance with the relevant provisions of that Guideline, and
 - (ii) that comply with the other relevant guidelines of the Australian Resuscitation Council, and
 - (iii) that are illustrated by drawings with key words only in bold print,
 - (c) a statement to the effect that formal instruction in resuscitation is essential,
 - (d) the name of the teaching organisation or other body that published the sign and the date of its publication.
- (2) However, any sign erected between 1 September 1995 and 31 August 2008 that bears a notice in accordance with clause 9 (a) and (b) of the *Swimming Pools Regulation 1998* (as in force immediately before its repeal) is taken to comply with this clause.

11 Legibility of warning notices

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

- (a) must be legible from a distance of at least 3 metres, and
- (b) must be maintained in a clearly legible condition.

Part 4 Exemptions from barrier requirements granted by local authorities

12 Application for exemption

- (1) An application made to a local authority under section 22 of the Act is to be in the form approved by that authority.
- (2) That form must contain statements to the effect that:
 - (a) if the local authority fails to finally determine the application within 6 weeks after it is made, then the local authority is taken, for the purposes of any appeal proceedings, to have refused the application, and
 - (b) if the local authority refuses the application for an exemption, or is taken to have refused the application, or imposes a condition on an exemption, the owner of the

premises on which the relevant swimming pool is situated is entitled to appeal to the Land and Environment Court against the local authority's refusal or against the condition.

13 Fee for application for exemption

- (1) A local authority may impose a fee of up to \$70 on an application for an exemption under section 22 of the Act.
- (2) An application made to a local authority that has imposed a fee must be accompanied by that fee.

14 Circumstances that justify an exemption

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.

15 Notice concerning certain decisions on exemptions

- (1) 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.

- (2) 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.

Part 5 Inspections and certificates

16 Community engagement

- (1) A local authority must establish and implement a strategy for engagement with the local community when developing a program for the inspection of swimming pools in its area.
- (2) The strategy must be based on social justice principles of equity, access, participation

and rights.

- (3) The local community is to be consulted in accordance with the strategy in relation to the development of the inspection program (including in relation to any review of such a program).

17 Time for carrying out inspections

For the purposes of section 22C (3) of the Act, a reasonable time within which a local authority must carry out an inspection is 10 business days after receiving a request for the inspection in accordance with section 22C of the Act.

18 Time for entering information on Register

For the purposes of section 22D (8) of the Act, details of a certificate of compliance are to be entered on the Register within 3 business days after the certificate of compliance is issued.

18A Fee for inspection

- (1) For the purposes of section 22F (1) of the Act, the maximum fee that a local authority may charge the owner of premises on which a swimming pool is situated for carrying out an inspection of the swimming pool is:
 - (a) if it is the first inspection since the person became the owner—\$150, or
 - (b) if it is the second inspection since the person became the owner—\$100, or
 - (c) if it is the first inspection since a certificate of compliance in relation to the premises ceased to be valid—\$150, or
 - (d) if it is the second inspection since a certificate of compliance in relation to the premises ceased to be valid—\$100.
- (2) No fee may be charged by a local authority for carrying out a third or subsequent inspection for the purpose of the issue of the same certificate of compliance.

Note—

Certificates of compliance are valid for a period of 3 years from the date of issue, in accordance with section 22D (6) of the Act. After a certificate of compliance for a swimming pool has ceased to be valid, the local authority may charge a fee in accordance with this clause for an inspection carried out for the purpose of issuing a new certificate of compliance.

18B Notices by local authority if pool does not comply

- (1) This clause applies to an inspection carried out by the local authority under section 22C of the Act.
- (2) The local authority must provide a written notice to the owner of premises on which a

swimming pool is situated if the local authority has inspected the swimming pool and is not satisfied that the requirements for the issue of a certificate of compliance have been met.

- (3) A notice under this clause is to set out the following:
- (a) the date of the notice,
 - (b) the address of the swimming pool to which the notice relates,
 - (c) the date on which the inspection took place,
 - (d) the reasons why the local authority is not satisfied that the requirements for the issue of a certificate of compliance have been met and the steps that need to be taken in order to meet those requirements,
 - (e) whether the local authority is of the opinion that the swimming pool poses a significant risk to public safety.

18BA Certificates of non-compliance if pool does not comply

- (1) This clause applies to an inspection carried out by the local authority, or an accredited certifier, under section 22C of the Act.
- (2) The local authority or accredited certifier must issue a certificate of non-compliance to the owner in respect of a swimming pool if the local authority or accredited certifier (as the case requires):
 - (a) has inspected the pool under section 22C of the Act, and
 - (b) is satisfied that the requirements for the issue of a certificate of compliance have not been met.
- (3) A certificate of non-compliance must be in the form approved by the Chief Executive of the Office of Local Government and must include the following:
 - (a) the address of the swimming pool to which the certificate relates,
 - (b) the date of the inspection,
 - (c) whether the local authority or accredited certifier is of the opinion that the swimming pool poses a significant risk to public safety,
 - (d) if the certificate of non-compliance is issued by the local authority—a statement that the owner of the premises on which the swimming pool is situated is entitled, under section 26 of the Act, to appeal the decision of the local authority to refuse to issue a certificate of compliance under section 22D of the Act.
- (4) A certificate of non-compliance must be issued within 7 days from the date of the

inspection of the pool. However, failure to issue a certificate of non-compliance within that period does not affect the validity of the certificate.

- (5) The requirement under subclause (4) to issue a certificate of non-compliance within the 7-day period applies whether or not a notice under clause 18B has been provided.
- (6) A certificate of non-compliance in respect of a swimming pool remains valid for a period of 1 year from the date on which it is issued but ceases to be valid if a certificate of compliance has been issued under section 22D of the Act for that swimming pool.

18BB Special provision relating to acquired premises

- (1) This clause applies to a swimming pool situated on premises acquired after the commencement of this clause if the contract of sale for the premises contained a certificate of non-compliance under clause 18BA, unless the certificate states that the swimming pool poses a significant risk to public safety.
- (2) For the purposes of sections 7 (1) (b), 12 (d) and 14 of the Act, the prescribed standard in the case of a swimming pool to which this clause applies is the condition of the child-resistant barrier or means of access as at the acquisition of the premises, but only until:
 - (a) 90 days after the acquisition of the premises, or
 - (b) the completion of work after the acquisition of the premises to ensure the child-resistant barrier or means of access complies with the *Building Code of Australia*, whichever is earlier.
- (3) In this clause:

acquisition of the premises means the date on which the sale of the premises is completed.

18BC Council reporting requirements for inspections

For the purposes of section 22F (2) of the Act, a local authority that is a council must include in its annual report under section 428 of the [Local Government Act 1993](#) the number of inspections under Division 5 of Part 2 of the Act that:

- (a) were inspections of tourist and visitor accommodation, or
- (b) were inspections of premises on which there are more than 2 dwellings, or
- (c) resulted in the council issuing:
 - (i) a certificate of compliance under section 22D of the Act, or
 - (ii) a certificate of non-compliance under clause 18BA of this Regulation.

Part 5A Registration of swimming pools

18C Registration information

For the purposes of section 30B (1) of the Act, the information required to be entered on the Register in relation to a swimming pool is as follows:

- (a) the address of the premises,
- (b) the type of swimming pool (for example, whether the pool is in-ground or above-ground, or indoor or outdoor, or a spa pool),
- (c) the type of premises (for example, premises on which a residential building is located, premises on which tourist and visitor accommodation is located or premises on which more than 2 dwellings are located).

18D Fee for provision of registration information

For the purposes of section 30B (2) (b) of the Act, the maximum fee that a local authority may require for the provision of registration information within the meaning of section 30B of the Act is \$10.

18E Authorised persons who may access Register

Accredited certifiers within the meaning of Division 5 of Part 2 of the Act are prescribed as authorised persons for the purposes of section 30E of the Act.

Note—

Section 22A of the Act defines **accredited certifier** in Division 5 of Part 2 of the Act as an accredited certifier within the meaning of the [Building Professionals Act 2005](#) holding:

- (a) category A1, category A2 or category A3 accreditation under that Act, or
- (b) if the regulations prescribe alternative qualifications, those alternative qualifications.

Clause 18F prescribes each category of accreditation under the [Building Professionals Act 2005](#) that authorises the carrying out of inspections under the [Swimming Pools Act 1992](#) as an alternative qualification for the purposes of paragraph (b) of the definition of **accredited certifier** in section 22A of the Act.

Part 6 Miscellaneous

18F Alternative qualification for accredited certifiers

Each category of accreditation under the [Building Professionals Act 2005](#) that authorises the carrying out of inspections under the [Swimming Pools Act 1992](#) is prescribed as an alternative qualification for the purposes of paragraph (b) of the definition of **accredited certifier** in section 22A of the Act.

19 Directions by local authorities

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 against the decision.

20 Certificates of identification

For the purposes of section 27 (2) of the Act, the prescribed form of certificate of identification is the form set out in Schedule 1.

21 Public access to AS 1926.1—2007, Building Code of Australia and Cardiopulmonary Resuscitation Guideline

- (1) The Department must ensure that a paper copy or electronic version of AS 1926.1—2007, the *Building Code of Australia* and the Cardiopulmonary Resuscitation Guideline are made available for public inspection at no cost at each public office of the Department during ordinary business hours.
- (2) Each local authority must ensure that a paper copy or electronic version of AS 1926.1—2007, the *Building Code of Australia* and the Cardiopulmonary Resuscitation Guideline are made available for public inspection at no cost at each public office of the local authority during ordinary business hours.
- (3) The Department and each local authority must ensure that the Cardiopulmonary Resuscitation Guideline is available for viewing on its website.

22 Penalty notices

For the purposes of section 35 of the Act:

- (a) each offence under each section of the Act 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.

Table

Offence under the Act	Penalty
section 7 (1)	\$550
section 12	\$550
section 14	\$550
section 15 (1)	\$550
section 16	\$550

section 17 (1)	\$110
section 23 (3)	\$550
section 30B (1)	\$220

22A Effect of changes to prescribed standards for existing complying swimming pool barriers and means of access

- (1) In this clause, **relevant amendment** means:
- (a) an amendment to this Regulation that amends or substitutes a standard prescribed for the purposes of a provision of Part 2 of the Act, or
 - (b) an amendment to a standard that is prescribed, as in force from time to time, for the purposes of a provision of Part 2 of the Act.
- (2) If a child-resistant barrier for a swimming pool is required to comply with a standard prescribed under a provision of Part 2 of the Act and the standard is amended or substituted by a relevant amendment, the barrier is taken to comply with the amended or substituted standard so long as:
- (a) immediately before the relevant amendment took effect, the barrier complied with the standard that applied to the barrier at that time and the barrier continues to comply with that standard, or
 - (b) if the barrier has been substantially altered or rebuilt, the barrier complied with the standard that applied to the barrier when it was so altered or rebuilt and the barrier continues to comply with that standard.
- (3) If the means of access to a swimming pool are required to comply with a standard prescribed under a provision of Part 2 of the Act and the standard is amended or substituted by a relevant amendment, the means of access are taken to comply with the amended or substituted standard so long as:
- (a) immediately before the relevant amendment took effect, the means of access complied with the standard that applied to the means of access at that time and the means of access continue to comply with that standard, or
 - (b) if the means of access have been substantially altered or rebuilt, the means of access complied with the standard that applied to the means of access when they were so altered or rebuilt and they continue to comply with that standard.

Note—

Subclause (3) applies to standards prescribed under provisions of Part 2 of the Act that relate to indoor swimming pools, outdoor swimming pools or both.

23 Existing complying swimming pools may continue to comply with earlier standards

- (1) This clause applies to a swimming pool the construction or installation of which was completed before 1 September 2008.
- (2) It is sufficient compliance with Part 2 of the Act for a swimming pool to comply with that Part on the basis of the requirements of Part 2 of the *Swimming Pools Regulation 1998* (as an alternative to compliance on the basis of the requirements of Part 2 of this Regulation).
- (3) However, this clause does not apply:
 - (a) in relation to an outdoor swimming pool—if the child-resistant barrier by which access to the swimming pool is restricted is substantially altered or rebuilt, and
 - (b) in relation to an indoor swimming pool—if the premises in which the swimming pool is situated are substantially altered or rebuilt in a way that affects the means of access to the swimming pool.

23A Certificates of compliance

- (1) Despite the repeal of section 24 of the Act by the *Swimming Pools Amendment Act 2012*, a certificate under that section can be applied for within 6 months after the repeal of that section and can be issued pursuant to such an application as if that section had not been repealed.
- (2) A certificate issued pursuant to such an application is taken to be a certificate of compliance issued under section 22D and remains valid for a period of 3 years from the date on which it was issued.
- (3) Such a certificate ceases to be valid if a direction is issued under section 23 in respect of the swimming pool to which the certificate relates.

24 Savings

Any act, matter or thing that, immediately before the repeal of the *Swimming Pools Regulation 1998*, had effect under that Regulation is taken to have effect under this Regulation.

Schedule 1 Certificate of identification

(Clause 20)

Certificate of identification

(*Swimming Pools Act 1992*)

This certifies that [*insert name of inspector*], whose photograph and signature appear below, is an inspector for [*insert name of local authority*] for the purposes of the *Swimming Pools Act 1992*.

(attach
photograph
here)

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

The holder of this certificate is empowered, by section 27B or 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 in or 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.