

# Swimming Pools Act 1992 No 49

[1992-49]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**

[Crown Land Legislation Amendment Act 2017 No 17](#) (not commenced — to commence on 1.7.2018)

[Statute Law \(Miscellaneous Provisions\) Act 2018 No 25](#) (not commenced — to commence on 29.6.2018)

### Authorisation

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# Swimming Pools Act 1992 No 49



New South Wales

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# Swimming Pools Act 1992 No 49



New South Wales

An Act to require access to private swimming pools to be effectively restricted; to repeal the *Swimming Pools Act 1990*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Swimming Pools Act 1992*.

### 2 Commencement

This Act commences on 1 August 1992 or on such earlier day as may be appointed by proclamation.

### 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.

**certificate of compliance** means a certificate issued under section 22D.

**council** means the council of an area within the meaning of the *Local Government Act 1993*.

**Director-General** means:

- (a) the Chief Executive of the Division of Local Government within the Department of Premier and Cabinet, or
- (b) if there is no such position within that Department, the Director-General of that Department.

**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](#).

**occupier of premises** 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.

**owner of premises** has the same meaning as “owner” has in relation to land in the [Local Government Act 1993](#) and, if there are 2 or more owners of the premises, includes any one of the owners.

**public authority** means a public authority constituted by or under an Act, a local authority, a Government Department or a statutory body representing the Crown.

**Register** means the Register of Swimming Pools under section 30A.

**relevant occupation certificate** in respect of a swimming pool means an occupation certificate issued under the [Environmental Planning and Assessment Act 1979](#) that is less than 3 years old and that authorises the use of the swimming pool.

**residential building** 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:

- (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
- (b) a moveable dwelling, or
- (b1) tourist and visitor accommodation, or
- (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
- (d) a building or structure of a kind prescribed by the regulations.

**spa pool** includes any excavation, structure or vessel in the nature of a spa pool, flotation tank, tub or the like.

**Standard Instrument** means the standard local environmental planning instrument prescribed by the [Standard Instrument \(Local Environmental Plans\) Order 2006](#).

**swimming pool** means an excavation, structure or vessel:

- (a) that is capable of being filled with water to a depth greater than 300 millimetres, and
- (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,

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.

**tourist and visitor accommodation** has the same meaning as in the Standard Instrument.

- (1A) For the avoidance of doubt, a swimming pool is situated on premises on which another building is located if the swimming pool is ancillary to that other building, regardless of whether the swimming pool is on a separate lot, such as on common property under a strata scheme.
- (2) Diagrams included in Schedule 1 form part of this Act.
- (3) Notes included in this Act do not form part of this Act.

#### **4 Swimming pools to which Act applies**

This Act applies to swimming pools (both outdoor and indoor) that are situated, or proposed to be constructed or installed, on premises on which a residential building, a moveable dwelling or tourist and visitor accommodation is located, but does not apply to

swimming pools that are situated, or proposed to be constructed or installed, on any premises occupied by the Crown or by a public authority.

## **5 General duties of local authorities regarding swimming pools**

Each local authority is required:

- (a) to take such steps as are appropriate to ensure that it is notified of the existence of all swimming pools to which this Act applies that are within its area, and
- (b) to promote awareness within its area of the requirements of this Act in relation to swimming pools, and
- (c) to investigate complaints about breaches of this Act in accordance with section 29A.

## **Part 2 Access to swimming pools**

### **Division 1 Outdoor swimming pools for dwelling-houses etc**

#### **6 To which swimming pools does this Division apply?**

This Division applies to outdoor swimming pools that are situated, or proposed to be constructed or installed, on premises on which a residential building is located.

#### **7 General requirements for outdoor swimming pools**

- (1) The owner of the premises on which a swimming pool is situated must ensure that the swimming pool is at all times surrounded by a child-resistant barrier:
  - (a) that separates the swimming pool from any residential building situated on the premises and from any place (whether public or private) adjoining the premises, and
  - (b) that is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations.

Maximum penalty: 50 penalty units.

- (2) The diagrams in Part 1 of Schedule 1 illustrate the provisions of this section.

#### **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.

#### **8 Exemption for swimming pools constructed before August 1990 and existing swimming pools on small properties**

- (1) This section applies to the following swimming pools:
  - (a) swimming pools the construction or installation of which commenced before 1



August 1990,

- (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.

**Note—**

230 square metres is the smallest area on which a dwelling-house may currently be erected.

- (2) The child-resistant barrier surrounding the swimming pool is not required to separate the swimming pool from any residential building situated on the premises so long as the means of access to the swimming pool from the building are at all times restricted in accordance with the standards prescribed by the regulations.
- (3) The diagrams in Part 2 of Schedule 1 illustrate the provisions of this section.
- (4) This section ceases to apply in respect of a swimming pool if a barrier is erected on the premises (between the swimming pool and a residential building) as a barrier to direct access to the swimming pool from any residential building situated on the premises.

**9 Exemption for swimming pools on large properties**

- (1) This section applies to swimming pools the construction or installation of which commenced before 1 July 2010.
- (2) A swimming pool that is situated on premises having an area of 2 hectares or more is not required to be surrounded by a child-resistant barrier so long as the means of access to the swimming pool from any residential building situated on the premises are at all times restricted in accordance with the standards prescribed by the regulations.
- (3) The diagram in Part 3 of Schedule 1 illustrates the provisions of this section.
- (4) A reference in this section to a residential building does not include a reference to a structure (such as a garage or shed) that is ancillary to the building if the structure is not itself used for residential purposes.
- (5) This section ceases to apply in respect of a swimming pool if a barrier is erected on the premises (between the swimming pool and a residential building) as a barrier to direct access to the swimming pool from any residential building situated on the premises.

**10 Exemption for swimming pools on waterfront properties**

- (1) This section applies to swimming pools the construction or installation of which commenced before 1 July 2010.

- (2) A swimming pool that is situated on premises having frontage to any large body of water (such as a permanently flowing creek, a river, a canal, a pond, a lake, a reservoir, an estuary, the sea or any other body of water, whether natural or artificial) is not required to be surrounded by a child-resistant barrier so long as the means of access to the swimming pool from any residential building situated on the premises are at all times restricted in accordance with the standards prescribed by the regulations.
- (3) The diagram in Part 4 of Schedule 1 illustrates the provisions of this section.
- (4) A reference in this section to a residential building does not include a reference to a structure (such as a garage or shed) that is ancillary to the building if the structure is not itself used for residential purposes.
- (5) This section ceases to apply in respect of a swimming pool if a barrier is erected on the premises (between the swimming pool and a residential building) as a barrier to direct access to the swimming pool from any residential building situated on the premises.

## **Division 2 Outdoor swimming pools for moveable dwellings and tourist and visitor accommodation**

### **11 Swimming pools to which Division applies**

This Division applies to outdoor swimming pools that are situated, or proposed to be constructed or installed, on premises on which a moveable dwelling or tourist and visitor accommodation is located.

### **12 General requirements for outdoor swimming pools**

The owner of the premises on which a swimming pool is situated must ensure that the swimming pool is surrounded at all times by a child-resistant barrier:

- (a) that separates the swimming pool from any moveable dwelling or tourist and visitor accommodation situated on the premises and from any place (whether public or private) adjoining the premises, and
- (b) that is located immediately around the swimming pool, and
- (c) that contains within its bounds no structure apart from the swimming pool and such other structures (such as diving boards and pool filtration plants) as are wholly ancillary to the swimming pool, and
- (d) that is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations.

Maximum penalty: 50 penalty units.

**Note—**

Section 12 should be read in conjunction with the other provisions of this Part, in particular sections 13, 18, 19 and 22.

**13 Exemptions for existing swimming pools**

- (1) This section applies to swimming pools the construction or installation of which commenced before 1 July 2010.
  - (1A) This section also applies to swimming pools:
    - (a) that are situated on premises on which there is tourist and visitor accommodation (but not if there is a moveable dwelling, hotel or motel on the premises), and
    - (b) the construction or installation of which commenced before 1 May 2013.
- (2) The child-resistant barrier surrounding the swimming pool:
  - (a) is not required to be located immediately around the swimming pool, and
  - (b) may contain within its bounds structures of the kind that, but for this section, would be required to be excluded by section 12 (c).

**Division 3 Indoor swimming pools**

**14 General requirements for indoor swimming pools**

The owner of any premises in which an indoor swimming pool is situated must ensure that the means of access to the swimming pool are at all times restricted in accordance with the standards prescribed by the regulations.

Maximum penalty: 50 penalty units.

**Division 4 Additional requirements for swimming pools**

**15 Child-resistant barrier must be in good repair**

- (1) Despite any other provision of this Act, the occupier of any premises on which a child-resistant barrier:
  - (a) is required by this Act to be installed in relation to a swimming pool, or
  - (b) is, at the commencement of this Act or at any later time, installed in relation to a swimming pool, whether or not it is required by this Act to be installed,must, so long as the swimming pool exists, maintain the barrier in existence and in a good state of repair as an effective and safe child-resistant barrier.

Maximum penalty: 50 penalty units.

(2) The regulations may prescribe standards of maintenance for the purposes of this section.

(3) A person who complies with the standards prescribed by the regulations is taken to have complied with this section.

#### **16 Access to swimming pools must be kept securely closed**

The occupier of any premises in or on which a swimming pool is situated must ensure that all doors and gates providing access to the swimming pool are kept securely closed at all times when they are not in actual use.

Maximum penalty: 50 penalty units.

#### **17 Warning notices must be erected near swimming pools**

(1) The occupier of any premises in or on which a swimming pool is situated must ensure that there is at all times maintained, in a prominent position in the immediate vicinity of the swimming pool, a sign erected in accordance with the regulations and bearing the notice required by the regulations.

Maximum penalty: 5 penalty units.

(2) The regulations may make provision for or with respect to the erection, display and maintenance of other signs, and the notices to be borne by those signs, by the occupier of any premises in or on which a swimming pool is situated.

(3) Failure to comply with the requirements of this section or of a regulation which is expressed to be made for the purposes of this section does not give rise to any civil liability that would not exist apart from this section.

#### **18 Owner may decide where required child-resistant barrier is to be located**

The owner of any premises in or on which an outdoor swimming pool is situated may, subject to the other provisions of this Part, determine where any child-resistant barrier required by this Part is to be located.

#### **19 House wall may be used as part of required child-resistant barrier**

(1) A child-resistant barrier that is formed by, or that includes, a wall of a residential building or a building used for the purposes of tourist and visitor accommodation is regarded, for the purposes of sections 7 and 12, as separating any outdoor swimming pool from the building so long as:

(a) the wall contains no opening through which access may at any time be gained to the swimming pool, and

(b) the wall is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations, and

(c) the remainder of the barrier complies with section 7 or 12, as the case requires.

(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).

## **20 Exemption for spa pools**

A spa pool is not required to be surrounded by a child-resistant barrier so long as access to the water contained in the spa pool is restricted, in accordance with the standards prescribed by the regulations, at all times when the spa pool is not in actual use.

## **21 Multiple swimming pools in close proximity**

For the purposes of this Part, 2 or more swimming pools that are situated on the same premises and in close proximity to each other are taken to be one swimming pool.

## **22 Local authority may grant exemptions from barrier requirements that are impracticable or unreasonable in particular cases**

(1) The local authority may, on application made by the owner of any premises in or on which a swimming pool is situated, or proposed to be constructed or installed, exempt the swimming pool from all or any of the requirements of this Part if it is satisfied, in the particular circumstances of the case:

(a) that it is impracticable or unreasonable (because of the physical nature of the premises, because of the design or construction of the swimming pool or because of special circumstances of a kind recognised by the regulations as justifying the granting of an exemption) for the swimming pool to comply with those requirements, or

(b) that alternative provision, no less effective than those requirements, exists for restricting access to the swimming pool.

(2) An exemption may be granted unconditionally or subject to such conditions as the local authority considers appropriate to ensure that effective provision is made for restricting access to the swimming pool concerned or the water contained in it.

(3) A person is not guilty of an offence under this Part:

(a) if the swimming pool concerned is the subject of an exemption under this section, and

(b) if the conditions (if any) to which the exemption is subject are being complied with.

(4) For the purposes only of any appeal proceedings arising in connection with an application under this section, the local authority is taken to have refused the application if it has not finally determined the application within 6 weeks after the

application was made.

## **Division 5 Inspections and compliance with Part**

### **22A Definition**

In this Division:

**accredited certifier** means 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.

### **22B Mandatory pool inspection program by local authority**

- (1) A local authority must, within 6 months after the commencement of this section, develop and adopt a program for the inspection of swimming pools in its area to ensure compliance with the requirements of this Part.
- (2) Within 12 months after the commencement of this section, the program must make provision for the inspection, at least once every 3 years, of any swimming pool situated on premises on which there is tourist and visitor accommodation or more than 2 dwellings.
- (3) The program is not to require the inspection of a swimming pool in respect of which there is a valid certificate of compliance or a relevant occupation certificate.
- (4) A local authority must inspect swimming pools in its area in accordance with its program.
- (5) The regulations may make provision for or with respect to the development and adoption of programs for the inspection of swimming pools including:
  - (a) the form and content of programs, and
  - (b) the manner in which the public is to be consulted during the development of any such program, and
  - (c) the carrying out of inspections under the program.
- (6) In this section:

**dwelling** has the same meaning as in the Standard Instrument.

### **22C Other inspections at request of owner**

- (1) The owner of any premises on which a swimming pool is situated may, at any time, request the local authority or an accredited certifier to inspect the swimming pool.

- (2) A local authority or an accredited certifier may carry out any such inspection if requested to do so.
- (3) A local authority must carry out an inspection under this section, and must carry out that inspection within a reasonable time, if the request to the local authority is in writing and states that the inspection is required to enable the sale or lease of the premises or part of the premises on which the swimming pool is situated.
- (4) The regulations may make provision for what is a reasonable time for the purposes of subsection (3).

## **22D Certificates of compliance**

- (1) The requirements for the issue of a certificate of compliance in respect of a swimming pool are that:
  - (a) the swimming pool is registered under Part 3A, and
  - (b) the swimming pool complies with the requirements of this Part.
- (2) A local authority or an accredited certifier must issue a certificate of compliance in respect of a swimming pool if the local authority or accredited certifier:
  - (a) has inspected the swimming pool under this Division, and
  - (b) is satisfied that the requirements for the issue of a certificate of compliance have been met.
- (3) A local authority or an accredited certifier must not issue a certificate of compliance except as provided by subsection (2).
- (4) A local authority or an accredited certifier may refuse to issue a certificate of compliance until any fee payable for the inspection has been paid.
- (5) A certificate of compliance in respect of a swimming pool is to be issued to the owner of the premises on which the pool is situated in a form approved by the Director-General.
- (6) A certificate of compliance remains valid for a period of 3 years from the date on which it is issued but ceases to be valid if a direction is issued under section 23 in respect of the swimming pool to which the certificate relates.
- (7) A local authority or accredited certifier that issues a certificate of compliance in respect of a swimming pool must ensure that details of the certificate are entered on the Register, by providing the details to the Director-General in a form approved by the Director-General.
- (8) The regulations may make provision for or with respect to the time and manner in which any such information is to be entered on the Register.

**22E Notices by accredited certifier if pool does not comply**

- (1) This section applies to an inspection carried out by an accredited certifier under section 22C.
- (2) An accredited certifier must provide a written notice to the owner of a swimming pool if the accredited certifier 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 section 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 accredited certifier 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 accredited certifier is of the opinion that the swimming pool poses a significant risk to public safety,
  - (f) a warning that a copy of the notice will be forwarded to the local authority for the area in which the swimming pool is situated:
    - (i) immediately, if the accredited certifier is of the opinion that the swimming pool poses a significant risk to public safety, or
    - (ii) 6 weeks after the date of inspection (or such other time as may be prescribed by the regulations) if a certificate of compliance is not issued for the swimming pool before that time,
  - (g) such other matters as may be prescribed by the regulations.
- (4) An accredited certifier who issues a notice under this section in respect of a swimming pool must forward a copy of the notice to the local authority for the area in which the swimming pool is situated:
  - (a) immediately, if the accredited certifier is of the opinion that the swimming pool poses a significant risk to public safety, or
  - (b) within 5 days after the end of the period specified in subsection (3) (f) (ii) in any other case.
- (5) An accredited certifier is not required to forward a copy of any notice to a local authority in respect of a swimming pool if, at the time at which the notice is due to be sent, the swimming pool has a valid certificate of compliance.



## **22F Inspections carried out by local authority**

- (1) A local authority may charge the owner of premises a fee for carrying out an inspection under this Division being a fee that is no greater than the maximum fee (if any) prescribed by the regulations, but it may not charge a separate fee for issuing a certificate of compliance.
- (2) A local authority that is a council must include in its annual report under section 428 of the *Local Government Act 1993* such information (if any) in relation to inspections under this Division as is prescribed by the regulations.
- (3) An inspection by a local authority is to be conducted by an authorised officer and entry on to premises to carry out such an inspection is to be in accordance with Part 3.

## **22G Local authorities that are not councils**

The regulations may:

- (a) modify the application of the provisions of this Division with respect to a local authority that is not a council, and
- (b) provide for any functions of such a local authority under this Division to be exercised by another person or body.

## **23 Local authority may order compliance with Part**

- (1) The local authority may, by order in writing served on the owner of any premises in or on which a swimming pool is situated, direct the owner to take, within such reasonable time as is specified in the direction, such measures as are so specified to ensure that the swimming pool or premises comply with the requirements of this Part or of a condition of an exemption granted under section 22.
- (2) Such a direction is of no effect to the extent to which it purports to impose requirements more onerous than the requirements of this Part or of a condition of an exemption granted under section 22.
- (3) A person on whom a direction is served must not fail to comply with the requirements of the direction.

Maximum penalty: 50 penalty units.

- (4) A direction does not cease to have effect merely because there is a change in the ownership of the premises to which the direction relates, but applies to the new owner in the same way as it applied to the old.
- (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.

- (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.

### **23A Compliance with direction of local authority**

- (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:
  - (a) the person to whom the direction is given fails to comply with the direction within the time specified in the direction, or
  - (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.
- (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.
- (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.
- (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) 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:
  - (a) after 24 hours have elapsed since the consent of the occupier was sought, and
  - (b) between 9.00 am and sunset.
- (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.

### **24 (Repealed)**

## **Division 6 Defences and appeals**

### **25 Defences to offences under Part**

- (1) In any proceedings for an offence under this Part, it is a sufficient defence if the owner of the premises concerned establishes:

- (a) that the owner was not the occupier of the premises when the alleged offence occurred, and
  - (b) that the owner had taken all reasonable steps to ensure that the alleged offence would not occur, and
  - (c) that the owner was not aware of, and could not reasonably be expected to have been aware of, the facts giving rise to the alleged offence.
- (2) In any proceedings for an offence under this Part, it is a sufficient defence if the owner of the premises concerned establishes:
- (a) that there is a valid certificate of compliance or relevant occupation certificate in respect of the swimming pool that is the subject of the alleged offence, and
  - (b) (Repealed)
  - (c) that the child-resistant barrier or other means of restricting 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.
- (3) In any proceedings for an offence under this Part, it is a sufficient defence if the owner of the premises concerned establishes that, when the alleged offence occurred:
- (a) the swimming pool was unassembled, or
  - (b) the swimming pool was in the course of construction, installation, alteration or renovation and:
    - (i) the swimming pool was empty of water or was filled with water to a depth of less than 300 millimetres, or
    - (ii) appropriate measures had, in the circumstances, been taken for restricting access to the swimming pool.

## **26 Appeals against decisions of local authority**

- (1) An appeal lies to the Land and Environment Court against the following decisions of a local authority:
- (a) a decision to refuse to grant an exemption under section 22 in accordance with the terms of the relevant application,
  - (b) a decision to impose a condition on an exemption under section 22,
  - (c) a decision to refuse to grant a certificate of compliance under section 22D,
  - (d) a decision to give a direction under section 23.
- (2) Such an appeal must be made within 28 days after the date on which the decision

was made or is taken to have been made.

- (3) A local authority is taken to have refused to issue a certificate of compliance in relation to a swimming pool if the local authority has failed to issue either a certificate of compliance or a direction under section 23 in respect of the swimming pool, within 6 weeks (or such other period as may be prescribed by the regulations) after:
  - (a) an inspection of the swimming pool is carried out under section 22B, or
  - (b) a written request is made under section 22C to the local authority that stated that the inspection was required to enable the sale or lease of the premises or part of the premises on which the swimming pool is situated.

## **Part 3 Enforcement**

### **27 Authorised officers may be appointed**

- (1) Each local authority may appoint:
  - (a) any of its employees, and
  - (b) with the approval of the Director-General of the Department of Premier and Cabinet or other officer of the Department designated by the Director-General—any other persons,to be authorised officers for the purposes of this Act.
- (2) A local authority must issue a certificate of identification to each authorised officer appointed by it.
- (3) A police officer is, by virtue of his or her office as such, an authorised officer for the purposes of this Act.
- (4) An authorised officer has such functions as are conferred or imposed on authorised officers by or under this Act.
- (5) An authorised officer appointed by a local authority may not exercise any functions under this Act outside the local authority's area.
- (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.

### **27A Grounds for entering premises**

- (1) An authorised officer may enter premises for any one or more of the following purposes:

- (a) to carry out an inspection of a swimming pool under Division 5 of Part 2,
  - (b) to investigate a complaint under section 29A,
  - (c) to investigate any contravention of this Act or the regulations that the authorised officer reasonably suspects to have occurred.
- (2) Nothing in this section prevents an authorised officer from entering premises with the consent of the owner or occupier of those premises.

**27B Powers of entry and search warrants—local council**

- (1) This section applies to an authorised officer who has been appointed by a local authority that is a council.
- (2) Part 2 of Chapter 8 of the *Local Government Act 1993* applies to the entry of premises by an authorised officer for any purpose specified in section 27A and an authorised officer is taken to be an authorised person for the purposes of section 201 of that Act.
- (3) For the avoidance of doubt, the investigation of any contravention of this Act or the regulations that an authorised officer reasonably suspects to have occurred is a function of the council that appointed the authorised officer.

**28 Power of entry—local authority other than local council**

- (1) This section applies to an authorised officer who has been appointed by a local authority other than a council.
- (1A) An authorised officer who enters premises for any purpose specified in section 27A may 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.
- (2) An authorised officer may not 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 issued under section 29.
- (3) Before exercising the functions conferred by this section in respect of any premises, an authorised officer must seek the consent of the occupier of the premises to the authorised officer's exercise of those functions.
- (4) If an authorised officer is unable to obtain the consent of the occupier of the premises, the authorised officer may exercise those functions (in respect only of that portion of premises not comprising such part of a building as is used for residential purposes and not comprising a moveable dwelling):
  - (a) after 24 hours have elapsed since the authorised officer has served notice on the occupier of his or her intention to exercise those functions, and

(b) between 9.00 am and sunset.

(5) (Repealed)

## **29 Search warrants—local authority other than local council**

(1A) This section applies to an authorised officer who has been appointed by a local authority other than a council.

(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.

(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:

(a) to enter the premises concerned, and

(b) to search the premises for evidence of a contravention of this Act or the regulations.

(3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(4) In this section:

**issuing officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## **29A Investigation of complaint**

(1) This section applies to a complaint made to a local authority in writing that alleges a contravention of this Act.

(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.

(3) The local authority may investigate the complaint as it thinks fit.

(4) An authorised officer may, in accordance with this Part, enter and examine premises for the purposes of investigating the complaint.

(5) Before premises are entered under subsection (4), the local authority is to take such steps as are reasonable:

(a) to notify the owner or occupier of the premises about the complaint, and

(b) to arrange to carry out the examination at a time that is convenient to the owner or occupier.

(6) The local authority may decline to investigate a complaint that it considers to be vexatious, misconceived, frivolous or lacking in substance.

(7) The local authority is to notify the complainant in writing if it declines to investigate the complaint.

### **30 Land and Environment Court may order compliance**

(1) A local authority may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act.

(2) If satisfied that a breach of this Act has been committed or will, unless restrained by order of the court, be committed, the Land and Environment Court may make such order as it considers appropriate to remedy or restrain the breach.

(3) Such an order may require the erection or installation of such structures (such as fencing, doors, gates or locks, latches or other safety devices) in compliance with the requirements of this Act, or may require the taking of such other action, as is specified in the order.

## **Part 3A Registration of swimming pools**

### **30A The Register of Swimming Pools**

(1) There is to be a Register of Swimming Pools.

(2) The Director-General is responsible for the keeping and administration of the Register.

(3) The regulations may make provision for the manner and form in which the Register is to be kept, the information that is to be entered on the Register, the fees (if any) payable for entering information on the Register and any other matter concerning the keeping and administration of the Register.

### **30B Registration of swimming pools**

(1) The owner of the premises on which a swimming pool is situated must ensure that any information prescribed by the regulations in relation to the swimming pool (the **registration information**) is entered on the Register.

Maximum penalty: 20 penalty units.

(2) A person complies with subsection (1) in respect of a swimming pool, if the person:

(a) provides to the Director-General, in a form approved by the Director-General, the registration information in relation to the swimming pool, or

(b) provides to a local authority, in a form approved by the local authority, the registration information in relation to the swimming pool and pays to the local authority any fee required by the local authority (being no more than the maximum fee (if any) prescribed by the regulations).

(3) A local authority is required to enter on the Register, in a form approved by the Director-General, any information provided to it under subsection (2) (b).

(4) A swimming pool is registered when the registration information about the swimming pool is entered on the Register.

### **30C Evidence of registration**

(1) The Director-General may issue a document certifying as to whether or not a particular swimming pool is or was registered at a particular time and certifying as to any registration information for the swimming pool entered on the Register at a particular time (including whether a certificate of compliance was valid with respect to a swimming pool at a particular time).

(2) A document issued under this section is evidence of the matters certified.

### **30D Director-General may enter into agreements for purposes of Part**

(1) The Director-General may enter into agreements and other arrangements with a person or body in respect of the exercise of functions of the Director-General under this Part by the person or body on behalf of the Director-General.

(2) An agreement or other arrangement may make provision for the ownership of information entered on the Register to be vested in the Director-General.

### **30E Access to Register**

(1) An authorised person is entitled to access information contained in the Register. The Director-General is required to provide that access free of charge.

(2) The regulations may provide for the ways in which access can or must be given to authorised persons.

(3) The regulations may require the Director-General to keep specified records with respect to the access given to the Register under this section and may provide for the persons who are entitled to have access to those records.

(4) The Director-General may give different degrees of access to the Register to different classes of authorised persons, having regard to the different functions that they perform.

(5) The Minister and any person acting with the Minister's authority is entitled to full and free access to information contained in the Register at all times.



- (6) The following persons are authorised persons for the purposes of this section:
- (a) authorised officers,
  - (b) a person who is a member of a class of persons prescribed by the regulations as authorised persons for the purposes of this section.
- (7) The regulations may prescribe the circumstances in which other persons may access information contained in the Register.

## **Part 4 Miscellaneous**

### **31 (Repealed)**

### **32 Relationship with other Acts**

- (1) In the event of an inconsistency between:
- (a) the provisions of this Act, and
  - (b) the provisions of any other Act or law, or of any agreement, covenant or instrument,
- the provisions of this Act are to prevail, but to the extent only of the inconsistency.
- (2) Without limiting the generality of subsection (1), the owner of a swimming pool the construction or installation of which commenced before 1 August 1990 is not required to obtain any approval under Part 1 of Chapter 7 of the [Local Government Act 1993](#) in respect of the construction, alteration, repair, replacement or maintenance of a child-resistant fence in accordance with the requirements of this Act.

### **33 How are the expenses of constructing dividing fences to be apportioned?**

- (1) The expenses of constructing, altering, repairing, replacing or maintaining a dividing fence are, to the extent to which they are attributable to work done for the purpose of complying with the requirements of this Act in respect of a swimming pool, to be borne:
- (a) by the owner of the premises on which the swimming pool is situated, or
  - (b) if swimming pools are situated on more than one of the premises bounded by the dividing fence—by the owners of each of those premises in appropriate proportions.
- (2) This section prevails over any provision of the [Dividing Fences Act 1991](#) to the contrary.

### **34 Service of notices**

Any notice that is authorised or required by or under this Act to be served on the owner or

occupier of any premises may be served:

- (a) personally, or
- (b) by means of a letter addressed to the owner or occupier and sent by post to the premises, or
- (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
- (c) by means of a letter addressed to the owner or occupier and left at the premises with a person who appears to be of or above the age of 16 years and to reside or to be employed at the premises, or
- (d) by means of a letter addressed to the owner or occupier and affixed to some conspicuous part of the premises.

### **35 Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount (not exceeding 5 penalty units) prescribed for the alleged offence by the regulations.
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

### **36 How are proceedings for offences to be dealt with?**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.

### **37 Liability**

No matter or thing done by a member of a local authority, by an authorised officer or by a person acting under the direction of a local authority subjects the member, authorised officer or person so acting personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purpose of executing this Act.

### **38 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:
  - (a) the use of land surrounding or adjoining child-resistant barriers required by this Act, and
  - (b) the functions of authorised officers, and
  - (b1) inspections of swimming pools, and
  - (b2) the Register of Swimming Pools, and
  - (c) the fees payable under this Act, and
  - (d) the forms to be used for the purposes of this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.
- (3) A regulation may apply, adopt or incorporate the provisions of any standard, code or rule, as in force for the time being.

### **39-41 (Repealed)**

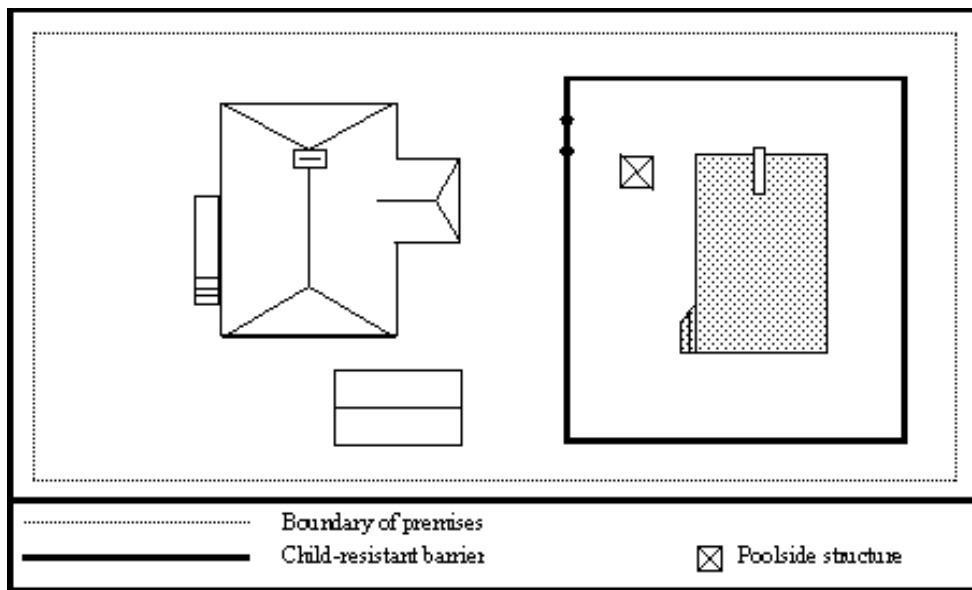
## **Schedule 1 Diagrams**

(Section 3)

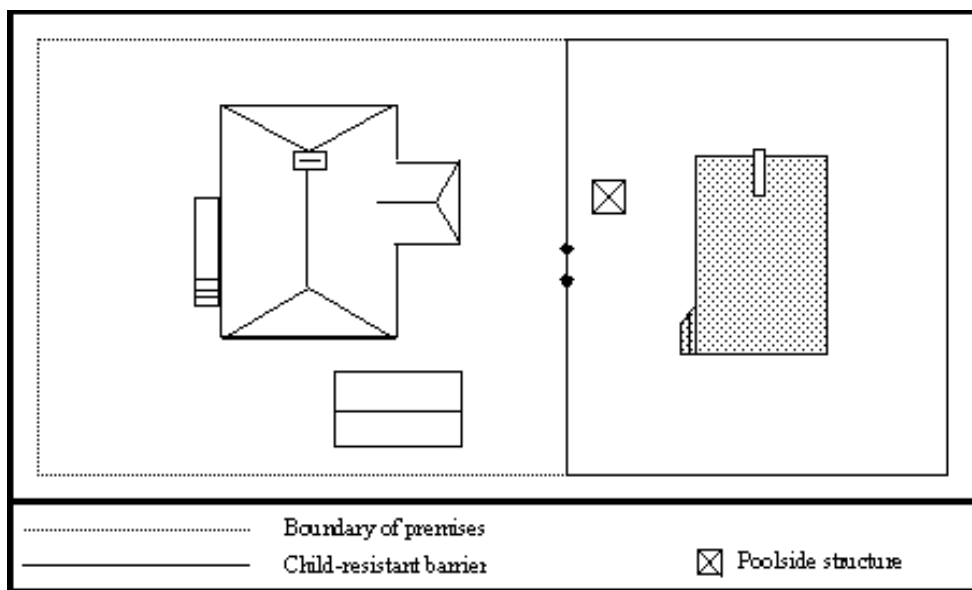
## **Part 1 Outdoor pools for residential buildings**

(Section 7)

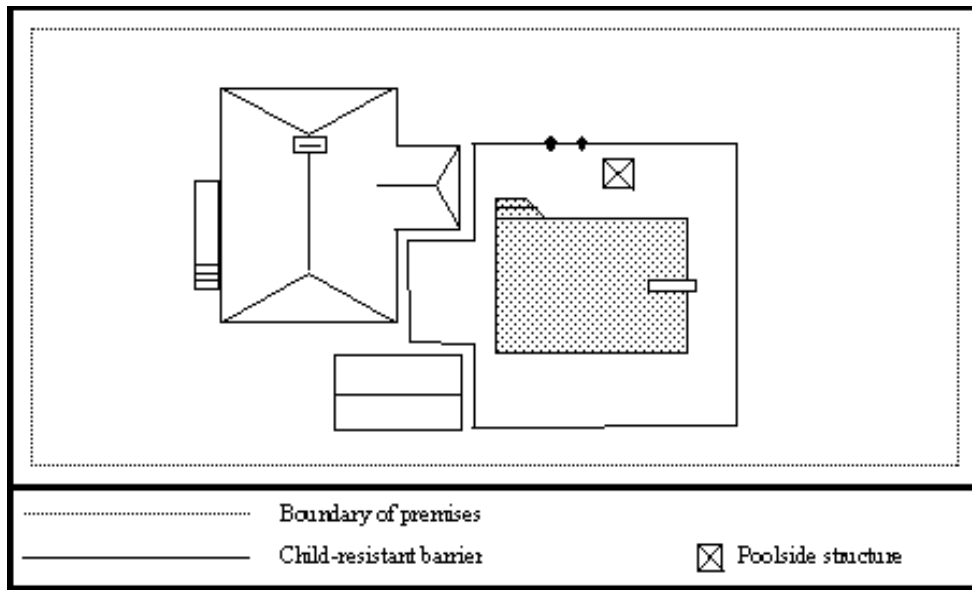
### ***Diagram 1***



**Diagram 2**



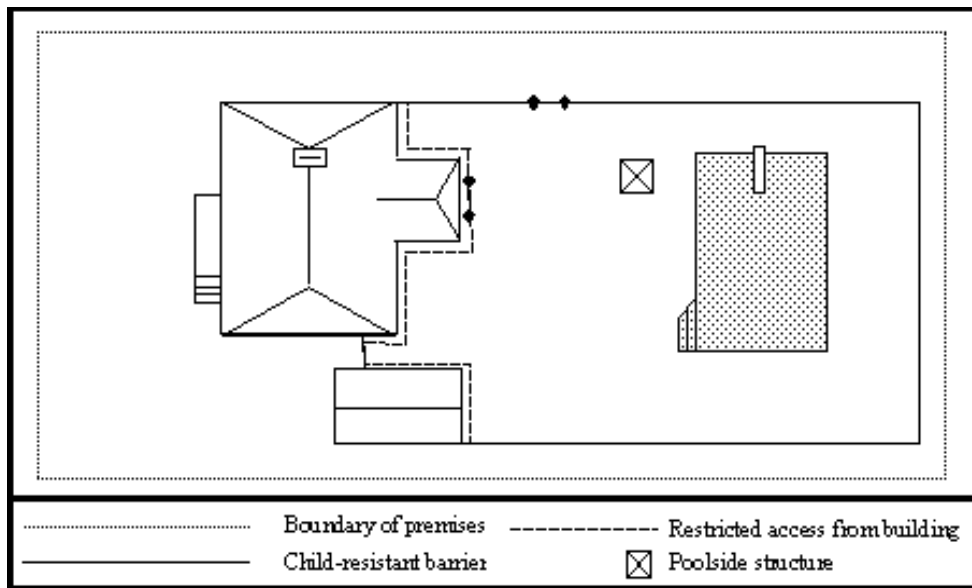
**Diagram 3**



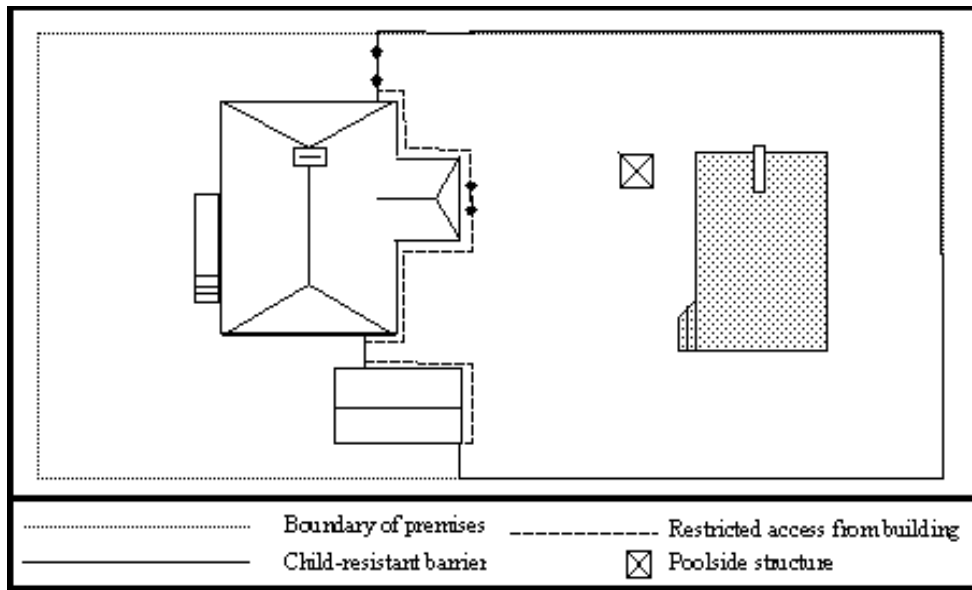
**Part 2 Swimming pools constructed before August 1990 and existing swimming pools on small properties**

(Section 8)

**Diagram 4**



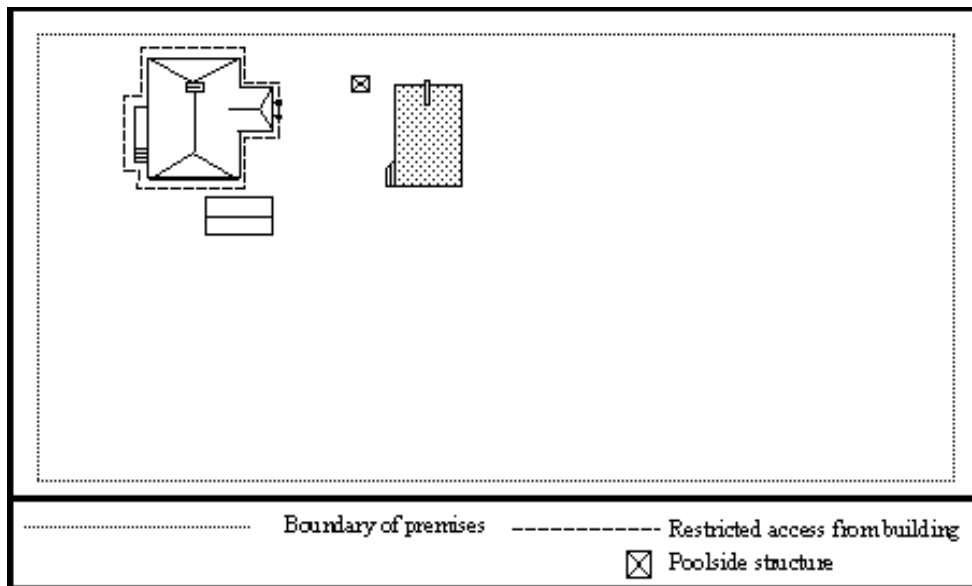
**Diagram 5**



### Part 3 Existing swimming pools on large properties

(Section 9)

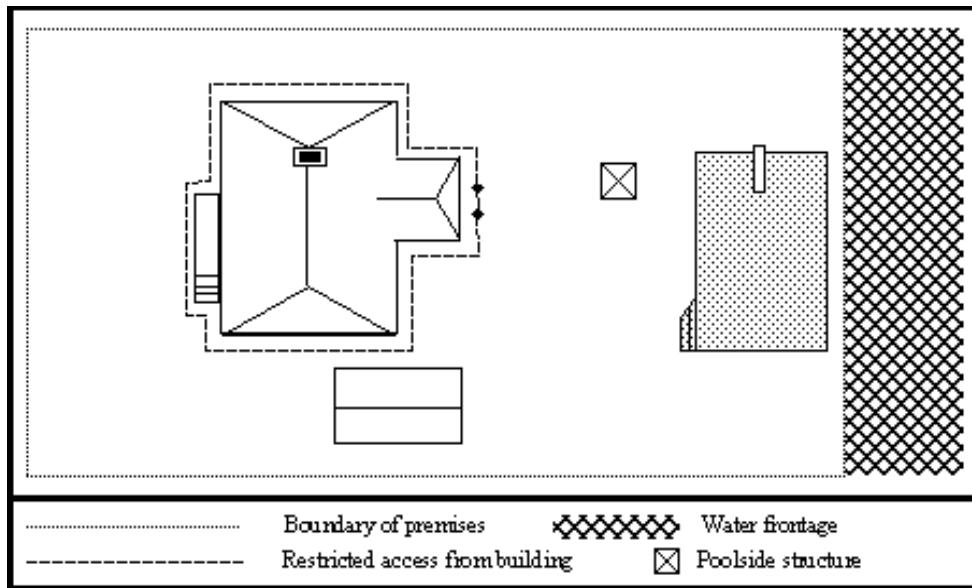
Diagram 6



### Part 4 Existing swimming pools on waterfront properties

(Section 10)

Diagram 7



## Schedule 2 (Repealed)

## Schedule 3 Savings, transitional and other provisions

### Part 1 Preliminary

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act

[Swimming Pools Amendment Act 2009](#)

[Swimming Pools Amendment Act 2012](#)

- (2) Such a provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

### Part 2 Provisions consequent on the enactment of the [Swimming](#)

## Pools Act 1992

### 2 Definition

In this Part:

**the repealed Act** means the *Swimming Pools Act 1990*.

### 3-5 (Repealed)

### 6 Exemptions

- (1) An exemption granted under section 14 of the repealed Act is taken to be an exemption granted under section 22 of this Act.
- (2) A decision refusing to grant an exemption under section 14 of the repealed Act is taken to be a decision refusing to grant an exemption under section 22 of this Act.
- (3) A decision to impose a condition on an exemption under section 14 of the repealed Act is taken to be a decision to impose a condition on an exemption under section 22 of this Act.

### 7 Certificates of compliance

- (1) A certificate of compliance issued under section 15 of the repealed Act is taken to be a certificate of compliance issued under section 24 of this Act.
- (2) A decision refusing to issue a certificate of compliance under section 15 of the repealed Act is taken to be a decision refusing to issue a certificate of compliance under section 24 of this Act.

### 8 Inspectors

- (1) An inspector appointed under section 17 of the repealed Act is taken to be an inspector appointed under section 27 of this Act.
- (2) A certificate of identification issued under section 17 of the repealed Act is taken to be a certificate of identification issued under section 27 of this Act.

### 9-14 (Repealed)

## Part 3 Provisions consequent on the enactment of the **Swimming Pools Amendment Act 2009**

### 15 Authorised officers

A person who was an inspector in respect of a local authority immediately before the commencement of Schedule 1 [19] to the *Swimming Pools Amendment Act 2009* 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.

#### **16 Abolition of Pool Fencing Advisory Committee**

- (1) The Pool Fencing Advisory Committee is abolished.
- (2) Any person holding office as a member of that Committee immediately before its abolition:
  - (a) ceases to hold office, and
  - (b) is not entitled to any compensation because of the loss of that office.

### **Part 4 Provisions consequent on the enactment of the [Swimming Pools Amendment Act 2012](#)**

#### **17 Definition**

In this Part:

**amending Act** means the [Swimming Pools Amendment Act 2012](#).

#### **18 Existing certificates of compliance**

- (1) A certificate of compliance issued under section 24 before the repeal of that section by the amending Act 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 or until 6 months after the date of assent to the amending Act (whichever is the later).
- (2) A certificate of compliance ceases to be valid if a direction is issued under section 23 in respect of the swimming pool to which the certificate relates.

#### **19 Registration of swimming pools**

The owner of premises on which a swimming pool is situated is not required to comply with section 30B until 12 months after the date of assent to the amending Act.

#### **20 Local authority not required to inspect pools**

A local authority is not required to carry out an inspection under section 22C (3) until 18 months after the date of assent to the amending Act.