



New South Wales

# Swimming Pools Regulation 2018

under the

Swimming Pools Act 1992

[*The following enacting formula will be included if this Regulation is made:*]

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Swimming Pools Act 1992*.

Minister for Innovation and Better Regulation

## Explanatory note

The object of this Regulation is to remake, with some changes, the provisions of the *Swimming Pools Regulation 2008*, which is repealed on 1 September 2018 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) standards of design, construction, installation and maintenance of child-resistant barriers for outdoor swimming pools,
- (b) standards of access (including the design, construction, installation and maintenance of doorways and windows) for outdoor swimming pools exempt from the child-resistant barrier standards,
- (c) standards of restricting access to indoor swimming pools,
- (d) standards of restricting access to the water contained in spa pools,
- (e) the contents and legibility of warning signs erected near swimming pools,
- (f) the process for obtaining exemptions from child-resistant barrier requirements granted by local authorities (such as councils),
- (g) swimming pool inspections by local authorities (such as councils) or accredited certifiers,
- (h) certificates of compliance and non-compliance issued by local authorities and accredited certifiers with respect to whether a swimming pool complies with the Act,
- (i) information required for the Register of Swimming Pools,
- (j) alternative qualifications for accredited certifiers,
- (k) the contents of directions made by local authorities to order compliance with the Act,
- (l) public access to the applicable Australian Standards, *Cardiopulmonary Resuscitation Guideline* and *Building Code of Australia*,
- (m) matters of a savings nature,

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# public consultation draft

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Swimming Pools Regulation 2018 [NSW]  
Explanatory note

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(n) penalty notices for offences against the Act.

The main changes made by this Regulation are the following:

- (a) permitting a lockable child-safe structure to be fastened to a structure of substantial construction that is adjacent to a spa pool in the standards of restricting access to water contained in spa pools,
- (b) in response to a 2018 coronial recommendation, making it an offence to fail to erect, during the construction of certain swimming pool, a warning sign that the swimming pool is not to be used or occupied,
- (c) updating the content of warning signs for swimming pools and the grace period for a warning sign that does not comply with this Regulation (unless the swimming pool to which the warning sign relates is substantially altered or rebuilt),
- (d) increasing the fees for exemption applications and inspections,
- (e) requiring local authorities and accredited certifiers to register information about certificates of non-compliance on the Swimming Pools Register,
- (f) clarifying that the standards for swimming pools of an acquired premises must comply with any applicable standards, not just the *Building Code of Australia*,
- (g) requiring public access to applicable Australian Standards but only requiring local authorities to provide paper copies of the applicable Australian Standards, *Cardiopulmonary Resuscitation Guideline* and *Building Code of Australia* when requested.

This Regulation is made under the *Swimming Pools Act 1992*, including sections 7 (1) (b), 8 (2), 9 (2), 10 (2), 12 (d), 14, 17 (1) and (2), 20, 22, 22A (definition of **accredited certifier**), 22B (5), 22C (3), 22D (8), 22F (1) and (2), 30A (3), 30B (1) and (2) (b), 30E, 35 and 38 (the general regulation-making power).

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# public consultation draft

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## Swimming Pools Regulation 2018

under the

Swimming Pools Act 1992

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Swimming Pools Regulation 2018*.

#### 2 Commencement

This Regulation commences on 1 September 2018 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Swimming Pools Regulation 2008* which is repealed on 1 September 2018 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.

**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*.

**the Cardiopulmonary Resuscitation Guideline** means the document entitled *ANZCOR Guideline 8: Cardiopulmonary Resuscitation* published in January 2016 by the Australian Resuscitation Council.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(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 AS 1926.1—2007 or the *Building Code of Australia* where applicable so long as it complies with the minimum requirements of the standard or the code.

## Part 2 Restriction of access to swimming pools

**Note.** Clause 31 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 requirements as set out in the *Building Code of Australia*.

**Note.** The Act and this Regulation prevail to the extent of any inconsistency with the *Building Code of Australia*.

- (2) This clause is subject to clause 22.

#### 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 are 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 requirements as set out in the *Building Code of Australia*.

- (2) This clause is subject to clause 22.

## **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-resistant 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, or fastened to a structure that is of substantial construction and adjacent 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 actively and responsibly supervised when using this swimming pool”, and
    - (ii) “Pool gates must be self-closing and self-latching and 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 chart (which may be the flow chart depicted in the *Cardiopulmonary Resuscitation Guideline*) containing details of resuscitation techniques:
    - (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,
  - (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 (and including) 1 January 2010 and 31 August 2018 that bears a notice in accordance with clause 10 (1) of the *Swimming Pools Regulation 2008* (as in force immediately before its repeal) is taken to comply with subclause (1) of this clause, unless the swimming pool to which the sign relates is substantially altered or rebuilt.
- (3) An occupier of any premises in or on which a swimming pool (not including a spa pool) is being constructed must ensure that a sign is erected and maintained:
  - (a) that bears a notice containing the words “This swimming pool is not to be occupied or used”, and
  - (b) that is located in a prominent position in the immediate vicinity of that swimming pool, and
  - (c) that continues to be erected and maintained until a relevant occupation certificate or a certificate of compliance has been issued for that swimming pool.

Maximum penalty: 5 penalty units.

### 11 Legibility of warning notices

For the purposes of section 17 (1) and (2) of the Act, the signs referred to in section 17 (1) of the Act and clause 10 (3) of this Regulation:

- (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 condition.

### **13 Fee for application for exemption**

- (1) A local authority may impose a fee of up to \$150 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 of the local authority.

## Part 5 Inspections and certificates

### 16 Community engagement

- (1) For the purposes of section 22B (5) of the Act, 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

- (1) 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.
- (2) For the purposes of section 30A (3) of the Act, a local authority or accredited certifier that issues a certificate of non-compliance in respect of a swimming pool must ensure that details of the certificate are entered on the Register, within 3 business days after the certificate is issued, by providing the details to the Secretary in a form approved by the Secretary.

### 19 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 in or 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) any or all subsequent inspections after the first 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) any or all subsequent inspections after the first inspection since a certificate of compliance in relation to the premises ceased to be valid—\$100.

**Note.** Certificates of compliance for a swimming pool 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 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.

### 20 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 in or 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.

## **21 Certificates of non-compliance if pool does not comply**

**Note.** A local authority may, under section 23 of the Act, order compliance with Part 2 of the Act.

- (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 Secretary 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 20 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 is subsequently issued under section 22D of the Act for that swimming pool.

**Note.** A non-compliance certificate must be entered on the Register. See clause 18 (2).

## **22 Special provision relating to acquired premises**

- (1) This clause applies to a swimming pool situated in or on premises acquired after 24 March 2016 if the contract of sale for the premises contained a certificate of non-compliance under clause 21, 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 standards that would apply but for this clause,

whichever is earlier.

**Note.** See clauses 5 (1) and 8 (1) for the standards prescribed for sections 7 (1) (b), 12 (d) and 14 of the Act that would apply but for this clause. Non-compliance with sections 7, 12 and 14 of the Act may be an offence that carries a maximum penalty of 50 penalty units.

- (3) In this clause:  
**acquisition** of the premises means the date on which the sale of the premises is completed.

### 23 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 the following inspections under Division 5 of Part 2 of the Act it carried out that:

- (a) were of tourist and visitor accommodation,
- (b) were of premises on which there were more than 2 dwellings,
- (c) resulted in the council issuing the following:
  - (i) a certificate of compliance under section 22D of the Act,
  - (ii) a certificate of non-compliance under clause 21 of this Regulation.

## Part 6 Registration of swimming pools

### 24 Registration information

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

- (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).

### 25 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.

### 26 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 27 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 7 Miscellaneous

### 27 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.

### 28 Directions by local authorities

A local authority that gives a direction under section 23 of the Act to the owner of any premises in or on which a swimming pool is situated 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 from the decision of the local authority.

### 29 Public access to Australian Standards, Building Code of Australia and Cardiopulmonary Resuscitation Guideline

- (1) Each local authority must ensure that an electronic version, and if requested a paper copy of a relevant extract of the applicable Australian standards, 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.
- (2) Each local authority must ensure that the *Cardiopulmonary Resuscitation Guideline* is available for viewing on its website.
- (3) In this clause:  
**applicable Australian standards** means all of the following:
  - (a) AS 1926—1986, *Fences and gates for private swimming pools* as published by Standards Australia on 4 August 1986,
  - (b) AS 1926.1—2007,
  - (c) AS 1926.1—2012, *Swimming pool safety, Part 1: Safety barriers for swimming pools* as published by Standards Australia on 6 November 2012, including any subsequent editions,
  - (d) AS 1926.2—2007, *Swimming pool safety, Part 2: Location of safety barriers for swimming pools* as published by Standards Australia on 12 July 2007, including any subsequent editions.

### 30 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 (including a code) 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 continues 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.

### **31 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 and that complied with Part 2 of the *Swimming Pools Regulation 1998* as in force immediately before the repeal of the regulation.
- (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 in relation to:
  - (a) 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) an indoor swimming pool—if the premises in or on which the swimming pool is situated are substantially altered or rebuilt in a way that affects the means of access to the swimming pool.

### **32 Savings**

- (1) Any act, matter or thing that, immediately before the repeal of the *Swimming Pools Regulation 2008*, had effect under that Regulation is taken to have effect under this Regulation.
- (2) A certificate of non-compliance issued under the *Swimming Pools Regulation 2008* continues in force or to have effect as if it had been issued under this Regulation and ceases to be in force or have effect under this Regulation at the same time as it would have ceased to be in force or have effect under the *Swimming Pools Regulation 2008*.

## Schedule 1 Penalty notice offences

For the purposes of section 35 of the Act:

- (a) each offence specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable under any such penalty notice is the amount specified in this Schedule for the offence.

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty</b>
<b>Offences under the Act</b>	
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
<b>Offences under the Regulation</b>	
Clause 10 (3)	\$110

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