



New South Wales

Swimming Pools Regulation 2008

under the

Swimming Pools Act 1992

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

PAUL LYNCH, M.P.,
Minister for Local Government

Explanatory note

The object of this Regulation is to remake, with some changes, the provisions of the *Swimming Pools Regulation 1998*. That Regulation is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The current *Swimming Pools Regulation 1998* includes provisions prescribing standards of design, construction, installation and maintenance of fences and gates for, or means of access to, swimming pools that are based on an Australian Standard published in 1986. That standard has been replaced. The most up-to-date standard is Australian Standard AS 1926.1–2007 *Swimming Pool Safety*, Part 1: *Safety barriers for swimming pools*, which is applied by this Regulation.

Under this Regulation:

- (a) new swimming pools will be required to comply with the standards set out in the new Australian Standard, and
- (b) existing swimming pools may continue to comply with the older Australian Standard, and the other standards in the *Swimming Pools Regulation 1998*, but may comply with the new Australian Standard (see clause 23).

This Regulation contains provisions dealing with the following matters under the *Swimming Pools Act 1992* (*the Act*):

- (a) standards of design, construction, installation and maintenance of child-resistant barriers that are required to surround outdoor swimming pools and doors and windows leading to outdoor swimming pools (clauses 5–7),
- (b) standards of restricting access to indoor swimming pools (clause 8),
- (c) standards of restricting access to the water contained in spa pools (clause 9),

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- (d) the erection of warning signs near swimming pools, and the contents of such signs (Part 3),
- (e) applications to local authorities (such as councils) for exemptions from barrier requirements that are impracticable or unreasonable in particular cases (Part 4),
- (f) certificates of compliance that a swimming pool complies with the Act's requirements regarding the restriction of access to swimming pools (Part 5),
- (g) the contents of directions made by local authorities to order compliance with the Act (clause 19),
- (h) the form of certificates of identification to be issued by local authorities to inspectors (clause 20 and Schedule 1),
- (i) public access to the Australian Standard, and to a guideline, referred to in the Regulation (clause 21),
- (j) penalty notices for offences under the Act (clause 22),
- (k) savings and formal matters (clauses 1–4 and 24).

This Regulation refers to Australian Standard AS 1926.1–2007 *Swimming Pool Safety*, Part 1: *Safety barriers for swimming pools* and to *Guideline 7: Cardiopulmonary Resuscitation*, published by the Australian Resuscitation Council (copies of which can be inspected at the head office of the Department of Local Government or at the office of any local government council or other local authority—see clause 21).

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, 20, 22, 23, 24, 27 (2), 35 and 38 (the general regulation-making power).

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Clause 1

Preliminary

Part 1

Swimming Pools Regulation 2008

under the

Swimming Pools Act 1992

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.

Department means the Department of Local Government.

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

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 so long as it complies with the minimum requirements for that clause.

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Clause 5 Swimming Pools Regulation 2008

Part 2 Restriction of access to swimming pools

Part 2 Restriction of access to swimming pools

Note. This Part prescribes standards for the restriction of access to new swimming pools. Clause 25 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

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 AS 1926.1—2007 (excluding Clause 2.8).

Note. The provisions of AS 1926.1—2007 about doorsets are inapplicable to child-resistant barriers required by section 7, since that section requires the owner of the premises on which the swimming pool is situated to ensure that the swimming pool is at all times surrounded by a child-resistant barrier that separates the swimming pool from any residential building situated on the premises and from any place adjoining the premises.

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.

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Clause 7

Restriction of access to swimming pools

Part 2

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

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 AS 1926.1—2007.

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.

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Clause 10 Swimming Pools Regulation 2008

Part 3 Warning notices

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.

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Clause 12

Exemptions from barrier requirements granted by local authorities

Part 4

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.

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Clause 15 Swimming Pools Regulation 2008

Part 4 Exemptions from barrier requirements granted by local authorities

(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.

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Clause 16

Certificates of compliance granted by local authorities

Part 5

Part 5 Certificates of compliance granted by local authorities

16 Application for certificate of compliance

- (1) An application made to a local authority under section 24 of the Act must be in the form approved by that local 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 a certificate of compliance, or is taken to have refused the application, 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.

17 Fee for application for certificate of compliance

- (1) A local authority may impose a fee of up to \$70 on an application for a certificate of compliance under section 24 of the Act.
- (2) An application made to a local authority that has imposed a fee must be accompanied by that fee.

18 Notice concerning refusal to grant certificate of compliance

- (1) A local authority that refuses to grant a certificate of compliance under section 24 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 to refuse to grant the certificate, and
 - (b) must state that the owner of the premises on which the relevant swimming pool is situated is entitled to appeal against the decision to the Land and Environment Court.

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Clause 19 Swimming Pools Regulation 2008

Part 6 Miscellaneous

Part 6 Miscellaneous

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 and Cardiopulmonary Resuscitation Guideline

- (1) The Department must ensure that a paper copy or electronic version of AS 1926.1—2007 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 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)	\$220
section 12	\$220
section 14	\$220

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Clause 23

Miscellaneous

Part 6

Offence under the Act	Penalty
section 15 (1)	\$220
section 16	\$220
section 17 (1)	\$55
section 23 (3)	\$220

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.

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.

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Schedule 1 Certificate of identification

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 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.

BY AUTHORITY