



New South Wales

Swimming Pools Amendment Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Swimming Pools Act 1992* as follows:

- (a) to increase the maximum penalty for offences under that Act,
 - (b) to remove automatic exemptions under that Act in respect of child-resistant barriers for swimming pools constructed or installed after 1 July 2010 on very small, large or waterfront properties,
 - (c) to permit the regulations to prescribe the circumstances in which an opening in a wall (that is part of a child-resistant barrier) is taken to enable access to be gained to a swimming pool at any time,
 - (d) to require a local authority to give notice before giving a direction under that Act and to enable a local authority to carry out the requirements of such a direction if there is a failure to comply or a significant risk to public safety,
 - (e) to require local authorities to investigate certain complaints,
 - (f) to abolish the Pool Fencing Advisory Committee,
 - (g) to make a number of minor and statute law revision amendments.
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Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Swimming Pools Act 1992 No 49

Schedule 1 [2] moves definitions that were in a Dictionary at the back of the *Swimming Pools Act 1992* (the *Principal Act*) to the front of that Act and, as a consequence of other amendments proposed in the Bill, definitions of *allotment*, *existing swimming pool*, *inspector* and *new swimming pool* have been omitted and a definition of *authorised officer* has been included. A standard definition of *exercise* is to replace a definition of *exercise a function* and the definition of *residential building* has been amended to provide that a shed is not a residential building if it is ancillary to a swimming pool and its primary purpose is the storage of equipment that is used in connection with the swimming pool. That definition has also been amended to enable regulations to prescribe other buildings and structures as not being residential buildings. **Schedule 1 [27] and [37]** make consequential amendments.

Schedule 1 [4] increases the maximum penalty for a number of offences under the Principal Act from 10 penalty units (\$1,100) to 50 penalty units (\$5,500).

Schedule 1 [7] and [8] remove exemptions from the requirements for a child-resistant barrier in relation to swimming pools on very small properties (having an area of less than 230 square metres), large properties (having an area no less than 2 hectares) and waterfront properties. Any swimming pool that is constructed or installed on any such property after 1 July 2010 will no longer be able to rely on these exemptions. However, the exemption will continue to apply in respect of a swimming pool on any such property if the construction or installation of the pool was commenced before that date. **Schedule 1 [31] and [32]** make consequential amendments.

Schedule 1 [10] clarifies that the obligation to maintain a barrier to a swimming pool means that the barrier should be maintained so that it is an effective and safe child-resistant barrier.

Schedule 1 [11] increases the maximum penalty for failure to maintain a warning notice in the immediate vicinity of a swimming pool from 1 penalty unit (\$110) to 5 penalty units (\$550).

Schedule 1 [12] provides that a wall of a residential building or a hotel or motel may not be used as part of a child-resistant barrier to a swimming pool if the wall contains an opening through which access may be gained to the swimming pool at any time. **Schedule 1 [13]** provides that the regulations may prescribe circumstances in which

such 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.

Schedule 1 [14] provides that a local authority may not serve a direction on an owner of premises under section 23 of the Principal Act unless the local authority has, at least 14 days before, served on the owner a notice of intention to serve the direction. However, a local authority may serve a direction without serving a notice 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.

Schedule 1 [15] permits an authorised officer, or a person acting under the direction of a local authority, to enter premises and carry out some or all of the requirements of a direction given by the local authority if the person to whom the direction is given fails to comply with the direction within the time specified in the direction or if 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. Before any requirement of a direction is carried out, a local authority or authorised officer must serve on the occupier of the premises a notice of intention to carry out the requirement. Also, before entering premises, a local authority or authorised officer must seek the consent of the occupier of the premises to the entry. The local authority may recover, from the person to whom the direction was given, the reasonable costs of carrying out the requirements of the direction.

Schedule 1 [19] and [20] rename inspectors as authorised officers in line with the title of such persons under other legislation. **Schedule 1 [36]** inserts a savings and transitional provision that provides for persons who are currently appointed as inspectors in respect of a local authority to be taken to be authorised officers appointed in respect of the local authority. **Schedule 1 [21]** omits a requirement that the certificate of identification issued to authorised officers by a local authority be in a prescribed form. This would enable a single identification document to be issued in respect of a person who is an authorised officer of a local authority under other legislation.

Schedule 1 [22] requires an authorised officer to produce his or her certificate of identification on demand when carrying out functions under the Principal Act on premises. **Schedule 1 [23]** makes a consequential amendment.

Schedule 1 [24] replaces the search warrant provision of the Principal Act with a standard provision and also inserts proposed section 29A. Proposed section 29A requires a local authority to investigate any written complaint it receives that alleges a contravention of the Principal Act unless the complaint is vexatious, misconceived, frivolous or lacking in substance. Investigation of the complaint is to be commenced, as far as is practicable, within 72 hours (or such other period as may be prescribed by the regulations). An authorised officer is permitted to enter premises to make an examination in relation to the complaint. However, before doing so, the local authority is to notify the owner or occupier of the premises about the complaint and arrange to carry out the examination at a time that is convenient to the owner or occupier. **Schedule 1 [3]** makes a consequential amendment.

Schedule 1 [26] and [36] abolish the Pool Fencing Advisory Committee.

Schedule 1 [28] permits notices under the Principal Act to be served by facsimile or email.

Schedule 1 [29] increases the maximum penalty that may be prescribed in respect of an offence that is dealt with by way of a penalty notice from 2 penalty units (\$220) to 5 penalty units (\$550).

Schedule 1 [34] permits the regulations to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [1], [5], [6], [9], [16]–[18], [25], [30], [33] and [35] make a number of minor amendments including omitting unnecessary notes and redundant provisions, inserting numbering, editing notes and updating a reference to a Department.