

Serial 106  
Swimming Pool Fencing Bill 2002  
Mr Ah Kit

**A BILL  
for  
AN ACT**

to require the registration of certain swimming pools, to require the enclosure of certain swimming pools by barriers that restrict access by children to swimming pools, and for related purposes



NORTHERN TERRITORY OF AUSTRALIA

SWIMMING POOL FENCING ACT 2002

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No. of 2002

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# NORTHERN TERRITORY OF AUSTRALIA

No. of 2002

## AN ACT

to require the registration of certain swimming pools, to require the enclosure of certain swimming pools by barriers that restrict access by children to swimming pools, and for related purposes

[Assented to 2002]  
[Second reading 2002]

**The Legislative Assembly of the Northern Territory enacts as follows:**

### PART 1 – PRELIMINARY

**1. Short title**

This Act may be cited as the *Swimming Pool Fencing Act 2002*.

**2. Commencement**

This Act comes into operation on 1 January 2003.

**3. Application of this Act**

(1) This Act does not apply to or in relation to a swimming pool that is situated on an area of land that is occupied by the Crown, a statutory corporation, a council or the Jabiru Town Development Authority.

(2) If there is an inconsistency between a provision of this Act and a provision of another Act, the provision of this Act prevails to the extent of the inconsistency.

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**4. Interpretation**

(1) In this Act, unless the contrary intention appears –

"Appeals Tribunal" means the Appeals Tribunal referred to in section 52;

"appropriate Australian Standard" has the meaning in section 5;

"approved" means approved by the Authority;

"Authority" means a person appointed under section 41;

"certificate of registration", in relation to a swimming pool –

- (a) means a certificate of registration issued under section 23(1) that is in force in respect of the swimming pool; or
- (b) if the registration of the swimming pool is varied under section 21 – means the certificate of registration issued under section 23(3)(c) that is in force in respect of the swimming pool;

"child" means a person who has not attained the age of 5 years;

"commencement day" means the date on which this Act comes into operation;

"compliance certificate" means a compliance certificate issued under section 39 that is in force;

"council" has the same meaning as in the *Local Government Act*;

"council area" has the same meaning as in the *Local Government Act*;

"dividing barrier" means a swimming pool barrier separating adjoining premises, whether –

- (a) the adjoining premises are wholly or only partly separated by the swimming pool barrier; or
- (b) the swimming pool barrier is –
  - (i) on the line of the common boundary of the adjoining premises or on a line of the common boundary of the adjoining premises;
  - (ii) on a line other than the line of the common boundary of the adjoining premises or a line of the common boundary of the adjoining premises; or



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- (iii) partly on any one of the lines, and partly on the other or other lines, specified in subparagraph (i) or (ii);

"existing swimming pool" means a swimming pool that is constructed or installed before the commencement day;

"gazetted fee" means a fee declared under subsection (4);

"inspector" means an inspector appointed under section 43;

"large premises" means premises that are 2 hectares or more in area;

"line of a common boundary" includes a line, or the line, of a common boundary determined under the *Fences Act*;

"new swimming pool" means a swimming pool, the construction or installation of which is completed after the commencement day;

"occupier", in relation to premises, includes –

- (a) a person who is for the time being in charge of the premises; and
- (b) if there are 2 or more occupiers of the premises – each of the occupiers;

"owner", in relation to premises, means the person recorded in the land register under the *Land Title Act* as the person entitled to –

- (a) the fee simple interest in the premises; or
- (b) a lease of the premises from the Crown under the *Crown Lands Act*, *Pastoral Land Act* or *Special Purposes Leases Act*;

"premises" means –

- (a) a parcel of land; or
- (b) if there is a swimming pool at common property, a unit, or a building lot, each within the meaning of the *Unit Titles Act*, on a parcel of land – the common property, unit or building lot,

and includes any building or structure at the premises;

"registered" means registered under Part 2;

"Registrar" means the person appointed under section 48(4);

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"residential building" means –

- (a) a building that is solely or principally used for residential purposes; or
- (b) a caravan or mobile home that is in a caravan park,

and includes any structure, including a shed or garage, that is ancillary to the building, but does not include a building that forms part of a complex of buildings that are principally used for non-residential purposes;

"Review Committee" means the Review Committee established under section 48(1);

"small premises" means premises that are less than 2 hectares in area;

"spa bath" means a bath, intended to be emptied after each use, that may inject air bubbles or jets of turbulent water into the water in the bath;

"spa pool" means a water-retaining structure that may inject air bubbles or jets of turbulent water into the waters contained in the structure and includes an excavation, structure or vessel in the nature of a spa pool, flotation tank or tub, but does not include a spa bath;

"swimming pool" means an excavation, structure or vessel that –

- (a) is capable of being filled with water to a depth of 300 millimetres or more at the deepest point of the swimming pool; and
- (b) is solely or principally used, or is designed, manufactured or adapted to be solely or principally used, for the purpose of swimming, wading, paddling or another human aquatic activity,

and includes a spa pool but does not include –

- (c) a spa bath that is within a building,
- (d) a structure that is within a bathroom that is within a building; or
- (e) a structure that is prescribed not to be a swimming pool for the purposes of this Act;

"swimming pool barrier" means a fence or a wall and includes –

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- (a) a gate or door set in the fence or wall;
- (b) a wall of a building;
- (c) a window, gate or door set in a wall of a building;
- (d) in relation to a spa pool that is, or is to be, registered under section 14 or 18 – a lid in respect of the spa pool; and
- (e) another structure or thing that is prescribed to be a swimming pool barrier for the purposes of this Act,

but does not include a fence consisting of a hedge or vegetation.

(2) If the same person is the owner of adjoining premises, the premises are taken to be one premises for the purposes of this Act.

(3) Two or more swimming pools that are situated at the same premises are taken together to comprise one swimming pool for the purposes of this Act if the swimming pools are in close proximity to one another.

(4) The Minister may, by notice in the *Gazette*, declare the fee payable for the purposes of a provision of this Act that is specified in the notice.

**5. Appropriate Australian Standard**

- (1) For the purposes of this Act, the appropriate Australian Standard –
  - (a) is the Australian Standard AS1926.1-1993 "Swimming pool safety Part 1: Fencing for swimming pools" and 1926.2-1995 "Swimming pool safety Part 2: Location of fencing for private swimming pools", as modified, if at all, as prescribed; or
  - (b) if another Australian Standard is prescribed in substitution for the standard referred to in paragraph (a) – is the substituted standard, as modified, if at all, as prescribed,

and includes an Australian Standard prescribed to be in addition to the Standard specified in, or prescribed for the purposes of, this subsection.

(2) The Authority must ensure that copies of the appropriate Australian Standard are made available for viewing by members of the public.

**6. When swimming pool is enclosed in accordance with appropriate Australian Standard**

(1) For the purposes of this Act, a swimming pool is enclosed in accordance with the appropriate Australian Standard if a swimming pool barrier in respect of the swimming pool –

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- (a) surrounds the swimming pool;
- (b) separates the swimming pool from a residential building at the premises at which the swimming pool is situated and from all areas of land or buildings adjoining the premises; and
- (c) is designed, constructed, sited, installed and maintained in a manner consistent with the appropriate Australian Standard.

(2) Diagrams 1, 2, 3 and 4 in Schedule 1 illustrate some ways in which an existing swimming pool or a new swimming pool may be surrounded by a swimming pool barrier for the purposes of subsection (1).

(3) Diagram 5 in Schedule 1 illustrates a way in which an existing swimming pool may be surrounded by a swimming pool barrier for the purposes of subsection (1).

**PART 2 – REGISTRATION OF SWIMMING POOLS**

*Division 1 – When registration is required*

**7. All existing swimming pools at small premises are to be registered**

(1) The owner of small premises at which an existing swimming pool is situated must ensure that the swimming pool is registered.

Penalty: 5 penalty units.

(2) Subsection (1) does not apply in relation to an existing swimming pool –

- (a) until after 18 months after the commencement day; or
- (b) if an application is made under section 11 in relation to the swimming pool before the end of the period referred to in paragraph (a) – until the notice of a decision in relation to the application is given under section 55.

**8. Application for registration of existing swimming pool at small premises to be made within 18 months**

The owner of small premises at which an existing swimming pool is situated must, before 18 months after the commencement day, apply under section 11 for registration of the swimming pool.

Penalty: 5 penalty units.

**9. All new swimming pools at small premises are to be registered**

(1) The owner of small premises at which a new swimming pool is situated must ensure that the swimming pool is registered.

Penalty: 10 penalty units.

(2) Subsection (1) does not apply in relation to a swimming pool on and from the date on which an application is made under section 11 in relation to the swimming pool until the notice of a decision in relation to the application is given under section 55.

**10. Application for registration of new swimming pool at small premises to be made within 4 weeks after installation begins**

The owner of small premises at which a new swimming pool is being constructed or installed, or is constructed or installed, must apply under section 11 for registration of the swimming pool –

- (a) before 4 weeks after commencement day, or the commencement of the construction or installation of the swimming pool at the premises, whichever is later; and
- (b) before the swimming pool is first wholly or partially filled at the premises with water to a depth of not less than 300 millimetres at the deepest point of the swimming pool.

Penalty: 10 penalty units.

*Division 2 – Registration of swimming pool at small premises*

**11. Application for registration of swimming pool at small premises**

(1) The owner of small premises at which an existing swimming pool or a new swimming pool is situated may apply for registration of the swimming pool.

(2) An application under subsection (1) is to be made in the approved form and is to be accompanied by the gazetted fee, if any.

**12. Registration as complying with former council swimming pool by-laws**

(1) The Authority may register an existing swimming pool to which an application under section 11 relates if the Authority is satisfied that the requirements of a clause in Schedule 2 are satisfied in relation to the swimming pool.

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(2) A swimming pool that is registered under subsection (1) is to be registered as satisfying the requirements of a clause in Schedule 2.

**13. Registration of enclosure in accordance with Australian Standard**

(1) The Authority may register an existing swimming pool, or a new swimming pool, to which an application under section 11 relates if the Authority is satisfied that the swimming pool is enclosed in accordance with the appropriate Australian Standard.

(2) A swimming pool that is registered under subsection (1) is to be registered as being enclosed in accordance with the appropriate Australian Standard.

(3) The Authority may register a swimming pool under this section on conditions specified by the Authority.

**14. Registration of non-standard enclosure**

(1) The Authority may register an existing swimming pool, or a new swimming pool, to which an application under section 11 relates if the Authority is satisfied that the swimming pool may be registered under this section in accordance with section 19.

(2) A swimming pool that is registered under subsection (1) is to be registered as being enclosed in accordance with section 19.

(3) The Authority may register a swimming pool under this section on conditions specified by the Authority.

(4) The conditions that may be imposed on the registration of a swimming pool under subsection (3) include, but are not limited to, a condition that an effective alternate means of restricting access to the swimming pool is to be established and maintained at the premises.

**15. Registration of swimming pool at small premises in area to which council swimming pool by-laws did not apply**

If the Authority receives an application under section 11 in relation to a swimming pool that is situated at small premises that are not situated in an area specified in a clause in Schedule 2, the Authority must, if the swimming pool cannot be registered under section 13 or 14, register the swimming pool under this section as authorised under this section without enclosure.

***Division 3 – Registration of swimming pools where owner of large premises chooses to register***

**16. Application for registration of swimming pool at large premises**

(1) The owner of large premises at which an existing swimming pool or a new swimming pool is situated may apply for registration of the swimming pool.

(2) An application under subsection (1) is to be made in the approved form and is to be accompanied by the gazetted fee, if any.

**17. Registration of enclosure in accordance with Australian Standard**

(1) The Authority may register an existing swimming pool, or a new swimming pool, to which an application under section 16 relates if the Authority is satisfied that the swimming pool is enclosed in accordance with the appropriate Australian Standard.

(2) A swimming pool that is registered under subsection (1) is to be registered as being enclosed in accordance with the appropriate Australian Standard.

(3) The Authority may register a swimming pool under this section on conditions specified by the Authority.

**18. Registration of non-standard enclosure**

(1) The Authority may register an existing swimming pool, or a new swimming pool, to which an application under section 16 relates if the Authority is satisfied that the swimming pool may be registered under this section in accordance with section 19.

(2) A swimming pool that is registered under subsection (1) is to be registered as being enclosed in accordance with section 19.

(3) The Authority may register a swimming pool under this section on conditions specified by the Authority.

(4) The conditions that may be imposed on the registration of a swimming pool under subsection (3) include, but are not limited to, a condition that an effective alternate means of restricting access to the swimming pool is to be established and maintained at the premises.

*Division 4 – Miscellaneous*

**19. When non-standard enclosure permitted**

- (1) The Authority may register an existing swimming pool, or a new swimming pool, under section 14 or 18 if he or she is satisfied that –
  - (a) because of the physical characteristics of the land on the premises at which the swimming pool is situated or the nature of the design and construction of the swimming pool –
    - (i) it is impracticable for the swimming pool to be enclosed in accordance with the appropriate Australian Standard; or
    - (ii) it is unreasonable to require it to be enclosed in accordance with the appropriate Australian Standard;
  - (b) the swimming pool meets the preconditions for non-standard enclosure specified in a subsection in section 20;
  - (c) the access to the swimming pool does not represent, in all the circumstances, an unacceptable risk to a child; and
  - (d) the owner of the premises is aware of the risks posed to a child by the swimming pool.
- (2) The Authority may only register a new swimming pool under section 14 or 18 in accordance with subsection (1) if –
  - (a) the owner of the premises at which the swimming pool is to be situated has, before construction or installation of the swimming pool, notified the Authority of the owner's intention to seek to have the swimming pool registered as enclosed in accordance with this section; and
  - (b) the Authority has notified the owner that the Authority is satisfied that the requirements of subsection (1) will be satisfied in relation to a swimming pool that is constructed or installed in accordance with the proposal as specified in the notice under this paragraph.
- (3) If subsection (2) has been complied with in relation to a new swimming pool and the new swimming pool is constructed or installed in accordance with the proposal specified in the notice under subsection (2)(b), the Authority must register the swimming pool under section 14 or 18 in accordance with subsection (1).



**20. Preconditions for non-standard enclosure**

(1) A swimming pool meets the preconditions for non-standard enclosure if –

- (a) the swimming pool is situated at premises that are less than 300 square metres in area; and
- (b) access to the swimming pool from a residential building at the premises is restricted in accordance with the appropriate Australian Standard.

(2) A swimming pool meets the preconditions for non-standard enclosure if –

- (a) the swimming pool is situated at premises that have frontage to a body of water, including a permanent creek or river, a canal, a pond, a lake, a reservoir, an estuary or the sea; and
- (b) access to the swimming pool from a residential building at the premises is restricted in accordance with the appropriate Australian Standard.

(3) A swimming pool meets the preconditions for non-standard enclosure if –

- (a) the swimming pool is in a room in a residential building; and
- (b) all points of entry to the room consist of doors, or windows, that are self-closing and self-latching.

(4) A swimming pool meets the preconditions for non-standard enclosure if –

- (a) the swimming pool is a spa pool to which access is restricted at all times when the spa pool is not in use; and
- (b) all points of entry to the area immediately surrounding the spa pool consist of doors, gates or windows, that are self-closing and self-latching.

(5) A swimming pool meets the preconditions for non-standard enclosure if the swimming pool is a spa pool that is covered by a solid lid that is able to be locked in place on top of the spa pool at all times when the spa pool is not in use.

(6) A swimming pool meets the preconditions for non-standard enclosure, although the characteristics of the swimming pool barrier are not in

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accordance with the appropriate Australian Standard, if the Authority is satisfied that –

- (a) the swimming pool barrier consists of louvre windows fitted with security bars, screens or devices to the satisfaction of the Authority; and
- (b) the swimming pool barrier does not allow access through an opening that does not have a self-closing and self-latching door or gate.

(7) A swimming pool meets the preconditions for non-standard enclosure if the swimming pool, or the premises on which it is, or is to be, situated, is a member of a class of swimming pools or premises that is prescribed for the purposes of this section.

(8) A reference in subsection (1) or (2) to a residential building does not include a reference to a structure such as a garage or shed that is ancillary to a residential building if the structure is not itself used for residential purposes.

**21. Variation of registration**

(1) The owner of premises at which a swimming pool is situated may apply to the Authority for a variation of the registration of the swimming pool in respect of the following matters:

- (a) whether the swimming pool is situated at large premises or small premises;
- (b) whether the swimming pool is registered as –
  - (i) satisfying the requirements of a clause in Schedule 2;
  - (ii) being enclosed in accordance with the appropriate Australian Standard;
  - (iii) being enclosed in accordance with section 19; or
  - (iv) authorised under section 15 without enclosure;
- (c) the conditions, if any, on which the swimming pool is registered.

(2) An application under subsection (1) is to be in the approved form.

(3) The Authority may vary or refuse to vary the registration of a swimming pool referred to in an application under subsection (1).

(4) The Authority may, of its own motion, vary the registration of a swimming pool.

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(5) The Authority may only vary the registration of a swimming pool under subsection (4) if –

- (a) the owner of the premises at which the swimming pool is situated has been given notice that he or she may, within 14 days after the notice is given, show cause to the Authority as to why the registration ought not be varied as proposed in the notice; and
- (b) the Authority takes into account the submissions, if any, made by the owner within 14 days after the notice under paragraph (a) is given.

### **22. Revocation of registration**

(1) The Authority may revoke the registration of a swimming pool in relation to premises if he or she is satisfied that the swimming pool is no longer situated at the premises.

(2) The Authority may revoke the registration of an existing swimming pool if section 24 or 25 is not being complied with in relation to the swimming pool.

(3) The Authority may revoke the registration of a new swimming pool if section 26 is not being complied with in relation to the swimming pool.

(4) The Authority may only revoke the registration of a swimming pool under this section if –

- (a) the owner of the premises at which the swimming pool is situated has been given notice that he or she may, within 14 days after the notice is given, show cause to the Authority as to why the registration ought not be revoked as proposed in the notice;
- (b) the Authority takes into account the submissions, if any, made by the owner within 14 days after the notice under paragraph (a) is given; and
- (c) an order issued under section 33 to the owner of the premises is not being complied with, unless the registration is to be revoked under subsection (1).

(5) If premises at which a swimming pool is situated cease to be large premises, the registration of the swimming pool is revoked by virtue of this subsection.

**23. Certificate of registration**

(1) If the Authority registers a swimming pool under this Part, he or she must issue a certificate of registration of the swimming pool in the prescribed form to the owner of the premises at which the swimming pool is situated.

(2) The certificate of registration of a swimming pool is to specify the following:

- (a) whether the swimming pool is situated at large premises or small premises;
- (b) whether the swimming pool is registered as –
  - (i) satisfying the requirements of a clause in Schedule 2;
  - (ii) being enclosed in accordance with the appropriate Australian Standard;
  - (iii) being enclosed in accordance with section 19; or
  - (iv) authorised under section 15 without enclosure;
- (c) the conditions, if any, on which the swimming pool is registered.

(3) If the registration of a swimming pool is varied under section 21, the Authority must –

- (a) request the owner of the premises at which the swimming pool is situated to return to the Authority the certificate of registration of the swimming pool;
- (b) revoke the certificate of registration; and
- (c) issue to the owner of the premises a certificate of registration in substitution for the revoked certificate of registration.

(4) The owner of premises who is requested under subsection (3) to return the certificate of registration of a swimming pool at the premises must, within 30 days after the request –

- (a) return the certificate to the Authority; or
- (b) if the certificate has been lost or destroyed – declare in writing to the Authority that the certificate has been lost or destroyed.

Penalty: 5 penalty units.

(5) If the registration of a swimming pool is revoked, the certificate of registration of the swimming pool is revoked.

**PART 3 – REQUIREMENTS FOR ENCLOSING SWIMMING POOLS**

*Division 1 – Swimming pools at small premises*

**24. Existing swimming pools at small premises to which council swimming pool by-laws applied**

(1) The owner of small premises at which an existing swimming pool is situated must, if the premises are situated in an area specified in a clause in Schedule 2, ensure that –

- (a) the requirements of the clause are satisfied in relation to the swimming pool;
- (b) the swimming pool is enclosed in accordance with the appropriate Australian Standard and, if the swimming pool is registered as being enclosed in accordance with the appropriate Australian Standard, the conditions, if any, on which the swimming pool is registered are complied with; or
- (c) if the swimming pool is registered as being enclosed in accordance with section 19 –
  - (i) the swimming pool barrier, if any, is the same, and is in substantially the same condition, as it was on the date on which the swimming pool was registered; and
  - (ii) the conditions, if any, on which the swimming pool is registered are complied with.

Penalty: 10 penalty units.

- (2) If a swimming pool situated at premises –
  - (a) is registered as satisfying the requirements of a clause in Schedule 2 – the owner of the premises only complies with subsection (1) if the requirements of subsection (1)(a) are complied with;
  - (b) is registered as being enclosed in accordance with the appropriate Australian Standard – the owner of the premises only complies with subsection (1) if the requirements of section (1)(b) are complied with; or
  - (c) is registered as being enclosed in accordance with section 19 – the owner of the premises only complies with subsection (1) if the requirements of subsection (1)(c) are complied with.

**25. Certain registered existing swimming pools at small premises to which council swimming pool by-laws did not apply**

- (1) The owner of small premises –
  - (a) that are not situated in an area specified in a clause in Schedule 2; and
  - (b) at which is situated an existing swimming pool that is registered as being enclosed in accordance with the appropriate Australian Standard,

must ensure that –

- (c) the swimming pool is enclosed in accordance with the appropriate Australian Standard; and
- (d) the conditions, if any, on which the swimming pool is registered are complied with.

Penalty: 10 penalty units.

- (2) The owner of small premises –
  - (a) that are not situated in an area specified in a clause in Schedule 2; and
  - (b) at which is situated an existing swimming pool that is registered as being enclosed in accordance with section 19,

must ensure that –

- (c) the swimming pool barrier, if any, is the same, and is in substantially the same condition, as it was on the date on which the swimming pool was registered; and
- (d) the conditions, if any, on which the swimming pool is registered are complied with.

Penalty: 10 penalty units.

**26. New swimming pools at small premises**

The owner of small premises at which a new swimming pool is situated must ensure that –

- (a) the swimming pool is enclosed in accordance with the appropriate Australian Standard and, if the swimming pool is registered as being enclosed in accordance with the appropriate Australian

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Standard, the conditions, if any, on which the swimming pool is registered are complied with; or

- (b) if the swimming pool is registered as being enclosed in accordance with section 19 –
  - (i) the swimming pool barrier, if any, is the same, and is in substantially the same condition, as it was on the date on which the swimming pool was registered; and
  - (ii) the conditions, if any, on which the swimming pool is registered are complied with.

Penalty: 10 penalty units.

**27. Application for registration is defence to non-compliance**

If the owner of small premises has, before 18 months after the commencement day, applied under section 11 for registration of an existing swimming pool situated at the premises, a prosecution may not, after the date of the application, be commenced in relation to an offence that –

- (a) is alleged to have been committed against section 24 at the premises; and
- (b) is alleged to have been committed at any time on and from the commencement day until and including the day 6 months after the date on which the application is made.

*Division 2 – Where owner has chosen to register swimming pool  
at large premises*

**28. Swimming pools at large premises that are registered as complying with standard or non-standard enclosure**

(1) The owner of large premises at which an existing swimming pool is situated that is registered as being enclosed in accordance with the appropriate Australian Standard must ensure that –

- (a) the swimming pool is enclosed in accordance with the appropriate Australian Standard; and
- (b) the conditions, if any, on which the swimming pool is registered are complied with.

Penalty: 10 penalty units.

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(2) The owner of large premises at which an existing swimming pool is situated that is registered as being enclosed in accordance with section 19 must ensure that –

- (a) the swimming pool barrier, if any, is the same, and is in substantially the same condition, as it was on the date on which the swimming pool was registered; and
- (b) the conditions, if any, on which the swimming pool is registered are complied with.

Penalty: 10 penalty units.

*Division 3 – Requirements relating to enclosure*

**29. Gates, doors etc. that give access to swimming pool to be securely closed**

- (1) The owner and occupier of –
  - (a) small premises, in an area specified in a clause in Schedule 2, at which a swimming pool is situated;
  - (b) small premises –
    - (i) that are not situated in an area specified in a clause in Schedule 2; and
    - (ii) at which a swimming pool is situated that is registered as being enclosed in accordance with the appropriate Australian Standard or as being enclosed in accordance with section 19; or
  - (c) large premises at which a registered swimming pool is situated,

must ensure that all gates, doors, windows and other structures that enable access to the swimming pool are kept securely closed at all times when they are not in actual use.

Penalty: 10 penalty units.

(2) It is a defence to a charge of committing an offence against subsection (1) in relation to premises if the owner of the premises establishes that –

- (a) he or she was not the occupier of the premises when the alleged offence occurred;



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- (b) he or she took all reasonable steps to ensure that the alleged offence would not occur; and
- (c) he or she was not aware of, and ought not reasonably be expected to have been aware of, the facts giving rise to the alleged offence.

**30. Occupier to notify owner if swimming pool barrier needs repair**

The occupier of –

- (a) small premises, in an area specified in a clause in Schedule 2, at which a swimming pool is situated;
- (b) small premises –
  - (i) that are not situated in an area specified in a clause in Schedule 2; and
  - (ii) at which a swimming pool is situated that is registered as being enclosed in accordance with the appropriate Australian Standard or as being enclosed in accordance with section 19; or
- (c) large premises at which a registered swimming pool is situated,

must notify the owner of the premises of any maintenance required to a swimming pool barrier at the premises to ensure that the owner of the premises complies with this Act.

Penalty: 5 penalty units.

**31. Dividing swimming pool barriers**

(1) Subject to subsection (2), any expenses associated with constructing, altering, repairing, replacing or maintaining a dividing barrier required for the purpose of complying with this Act or the Regulations, or to enable the swimming pool to be registered, are to be borne by the owner of the premises at which is situated, or is to be situated, the swimming pool to which the barrier relates or is to relate.

(2) If there are adjoining premises, at each of which is situated, or is to be situated, a swimming pool, the expenses associated with constructing, altering, repairing, replacing or maintaining a dividing barrier or a proposed dividing barrier between the premises are to be borne by both owners of the premises in equal proportions or as otherwise agreed between them.

**32. Location of swimming pool barriers**

(1) The owner of premises at which a swimming pool is situated may, subject to this Act, determine where a swimming pool barrier for the purposes of this Act is to be installed.

(2) The location of the dividing barrier or proposed dividing barrier between adjoining premises, at each of which is situated a swimming pool, is, subject to this Act, to be as agreed between the owners of the premises.

**33. Power to order works to be performed**

(1) The Authority may issue an order in writing to the owner of premises at which a swimming pool is situated, if he or she is satisfied that the owner is contravening section 24, 25, 26 or 28 in relation to the premises.

(2) An order issued under subsection (1) may require the owner, within a reasonable time specified in the order, to take the measures specified in the order to ensure that the swimming pool complies with the requirements of the section specified in the order.

(3) An order issued under subsection (1) is of no effect to the extent to which it purports to require measures to be taken that are more onerous than the requirements of the section specified in the order.

(4) A person must comply with an order issued under subsection (1).

Penalty: 5 penalty units.

(5) An order issued under subsection (1) to an owner of premises applies to a subsequent owner of the premises.

***Division 4 – Financial assistance towards meeting requirements***

**34. Financial assistance schemes**

(1) The Minister may approve a financial assistance scheme for the purposes of this Act.

(2) A financial assistance scheme may specify –

(a) the upper limit of loans that may be made;

(b) the rate or rates of interest to be charged on loans;

(c) the rate of repayment of loans; and

(d) other terms and conditions as the Minister thinks fit.

**35. Loans under financial assistance scheme**

(1) The Authority may, in accordance with a financial assistance scheme that is approved under section 34(1), enter into an agreement with an owner of premises at which an existing swimming pool is situated to provide to the owner a loan under the scheme to be used for the construction or installation of a swimming pool barrier in respect of the swimming pool.

(2) An agreement under subsection (1) is subject to the terms and conditions specified in the agreement.

**36. Loan to be repaid before sale of premises**

The balance from time to time outstanding of an amount that is due and payable by an owner of premises to the Authority under an agreement under section 35(1) is a statutory charge under the *Land Title Act* on the premises to which the charge relates.

**PART 4 – SALE OR RESIDENTIAL LEASE OF SMALL PREMISES  
WITH SWIMMING POOLS**

**37. Memorandum of restriction on sale to be entered under *Land Title Act* in relation to small premises with swimming pools**

(1) The requirements of section 38(1) in relation to small premises at which a swimming pool is situated are, for the purposes of section 35 of the *Land Title Act*, taken to impose a restriction on the use and occupation of the land comprising the premises.

(2) The Minister may lodge with the Registrar-General a memorandum under section 35(1) of the *Land Title Act* of the restriction referred to in subsection (1) in relation to small premises, specified in the memorandum, at which a swimming pool is situated.

(3) The Minister may lodge with the Registrar-General a notice to the effect that the reason for the entry of a memorandum in accordance with section 35 of the *Land Title Act* of a restriction referred to in subsection (1) in relation to premises no longer exists if the Minister is satisfied –

- (a) a compliance certificate has been issued under section 39(4) in relation to the premises; or
- (b) there is no longer a swimming pool at the premises.

(4) The Registrar-General must remove a memorial under section 36 of the *Land Title Act* if he or she receives a notice under subsection (3) in relation to the memorial.

**38. No sale of small premises with swimming pool unless compliance certificate issued**

(1) The owner of small premises at which a swimming pool is situated must not sell the premises unless there is a compliance certificate in relation to the premises.

Penalty: 10 penalty units.

(2) Subsection (1) does not prevent an owner of premises from entering into a contract to sell the premises if the contract contains a condition that the sale is not to be completed until there is a compliance certificate in relation to the premises.

(3) The Registrar-General must not, under Part 6 of the *Land Title Act*, transfer a fee simple interest in small premises at which a swimming pool is situated, unless there is a compliance certificate in relation to the premises.

(4) If the owner of premises at which a swimming pool is situated sells the premises in contravention of subsection (1), he or she must take, within a reasonable period, all reasonable steps to ensure that a compliance certificate may be issued in relation to the premises.

Penalty: 5 penalty units.

**39. Compliance certificates**

(1) If the Authority registers a new swimming pool at small premises the Authority must, of its own motion, issue a compliance certificate in relation to the premises.

(2) The owner of small premises at which an existing swimming pool is situated may apply to the Authority for the issue of a compliance certificate in relation to the premises.

(3) An application under subsection (2) is to be in the approved form and is to be accompanied by the gazetted fee, if any.

(4) The Authority may issue a compliance certificate in relation to premises to which an application under subsection (2) relates if –

(a) the swimming pool situated at the premises is registered as being enclosed in accordance with the appropriate Australian Standard or as being enclosed in accordance with section 19;

(b) he or she is satisfied that either –

(i) the swimming pool is enclosed in accordance with the appropriate Australian Standard; or

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- (ii) if the swimming pool is registered as being enclosed in accordance with section 19 – the swimming pool barrier, if any, is the same, and is in substantially the same condition, as it was on the date on which the swimming pool was registered; and
  - (c) he or she is satisfied that the conditions, if any, on which the swimming pool is registered are complied with.
- (5) The Authority may issue a compliance certificate in relation to premises to which an application under subsection (2) relates if he or she is satisfied that –
- (a) the premises are part of a deceased estate;
  - (b) the compliance certificate is for the purpose of enabling the transfer of the fee simple interest in the premises to a spouse, surviving relative, or member of the family, of the deceased; and
  - (c) no consideration has passed or is to pass for the transfer of the fee simple interest in the premises.
  - (6) A compliance certificate is to be in the approved form.
  - (7) A compliance certificate for the purposes of subsection (5) –
    - (a) is to specify the name of the person to whom the fee simple interest in the premises to which the certificate relates is to be transferred; and
    - (b) is revoked by virtue of this section after the transfer of the fee simple interest in the premises under the *Land Title Act*.
  - (8) The Authority may revoke a compliance certificate in relation to premises if –
    - (a) the swimming pool at the premises is not enclosed in accordance with the appropriate Australian Standard, unless the compliance certificate was issued in accordance with subsection (5);
    - (b) a condition on which the swimming pool is registered is not complied with;
    - (c) the swimming pool barrier, if any, in respect of the swimming pool is not the same, or is not in substantially the same condition, as it was on the date on which the swimming pool was registered; or
    - (d) the Authority is satisfied that the swimming pool has been registered in error.

**40. No residential lease of small premises with swimming pool unless swimming pool registered and enclosed**

(1) A landlord must not enter into a tenancy agreement in relation to small premises at which a swimming pool is situated unless –

- (a) the swimming pool is registered as being enclosed in accordance with the appropriate Australian Standard or as being enclosed in accordance with section 19;
- (b) either –
  - (i) the swimming pool is enclosed in accordance with the appropriate Australian Standard; or
  - (ii) if the swimming pool is registered as being enclosed in accordance with section 19 – the swimming pool barrier, if any, is the same, and is in substantially the same condition, as it was on the date on which the swimming pool was registered; and
- (c) the conditions, if any, on which the swimming pool is registered are complied with.

Penalty: 10 penalty units.

(2) If a tenancy agreement in relation to small premises at which a swimming pool is situated is entered into in contravention of subsection (1), the landlord must, within a reasonable period after the agreement is entered into, take all reasonable steps to ensure that –

- (a) the swimming pool is registered as being enclosed in accordance with the appropriate Australian Standard or as being enclosed in accordance with section 19;
- (b) either –
  - (i) the swimming pool is enclosed in accordance with the appropriate Australian Standard; or
  - (ii) if the swimming pool is registered as being enclosed in accordance with section 19 – the swimming pool barrier, if any, is the same, and is in substantially the same condition, as it was on the date on which the swimming pool was registered; and

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- (c) the conditions, if any, on which the swimming pool is registered are complied with.

Penalty: 5 penalty units.

- (3) In this section –

"landlord" has the same meaning as in the *Residential Tenancies Act*;

"tenancy agreement" has the same meaning as in the *Residential Tenancies Act*.

**PART 5 – ADMINISTRATION**

**41. Swimming Pool Fencing Authority**

(1) The Minister may, by notice in the *Gazette*, appoint a person to be the Swimming Pool Fencing Authority.

(2) The Minister may, by notice in the *Gazette*, appoint –

(a) a person, nominated by the council of a council area specified in the notice, to be the Swimming Pool Fencing Authority in respect of the council area; or

(b) a person to be the Swimming Pool Fencing Authority in respect of an area specified in the notice.

(3) If a person is appointed under subsection (2) in respect of an area, the person appointed under subsection (1) is not the Swimming Pool Fencing Authority in respect of the area but may direct an inspector appointed under section 43(1) to exercise the inspector's powers, or perform the inspector's functions, in relation to the area.

**42. Delegation**

(1) The Minister may, in writing, delegate to a person a power or function of the Minister under this Act.

(2) The Authority may, in writing, delegate to a person a power or function of the Authority under this Act.

(3) A delegation under subsection (1) or (2) may be limited to the exercise of a power, or the performance of a function, in respect of an area specified in the instrument of delegation.

**43. Inspectors**

(1) A person appointed under section 41(1) to be the Authority may, by notice in the *Gazette*, appoint a person to be an inspector.

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(2) A person appointed under section 41(2) to be the Authority in respect of an area may, by notice in the *Gazette*, appoint a person to be an inspector in respect of the area.

(3) An inspector is, in the exercise of his or her powers or the performance of his or her functions, subject to the directions of the Authority that appointed the inspector.

**44. Identity cards**

(1) The Minister must issue an identity card in the prescribed form to the Authority.

(2) The Authority must issue an identity card in the prescribed form to each inspector appointed by the Authority under section 43.

(3) The Authority must return his or her identity card to the Minister within 14 days after ceasing to be the Authority.

Penalty: 1 penalty unit.

(4) An inspector must, within 14 days after ceasing to be an inspector, return to the Authority an identity card issued to him or her by the Authority.

Penalty: 1 penalty unit.

**45. Powers of entry and inspection**

(1) The Authority or an inspector may, for the purposes of administering or enforcing this Act, enter premises under the authority of a search warrant issued under section 46.

(2) The Authority or an inspector may, for the purposes of administering or enforcing this Act, enter premises otherwise than in accordance with a search warrant issued under section 46 if –

- (a) the Authority or inspector has a reasonable belief that there is a swimming pool situated at the premises;
- (b) reasonable steps were taken to give notice to the owner and the occupier of the premises that the Authority or an inspector intended to enter the premises within 7 days after the notice was given;
- (c) the entry occurs within 7 days after, but not earlier than 24 hours after, the notice is given under paragraph (b), unless the occupier of the premises or, if there is no occupier of the premises, the owner of the premises, agrees to an earlier entry;



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- (d) the entry occurs between 8 a.m. and 6 p.m. or, if the normal business hours at the premises are not between 8 a.m. and 6 p.m., during the normal business hours at the premises;
- (e) the entry occurs at a time to which the occupier of the premises or, if there is no occupier of the premises, the owner of the premises, has agreed, unless the agreement has been unreasonably withheld, in which case the agreement is not required; and
- (f) the Authority or inspector, if the owner or occupier so requests, displays the identity card issued to him or her under section 44.

(3) The Authority or an inspector may enter premises (other than a residential building) in accordance with subsection (2), although subsection (2)(c), (d) and (e) have not been complied with, if the entry is urgently required for a prescribed reason.

(4) The Authority or an inspector may only enter a residential building –

- (a) if the occupier of the building agrees or, if there is no occupier of the building, if the owner of the building agrees; or
- (b) if the Authority or inspector is acting under the authority of a search warrant issued under section 46.

(5) The Authority or an inspector may at premises (including a residential building) entered in accordance with this section –

- (a) carry out an inspection that he or she considers relevant to the administration or enforcement of this Act;
- (b) take photographs, including video recordings, or make sketches or other records of the premises or things at the premises;
- (c) inspect and take copies of a document within the meaning of the *Evidence Act*; and
- (d) request a person at the premises to provide assistance in carrying out an investigation of the premises.

(6) A person must not (other than by refusing to agree to permit the Authority or an inspector to enter a residential building) –

- (a) obstruct the Authority or an inspector in exercising a power of entry or inspection under this Act; or

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- (b) refuse to provide assistance to the Authority or an inspector in carrying out an investigation of the premises when the person is requested to do so under subsection (5)(d).

Penalty: 5 penalty units.

**46. Search warrants**

(1) The Authority or an inspector may apply to a Justice, by information on oath, for a search warrant in relation to the premises if the Authority believes on reasonable grounds that an offence against this Act or the Regulations is being committed at the premises.

(2) A Justice may issue a search warrant authorising the Authority and inspectors to enter premises specified in the information to which the warrant relates, including a residential building at the premises, if the Justice is satisfied that there are reasonable grounds to suspect that an offence against this Act or the Regulations is being committed at the premises in relation to a swimming pool.

(3) A search warrant authorises the Authority and an inspector accompanying the Authority to –

- (a) enter premises, including a residential building at the premises, and, if necessary, to use reasonable force to do so; and
  - (b) to do anything referred to in section 45 at the premises and in the residential building.
- (4) A search warrant is to –
- (a) state the purpose for which it is issued;
  - (b) state the nature of the alleged offence in respect of which the entry is authorised;
  - (c) specify the hours during which entry to the premises or a residential building at the premises is authorised; and
  - (d) specify the date on which the warrant ceases to have effect, which is to be not later than 30 days after the date on which the warrant is issued.

**47. Liability of persons acting under this Act**

Civil proceedings do not lie against a person in relation to the exercise by him or her of a power, or the performance by him or her of a function, under this Act or the Regulations in good faith.

**PART 6 – REVIEW AND APPEAL OF DECISIONS**

*Division 1 – Review of decisions of Authority*

**48. Review Committee and Registrar of Review Committee**

- (1) A Review Committee is established.
- (2) The Review Committee is to consist of 3 persons appointed by the Minister under subsection (3).
- (3) The Minister may, by notice in the *Gazette*, appoint a person to be a member of the Review Committee.
- (4) The Minister may appoint a person to be the Registrar of the Review Committee.

**49. Person may apply to Review Committee for review of decision of Authority**

- (1) A person may apply to the Registrar for a review by the Review Committee of a decision of the Authority under section 12, 13, 14, 15, 17, 18, 21, 22, 33 or 39.
- (2) An application under subsection (1) is to be lodged with the Registrar within 28 days after the date on which notice of the decision by the Authority to which the application relates was given to the applicant under section 55.
- (3) An application under subsection (1) is to be made in the approved form and is to be accompanied by the gazetted fee, if any.
- (4) A review is to be by hearing de novo.
- (5) The practices and procedure of a review are to be as determined by the Review Committee.

**50. Determination of review**

- (1) A review is to be determined within 28 days after the date on which the application for review is lodged under section 49(1).
- (2) The Review Committee must determine a review by –
  - (a) confirming the decision of the Authority;
  - (b) varying the decision of the Authority; or
  - (c) setting aside the decision of the Authority and making a decision in substitution for the decision to which the review relates.

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(3) The Review Committee must give written notice to an applicant of the Committee's determination under subsection (2) and of the reasons for the determination.

(4) The gazetted fee, if any, paid by an applicant under section 49(3) is to be refunded to the applicant if the decision of the Authority is varied or set aside under subsection (2).

(5) A decision under subsection (2)(b) or (c) is taken, except for the purposes of this Part, to be the decision of the Authority.

***Division 2 – Appeal against determination of Review Committee***

**51. Person may appeal to Appeals Tribunal against determination of Review Committee**

(1) A person may appeal to the Appeals Tribunal against a determination of the Review Committee under section 50(2) in respect of an application made by the person under section 49(1).

(2) An appeal under subsection (1) is to be lodged under the *Lands and Mining Tribunal Act* within 28 days after the date on which notice of the determination by the Review Committee to which the appeal relates was given to the appellant under section 50(3).

**52. Appeals Tribunal**

The Lands and Mining Tribunal established under the *Lands and Mining Tribunal Act* is the Appeals Tribunal for the purposes of this Act.

**53. Application of *Lands and Mining Tribunal Act* to Appeals Tribunal**

The provisions of the *Lands and Mining Tribunal Act*, other than sections 14(4A), 17(1)(d)(ii) and (2), Part 3, Divisions 2 and 3, and sections 36 and 37, apply in relation to the Appeals Tribunal in relation to an appeal under this Division.

**54. Interests of members of Appeals Tribunal**

(1) A personal, professional, commercial or other relationship that a member of the Appeals Tribunal has with an appellant or another person or association, which relationship is one that it is likely to, or may reasonably be regarded as likely to, inhibit or prevent the exercise by the member of independent judgment in relation to an appeal under this Act, is an interest for the purposes of section 32 of the *Lands and Mining Tribunal Act*.

(2) A direct or indirect pecuniary interest that a member of the Appeals Tribunal has as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which he or

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she is not a director, is not, in relation to an appeal under this Division, an interest for the purposes of section 32 of the *Lands and Mining Tribunal Act*.

(3) A member of the Appeals Tribunal who is an employee of, a partner with, an agent for or a consultant to, a person, partnership, firm or company who or which –

- (a) has a direct or indirect interest in a matter to which an appeal under this Act relates; or
- (b) is representing a party to an appeal under this Act,

is taken to have an interest in relation to the appeal for the purposes of section 32 of the *Lands and Mining Tribunal Act*.

### **PART 7 – MISCELLANEOUS**

#### **55. Notice of decisions to be given by Authority**

The Authority must, within 14 days after making a decision under section 12, 13, 14, 15, 17, 18, 21, 22, 33 or 39, give written notice to the owner of the premises to which the decision relates of the making of the decision and of the reasons for the decision.

#### **56. How notice may be given**

A notice that is permitted or required to be given by or under this Act to an owner or occupier of premises may be given –

- (a) personally;
- (b) by letter addressed to the owner or occupier and sent by post to the premises;
- (c) by 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 be employed at the premises; or
- (d) by a letter addressed to the owner or occupier and fixed to a conspicuous part of the premises.

#### **57. Certificate is evidence of certain matters**

A certificate of registration that specifies that the swimming pool referred to in the certificate –

- (a) is situated at large premises or small premises;
- (b) is registered as satisfying the requirements of a clause specified in Schedule 2;

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- (c) is registered as being enclosed in accordance with the Australian Standard;
- (d) is registered as being enclosed in accordance with section 19;
- (e) is registered as authorised under section 15 without enclosure; or
- (f) is registered on the conditions specified on the certificate,

is evidence that the pool was so registered.

**58. Defence if swimming pool not able to be used**

It is a defence to a charge of committing an offence against this Act in relation to a swimming pool if the defendant establishes that, at the time of the alleged offence, the swimming pool –

- (a) was not intended for use or was incapable of use as a swimming pool because it was dismantled or in the course of alteration, renovation or removal; and
- (b) was empty or filled with water to a depth less than 300 millimetres at the deepest point of the swimming pool.

**59. Continuing offences**

(1) If a court is satisfied, on finding a person guilty of an offence against this Act, that the person continued to commit the offence after the date on which he or she was notified of the alleged offence, the Court may, in addition to the penalty, if any, specified for the offence, impose a further penalty.

(2) A further penalty may be imposed under subsection (1) on a person in respect of each day during which the offence continued to be committed after the date on which the person was notified of the alleged offence.

(3) A further penalty imposed under subsection (1) may not exceed one penalty unit for each day on which the offence continued.

**60. Regulations**

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters that are –

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Regulations may provide for the following:

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- (a) restrictions on the use of land surrounding or adjoining a swimming pool barrier required by or under this Act to be installed around a swimming pool, or that is installed for the purposes of registration under this Act, so as to ensure the effective restriction of access by children to swimming pools;
- (b) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act or the Regulations, the service of a notice relating to the payment of the amount on a person alleged to have committed the offence and the particulars to be included in the notice;
- (c) penalties not exceeding 5 penalty units for an offence against the Regulations.

(3) The Regulations may, for the purposes of this Act, apply, adopt, incorporate, or modify the application of, the provisions of a standard, code or rule as in force for the time being.

**61. Repeal of council by-laws relating to swimming pools**

The by-laws specified in Schedule 3 are repealed.

**62. Transitional matters relating to swimming pools in certain council areas**

(1) If an application for a permit, registration or provisional registration that was made under a by-law repealed under section 61 has not been determined by the commencement day, the fee accompanying the application is to be refunded to the applicant by the person or body to whom it was paid.

(2) If premises at which a swimming pool is situated are in an area specified in a clause in Schedule 2, the owner of the premises is taken to comply with the requirements specified in the clause –

- (a) if, immediately before the date on which this Act comes into operation, there was in force a certificate, permit, registration or provisional registration granted or issued in relation to the swimming pool for the purposes of or under a by-law in respect of the area; and
- (b) where –
  - (i) a swimming pool barrier was in place on the date on which the certificate, permit, registration or provisional registration was granted or issued – if the barrier is the same, and is in substantially the same condition, as it was on that date; or

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- (ii) other measures, if any, were required to be taken for the purpose of complying with the certificate, permit, registration or provisional registration – if the measures are taken.

(3) The council of a council area specified in Schedule 2 must, at the request in writing of the Authority, ensure that records, in relation to swimming pools in the council area, that –

- (a) came into existence before the commencement day; and
- (b) are held on the commencement day by the council,

are made available to the Authority for inspection for the purposes of the administration and enforcement of this Act.

(4) The Jabiru Town Development Authority must, at the request in writing of the Authority, ensure that records, in relation to swimming pools in the area to which the *Jabiru Town Development Act* relates, that –

- (a) came into existence before the commencement day; and
- (b) are held on the commencement day by the Jabiru Town Development Authority,

are made available to the Authority for inspection for the purposes of the administration and enforcement of this Act.

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Swimming Pool Fencing Act 2002

Diagram 1

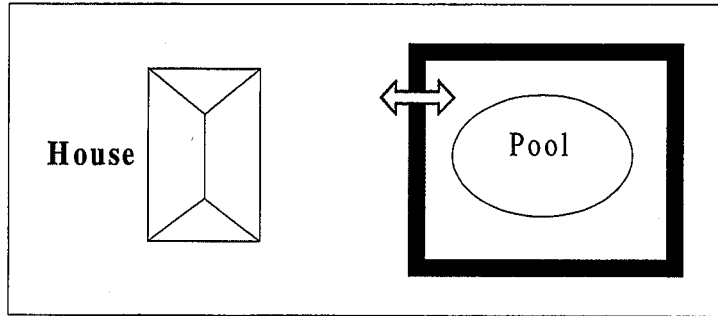


Diagram 2

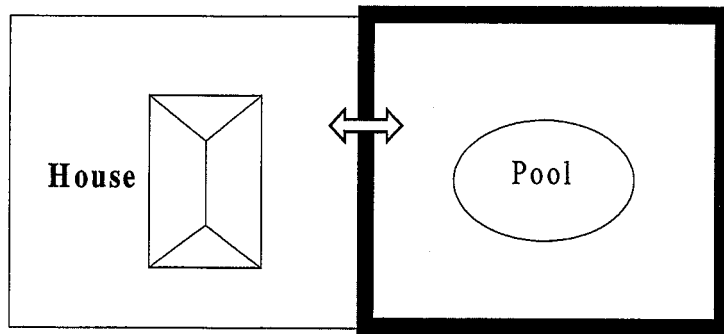
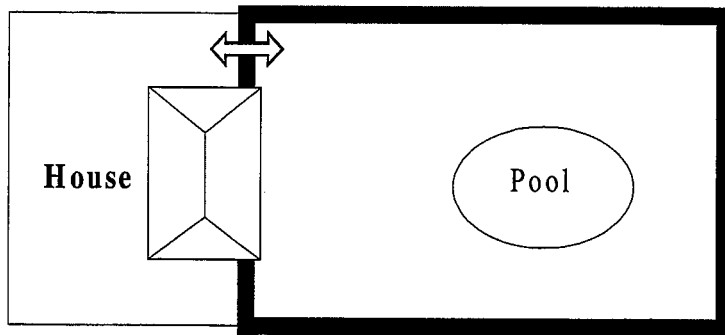


Diagram 3






<b>Legend</b>	
Gate	
Property boundary	
Child resistant barrier	

Diagram 4

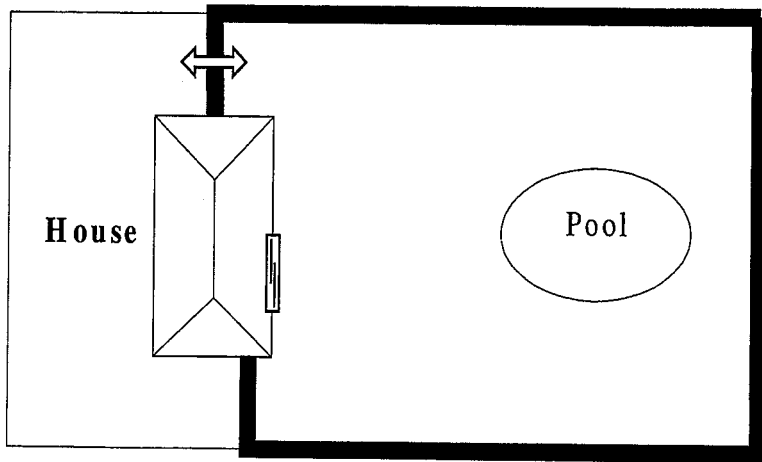
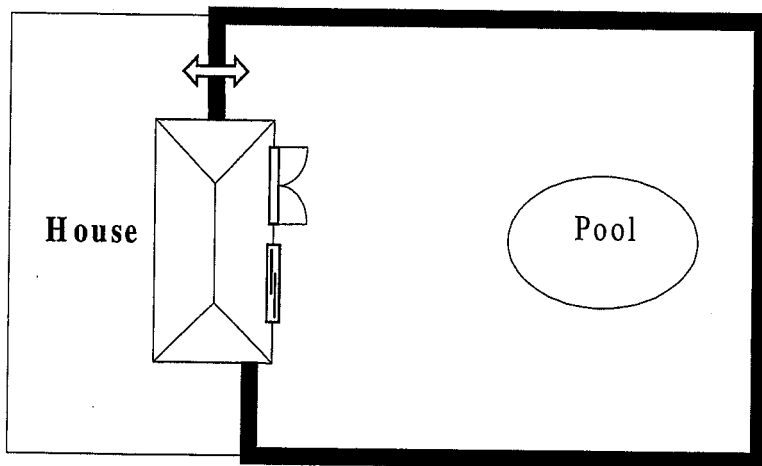







Diagram 5



<b>Legend</b>	
Gate	
Property boundary	
Child resistant barrier	
Child resistant window	
Child resistant door	

SCHEDULE 2

Section 24

1. ALICE SPRINGS

If premises at which a swimming pool is situated are within the council area of the Alice Springs City Council, the owner of the premises must take reasonable measures to ensure that the swimming pool is not a danger to an unsupervised child.

2. DARWIN

(1) If premises at which a swimming pool is situated are within the council area of the Darwin City Council, the owner of the premises must cause the swimming pool, or the whole or the relevant part of the premises at which it is situated, to be enclosed by a swimming pool barrier of such a construction or nature as to provide a reasonably effective barrier against a child gaining access to the swimming pool.

(2) The owner referred to in subclause (1) must ensure that –

- (a) the swimming pool barrier referred to in subclause (1) is not in any part lower than 1.2 metres in height above the surface on which it is constructed; and
- (b) every gate or door incorporated in the barrier is fitted with –
  - (i) an efficient self-closing mechanism; and
  - (ii) a positive self-latching mechanism that is situated not less than 1.1 metres from the ground or floor above which it is suspended.

3. JABIRU

(1) If premises at which a swimming pool is situated are within the area to which the *Jabiru Town Development Act* relates, the owner of the premises must ensure that all of the premises, or the swimming pool, is enclosed by a swimming pool barrier –

- (a) at least 1.22 metres in height; and
- (b) of such a construction as –
  - (i) may reasonably be expected to prevent a child from gaining access to the swimming pool by passing beneath, over or through the barrier;

*Swimming Pool Fencing Act 2002*

- (ii) not to afford foot or hand holds to a child entering or attempting to enter the swimming pool by scaling the barrier; and
- (iii) to ensure that the barrier is and remains of sufficient strength and durability to prevent access to that swimming pool by a child.

(2) The owner of the swimming pool must ensure that a gate or other device for gaining access to the swimming pool that is incorporated in a swimming pool barrier enclosing the swimming pool is fitted with –

- (a) a positive self-closing, self-latching mechanism that is attached to the inside of the gate or other device and situated not less than 15 centimetres below the top of the gate or other device; and
- (b) a mechanism that enables the gate or device to be permanently locked.

4. PALMERSTON

If premises at which a swimming pool is situated are within the council area of the Palmerston City Council, the owner of the premises must ensure that the swimming pool is enclosed by a swimming pool barrier that complies with Parts 1 and 2 of the appropriate Australian Standard specified in section 5(1)(a) of this Act (as the Standard is in force immediately after commencement day and not including any prescribed modification to the Standard).

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**SCHEDULE 3**

Section 61

**REPEALED BY-LAWS**

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Alice Springs (Private Swimming Pool) By-laws	Regulations 1988, No. 45
Amendments of Alice Springs (Private Swimming Pool) By-laws	Regulations 1990, No. 46
Part 2, Division 3 of Darwin City Council By-laws	
Jabiru Town Development (Private Swimming Pool) By-laws	Regulations 1983, No. 6
Palmerston (Private Swimming Pool) By-laws	Regulations 1996, No. 21
Amendments of Palmerston (Private Swimming Pool) By-laws	Regulations 1999, No. 5

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