



Australian Capital Territory

Public Pools Act 2015

A2015-7

Republication No 2

Effective: 2 July 2017

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Act not amended
(republication for expiry of transitional provisions (pt 20))

About this republication

The republished law

This is a republication of the *Public Pools Act 2015* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 July 2017. It also includes any commencement, repeal or expiry affecting this republished law.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$150 for an individual and \$750 for a corporation (see *Legislation Act 2001*, s 133).



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Public Pools Act 2015

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Australian Capital Territory

Public Pools Act 2015

An Act relating to public pools, and for other purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Public Pools Act 2015*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*low-alcohol liquor*—see the [Liquor Act 2010](#), dictionary.' means that the term 'low-alcohol liquor' is defined in that dictionary and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Application of Act

This Act applies to a category 1 facility.

Note *Category 1 facility*—see s 7.

Part 2 Key concepts

7 Meaning of *category 1 facility*

In this Act:

category 1 facility—

- (a) means a pool facility that is—
 - (i) owned by the Territory; and
 - (ii) open to or used by the public (whether or not on payment of money); and
- (b) includes a pool facility managed under a facility management agreement.

Note *Facility management agreement*—see the dictionary.

8 Meaning of *operator*

(1) In this Act:

operator, of a pool facility—

- (a) means the person who, alone or with someone else, manages or controls the pool facility; and
- (b) includes—
 - (i) a person for the time being managing or controlling the pool facility; and
 - (ii) a person managing or controlling the pool facility in accordance with a facility management agreement; and

- (iii) any other person prescribed by regulation; but

Note Power to make a regulation in relation to a matter includes power to make provision in relation to a class of matter (see [Legislation Act](#), s 48 (2)).

- (c) does not include a person excluded from this definition by regulation.
- (2) If there is more than 1 operator of a pool facility, it is sufficient compliance with a requirement of this Act if—
- (a) any of the operators exercises the functions of an operator under this Act; and
 - (b) any notice or other document required to be given to the operator under this Act is given to any of the operators.

9 **Meaning of *pool***

In this Act:

pool—

- (a) means an artificial structure or vessel that is—
 - (i) capable of being filled with water; and
 - (ii) used or intended to be used for swimming, diving, wading, paddling or any other recreational water activity; and
- (iii) unable to be emptied by overturning the structure or vessel; but
- (b) does not include—
 - (i) a bath tub or other vessel used for cleaning the body; or
 - (ii) an artificial structure or vessel prescribed by regulation.

10 Meaning of *pool facility*

In this Act:

pool facility—

- (a) means 1 or more pools; and
- (b) includes any 1 or more of the following:
 - (i) the plant associated with each pool;
 - (ii) the concourse for each pool;
 - (iii) the toilets, change rooms and similar facilities associated with each pool;
 - (iv) lighting;
 - (v) a fence and any other structure that—
 - (A) excludes access to a pool; or
 - (B) forms a boundary around 1 or more pools;
 - (vi) premises used for administration in relation to each pool;
 - (vii) any other structure, building or plant necessary for the operation of each pool; but
- (c) does not include—
 - (i) if the pool is located within a gymnasium or recreational centre—the areas of the recreational centre not associated with the pool; or
 - (ii) a facility prescribed by regulation.

11 Exemption of pool facility or person from Act

- (1) The Minister may exempt a pool facility or person from this Act.

Note 1 A reference to an Act includes a reference to a provision of an Act (see [Legislation Act](#), s 7 (3)).

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

Note 3 Power to make a statutory instrument (including exemptions) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (2) In deciding whether to exempt a pool facility or person from this Act, the Minister must take into account any criteria prescribed by regulation.
- (3) An exemption may be conditional.
- (4) An exemption has no effect—
- (a) to the extent that it is inconsistent with a regulation; or
 - (b) during any period in which a condition of the exemption is not complied with.
- (5) An exemption is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

Part 3 Pool facilities administration— minimum requirements, standards and guidelines

Division 3.1 Pool operators and staff

12 Qualifications, skills and training

- (1) The director-general may determine minimum qualifications, skills and training requirements for operators, employees, people engaged under contract or volunteers at a pool facility.
- (2) A determination may make provision in relation to the following:
 - (a) the kinds of qualifications, training, skills or experience required by—
 - (i) operators of pool facilities; and
 - (ii) in accordance with their functions—employees, people engaged under contract or volunteers at a pool facility;

Examples

- swimming instructor
- swimming coach
- lifeguard

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (b) ongoing professional development and training requirements;
- (c) compliance with requirements under the *Working With Vulnerable People (Background Checking) Act 2011*;

- (d) requirements about record keeping relating to qualifications, training, skills or experience.

Note 1 Power to make a statutory instrument (including a determination) about a particular matter does not limit power to make a statutory instrument about any other matter (see [Legislation Act](#), s 44 (3)).

Note 2 Power to make a statutory instrument (including a determination) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (3) A determination is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the [Legislation Act](#).

Note 2 A determination may apply, adopt or incorporate a law of another jurisdiction or instrument, as in force from time to time (see s 56).

Division 3.2 Standards

13 Operations and management—Ministerial standards

- (1) The Minister may determine standards in relation to the operation or management of a pool facility.
- (2) Before determining a standard, the Minister must—
- (a) consult with people or organisations that conduct an activity or are engaged in the industry to which the standard relates; and
 - (b) invite written submissions on the standard.
- (3) The Minister must consider any submission made under subsection (2) before determining the standard.
- (4) A determination is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

Note 2 A determination may apply, adopt or incorporate a law of another jurisdiction or instrument, as in force from time to time (see s 56).

14 Operational matters

- (1) The director-general may determine standards in relation to the following operational matters at a pool facility:
- (a) occupancy loading;
 - (b) pool loading;
 - (c) water safety initiatives;
 - (d) safety rules and requirements;
 - (e) adult supervision of a child;
 - (f) supervision of patrons by pool facility staff;
 - (g) customer service charters;

Examples

- 1 standard of service patrons can expect at pool facility
- 2 obligations of patrons attending pool facility
- 3 feedback and complaint processes

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (h) mandatory safety equipment;
 - (i) mandatory or recommended best practice signage in relation to a pool facility, including meeting any AS, AS/NZS or international standards for safety signs;
 - (j) record keeping in relation to the operation and management of a pool facility.
- (2) Before determining a standard, the director-general must—
- (a) consult with people or organisations that conduct an activity or are engaged in the industry to which the standard relates; and
 - (b) invite written submissions on the standard.

- (3) The director-general must consider any submission made under subsection (2) before determining the standard.
- (4) A determination is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the [Legislation Act](#).

Note 2 A determination may apply, adopt or incorporate a law of another jurisdiction or instrument, as in force from time to time (see s 56).

15 Conditions of entry and removal

- (1) The director-general may determine standards in relation to conditions of entry to, and requirements for removal from, a pool facility.
- (2) A standard may make provision in relation to the following:
 - (a) conditions of entry, including—
 - (i) health and hygiene requirements; and
 - (ii) the minimum age for entry without adult supervision; and
 - (iii) in relation to assistance animals;
 - (b) rules of behaviour, including behaviour that may cause a person to be excluded or removed from a pool facility;
 - (c) procedures and grounds for excluding people, including in relation to operational matters.

Examples—pars (b) and (c)

- possession of alcohol
- smoking
- exceeding occupancy or pool loading

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) A determination is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the [Legislation Act](#).

Note 2 A determination may apply, adopt or incorporate a law of another jurisdiction or instrument, as in force from time to time (see s 56).

16 Signs

- (1) The director-general may determine standards in relation to signage at a pool facility.
- (2) A standard may make provision in relation to the following:
- (a) minimum construction and design requirements for signs, including words and images that may be displayed on signs;
 - (b) the size and location of signs;
 - (c) signs that are mandatory or reflect best practice;
 - (d) the form of a sign and how patrons may be notified of pool facility conditions of entry and grounds for exclusion or removal.

Examples—form of a sign

- 1 pamphlet containing conditions of entry and grounds for exclusion or removal
- 2 copy of notifiable instrument displayed prominently at pool facility

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) A determination is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the [Legislation Act](#).

Note 2 A determination may apply, adopt or incorporate a law of another jurisdiction or instrument, as in force from time to time (see s 56).

Division 3.3 Pool fees

17 Pool fees and guidelines—category 1 facilities

- (1) This section applies to a category 1 facility.
- (2) An operator of the facility may set fees to be charged for the facility, if there is no fee determination under section 54 (Determination of fees) in force for the facility.
- (3) The Minister may issue guidelines for fees (the *pool fee guidelines*) to be set under subsection (2).
- (4) A pool fee guideline may make provision in relation to the following:
 - (a) the pool facilities that are subject to the pool fee guidelines;
 - (b) the maximum fees that may be set;
 - (c) fees for different purposes or circumstances;
 - (d) fees based on the following:
 - (i) the age of patrons;

Examples

- child
- student
- senior

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (ii) whether a patron is supervising a child or person requiring care;
- (iii) entry with a concession or disability card issued by the Territory, a State or the Commonwealth;
- (iv) combined memberships for pool facility use and other recreational uses;

- (v) community-based membership;
- (vi) entry as a spectator only;
- (vii) entry as a member of a swimming school, training squad or other aquatic group;
- (viii) the nature and scale of the activities being carried out at a pool facility;

Examples—nature of activities

- pool hire for school carnival
 - exclusive lane hire
- (e) fees for lessons or coaching;
 - (f) fees for the sale or hire of articles and equipment;
 - (g) the way fees are notified;
 - (h) the circumstances in which fees may be waived or reduced;
 - (i) the review of the pool fee guidelines and timeframe for the review;
 - (j) any matters the director-general may consider before the fees are applied.

Note Power to make a statutory instrument (including a guideline) about a particular matter does not limit power to make a statutory instrument about any other matter (see [Legislation Act](#), s 44 (3)).

(5) A pool fee guideline is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the [Legislation Act](#).

Note 2 A pool fee guideline may apply, adopt or incorporate a law of another jurisdiction or instrument, as in force from time to time (see s 56).

Division 3.4 Prohibited articles

18 Meaning of *prohibited article*

In this Act:

prohibited article means a thing declared by the director-general to be a prohibited article under section 19.

19 Declaration of prohibited articles

- (1) The director-general may declare a thing to be a prohibited article if satisfied that the thing—
- (a) is, or is likely to be—
 - (i) obscene or offensive; or
 - (ii) an undue risk to the health and safety of people at a pool facility; or
 - (iii) a hazard at a pool facility; or
 - (b) is otherwise inappropriate at a pool facility.

Examples—par (a)

- 1 magazines or audio visual material with an “R” classification
- 2 ceramic or glass item

Example—par (b)

high-power water pistol

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) A declaration may state that a prohibited article must not—
- (a) be sold or offered for sale at a pool facility; or
 - (b) be hired or offered for hire at a pool facility.

Note Power to make a statutory instrument (including a notifiable instrument) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (3) A declaration is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the [Legislation Act](#).

Note 2 A declaration may apply, adopt or incorporate a law of another jurisdiction or instrument, as in force from time to time (see s 56).

Part 4 **Maintenance directions and pool closure orders**

Division 4.1 **Maintenance directions**

20 **Pool facility not maintained**

- (1) This section applies if the director-general is satisfied on reasonable grounds that—
 - (a) an operator of a pool facility is not maintaining the pool facility in good repair or condition; and
 - (b) the failure to maintain the pool facility is causing undue risk to people, property or the environment.
- (2) The director-general may direct the operator to maintain the pool facility (a *maintenance direction*).

Note 1 The director-general's decision to issue a maintenance direction is reviewable by the ACAT (see s 50 and sch 1).

Note 2 The director-general must give the operator a reviewable decision notice in relation to the decision to issue a maintenance direction (see s 50).

- (3) A maintenance direction must be in writing and state the action to be taken to ensure the pool facility is maintained in a way that is likely to prevent or reduce risk to people, property or the environment and include the following:
 - (a) the details of the maintenance work required, or matters to be rectified;
 - (b) when the maintenance direction must be complied with, being a day at least 1 month after the day the maintenance direction is given to the operator;

- (c) if the maintenance required is extensive—
 - (i) that the pool facility be closed for a period (a *stated period*) for maintenance work to be carried out; and
 - (ii) the stated period the pool must be closed.

Note Power to make the direction includes power to amend or repeal the direction (see [Legislation Act](#), s 46).

- (4) A maintenance direction must also state that, if the maintenance direction is not complied with, the pool facility may be closed under section 21 if closure is the only viable option to prevent or reduce undue risk to people, property or the environment.
- (5) If a maintenance direction includes a stated period for the pool to be closed, the maintenance direction must provide that—
 - (a) the stated period starts on a day at least 60 days after the day the maintenance direction is given to the operator of the pool facility; and
 - (b) as far as practicable, the stated period is during the off-peak season.
- (6) A stated period may end on a stated day or on the happening of a stated event.

Division 4.2 Emergency closure orders

21 Emergency closure of pool facility

- (1) The director-general may order an operator of a pool facility to close the pool facility (an *emergency closure order*) if the director-general believes on reasonable grounds that—
 - (a) the operator did not comply with a maintenance direction, and the closure of the pool facility is the only viable option to prevent or reduce undue risk to people, property or the environment; or

- (b) the immediate closure of a pool facility is the only viable option to prevent or reduce undue risk to people, property or the environment.
- (2) If an emergency closure order is made under subsection (1), the director-general must immediately, or as soon as practicable, give written notice to the operator stating the following:
- (a) the pool facility that must be closed by the operator;
 - (b) the grounds on which the order is given;
 - (c) the date of issue of the order;
 - (d) that the order starts on the day the order is given;
 - (e) when the order ends;
 - (f) that if the order is not complied with, the operator may be committing an offence under section 22;
 - (g) that the operator may apply for the cancellation of the order under section 23 and details about the application process.

Note For how documents may be given, see the [Legislation Act](#), pt 19.5.

- (3) For subsection (2) (e), the order may end on a stated day or on the happening of a stated event.

22 Offence—fail to comply with emergency closure order

- (1) A person commits an offence if the person—
- (a) is subject to an emergency closure order; and
 - (b) the person fails to comply with the order.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

23 Cancellation of emergency closure order—application

- (1) An operator of a pool facility who is required to close the pool facility by an emergency closure order may apply, in writing, not later than 7 days after the day the order is given, to the director-general for cancellation of the emergency closure order stating reasons why the order should be cancelled.
- (2) Before making a decision on the application, the director-general must consider—
 - (a) the application; and
 - (b) the grounds on which the emergency closure order was given; and
 - (c) the current state of the pool facility to which the order relates.
- (3) The director-general may cancel the emergency closure order if satisfied on reasonable grounds that the cancellation will not endanger the health or safety of people or cause undue risk to property or the environment.

Note The director-general's decision to refuse to cancel an emergency closure order is reviewable by the ACAT (see s 50 and sch 1).

- (4) The director-general must tell the operator of the decision and, if the director-general refuses to cancel the emergency closure order, the reasons for the refusal.

Note The director-general must also give the operator a reviewable decision notice in relation to the decision to refuse to cancel an emergency closure order (see s 50).

24 Compensation—pool closure

- (1) This section applies if—
 - (a) a person was subject to a maintenance direction or an emergency closure order requiring a pool facility to be closed; and

- (b) the person suffers loss or expense because of the direction or order; and
 - (c) the person considers that there were insufficient grounds for giving the direction or order.
- (2) The person may apply, in writing, to the Minister for compensation, setting out the reasons for the application.
- (3) The Minister must—
- (a) decide whether to pay any compensation to the person and, if so, the amount of the compensation; and
 - (b) give the person written notice of the Minister’s decision.
- Note* For how documents may be given, see the [Legislation Act](#), pt 19.5.
- (4) If the Minister is satisfied that there were insufficient grounds for giving the direction or order, the Territory must pay the person the reasonable compensation decided by the Minister.
- (5) However, compensation is not payable to the person—
- (a) in relation to any loss or expense suffered by the person because of an act or omission of the person; or
 - (b) if the person caused or contributed to the circumstances that caused the direction or order to be given; or
 - (c) if the direction or order was given in accordance with this Act and in good faith.
- Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).
- (6) If the Minister does not decide the application within 28 days after the day the Minister receives the application, the Minister is taken to have refused to pay compensation.

Part 5 Refusing entry and removal powers

25 Definitions—pt 5

- (1) In this part:

authorised person, in relation to a pool facility, means—

- (a) the operator; or
- (b) an employee of the operator; or
- (c) a licensed security guard engaged by the operator.

licensed security guard means a person who holds a security licence.

- (2) In this section:

security licence means a licence under the [Security Industry Act 2003](#) that authorises the licensee to carry out crowd control under that Act, whether or not it authorises the licensee to do anything else.

26 Authorised person may refuse entry

- (1) An authorised person may refuse entry to a pool facility to a child if the child is—
- (a) under the minimum age; and
 - (b) not accompanied by an adult.
- (2) An authorised person may also refuse a person entry to a pool facility if the authorised person believes on reasonable grounds that—
- (a) the person has committed, or is likely to commit, an offence against this Act; or

- (b) the person has contravened, or is likely to contravene a condition of entry to the pool facility; or
- (c) admitting the person will be inconsistent with a standard.

Example—par (c)

pool or occupancy loading exceeded

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) An authorised person may only refuse entry to a person under subsection (2) (b) or (c) if the conditions of entry or standard, and grounds for exclusion for contravening those conditions or to meet a standard, are displayed or made available at the entry of the pool facility.
- (4) In this section:

minimum age means the minimum age mentioned in a standard determined under section 15 (Conditions of entry and removal).

standard means a standard determined under division 3.2.

27 Authorised person's directions

- (1) This section applies if an authorised person believes on reasonable grounds that a person at a pool facility—
 - (a) has committed, is committing or is about to commit an offence against this Act; or
 - (b) has contravened, or is likely to contravene, a condition of entry to the pool facility.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (2) The authorised person may direct the person—
- (a) as reasonably necessary for—
 - (i) the good management of the pool facility; or
 - (ii) the safety and enjoyment of people at the pool facility; or
 - (b) to immediately leave the pool facility.

Examples—when direction to leave may be given

- 1 for drinking alcohol or smoking
- 2 for damaging infrastructure
- 3 for other behaviour that contravenes a condition of entry

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) For subsection (1) (b), an authorised person may only give a direction under subsection (2) (b) if the conditions of entry and grounds for removing a person for contravening those conditions are displayed or made available at the entry of the pool facility.
- (4) If an authorised person gives a direction under subsection (2) (b) to a person, the authorised person must tell the person that it is an offence to fail to comply with the direction.
- (5) A direction under subsection (2) (b) is effective whether or not the person paid an entry fee to the pool facility.

28 Authorised person’s direction—operational reasons

- (1) An authorised person may direct a person at any time to immediately leave a pool facility because the pool facility is required for a specific purpose.

Example

a pool facility is to be used for a school carnival or other event

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) If an authorised person directs a person to leave, the authorised person must tell the person that it is an offence to fail to comply with the direction.
- (3) A direction under subsection (1) is effective whether or not the person paid an entry fee to the pool facility.
- (4) However, unless a sign is displayed at the entry of the pool facility stating that the facility will be closed for a specific purpose, the person who is directed to leave under subsection (1) is entitled to a full refund of the person's entry fee.

29 Disability—assistance animals

- (1) This section applies to a person who requires the aid of, and is accompanied by, an assistance animal.
- (2) The assistance animal may enter and remain at a pool facility only if the animal is accompanying the person.
- (3) The person must not cause or allow the assistance animal to enter or remain in a pool.
- (4) If an assistance animal enters a pool, an authorised person may direct the person to remove the animal from the pool.
- (5) If the person fails to comply with a direction under subsection (4), the authorised person may direct the person to immediately leave the pool facility.
- (6) An authorised person may only give a direction under subsection (5) if the conditions of entry in subsections (2) and (3), and the effect of contravening those conditions, are displayed or made available at the entry of the pool facility.
- (7) If an authorised person gives a direction under subsection (5) to a person, the authorised person must tell the person that it is an offence to fail to comply with the direction.

- (8) A direction under subsection (5) is effective whether or not the person paid an entry fee to the pool facility.

30 Offence—fail to comply with direction

- (1) A person commits an offence if the person—
- (a) is subject to a direction to leave under section 27 (2) (b), section 28 (1) or section 29 (5); and
 - (b) fails to comply with the direction.

Maximum penalty: 10 penalty units.

Note **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if, before giving the direction, the authorised person did not warn the person that failure to comply with the direction is an offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) If a person commits an offence under subsection (1), a police officer or licensed security guard may use such force as is reasonably necessary to—
- (a) apprehend and detain the person; or
 - (b) remove the person from, or stop the person from re-entering, the pool facility.
- (5) A police officer or licensed security guard exercising powers under subsection (4) may act with such assistance as is reasonably necessary from an authorised person.
- (6) A person must not be detained under subsection (4) (a) for longer than is reasonably necessary to remove the person from the pool facility.

Part 6 Offences

31 Infections

- (1) A person commits an offence if the person—
 - (a) is suffering from a skin, gastrointestinal or other infection that is communicable in or around water; and
 - (b) enters or remains at a pool facility.

Maximum penalty: 5 penalty units.

- (2) This section does not apply if the person has a medical certificate or report from a doctor stating that the person is not a health risk to other people at the pool facility.

32 Smoking prohibited

- (1) A person commits an offence if the person smokes in a pool facility.
Maximum penalty: 5 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply if the pool facility has no signage indicating that the facility is smoke-free.

33 Consumption of liquor

- (1) A person commits an offence if the person—
 - (a) is at a pool facility; and
 - (b) consumes liquor or low-alcohol liquor.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.

34 Possession of liquor

- (1) A person commits an offence if the person—
 - (a) is at a pool facility; and
 - (b) possesses liquor or low-alcohol liquor.Maximum penalty: 5 penalty units.
- (2) An offence against this section is a strict liability offence.

35 Graffiti etc

- (1) A person commits an offence if the person—
 - (a) marks any part of a pool facility; and
 - (b) is not authorised to mark the pool facility by the operator of the pool facility.Maximum penalty: 5 penalty units.
- (2) In this section:
mark means write on, draw on or paint.

36 Damaging infrastructure

- (1) A person commits an offence if the person—
 - (a) is at a pool facility; and
 - (b) engages in conduct that damages or interferes with any infrastructure of the pool facility; and
 - (c) is reckless about whether the conduct is likely to damage or interfere with any infrastructure of the pool facility; and
 - (d) is not authorised by the operator of the pool facility to engage in the conduct.Maximum penalty: 10 penalty units.

(2) In this section:

infrastructure includes a lock, valve, tap, pipework, machinery, apparatus, furniture, fittings, showers, toilets or changing rooms.

Part 7 Enforcement

Division 7.1 Inspectors and identity cards

37 Inspectors

- (1) The director-general may appoint a public servant as an inspector for this Act.

Note 1 For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) Also, a police officer is an inspector for this Act.

38 Identity cards

- (1) This section applies in relation to an inspector appointed under section 37 (1).
- (2) The director-general must give an inspector an identity card stating the person's name and that the person is an inspector.
- (3) The identity card must show—
 - (a) a recent photograph of the inspector; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.
- (4) A person commits an offence if the person—
 - (a) stops being an inspector; and
 - (b) does not return the person's identity card to the director-general as soon as practicable, but not later than 7 days, after the day the person stops being an inspector.

Maximum penalty: 1 penalty unit.

(5) Subsection (4) does not apply to a person if the person's identity card has been—

- (a) lost or stolen; or
- (b) destroyed by someone else.

Note The defendant has an evidential burden in relation to the matters mentioned in s (5) (see [Criminal Code](#), s 58).

(6) An offence against this section is a strict liability offence.

39 Power not to be exercised before identity card shown

- (1) This section applies in relation to an inspector appointed under section 37 (1).
- (2) The inspector may exercise a power under this Act in relation to a person only if the inspector first shows the person the inspector's identity card.

Division 7.2 Powers of inspectors

40 Power to enter pool facility

- (1) For this Act, an inspector may—
 - (a) for a category 1 facility—
 - (i) enter a pool facility in accordance with a facility management agreement for the facility; or
 - (ii) if the facility management agreement does not provide for powers of entry to a pool facility—enter the pool facility at any time; or
 - (b) in any other case—
 - (i) during the stated period, enter a pool facility that the public is entitled to use or that is open to the public (whether or not on payment of money); or

- (ii) at any time, enter a pool facility with the consent of the operator of the pool facility; or
 - (iii) at any time, enter a pool facility if the inspector believes on reasonable grounds that the circumstances are so serious and urgent that immediate entry to the pool facility is necessary.
- (2) However, subsection (1) (b) (i) does not authorise entry into a part of the pool facility that is being used only for residential purposes.
 - (3) An inspector may, without the consent of the operator, enter land around the pool facility to ask for consent to enter the pool facility.
 - (4) To remove any doubt, an inspector may enter the pool facility under subsection (1) without payment of an entry fee or other charge.
 - (5) In this section:

stated period means the period from Monday to Saturday between 8.00 am and 6.00 pm.

41 Production of identity card

- (1) An inspector must not remain at a pool facility entered under this part if the inspector does not produce the inspector's identity card when asked by the operator of the pool facility.
- (2) A police officer must not remain at a pool facility entered under this part if the officer does not produce evidence that the officer is a police officer when asked by the operator of the pool facility.

42 Consent to entry

- (1) When seeking the consent of an operator of a pool facility to enter the pool facility under section 40 (1) (b) (ii), an inspector must—
 - (a) either—
 - (i) for an inspector appointed under section 37 (1)—produce the inspector's identity card; or

- (ii) for a police officer—produce evidence that the person is a police officer; and
- (b) tell the operator—
 - (i) the purpose of the entry; and
 - (ii) that anything found under this part may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the operator of a pool facility consents, the inspector must ask the operator to sign a written acknowledgment (an *acknowledgment of consent*)—
 - (a) that the operator was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found under this part may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the operator consented to the entry; and
 - (c) stating the time and date when consent was given.
- (3) If the operator of a pool facility signs an acknowledgment of consent, the inspector must as soon as practicable give a copy to the operator.

Note For how documents may be given, see the [Legislation Act](#), pt 19.5.
- (4) A court must find that the operator of a pool facility did not consent to an inspector entering the pool facility under this part if—
 - (a) the question arises in a proceeding in the court whether the operator consented to the entry; and

- (b) an acknowledgment of consent is not produced in evidence;
and
- (c) it is not proved that the operator consented to the entry.

43 Advance notification and consent to entry

- (1) An inspector may seek the advance consent of an operator of a pool facility to enter the pool facility.
- (2) When seeking the advance consent of the operator to enter the pool facility, an inspector must notify the operator, in writing—
 - (a) either—
 - (i) for an inspector appointed under section 37 (1)—giving a copy of the inspector’s identity card; or
 - (ii) for a police officer—providing evidence that the person is a police officer; and
 - (b) stating—
 - (i) the proposed time and day when the entry would be made; and
 - (ii) the purpose of the entry; and
 - (iii) that anything found under this part may be used in evidence in court; and
 - (iv) that consent may be refused; and
 - (c) asking the operator to—
 - (i) sign the acknowledgment of advance consent if the operator consents to the entry; and
 - (ii) return the acknowledgment of advance consent to the inspector.

- (3) If the operator of the pool facility signs and returns the acknowledgment of advance consent, the inspector must—
- (a) enter the pool facility at the proposed time and day mentioned in subsection (2); and
 - (b) when entering the pool facility—
 - (i) either—
 - (A) for an inspector appointed under section 37 (1)—produce the inspector’s identity card; or
 - (B) for a police officer—produce evidence that the person is a police officer; and
 - (ii) produce the acknowledgment of advance consent; and
 - (iii) give the operator a copy of the acknowledgment of advance consent.
- (4) In this section:

acknowledgment of advance consent means a written statement signed by the operator of a pool facility stating the following:

- (a) that the operator was told—
 - (i) the proposed time and day when the entry would be made; and
 - (ii) the purpose of the entry; and
 - (iii) that anything found under this part may be used in evidence in court; and
 - (iv) that consent may be refused;
- (b) that the operator consents in advance to the entry at the proposed time and day;
- (c) the time and day when the advance consent was given.

44 General powers on entry to pool facility

- (1) An inspector who enters a pool facility under this part may, for this Act, do 1 or more of the following in relation to the pool facility or anything at the pool facility:

- (a) inspect or examine;
- (b) inspect and copy, or take an extract from, any document at the pool facility;

Note **Document**—see the [Legislation Act](#), dictionary, pt 1.

- (c) take measurements or conduct tests;
- (d) take samples;
- (e) take photographs, films or audio, video or other recordings;
- (f) require the operator of the pool facility to give information, answer questions, or produce documents or anything else, reasonably needed to exercise the inspector's powers under this part.

Note The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (2) A person must take reasonable steps to comply with a requirement made of the person under subsection (1) (f).

Maximum penalty: 20 penalty units.

45 Other powers

- (1) An inspector may, by written notice, require the operator of a pool facility to give information, answer questions, or produce documents or anything else, reasonably needed to exercise the inspector's powers under this part.

Note The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (2) A person must take reasonable steps to comply with a requirement made of the person under subsection (1).

Maximum penalty: 20 penalty units.

Division 7.3 Miscellaneous

46 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an inspector must take all reasonable steps to ensure that the inspector causes as little inconvenience, detriment and damage as practicable.
- (2) If an inspector damages anything in the exercise or purported exercise of a function under this part, the inspector must give written notice of the particulars of the damage to—
- (a) for an asset owned by the Territory—the operator of the pool facility; or
 - (b) in any other case—the person the inspector believes on reasonable grounds is the owner of, or the person responsible for, the thing.

Note For how documents may be given, see the [Legislation Act](#), pt 19.5.

- (3) The notice must state that—
- (a) the person may claim compensation from the Territory if the person suffers loss or expense because of the damage; and
 - (b) compensation may be claimed and ordered in a proceeding for compensation brought in a court of competent jurisdiction; and
 - (c) the court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.

- (4) If the damage happens at a pool facility entered under this part in the absence of the operator of the pool facility, the notice may be given by leaving it, secured conspicuously, at the pool facility.

47 Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an inspector.
- (2) Compensation may be claimed and ordered in a proceeding for—
- (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Division 7.4 Auditing and compliance

48 Appointment of auditor

- (1) The director-general may appoint a suitably qualified person to conduct an audit of a pool facility (an *auditor*) in relation to water safety measures at the premises.

Note 1 For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) The operator of the pool facility being audited must—
 - (a) comply with the reasonable requirements of the auditor; and
 - (b) allow the auditor access to the premises and information reasonably required to conduct the audit; and
 - (c) pay any fee for the audit that is payable to the auditor.
- (3) The auditor must provide a written report to the director-general and the operator of the pool facility audited, within the time set by the director-general.

Part 8 Notification and review of decisions

49 Meaning of *reviewable decision*—pt 8

In this part:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

50 Reviewable decision notices

If the director-general makes a reviewable decision, the director-general must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The director-general must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see [ACT Civil and Administrative Tribunal Act 2008](#), s 67A).

Note 2 The requirements for a reviewable decision notice are prescribed under the [ACT Civil and Administrative Tribunal Act 2008](#).

51 Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the [ACT Civil and Administrative Tribunal Act 2008](#) for the application, the form must be used.

Part 9 Miscellaneous

52 Liability for loss of, or damage to, property

- (1) No action lies against the Territory by reason of the loss of, or damage to, property occurring in any pool facility.
- (2) No action lies against the operator of, or an employee of the operator at, any pool facility by reason of the loss of, or damage to, property occurring in the pool facility as a result of an act or omission of the operator or the employee in the course of the operator exercising the operator's functions, or the employee's employment.

53 Protection from liability

- (1) A public servant exercising a function under this Act does not incur civil liability for an act or omission done honestly and without recklessness for this Act.
- (2) Any civil liability that would, apart from this section, attach to a public servant attaches instead to the Territory.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

54 Determination of fees

- (1) The Minister may determine fees for this Act.

Note The [Legislation Act](#) contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

55 Exemption from fees

- (1) The Minister may exempt a pool facility from the application of any fees determined under section 54.
- (2) An exemption is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

56 Statutory instruments—application etc of other laws or instruments

- (1) A statutory instrument under this Act may apply, adopt or incorporate a law of another jurisdiction or an instrument, as in force from time to time.

Example—incorporated instrument

Royal Life Saving Society—Australia guidelines or standards in relation to—

- qualifications, skills or training for lifeguards or coaches
- water safety initiatives
- signage

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the [Legislation Act](#), s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the [Legislation Act](#).

Note 3 A reference to an instrument includes a reference to a provision of an instrument (see [Legislation Act](#), s 14 (2)).

Note 4 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) The [Legislation Act](#), section 47 (6) does not apply in relation to an AS, AS/NZS or international standard applied, adopted or incorporated under subsection (1).

Note An AS, AS/NZS or international standard does not need to be notified under the [Legislation Act](#) because s 47 (6) does not apply (see [Legislation Act](#), s 47 (7)). An AS, AS/NZS or international standard may be purchased at www.standards.org.au.

57 Approved forms

- (1) The director-general may approve forms for this Act.
- (2) If the director-general approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

58 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) A regulation may create offences and fix maximum penalties of not more than 20 penalty units for the offences.

59 Regulations—first-aid equipment and facilities

A regulation may make provision in relation to the following:

- (a) the minimum requirements for first-aid equipment and facilities;
- (b) the pool facilities that must comply with first-aid equipment and facilities requirements;
- (c) design specifications for first-aid facilities.

Examples—par (a)

- first-aid kit
- rescue and resuscitation equipment
- spinal boards and extrication collars
- disposable bandages, swabs, hygiene items
- stretchers, blankets, pillows

Examples—par (c)

- dedicated room
- washing facilities
- washable floors
- storage requirements

Note 1 Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

Note 2 An example is part of the Act is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

Schedule 1 Reviewable decisions

(see pt 8)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	20 (2)	issue maintenance direction	person directed
2	23 (3)	refuse to cancel emergency closure order	person ordered

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- Act
- adult
- AS (see s 164 (1))
- AS/NZS (see s 164 (2))
- Australian Standard (see s 164 (1))
- child
- Commonwealth
- director-general (see s 163)
- disallowable instrument (see s 9)
- document
- magistrate
- police officer
- public servant
- State
- statutory instrument (see s 13)
- the Territory.

assistance animal—see the [Domestic Animals Act 2000](#), dictionary.

authorised person, in relation to a pool facility, for part 5 (Refusing entry and removal powers)—see section 25 (1).

category 1 facility—see section 7.

condition of entry means a condition of entry included in a standard determined under section 15.

emergency closure order—see section 21.

facility management agreement means a contractual arrangement with the Territory for the management of a pool facility.

inspector means an inspector mentioned in section 37.

law of another jurisdiction—see the [Legislation Act](#), section 47 (10).

licensed security guard, for part 5 (Refusing entry and removal powers)—see section 25 (1).

liquor—see the [Liquor Act 2010](#), section 11.

low-alcohol liquor—see the [Liquor Act 2010](#), dictionary.

maintenance direction—see section 20 (2).

operator, of a pool facility—see section 8.

pool—see section 9.

pool facility—see section 10.

pool fee guidelines—see section 17.

premises includes land, structure, vehicle or boat.

prohibited article—see section 18.

reviewable decision, for part 8 (Notification and review of decisions)—see section 49.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Public Pools Act 2015 A2015-7

notified LR 31 March 2015

s 1, s 2 commenced 31 March 2015 (LA s 75 (1))

remainder commenced 1 July 2015 (s 2 and [CN2015-8](#))

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Repeals and consequential amendments

pt 10 hdg om LA s 89 (3)

Legislation repealed

s 60 om LA s 89 (3)

Legislation amended—sch 2

s 61 om LA s 89 (3)

Transitional

pt 20 hdg exp 1 July 2017 (s 203)

Meaning of commencement day—pt 20

s 200 exp 1 July 2017 (s 203)

Facility management agreements

s 201 exp 1 July 2017 (s 203)

Transitional regulations

s 202 exp 1 July 2017 (s 203)

Expiry—pt 20

s 203 exp 1 July 2017 (s 203)

Consequential amendments

sch 2 om LA s 89 (3)

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 July 2015	1 July 2015- 1 July 2017	not amended	new Act

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