



Australian Capital Territory

# Building (Swimming Pool Safety) Legislation Amendment Act 2023

A2023-46

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J2022-312

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Australian Capital Territory

# **Building (Swimming Pool Safety) Legislation Amendment Act 2023**

**A2023-46**

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An Act to amend legislation about swimming pool safety, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Building (Swimming Pool Safety) Legislation Amendment Act 2023*.

### 2 Commencement

- (1) This Act (other than sections 5, 6 and 29) commences on 1 May 2024.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) Sections 5, 6 and 29 commence on 1 May 2028.

### 3 Legislation amended

This Act amends the legislation mentioned in parts 2 to 7.

## Part 2 Building Act 2004

### 4 New part 5A

*insert*

## Part 5A Regulated swimming pools

### Division 5A.1 Preliminary

#### 83 Definitions—pt 5A

(1) In this part:

*access point*—

- (a) means the portion of a safety barrier that is designed to provide access through the barrier to a regulated swimming pool or the water in the pool; and
- (b) includes a door.

*authorised person*—means a person appointed, or taken to be appointed, under section 83P.

*compliance certificate*, for a regulated swimming pool—see section 83K (1).

*exemption certificate*, for a regulated swimming pool—see section 83D (6).

*Ministerial exemption* means an exemption that applies to a regulated swimming pool under section 83D.

*occupier*, of premises, includes any person who is for the time being in charge of the premises and, if there are 2 or more occupiers of the premises, includes any one of the occupiers.

**owner**, of premises, means—

- (a) for premises other than common property—the registered proprietor of the lease for the land on which the premises are located; or
- (b) for premises that are a unit—the registered proprietor of the lease for the unit; or
- (c) for premises that are common property—the owners corporation for the common property.

**safety barrier**, for a regulated swimming pool—

- (a) means any structure or naturally occurring feature that forms, or forms part of, a continuous perimeter that is effective as a safe child resistant barrier to the pool or the water in the pool; and
- (b) includes—
  - (i) a fence, post, panel, access point, child-resistant doorset, wall, balustrade or part of a building; and
  - (ii) for a pool that is a spa—a lockable child-resistant structure; and
  - (iii) if a Ministerial exemption has been granted for the pool—the barrier that restricts access to a swimming pool or water in the pool permitted under the exemption; and
  - (iv) anything else prescribed by regulation

**safety standards**, for a regulated swimming pool—see section 83A.

**standing exemption** means an exemption that applies to a regulated swimming pool under section 83C.

- (2) In this section:

**child-resistant doorset** means a safety barrier that comprises a door, door frame, self-closing device and latch.



*common property*—see the *Unit Titles Act 2001*, section 13.

*registered proprietor*, in relation to a lease, means the person who is registered under the *Land Titles Act 1925* as the proprietor of the lease.

*unit*—see the *Unit Titles Act 2001*, section 9.

**83A      *Meaning of safety standards—pt 5A***

In this part:

*safety standards*, for a regulated swimming pool, means the standards prescribed by regulation.

**83B      *Meaning of regulated swimming pool***

(1) In this Act:

*regulated swimming pool*—

- (a) means an excavation, structure or vessel that—
  - (i) can be filled with water to a depth of 300mm or more; and
  - (ii) is used, designed or manufactured mainly for human aquatic activity; and
- (b) includes the following:
  - (i) a demountable swimming pool;
  - (ii) a flotation tank or flotation tub not equipped to create bubbles or turbulence into water;
  - (iii) a spa; but
- (c) does not include the following:
  - (i) a bath in a bathroom;
  - (ii) a birthing pool used only for waterbirths;

- (iii) an ornamental pond;
- (iv) a water feature;
- (v) a pool at a category 1 facility;
- (vi) a pool at short-term accommodation premises;
- (vii) an inflatable pool;
- (viii) anything else prescribed by regulation.

(2) In this section:

**category 1 facility**—see the *Public Pools Act 2015*, section 7.

**demountable swimming pool** means a swimming pool—

- (a) that can be assembled and disassembled by hand, or with hand tools, without damaging the pool's components; or
- (b) that—
  - (i) can be inflated and deflated; and
  - (ii) has a filtration system.

**inflatable pool** means a pool that—

- (a) can be inflated and deflated; but
- (b) does not have a filtration system.

**mobile home park**—see the *Residential Tenancies Act 1997*, dictionary.

**short-term accommodation premises**—

- (a) means premises used to provide short-term accommodation to members of the public as part of a commercial transaction; and
- (b) includes the following kinds of accommodation:
  - (i) backpacker;

- (ii) bed and breakfast;
  - (iii) hotel;
  - (iv) mobile home park;
  - (v) motel;
  - (vi) resort;
  - (vii) serviced apartment; but
- (c) does not include premises that are also used, or able to be used, for residential purposes.

**Examples—par (c)**

- 1 premises used as a residential home made available under a home exchange scheme
- 2 premises able to be used for a residential home made available for short-term rental accommodation
- 3 an apartment complex that contains a mix of residential apartments and serviced apartments

***spa***—

- (a) means an excavation, structure or vessel able to retain water for human immersion and equipped to create water bubbles or water turbulence into the water; and
- (b) includes—
  - (i) a swim spa; and
  - (ii) a flotation tank or flotation tub equipped to create bubbles or turbulence into water; but
- (c) does not include a spa bath in a bathroom.

## Division 5A.2 Compliance with safety standards

### Subdivision 5A.2.1 Exemptions

#### 83C Standing exemption

A regulated swimming pool is exempt from the safety standards if a circumstance prescribed by regulation applies to the pool.

#### 83D Ministerial exemption

- (1) The owner of premises on which a regulated swimming pool is located (the *applicant*) may apply in writing to the Minister for the pool to be exempt from all or part of the safety standards.
- (2) On application, the Minister may grant an exemption only if a circumstance prescribed by regulation applies to the regulated swimming pool.

*Note 1* The Minister may make guidelines for granting exemptions (see s 83G).

*Note 2* A Minister may delegate the Minister's functions under an Act or statutory instrument to anyone else (see [Legislation Act](#), s 254A).

- (3) An exemption may be subject to conditions the Minister considers appropriate.
- (4) The Minister may ask the applicant for further information the Minister reasonably needs to consider the application.
- (5) In exercising the Minister's functions under this section, the Minister may—
  - (a) seek advice from an entity the Minister considers suitable to give advice about a matter relevant to the exercise of the functions; and
  - (b) consider any other relevant information.

- (6) If the Minister grants an exemption, the Minister must issue a certificate (an *exemption certificate*) to the owner that states—
- (a) the extent to which the regulated swimming pool is exempt from the safety standards; and
  - (b) the grounds for the exemption; and
  - (c) any condition on the exemption and the reason for the condition; and
  - (d) the date of issue of the certificate; and
  - (e) it is an offence for the owner to fail to notify the Minister of a change of circumstances that affects a ground on which the exemption was granted; and
  - (f) anything else prescribed by regulation.
- (7) An exemption certificate for a regulated swimming pool is in force for the period stated in the exemption certificate which must be not longer than 5 years.

### **83E Variation of Ministerial exemption**

- (1) This section applies to a regulated swimming pool to which a Ministerial exemption applies.
- (2) The owner of premises on which the regulated swimming pool is located (the *applicant*) may apply, in writing, to the Minister to vary a condition that applies to the exemption.
- (3) On application, the Minister may vary the exemption if the Minister—
  - (a) has considered any reasons provided by the applicant in the application; and
  - (b) is satisfied it is appropriate to vary the exemption.

- (4) Also, the Minister may vary an exemption on the Minister's own initiative if the Minister—
- (a) has given an owner of premises on which the pool is located written notice that—
    - (i) states how the Minister proposes to vary the exemption; and
    - (ii) states the reason the Minister proposes to vary the exemption; and
    - (iii) tells the owner that a written response may be given to the Minister about the matters stated in the notice not later than 28 days after the owner receives the notice; and
  - (b) has considered any response given in accordance with paragraph (a) (iii); and
  - (c) is satisfied that it is appropriate to vary the exemption.
- (5) A variation of the exemption takes effect—
- (a) 90 days after the day notice is given to the owner; or
  - (b) if another day is stated in the notice—on the stated day.

### **83F Revocation of exemption**

- (1) The Minister may revoke a Ministerial exemption that applies to a regulated swimming pool on the Minister's own initiative if satisfied that any of the following apply:
- (a) the owner of the premises on which the pool is located has failed to comply with a condition of the exemption;
  - (b) the owner of the premises knowingly or recklessly used false or misleading information in the application for the exemption, or an application for variation of the exemption;

- (c) no circumstance mentioned in section 83D (2) applies to the pool;
  - (d) there is an immediate and serious risk to the health or safety of a person.
- (2) However, the Minister must not revoke an exemption unless the Minister—
- (a) has given the owner of the premises written notice that—
    - (i) states that the Minister proposes to revoke the exemption; and
    - (ii) states the reason the Minister proposes to revoke the exemption; and
    - (iii) tells the owner that the owner may give a written response to the Minister about the matters stated in the notice not later than 28 days after the owner receives the notice; and
  - (b) has considered any response given in accordance with paragraph (a) (iii); and
  - (c) is satisfied that it is appropriate to revoke the certificate.
- (3) Subsection (2) does not apply to a revocation made under subsection (1) (d).
- (4) The revocation of the exemption takes effect—
- (a) for a revocation under subsection (1) (d)—immediately; or
  - (b) in any other case—
    - (i) 90 days after the day notice is given to the owner; or
    - (ii) if another day is stated in the notice—on the stated day.

**83G Minister may make guidelines**

- (1) The Minister may make guidelines about applications for, and granting of, Ministerial exemptions.
- (2) A guideline is a disallowable instrument.

**83H Guidance about obligations on owners**

- (1) The Minister must prepare guidance material about the obligations arising under this part of owners of premises on which a regulated swimming pool is located.
- (2) Guidance material is a notifiable instrument.
- (3) This section expires on 1 May 2028.

**83I Failure to comply with exemption certificate conditions**

- (1) A person commits an offence if—
  - (a) the person is the owner of premises on which a regulated swimming pool is located; and
  - (b) a Ministerial exemption applies to the pool; and
  - (c) the person fails to comply with a condition of the exemption.Maximum penalty: 20 penalty units.
- (2) An offence against this section is a strict liability offence.

**83J Failure to notify change of exemption circumstances**

- (1) A person commits an offence if—
  - (a) the person is the owner of premises on which a regulated swimming pool is located; and
  - (b) a Ministerial exemption applies to the pool; and



- (c) a change of circumstances happens which affects a ground on which the exemption was granted; and
- (d) the person fails to notify the Minister of the change of circumstances within 14 days of the change happening.

Maximum penalty: 20 penalty units.

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

### **Subdivision 5A.2.2 Compliance certificates**

#### **83K Compliance certificates**

- (1) An authorised person must inspect a regulated swimming pool before giving the owner of the premises on which the pool is located (the *owner*) a written certificate (a *compliance certificate*) that states the following:
  - (a) whether or not the pool complies with the safety standards, to the extent it is not subject to a Ministerial exemption;
  - (b) if the pool is subject to a Ministerial exemption—details of the exemption including any conditions on the exemption;
  - (c) the date of issue of the certificate;
  - (d) anything else prescribed by regulation.
- (2) If an authorised person is satisfied that the regulated swimming pool complies with the safety standards, the authorised person must as soon as practicable after the inspection give the owner a compliance certificate for the pool.

- (3) If an authorised person is satisfied that the regulated swimming pool does not comply with the safety standards but the non-compliance does not create a serious and immediate safety risk, the authorised person must, as soon as practicable but not later than 7 days after the day of inspection, give the owner written notice (a *pool rectification notice*) that states the following:
- (a) the pool fails to comply with the safety standards and the reasons why it fails to comply;
  - (b) the steps needed to rectify the failure to comply;
  - (c) the day (the *rectification day*), within 6 months of giving the notice, by which the pool must be rectified to comply;
  - (d) anything else prescribed by regulation.
- (4) If an authorised person is satisfied that the regulated swimming pool does not comply with the safety standards and the non-compliance creates a serious and immediate safety risk, the authorised person must immediately after the inspection give the owner a compliance certificate for the pool.
- (5) If an authorised person has given the owner a rectification notice for the pool, the authorised person—
- (a) may give the owner a compliance certificate for the pool only after further inspection of the pool; and
  - (b) if giving a compliance certificate to the owner—must give the certificate as soon as practicable, but not later than 14 days, after the day on which the further inspection happens.

- (6) An authorised person must give the construction occupations registrar—
- (a) a copy of a pool rectification notice given under subsection (3) within 14 days after the day the notice is given; and
  - (b) a copy of a compliance certificate given under section (5) (b), but only if the compliance certificate states that the pool does not comply with the safety standards to the extent that the pool is not subject to a Ministerial exemption, within 14 days after the day the certificate is given; and
  - (c) a copy of a compliance certificate given under subsection (4) within 7 days after the day the certificate is given.

**83L Period for which compliance certificate in force**

- (1) A compliance certificate for a regulated swimming pool is in force for the period beginning on the day the certificate is issued and ending on the earliest of the following:
- (a) whichever of the following applies:
    - (i) for a certificate issued before 1 May 2028—30 April 2032;
    - (ii) for a certificate issued on or after 1 May 2028—the day 5 years after the period begins;
  - (b) the day the regulated swimming pool, or the safety barrier for the pool, is substantially altered;
  - (c) if a Ministerial exemption applies to the regulated swimming pool and the exemption is revoked—the day on which the revocation of the exemption takes effect.

*Note* The reason for the revocation of a Ministerial exemption affects when the revocation takes effect (see s 83F (4)).

(2) In this section:

*substantially altered*—

- (a) in relation to a swimming pool—means at least 50% of the pool is modified, demolished or replaced; and
- (b) in relation to a safety barrier for a swimming pool—means the safety barrier is—
  - (i) demolished or replaced; or
  - (ii) altered as prescribed by regulation.

**83M Failure to lodge compliance certificate etc for regulated swimming pool**

- (1) A person commits an offence if—
- (a) the person is the owner of premises on which a regulated swimming pool is located; and
  - (b) the pool was built before 1 May 2013; and
  - (c) the pool is not subject to a standing exemption; and
  - (d) the person fails to lodge with the construction occupations registrar before 1 June 2028—
    - (i) a compliance certificate in force for the pool within 30 days after the certificate is given to the person by an authorised person; and
    - (ii) if the pool has been granted an exemption certificate—the exemption certificate at the same time as the compliance certificate; and
  - (e) a document required to be lodged under subsection (1) (d) has not been lodged by a previous owner of the premises.

Maximum penalty: 20 penalty units.

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

### **Division 5A.3      Swimming pool safety**

#### **83N      Failure to maintain swimming pool safety barrier**

- (1) A person commits an offence if—
- (a) the person is the owner of premises on which a regulated swimming pool is located; and
  - (b) the person fails to maintain a safety barrier for the pool that is an effective and safe child-resistant barrier.

Maximum penalty: 30 penalty units.

- (2) For subsection (1) (b) a safety barrier is an effective and safe child-resistant barrier if the barrier—
- (a) complies with the safety standards for a regulated swimming pool; or
  - (b) if the swimming pool is subject to a Ministerial exemption—complies with the safety standards to the extent the pool is not exempt from the standards; or
  - (c) complies with a requirement prescribed by regulation.
- (3) An offence against this section is a strict liability offence.
- (4) It is a defence to a prosecution against this section if the defendant proves that the regulated swimming pool is subject to a standing exemption.

*Note*      The defendant has a legal burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 59).

**83O Failure to close swimming pool safety barrier**

- (1) A person commits an offence if—
  - (a) the person is the occupier of premises on which a regulated swimming pool is located; and
  - (b) the person fails to ensure all access points for the pool's safety barrier—
    - (i) are securely closed when they are not in use; or
    - (ii) for a spa with a safety barrier that is a lockable child-resistant structure—the structure is securely fitted and locked when the spa is not in use.

Maximum penalty: 30 penalty units.

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

**Division 5A.4 Administration****83P Authorised person**

- (1) The director-general may appoint a person as an authorised person for this part.
- (2) A person must not be appointed under subsection (1) unless the director-general is satisfied that the person is competent to exercise the functions of an authorised person under this part.
- (3) A regulation may prescribe matters that the director-general must consider in relation to a person's competency for subsection (2) (a).
- (4) A regulation may prescribe—
  - (a) a class of person taken to be appointed as an authorised person under this section; and

(b) the terms of appointment for the class of person.

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

- (5) An appointment under subsection (1)—
- (a) must be for a term of not longer than 5 years; and
  - (b) is a notifiable instrument.
- (6) An authorised person has the following functions:
- (a) assessing whether regulated swimming pools comply with the safety standards;
  - (b) issuing compliance certificates and pool rectification notices for regulated swimming pools;
  - (c) any other function under this part or prescribed by regulation.
- (7) An authorised person must exercise the person's functions in accordance with—
- (a) if the person is appointed under subsection (1)—the instrument of appointment; and
  - (b) however appointed—any directions the director-general gives the person.
- (8) In this section:
- pool rectification notice*—see section 83K (3).

### **83Q Identity cards**

- (1) The director-general must issue an authorised person with an identity card that states the person is an authorised person for this part, and shows—
- (a) a recent photograph of the person; and

- (b) the name of the person; and
  - (c) the date of issue of the card; and
  - (d) the date of expiry for the card; and
  - (e) anything else prescribed by regulation.
- (2) A person commits an offence if—
- (a) the person stops being an authorised person; and
  - (b) the person does not return the person’s identity card to the director-general within 7 days after the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

- (3) Subsection (2) does not apply to a person if the person’s identity card is—
- (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 (3) (see [Criminal Code](#), s 58).

- (4) An offence against subsection (2) is a strict liability offence.

### **83R Person pretending to be authorised person**

- (1) A person commits an offence if the person—
- (a) is not an authorised person; and
  - (b) carries out a function of an authorised person; and
  - (c) is reckless as to whether the person is appointed as an authorised person.

Maximum penalty: 60 penalty units.



- (2) A person commits an offence if the person—
- (a) is not an authorised person; and
  - (b) carries out a function of an authorised person.
- Maximum penalty: 30 penalty units.
- (3) Strict liability applies to—
- (a) subsection (1) (a) and (b); and
  - (b) subsection (2) (a) and (b).

## **Division 5A.5      Miscellaneous**

### **83S      Criminal liability of executive members of owners corporation**

- (1) An executive member of an owners corporation is taken to commit an offence against this part if—
- (a) the corporation commits an offence against this part (a *relevant offence*); and
  - (b) the member was reckless about whether the relevant offence would be committed; and
  - (c) the member was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and
  - (d) the member failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the offence by an individual.

- (2) Subsection (1) does not apply if the owners corporation would have a defence to a prosecution for the relevant offence.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

- (3) This section applies whether or not the owners corporation is prosecuted for, or convicted of, the relevant offence.
- (4) In this section:

*executive member*, of an owners corporation—see the [Unit Titles \(Management\) Act 2011](#), dictionary.

## **5 Period for which compliance certificate in force New section 83L (1) (c)**

*insert*

- (c) the day the owner of the premises on which the swimming pool is located is convicted or found guilty of an offence against section 83OA (Regulated swimming pool fails to comply with safety standards).

## **6 New sections 83OA and 83OB**

*in division 5A.3, insert*

### **83OA Regulated swimming pool fails to comply with safety standards**

- (1) A person commits an offence if—
- (a) the person is the owner of premises on which a regulated swimming pool is located; and
  - (b) the swimming pool fails to comply with the safety standards to the extent that the pool is not subject to an exemption; and
  - (c) the person knows that the pool fails to comply with the safety standards; and

- (d) the person fails, within 90 days after the person becomes aware the pool fails to comply with the standards, to take reasonable steps to ensure the pool complies with the standards.

Maximum penalty: 60 penalty units.

- (2) In this section:

*exemption* means—

- (a) a Ministerial exemption; or
- (b) a standing exemption.

**83OB Failure to obtain compliance certificate for regulated swimming pool**

- (1) A person commits an offence if—
  - (a) the person is the owner of premises on which a regulated swimming pool is located; and
  - (b) the pool was built before 1 May 2013; and
  - (c) the pool is not subject to a standing exemption; and
  - (d) the person fails to obtain a compliance certificate for the pool from an authorised person before 1 May 2028; and
  - (e) a compliance certificate for the pool was not obtained from an authorised person by a previous owner of the premises.

Maximum penalty: 30 penalty units.

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

**7 Inspection of building work where no approval  
Section 131 (1) (a)**

*substitute*

- (a) a building approval has not been issued for building work not exempt from part 3 that is being, or has been, carried out; or
- (aa) building work exempt from all or part of this Act does not comply with the exemption; or

**8 New section 131 (1) (h) and (i)**

*insert*

- (h) the building is a regulated swimming pool that may not comply with part 5A (Regulated swimming pools); or
- (i) a circumstance prescribed by regulation exists.

**9 Dictionary, new definitions**

*insert*

***access point***, for part 5A (Regulated swimming pools)—see section 83 (1).

***authorised person***, for part 5A (Regulated swimming pools)—see section 83 (1).

***compliance certificate***, for a regulated swimming pool, for part 5A (Regulated swimming pools)—see section 83K (1).

***exemption certificate***, for a regulated swimming pool, for part 5A (Regulated swimming pools)—see section 83D (6).

***Ministerial exemption***, for part 5A (Regulated swimming pools)—see section 83 (1).

***occupier***, of premises, for part 5A (Regulated swimming pools)—see section 83 (1).

**10 Dictionary, definition of *owner***

*substitute*

***owner***—

- (a) of land, means—
- (i) if the land is held under a lease from the Commonwealth for a term of years—the lessee; or
  - (ii) if the land is subdivided under the *Unit Titles Act 2001*—
    - (A) if building work has been, is being or is to be carried out on the land for the owners corporation—the owners corporation; or
    - (B) if building work has been, is being or is to be carried out on the land for the proprietor of a unit in a units plan for the land—the proprietor; or
    - (C) in any other case—the owners corporation; or
  - (iii) if the land is occupied under a tenancy from the Territory or the Commonwealth—the occupier; or
  - (iv) if the land is subject to a public unleased land permit under the *Public Unleased Land Act 2013*—the permit-holder; or
  - (v) if the land is subject to a licence under the *Planning Act 2023*, part 10.13 (Licences for unleased land)—the licensee; or
  - (vi) if the Territory carries out or proposes to carry out building work on the land—the Territory; or
  - (vii) if the Commonwealth carries out or proposes to carry out building work on the land—the Commonwealth; or
  - (viii) if the land is under a land sublease—the sublessee; and

(b) of premises, for part 5A (Regulated swimming pools)—see section 83 (1).

## 11 Dictionary, new definitions

*insert*

*regulated swimming pool*—see section 83B (1).

*safety barrier*, for a regulated swimming pool, for part 5A (Regulated swimming pools)—see section 83 (1).

*safety standards*, for a regulated swimming pool, for part 5A (Regulated swimming pools)—see section 83A.

*standing exemption*, for part 5A (Regulated swimming pools)—see section 83 (1).

## Part 3 Building (General) Regulation 2008

### 12 Unaltered parts need not comply with building code if alternative requirements met—Act, s 29 (2) (b) Section 24 (3) (b) (vi)

*substitute*

(vi) regulated swimming pool access; or

### 13 New part 3A

*insert*

## Part 3A Regulated swimming pools

### 36D Safety standards—Act, s 83A, def *safety standards*

- (1) The following are prescribed:
- (a) for a pool built before 1 May 2023—the following taken together:
    - (i) the building code as in force on 1 May 2023;
    - (ii) AS 1926.1 (2012) (Swimming pool safety, Part 1: Safety barriers for swimming pools);
    - (iii) AS 1926.2 (2007) (Swimming pool safety, Part 2: Location of safety barriers for swimming pools); and
- Note* AS 1926.1 (2012) and AS 1926.2 (2007) may be purchased at [www.standards.org.au](http://www.standards.org.au).
- (b) for a pool built or substantially altered on or after 1 May 2023—the building code.

(2) In this section:

*substantially altered*, in relation to a swimming pool, means at least 50% of the pool, or the safety barrier for the pool, is modified, demolished or replaced.

### 36E Standing exemptions—circumstances—Act, s 83C

(1) A circumstance mentioned in table 36E, column 3 is prescribed for a regulated swimming pool mentioned in column 2.

**Table 36E Standing exemptions**

column 1 item	column 2 regulated swimming pool	column 3 circumstances in which pool is exempt from safety standard
1	a regulated swimming pool	demountable pool in place for not more than 3 consecutive days
2	a regulated swimming pool built before 1 May 2023	spa (wherever located) covered and secured by a lockable child-resistant structure (such as a door, lid, grille or mesh) that— <ul style="list-style-type: none"> <li>(a) is of substantial construction and having no opening through which it is possible to pass a testing apparatus, and</li> <li>(b) is securely fastened by a device that is itself of substantial construction and has no opening through which it is possible to pass a testing apparatus</li> </ul>
3	a regulated swimming pool built before 1 May 2023	spa (located on apartment balcony) if the balcony is accessible only through self-closing and self latching doors or windows

(2) In this section:

*spa*—see the [Act](#), section 83B (2).



*testing apparatus* means a cylindrical test object that has—

- (a) a diameter of 105 millimetres, plus or minus 1 millimetre; and
- (b) at least 1 solid flat-faced end.

### 36F Exemption by Minister—circumstances—Act, s 83D (2)

- (1) A circumstance mentioned in table 36F, column 3 is prescribed for a regulated swimming pool mentioned in column 2.

**Table 36F Exemptions by Minister**

column 1 item	column 2 regulated swimming pool	column 3 circumstances in which pool may be exempt from safety standard
1	a regulated swimming pool built before 1 May 2013	<ul style="list-style-type: none"> <li>(a) compliance with the safety standard is impracticable because of— <ul style="list-style-type: none"> <li>(i) the physical nature of the premises on which the pool is located; or</li> <li>(ii) the design or construction of either the pool or other buildings on the premises on which the pool is located; and</li> </ul> </li> <li>(b) either— <ul style="list-style-type: none"> <li>(i) a barrier comparable to a safety barrier that complies with the safety standards is installed for the pool (a <i>comparable barrier</i>); or</li> <li>(ii) evidence is provided to the Minister as to why installation of a comparable barrier cannot be done</li> </ul> </li> </ul>
2	a regulated swimming pool built before 1 May 2013	compliance with the safety standard would be reasonably likely to require approval under the <a href="#">Tree Protection Act 2005</a> to remove a protected tree

column 1 item	column 2 regulated swimming pool	column 3 circumstances in which pool may be exempt from safety standard
3	a regulated swimming pool built before 1 May 2013	compliance with the safety standard would be reasonably likely to involve conduct that would have a significant adverse effect on the heritage significance of a place or object registered under the <i>Heritage Act 2004</i>
4	a regulated swimming pool built before 1 May 2023	(a) the occupier of premises on which the pool is located is a person with disability; and (b) safety barrier compliance with safety standards would substantially impede the occupier's access to the pool; and (c) the owner of the premises agrees to adopt alternative safety measures (if available)
5	a regulated swimming pool built before 1 May 2023	there are documented plans to demolish the pool within 24 months of the application for exemption

*Note* The Minister may make guidelines in relation to applications for exemptions and the granting of exemptions (see Act, s 83G).

(2) In this section:

*disability*—see the *Discrimination Act 1991*, section 5AA.

*protected tree*—see the *Tree Protection Act 2005*, section 8.

*registered*—see the *Heritage Act 2004*, section 11.

## 14 Exempt buildings and building work Schedule 1, part 1.1, section 1.1, definition of *demountable pool*

*substitute*

*demountable swimming pool*—see the *Act*, section 83B (2).

**15 Schedule 1, part 1.1, section 1.1, new definition of *safety barrier***

*insert*

*safety barrier*, for a regulated swimming pool—see the [Act](#), section 83 (1).

**16 Schedule 1, part 1.1, section 1.1, definition of *swimming pool***

*omit*

**17 Schedule 1, part 1.2, item 11, column 2, paragraph (c)**

*substitute*

(c) a regulated swimming pool

**18 Schedule 1, part 1.3, items 1 and 2, column 2**

*omit*

swimming pool

*insert*

regulated swimming pool

**19 Schedule 1, part 1.3, items 11 and 12, column 2**

*omit*

demountable pool

*insert*

demountable swimming pool

**20 Schedule 1, part 1.3, new item 12A***insert*

12A	demountable swimming pool	pt 3 (Building work)	demountable swimming pool erected for not more than 3 consecutive days
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**21 Reviewable decisions  
Schedule 4, new items 11A to 11D***insert*

11A	a decision under the <a href="#">Act</a> , s 83D (2) to refuse to exempt regulated swimming pool from safety standards	Minister	applicant for exemption
11B	a decision under the <a href="#">Act</a> , s 83D (3) to exempt regulated swimming pool from safety standards subject to conditions	Minister	applicant for exemption
11C	a decision under the <a href="#">Act</a> , s 83E (4) to vary exemption of regulated swimming pool from safety standards	Minister	applicant for exemption
11D	a decision under the <a href="#">Act</a> , s 83F (1) (a), (b) or (c) to revoke exemption of regulated swimming pool from safety standards	Minister	applicant for exemption

**22 Dictionary, note 3**

*insert*

- regulated swimming pool (see s 83B)

**23 Dictionary, definition of *demountable pool***

*omit*

**24 Dictionary, new definition of *demountable swimming pool***

*insert*

*demountable swimming pool*, for schedule 1 (Exempt buildings and building works)—see schedule 1, section 1.1

**25 Dictionary, definition of *swimming pool***

*omit*

## Part 4                      Civil Law (Sale of Residential Property) Act 2003

### **26                      Meaning of *required documents* New section 9 (1) (ja)**

*insert*

- (ja) if there are premises covered by the proposed contract, or common property associated with the premises, on which a regulated swimming pool is located—the documents prescribed by regulation;

### **27                      Section 9 (4), new definition of *regulated swimming pool***

*insert*

*regulated swimming pool*—see the [Building Act 2004](#), section 83B (1).

## Part 5 Civil Law (Sale of Residential Property) Regulation 2004

### 28 New section 10B

*insert*

#### 10B Required documents—Act, s 9 (1) (ja)

- (1) If the regulated swimming pool was built before 1 May 2023—the following documents are prescribed:
  - (a) a copy of the notifiable instrument made under the *Building Act 2004*, section 83H;
  - (b) a document mentioned for whichever of the following circumstances apply:
    - (i) if the pool has been granted a Ministerial exemption from the safety standards—
      - (A) the exemption certificate in force for the pool; and
      - (B) if the pool is exempt from only part of the safety standards—a compliance certificate for the pool to the extent that it is not exempt from the standards;
    - (ii) in any other case—any of the following:
      - (A) a swimming pool disclosure statement for the premises covered by the contract;
      - (B) a compliance certificate for the pool;
      - (C) a certificate of occupancy for the pool and safety barrier that is not older than 5 years after the day it was issued.

- (2) If the regulated swimming pool was built or substantially altered on or after 1 May 2023—any 1 of the following documents is prescribed:
- (a) a swimming pool disclosure statement for the premises covered by the contract;
  - (b) a certificate of occupancy for the pool and safety barrier that is not older than 5 years after the day it was issued;
  - (c) a compliance certificate for the pool.

- (3) In this section:

*certificate of occupancy*—see the *Building Act 2004*, dictionary.

*compliance certificate*, for a regulated swimming pool—see the *Building Act 2004*, section 83K (1).

*exemption certificate*, for a regulated swimming pool—see the *Building Act 2004*, section 83D (6).

*Ministerial exemption*—see the *Building Act 2004*, section 83 (1).

*regulated swimming pool*—see the *Building Act 2004*, section 83B (1).

*safety barrier*, for a regulated swimming pool—see the *Building Act 2004*, section 83 (1).

*standing exemption*—see the *Building Act 2004*, section 83 (1).

*substantially altered*—see the *Building Act 2004*, section 83L (2).

*swimming pool disclosure statement* means a statement by the owner of the premises covered by the proposed contract stating, to the best of the owner's knowledge and belief and as accurately as the person has been able to find out, the following information:

- (a) when—
  - (i) the owner purchased the premises; and
  - (ii) the premises were built; and



- (iii) if the premises were built by the owner—building approval for the premises was granted; and
  - (iv) construction of the pool was completed; and
  - (v) any alterations to the pool were completed; and
- (b) if a standing exemption applies to the pool—that the pool is subject to a standing exemption and the circumstances for the exemption.

**29 Section 10B**

*substitute*

**10B Required documents—Act, s 9 (1) (ja)**

- (1) If the regulated swimming pool was built before 1 May 2013—a document mentioned for whichever of the following circumstances apply is prescribed:
- (a) if the pool has been granted a Ministerial exemption from the safety standards—
    - (i) the exemption certificate in force for the pool; and
    - (ii) if the pool is exempt from only part of the safety standards—a compliance certificate for the pool to the extent that it is not exempt from the standards;
  - (b) if a standing exemption applies to the pool—a statutory declaration of the circumstances for the exemption;
  - (c) in any other case—a compliance certificate for the pool.

- (2) If the regulated swimming pool was built or substantially altered on or after 1 May 2013 but before 1 May 2023—a document mentioned for whichever of the following circumstances apply is prescribed:
- (a) if the pool has been granted a Ministerial exemption from the safety standards—
    - (i) the exemption certificate in force for the pool; and
    - (ii) if the pool is exempt from only part of the safety standards—a compliance certificate for the pool to the extent that it is not exempt from the standards;
  - (b) if a standing exemption applies to the pool—a statutory declaration of the circumstances for the exemption;
  - (c) in any other case—either of the following:
    - (i) a compliance certificate for the pool;
    - (ii) a certificate of occupancy for the pool and safety barrier that is not older than 5 years after the day it was issued.
- (3) If the regulated swimming pool was built or substantially altered on or after 1 May 2023—a document mentioned for whichever of the following circumstances apply is prescribed:
- (a) if a standing exemption applies to the pool—a statutory declaration of the circumstances for the exemption;
  - (b) in any other case—either of the following:
    - (i) a compliance certificate for the pool;
    - (ii) a certificate of occupancy for the pool and safety barrier that is not older than 5 years after the day it was issued.

(4) In this section:

***certificate of occupancy***—see the *Building Act 2004*, dictionary.

***compliance certificate***, for a regulated swimming pool—see the *Building Act 2004*, section 83K (1).

***exemption certificate***, for a regulated swimming pool—see the *Building Act 2004*, section 83D (6).

***Ministerial exemption***—see the *Building Act 2004*, section 83 (1).

***regulated swimming pool***—see the *Building Act 2004*, section 83B (1).

***safety barrier***, for a regulated swimming pool—see the *Building Act 2004*, section 83 (1).

***standing exemption***—see the *Building Act 2004*, section 83 (1).

***substantially altered***—see the *Building Act 2004*, section 83L (2).

## Part 6 Common Boundaries Act 1981

### 30 New section 13A

*insert*

#### 13A Matters to be taken into account—dividing fences a safety barrier for regulated swimming pool

- (1) This section applies if—
  - (a) the ACAT is required to make a determination under this division; and
  - (b) the determination involves a fence that forms part, or will form part, of a safety barrier for a regulated swimming pool.
- (2) The ACAT must take into account the matters prescribed by regulation.
- (3) In this section:

*regulated swimming pool*—see the [Building Act 2004](#), section 83B (1).

*safety barrier*, for a regulated swimming pool—see the [Building Act 2004](#), section 83B (1).

### 31 New part 4

*insert*

## Part 4 Miscellaneous

#### 29 Regulation-making power

The Executive may make regulations for this Act.

## Part 7

# Magistrates Court (Building Infringement Notices) Regulation 2008

### 32 Building legislation infringement notice offences and penalties Schedule 1, part 1.1, new items 5 to 10

*insert*

5	83I	20	280
6	83J	20	220
7	83M	20	220
8	83N	30	420
9	83O	30	420
10	83R (2)	30	360

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 30 August 2023.

**2 Notification**

Notified under the [Legislation Act](#) on 15 November 2023.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Building (Swimming Pool Safety) Legislation Amendment Bill 2023, which was passed by the Legislative Assembly on 1 November 2023.

Acting Clerk of the Legislative Assembly

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