

2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Sustainable Building and Construction)

Building (Swimming Pool Safety) Legislation Amendment Bill 2023

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FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Sustainable Building and Construction)

Building (Swimming Pool Safety) Legislation Amendment Bill 2023

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

5 **2 Commencement**

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

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

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

10 **3 Legislation amended**

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

1 Part 2 Building Act 2004

2 4 New part 5A

3 *insert*

4 Part 5A Regulated swimming pools

5 Division 5A.1 Preliminary

6 83 Definitions—pt 5A

7 (1) In this part:

8 *access point*—

9 (a) means the portion of a safety barrier that is designed to provide
10 access through the barrier to a regulated swimming pool or the
11 water in the pool; and

12 (b) includes a door.

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

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

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

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

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

- 1 **owner**, of premises, means—
- 2 (a) for premises other than common property—the registered
3 proprietor of the lease for the land on which the premises are
4 located; or
- 5 (b) for premises that are a unit—the registered proprietor of the
6 lease for the unit; or
- 7 (c) for premises that are common property—the owners corporation
8 for the common property.
- 9 **safety barrier**, for a regulated swimming pool—
- 10 (a) means any structure or naturally occurring feature that forms, or
11 forms part of, a continuous perimeter that is effective as a safe
12 child resistant barrier to the pool or the water in the pool; and
- 13 (b) includes—
- 14 (i) a fence, post, panel, access point, child-resistant doorset,
15 wall, balustrade or part of a building; and
- 16 (ii) for a pool that is a spa—a lockable child-resistant
17 structure; and
- 18 (iii) if a Ministerial exemption has been granted for the pool—
19 the barrier that restricts access to a swimming pool or
20 water in the pool permitted under the exemption; and
- 21 (iv) anything else prescribed by regulation
- 22 **safety standards**, for a regulated swimming pool—see section 83A.
- 23 **standing exemption** means an exemption that applies to a regulated
24 swimming pool under section 83C.
- 25 (2) In this section:
- 26 **child-resistant doorset** means a safety barrier that comprises a door,
27 door frame, self-closing device and latch.

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

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

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

6 **83A Meaning of *safety standards*—pt 5A**

7 In this part:

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

10 **83B Meaning of *regulated swimming pool***

11 (1) In this Act:

12 *regulated swimming pool*—

13 (a) means an excavation, structure or vessel that—

14 (i) can be filled with water to a depth of 300mm or more; and

15 (ii) is used, designed or manufactured mainly for human
16 aquatic activity; and

17 (b) includes the following:

18 (i) a demountable swimming pool;

19 (ii) a flotation tank or flotation tub not equipped to create
20 bubbles or turbulence into water;

21 (iii) a spa; but

22 (c) does not include the following:

23 (i) a bath in a bathroom;

24 (ii) a birthing pool used only for waterbirths;

- 1 (iii) an ornamental pond;
- 2 (iv) a water feature;
- 3 (v) a pool at a category 1 facility;
- 4 (vi) a pool at short-term accommodation premises;
- 5 (vii) an inflatable pool;
- 6 (viii) anything else prescribed by regulation.
- 7 (2) In this section:
- 8 **category 1 facility**—see the *Public Pools Act 2015*, section 7.
- 9 **demountable swimming pool** means a swimming pool that—
- 10 (a) can be—
- 11 (i) filled with water to a depth of 300mm or more; and
- 12 (ii) either—
- 13 (A) assembled and disassembled by hand or with hand
- 14 tools without damaging the pool’s components; or
- 15 (B) inflated and deflated; and
- 16 (b) has a filtration system.
- 17 **inflatable pool** means a pool that—
- 18 (a) can be inflated and deflated; and
- 19 (b) can be filled with water to a depth of not more than 300mm; and
- 20 (c) does not have a filtration system.
- 21 **mobile home park**—see the *Residential Tenancies Act 1997*,
- 22 dictionary.

1 ***short-term accommodation premises—***

- 2 (a) means premises used to provide short-term accommodation to
3 members of the public as part of a commercial transaction; and
4 (b) includes the following kinds of accommodation:
5 (i) backpacker;
6 (ii) bed and breakfast;
7 (iii) hotel;
8 (iv) mobile home park;
9 (v) motel;
10 (vi) resort;
11 (vii) serviced apartment; but
12 (c) does not include premises that are also used, or able to be used,
13 for residential purposes.

14 **Examples—par (c)**

- 15 1 premises used as a residential home made available under a home
16 exchange scheme
17 2 premises able to be used for a residential home made available for
18 short-term rental accommodation
19 3 an apartment complex that contains a mix of residential apartments and
20 serviced apartments

21 ***spa—***

- 22 (a) means an excavation, structure or vessel able to retain water for
23 human immersion and equipped to create water bubbles or water
24 turbulence into the water; and
25 (b) includes—
26 (i) a swim spa; and

1 (ii) a flotation tank or flotation tub equipped to create bubbles
2 or turbulence into water; but

3 (c) does not include a spa bath in a bathroom.

4 **Division 5A.2 Compliance with safety standards**

5 **Subdivision 5A.2.1 Exemptions**

6 **83C Standing exemption**

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

9 **83D Ministerial exemption**

10 (1) The owner of premises on which a regulated swimming pool is
11 located (the *applicant*) may apply in writing to the Minister for the
12 pool to be exempt from all or part of the safety standards.

13 (2) On application, the Minister may grant an exemption only if a
14 circumstance prescribed by regulation applies to the regulated
15 swimming pool.

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

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

19 (3) An exemption may be subject to conditions the Minister considers
20 appropriate.

21 (4) The Minister may ask the applicant for further information the
22 Minister reasonably needs to consider the application.

- 1 (5) In exercising the Minister's functions under this section, the Minister
2 may—
- 3 (a) seek advice from an entity the Minister considers suitable to give
4 advice about a matter relevant to the exercise of the functions;
5 and
- 6 (b) consider any other relevant information.
- 7 (6) If the Minister grants an exemption, the Minister must issue a
8 certificate (an *exemption certificate*) to the owner that states—
- 9 (a) the extent to which the regulated swimming pool is exempt from
10 the safety standards; and
- 11 (b) the grounds for the exemption; and
- 12 (c) any condition on the exemption and the reason for the condition;
13 and
- 14 (d) the date of issue of the certificate; and
- 15 (e) it is an offence for the owner to fail to notify the Minister of a
16 change of circumstances that affects a ground on which the
17 exemption was granted; and
- 18 (f) anything else prescribed by regulation.
- 19 (7) An exemption certificate for a regulated swimming pool is in force
20 for the period stated in the exemption certificate which must be not
21 longer than 5 years.

22 **83E Variation of Ministerial exemption**

- 23 (1) This section applies to a regulated swimming pool to which a
24 Ministerial exemption applies.
- 25 (2) The owner of premises on which the regulated swimming pool is
26 located (the *applicant*) may apply, in writing, to the Minister to vary
27 a condition that applies to the exemption.

- 1 (3) On application, the Minister may vary the exemption if the
2 Minister—
- 3 (a) has considered any reasons provided by the applicant in the
4 application; and
- 5 (b) is satisfied it is appropriate to vary the exemption.
- 6 (4) Also, the Minister may vary an exemption on the Minister’s own
7 initiative if the Minister—
- 8 (a) has given an owner of premises on which the pool is located
9 written notice that—
- 10 (i) states how the Minister proposes to vary the exemption;
11 and
- 12 (ii) states the reason the Minister proposes to vary the
13 exemption; and
- 14 (iii) tells the owner that a written response may be given to the
15 Minister about the matters stated in the notice not later
16 than 28 days after the owner receives the notice; and
- 17 (b) has considered any response given in accordance with
18 paragraph (a) (iii); and
- 19 (c) is satisfied that it is appropriate to vary the exemption.
- 20 (5) A variation of the exemption takes effect—
- 21 (a) 90 days after the day notice is given to the owner; or
22 (b) if another day is stated in the notice—on the stated day.

- 1 **83F Revocation of exemption**
- 2 (1) The Minister may revoke a Ministerial exemption that applies to a
- 3 regulated swimming pool on the Minister's own initiative if satisfied
- 4 that any of the following apply:
- 5 (a) the owner of the premises on which the pool is located has failed
- 6 to comply with a condition of the exemption;
- 7 (b) the owner of the premises knowingly or recklessly used false or
- 8 misleading information in the application for the exemption, or
- 9 an application for variation of the exemption;
- 10 (c) no circumstance mentioned in section 83D (2) applies to the
- 11 pool;
- 12 (d) there is an immediate and serious risk to the health or safety of
- 13 a person.
- 14 (2) However, the Minister must not revoke an exemption unless the
- 15 Minister—
- 16 (a) has given the owner of the premises written notice that—
- 17 (i) states that the Minister proposes to revoke the exemption;
- 18 and
- 19 (ii) states the reason the Minister proposes to revoke the
- 20 exemption; and
- 21 (iii) tells the owner that the owner may give a written response
- 22 to the Minister about the matters stated in the notice not
- 23 later than 28 days after the owner receives the notice; and
- 24 (b) has considered any response given in accordance with
- 25 paragraph (a) (iii); and
- 26 (c) is satisfied that it is appropriate to revoke the certificate.
- 27 (3) Subsection (2) does not apply to a revocation made under
- 28 subsection (1) (d).

- 1 (4) The revocation of the exemption takes effect—
2 (a) for a revocation under subsection (1) (d)—immediately; or
3 (b) in any other case—
4 (i) 90 days after the day notice is given to the owner; or
5 (ii) if another day is stated in the notice—on the stated day.

6 **83G Minister may make guidelines**

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

10 **83H Guidance about obligations on owners**

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

16 **83I Failure to comply with exemption certificate conditions**

- 17 (1) A person commits an offence if—
18 (a) the person is the owner of premises on which a regulated
19 swimming pool is located; and
20 (b) the pool was built before 1 May 2023; and
21 (c) a Ministerial exemption applies to the pool; and
22 (d) the person fails to comply with a condition of the exemption.
23 Maximum penalty: 20 penalty units.
24 (2) An offence against this section is a strict liability offence.

1 **83J Failure to notify change of exemption circumstances**

- 2 (1) A person commits an offence if—
- 3 (a) the person is the owner of premises on which a regulated
- 4 swimming pool is located; and
- 5 (b) the pool was built before 1 May 2023; and
- 6 (c) a Ministerial exemption applies to the pool; and
- 7 (d) a change of circumstances happens which affects a ground on
- 8 which the exemption was granted; and
- 9 (e) the person fails to notify the Minister of the change of
- 10 circumstances within 14 days of the change happening.

11 Maximum penalty: 20 penalty units.

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

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

14 **83K Compliance certificates**

- 15 (1) An authorised person must inspect a regulated swimming pool before
- 16 giving the owner of the premises on which the pool is located
- 17 (the *owner*) a written certificate (a *compliance certificate*) that states
- 18 the following:
- 19 (a) whether or not the pool complies with the safety standards, to
- 20 the extent it is not subject to a Ministerial exemption;
- 21 (b) if the pool is subject to a Ministerial exemption—details of the
- 22 exemption including any conditions on the exemption;
- 23 (c) the date of issue of the certificate;
- 24 (d) anything else prescribed by regulation.

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

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

12 **83L Period for which compliance certificate in force**

- 13 (1) A compliance certificate for a regulated swimming pool is in force
14 for the period beginning on the day the certificate is issued and ending
15 on the earliest of the following:
- 16 (a) whichever of the following applies:
- 17 (i) for a certificate issued before 1 May 2028—30 April 2032;
- 18 (ii) for a certificate issued on or after 1 May 2028—the day
19 5 years after the period begins;
- 20 (b) the day the regulated swimming pool, or the safety barrier for
21 the pool, is substantially altered.
- 22 (2) In this section:
- 23 *substantially altered*—
- 24 (a) in relation to a swimming pool—means at least 50% of the pool
25 is modified, demolished or replaced; and

1 (b) in relation to a safety barrier for a swimming pool—means the
2 safety barrier is—

3 (i) demolished or replaced; or

4 (ii) altered as prescribed by regulation.

5 **83M Failure to lodge compliance certificate etc for regulated**
6 **swimming pool**

7 (1) A person commits an offence if—

8 (a) the person is the owner of premises on which a regulated
9 swimming pool is located; and

10 (b) the pool was built before 1 May 2013; and

11 (c) the pool is not subject to a standing exemption; and

12 (d) the person fails to lodge with the construction occupations
13 registrar before 1 June 2028—

14 (i) a compliance certificate in force for the pool within
15 30 days after the certificate is given to the person by an
16 authorised person; and

17 (ii) if the pool has been granted an exemption certificate—the
18 exemption certificate at the same time as the compliance
19 certificate; and

20 (e) a document required to be lodged under subsection (1) (d) has
21 not been lodged by a previous owner of the premises.

22 Maximum penalty: 20 penalty units.

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

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

2 **83N Failure to maintain swimming pool safety barrier**

3 (1) A person commits an offence if—

4 (a) the person is the owner of premises on which a regulated
5 swimming pool is located; and

6 (b) the person fails to maintain a safety barrier for the pool that is
7 an effective and safe child-resistant barrier.

8 Maximum penalty: 30 penalty units.

9 (2) For subsection (1) (b) a safety barrier is an effective and safe
10 child-resistant barrier if the barrier—

11 (a) complies with the safety standards for a regulated swimming
12 pool; or

13 (b) if the swimming pool is subject to a Ministerial exemption—
14 complies with the safety standards to the extent the pool is not
15 exempt from the standards; or

16 (c) complies with a requirement prescribed by regulation.

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

18 (4) It is a defence to a prosecution against this section if the defendant
19 proves that the regulated swimming pool is subject to a standing
20 exemption.

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

23 **83O Failure to close swimming pool safety barrier**

24 (1) A person commits an offence if—

25 (a) the person is the occupier of premises on which a regulated
26 swimming pool is located; and

- 1 (b) the person fails to ensure all access points for the pool's safety
2 barrier—
- 3 (i) are securely closed when they are not in use; or
- 4 (ii) for a spa with a safety barrier that is a lockable
5 child-resistant structure—the structure is securely fitted
6 and locked when the spa is not in use.

7 Maximum penalty: 30 penalty units.

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

9 **Division 5A.4 Administration**

10 **83P Authorised person**

- 11 (1) The director-general may appoint a person as an authorised person
12 for this part.
- 13 (2) A person must not be appointed under subsection (1) unless the
14 director-general is satisfied that the person is competent to exercise
15 the functions of an authorised person under this part.
- 16 (3) A regulation may prescribe matters that the director-general must
17 consider in relation to a person's competency for subsection (2) (a).
- 18 (4) A regulation may prescribe—
- 19 (a) a class of person taken to be appointed as an authorised person
20 under this section; and
- 21 (b) the terms of appointment for the class of person.

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

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

18 **83Q Identity cards**

- 19 (1) The director-general must issue an authorised person with an identity
20 card that states the person is an authorised person for this part, and
21 shows—
22 (a) a recent photograph of the person; and
23 (b) the name of the person; and
24 (c) the date of issue of the card; and

- 1 (d) the date of expiry for the card; and
2 (e) anything else prescribed by regulation.
- 3 (2) A person commits an offence if—
4 (a) the person stops being an authorised person; and
5 (b) the person does not return the person’s identity card to the
6 director-general within 7 days after the person stops being an
7 authorised person.
- 8 Maximum penalty: 1 penalty unit.
- 9 (3) Subsection (2) does not apply to a person if the person’s identity card
10 is—
11 (a) lost or stolen; or
12 (b) destroyed by someone else.
- 13 *Note* The defendant has an evidential burden in relation to the matters
14 mentioned in s (3) (see [Criminal Code](#), s 58).
- 15 (4) An offence against subsection (2) is a strict liability offence.

16 **83R Person pretending to be authorised person**

- 17 (1) A person commits an offence if the person—
18 (a) is not an authorised person; and
19 (b) carries out a function of an authorised person; and
20 (c) is reckless as to whether the person is appointed as an authorised
21 person.
- 22 Maximum penalty: 60 penalty units.

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

- 5 (3) Strict liability applies to—
6 (a) subsection (1) (a) and (b); and
7 (b) subsection (2) (a) and (b).

8 **Division 5A.5 Miscellaneous**

9 **83S Criminal liability of executive members of owners** 10 **corporation**

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

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

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

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

5 (3) This section applies whether or not the owners corporation is
6 prosecuted for, or convicted of, the relevant offence.

7 (4) In this section:

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

10 **5 Period for which compliance certificate in force**
11 **New section 83L (1) (c)**

12 *insert*

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

17 **6 New sections 83OA and 83OB**

18 *in division 5A.3, insert*

19 **83OA Regulated swimming pool fails to comply with safety**
20 **standards**

21 (1) A person commits an offence if—

22 (a) the person is the owner of premises on which a regulated
23 swimming pool is located; and

24 (b) the swimming pool fails to comply with the safety standards to
25 the extent that the pool is not subject to an exemption; and

26 (c) the person knows that the pool fails to comply with the safety
27 standards; and

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

4 Maximum penalty: 60 penalty units.

- 5 (2) In this section:

6 *exemption* means—

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

9 **83OB Failure to obtain compliance certificate for regulated**
10 **swimming pool**

- 11 (1) A person commits an offence if—

- 12 (a) the person is the owner of premises on which a regulated
13 swimming pool is located; and
14 (b) the pool was built before 1 May 2013; and
15 (c) the pool is not subject to a standing exemption; and
16 (d) the person fails to obtain a compliance certificate for the pool
17 from an authorised person before 1 May 2028; and
18 (e) a compliance certificate for the pool was not obtained from an
19 authorised person by a previous owner of the premises.

20 Maximum penalty: 30 penalty units.

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

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

3 *substitute*

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

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

9 *insert*

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

13 **9 Dictionary, new definitions**

14 *insert*

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

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

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

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

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

25 *occupier*, of premises, for part 5A (Regulated swimming pools)—see
26 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

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

3 **11 Dictionary, new definitions**

4 *insert*

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

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

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

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

1 **Part 3** **Building (General)**
2 **Regulation 2008**

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

6 *substitute*

7 (vi) regulated swimming pool access; or

8 **13** **New part 3A**

9 *insert*

10 **Part 3A** **Regulated swimming pools**

11 **36D** **Safety standards—Act, s 83A, def *safety standards***

12 (1) The following are prescribed:

13 (a) for a pool built before 1 May 2023—the following taken
14 together:

15 (i) the building code as in force on 1 May 2023;

16 (ii) AS 1926.1 (2012) (Swimming pool safety, Part 1: Safety
17 barriers for swimming pools);

18 (iii) AS 1926.2 (2007) (Swimming pool safety, Part 2:
19 Location of safety barriers for swimming pools); and

20 *Note* AS 1926.1 (2012) and AS 1926.2 (2007) may be purchased at
21 www.standards.org.au.

22 (b) for a pool built or substantially altered on or after 1 May 2023—
23 the building code.

1 (2) In this section:

2 *substantially altered*, in relation to a swimming pool, means at least
3 50% of the pool, or the safety barrier for the pool, is modified,
4 demolished or replaced.

5 **36E Standing exemptions—circumstances—Act, s 83C**

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

8 **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— (a) is of substantial construction and having no opening through which it is possible to pass a testing apparatus, and (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
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

9 (2) In this section:

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

- 1 *testing apparatus* means a cylindrical test object that has—
- 2 (a) a diameter of 105 millimetres, plus or minus 1 millimetre; and
- 3 (b) at least 1 solid flat-faced end.

4 **36F Exemption by Minister—circumstances—Act, s 83D (2)**

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

7 **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	<p>(a) compliance with the safety standard is impracticable because of—</p> <p>(i) the physical nature of the premises on which the pool is located; or</p> <p>(ii) the design or construction of either the pool or other buildings on the premises on which the pool is located; and</p> <p>(b) either—</p> <p>(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</p> <p>(ii) evidence is provided to the Minister as to why installation of a comparable barrier cannot be done</p>
2	a regulated swimming pool built before 1 May 2013	compliance with the safety standard would be reasonably likely to require approval under the <i>Tree Protection Act 2005</i> to remove a protected tree

- 1 **15** **Schedule 1, part 1.1, section 1.1, new definition of *safety***
2 ***barrier***
- 3 *insert*
- 4 *safety barrier*, for a regulated swimming pool—see the [Act](#),
5 section 83 (1).
- 6 **16** **Schedule 1, part 1.1, section 1.1, definition of *swimming***
7 ***pool***
- 8 *omit*
- 9 **17** **Schedule 1, part 1.2, item 11, column 2, paragraph (c)**
- 10 *substitute*
- 11 (c) a regulated swimming pool
- 12 **18** **Schedule 1, part 1.3, items 1 and 2, column 2**
- 13 *omit*
- 14 swimming pool
- 15 *insert*
- 16 regulated swimming pool
- 17 **19** **Schedule 1, part 1.3, items 11 and 12, column 2**
- 18 *omit*
- 19 demountable pool
- 20 *insert*
- 21 demountable swimming pool

1 **20 Schedule 1, part 1.3, new item 12A**2 *insert*

12A	demountable swimming pool	pt 3 (Building work)	demountable swimming pool erected for not more than 3 consecutive days
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3 **21 Reviewable decisions**
4 **Schedule 4, new items 11A to 11D**5 *insert*

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

1 **22 Dictionary, note 3**

2 *insert*

- 3 • regulated swimming pool (see s 83B)

4 **23 Dictionary, definition of *demountable pool***

5 *omit*

6 **24 Dictionary, new definition of *demountable swimming pool***

7 *insert*

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

10 **25 Dictionary, definition of *swimming pool***

11 *omit*

1 **Part 4** **Civil Law (Sale of Residential**
2 **Property) Act 2003**

3 **26** **Meaning of *required documents***
4 **New section 9 (1) (ja)**

5 *insert*

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

10 **27** **Section 9 (4), new definition of *regulated swimming pool***

11 *insert*

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

1 **Part 5** **Civil Law (Sale of Residential**
2 **Property) Regulation 2004**

3 **28** **New section 10B**

4 *insert*

5 **10B** **Required documents—Act, s 9 (1) (ja)**

6 (1) If the regulated swimming pool was built before 1 May 2023—the
7 following documents are prescribed:

8 (a) a copy of the notifiable instrument made under the *Building*
9 *Act 2004*, section 83H;

10 (b) a document mentioned for whichever of the following
11 circumstances apply:

12 (i) if the pool has been granted a Ministerial exemption from
13 the safety standards—

14 (A) the exemption certificate; and

15 (B) if the pool is exempt from only part of the safety
16 standards—a compliance certificate for the pool to
17 the extent that it is not exempt from the standards;

18 (ii) in any other case—any of the following:

19 (A) a swimming pool disclosure statement for the
20 premises covered by the contract;

21 (B) a compliance certificate for the pool;

22 (C) a certificate of occupancy for the pool and safety
23 barrier that is not older than 5 years after the day it
24 was issued.

- 1 (2) If the regulated swimming pool was built or substantially altered on
2 or after 1 May 2023—any 1 of the following documents is prescribed:
- 3 (a) a swimming pool disclosure statement for the premises covered
4 by the contract;
- 5 (b) a certificate of occupancy for the pool and safety barrier that is
6 not older than 5 years after the day it was issued;
- 7 (c) a compliance certificate for the pool.
- 8 (3) In this section:
- 9 *certificate of occupancy*—see the *Building Act 2004*, dictionary.
- 10 *compliance certificate*, for a regulated swimming pool—see the
11 *Building Act 2004*, section 83K (1).
- 12 *exemption certificate*, for a regulated swimming pool—see the
13 *Building Act 2004*, section 83D (6).
- 14 *Ministerial exemption*—see the *Building Act 2004*, section 83 (1).
- 15 *regulated swimming pool*—see the *Building Act 2004*,
16 section 83B (1).
- 17 *safety barrier*, for a regulated swimming pool—see the *Building*
18 *Act 2004*, section 83 (1).
- 19 *standing exemption*—see the *Building Act 2004*, section 83 (1).
- 20 *substantially altered*—see the *Building Act 2004*, section 83L (2).
- 21 *swimming pool disclosure statement* means a statement by the owner
22 of the premises covered by the proposed contract stating, to the best
23 of the owner’s knowledge and belief and as accurately as the person
24 has been able to find out, the following information:
- 25 (a) when—
- 26 (i) the owner purchased the premises; and
- 27 (ii) the premises were built; and

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

8 **29 Section 10B**

9 *substitute*

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

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

- 1 (2) If the regulated swimming pool was built or substantially altered on
2 or after 1 May 2013 but before 1 May 2023—a document mentioned
3 for whichever of the following circumstances apply is prescribed:
- 4 (a) if the pool has been granted a Ministerial exemption from the
5 safety standards—
- 6 (i) the exemption certificate; and
- 7 (ii) if the pool is exempt from only part of the safety
8 standards—a compliance certificate for the pool to the
9 extent that it is not exempt from the standards;
- 10 (b) if a standing exemption applies to the pool—a statutory
11 declaration of the circumstances for the exemption;
- 12 (c) in any other case—either of the following:
- 13 (i) a compliance certificate for the pool;
- 14 (ii) a certificate of occupancy for the pool and safety barrier
15 that is not older than 5 years after the day it was issued.
- 16 (3) If the regulated swimming pool was built or substantially altered on
17 or after 1 May 2023—a document mentioned for whichever of the
18 following circumstances apply is prescribed:
- 19 (a) if a standing exemption applies to the pool—a statutory
20 declaration of the circumstances for the exemption;
- 21 (b) in any other case—either of the following:
- 22 (i) a compliance certificate for the pool;
- 23 (ii) a certificate of occupancy for the pool and safety barrier
24 that is not older than 5 years after the day it was issued.

- 1 (4) In this section:
- 2 ***certificate of occupancy***—see the *Building Act 2004*, dictionary.
- 3 ***compliance certificate***, for a regulated swimming pool—see the
- 4 *Building Act 2004*, section 83K (1).
- 5 ***exemption certificate***, for a regulated swimming pool—see the
- 6 *Building Act 2004*, section 83D (6).
- 7 ***Ministerial exemption***—see the *Building Act 2004*, section 83 (1).
- 8 ***regulated swimming pool***—see the *Building Act 2004*,
- 9 section 83B (1).
- 10 ***safety barrier***, for a regulated swimming pool—see the *Building*
- 11 *Act 2004*, section 83 (1).
- 12 ***standing exemption***—see the *Building Act 2004*, section 83 (1).
- 13 ***substantially altered***—see the *Building Act 2004*, section 83L (2).

1 **Part 6** **Common Boundaries Act 1981**

2 **30** **New section 13A**

3 *insert*

4 **13A** **Matters to be taken into account—dividing fences a**
5 **safety barrier for regulated swimming pool**

- 6 (1) This section applies if—
- 7 (a) the ACAT is required to make a determination under this
8 division; and
- 9 (b) the determination involves a fence that forms part, or will form
10 part, of a safety barrier for a regulated swimming pool.
- 11 (2) The ACAT must take into account the matters prescribed by
12 regulation.
- 13 (3) In this section:
- 14 *regulated swimming pool*—see the *Building Act 2004*,
15 section 83B (1).
- 16 *safety barrier*, for a regulated swimming pool—see the *Building*
17 *Act 2004*, section 83B (1).

18 **31** **New part 4**

19 *insert*

20 **Part 4** **Miscellaneous**

21 **29** **Regulation-making power**

22 The Executive may make regulations for this Act.

1 **Part 7** **Magistrates Court (Building**
2 **Infringement Notices)**
3 **Regulation 2008**

4 **32 Building legislation infringement notice offences and**
5 **penalties**
6 **Schedule 1, part 1.1, new items 5 to 10**

7 *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

Endnotes

1 Presentation speech

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

2 Notification

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

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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