

Australian Capital Territory

Building (Ministerial exemptions for regulated swimming pools) Guidelines 2024

Disallowable instrument DI2024–82

made under the

Building Act 2004, s 83G (Minister may make guidelines)

1 Name of instrument

This instrument is the *Building (Ministerial exemptions for regulated swimming pools) Guidelines 2024*.

2 Commencement

This instrument commences on 1 May 2024.

3 Guidelines

I make the guidelines about applications for, and granting of, Ministerial exemptions for regulated swimming pools at schedule 1.

Rebecca Vassarotti MLA
Minister for Sustainable Building and Construction
29 April 2024

Schedule 1

(see s 3)

Ministerial exemptions for regulated swimming pools

The ACT Government has introduced reforms to home swimming pool safety, with a focus on swimming pool safety barriers. Under the scheme, there are specified circumstances where homeowners or owners corporations can apply for an exemption from compliance if the swimming pool or spa is unable to have a safety barrier compliant with prescribed safety standards.

Section 83G of the *Building Act 2004* states that the Minister may make guidelines about applications for, and granting of, Ministerial exemptions. This Guideline outlines the matters that will be considered when assessing an application for a Ministerial exemption for regulated swimming pools, and sets out the documentation required to be submitted with an application.

The intention of the exemption framework is to provide alternative pathways to make a regulated swimming pool area safe, where there may be extenuating circumstances which prevent a regulated swimming pool from being able to have a safety barrier compliant with the prescribed safety standards.

GROUNDS FOR MINISTERIAL EXEMPTION

Below are descriptions of the five grounds on which a homeowner or owners corporations may apply for an exemption from the requirement to have a safety barrier compliant with the prescribed safety standards.

Under each of the exemption grounds is information on:

1. what regulated swimming pools are eligible for the exemption
2. examples of the circumstances that may give rise to an application (where applicable)
3. the documentation required to be submitted with an application
4. conditions that apply or may apply to the exemption ground

UNABLE TO PHYSICALLY ACCOMMODATE

This exemption is available to a regulated swimming pool that was built or altered before 1 May 2013 and the swimming pool area is unable to physically accommodate a safety barrier compliant with the prescribed safety standards.

The following are examples of circumstances that may give rise to an application on this exemption ground:

- compliance would require the movement or demolition of a building or part of a building on the premises

- compliance would require the location or size of the regulated swimming pool to be changed
- compliance would interfere with any utilities or services lines that run through the property

An **alternative safety measure** must be proposed as part of any application for exemption on this ground. Where there is no viable alternative safety measure, the Government may still consider the application.

Documentation

An application should include evidence that demonstrates the date of construction or alteration of the regulated swimming pool. This could include:

- certificate of occupancy and use (COU)
- building approval (BA)
- receipt or invoice for purchase, installation or construction

An application should include evidence that demonstrates why the swimming pool area is unable to physically accommodate a safety barrier compliant with the prescribed safety standards. This could include:

- photos
- building or landscaping plans
- written advice from a builder, landscaper or authorised person

An application should also include documentation outlining the alternative safety measure and what standards this alternative safety measure would comply with (elements can comply with different standards – if this is the case, the proposal should make this clear). This could include:

- a written proposal
- written advice from a builder, landscaper or authorised person
- plans that clearly show the proposed alternative safety measure

Conditions

This exemption will apply only to the extent reasonably necessary in the circumstances to overcome the impracticality associated with compliance.

Protected tree

This exemption is available to a regulated swimming pool that was built or altered before 1 May 2013 and compliance with the prescribed safety standards would be reasonably likely to require approval under the *Urban Forest Act 2023* to remove a protected tree.

In submitting an application for exemption on this ground, the applicant must propose an **alternative safety measure** as part of their exemption application. Where there is no viable alternative safety measure, the Government may still consider an application.

Documentation

An application should include evidence that demonstrates the date of construction or alteration of the regulated swimming pool. This could include:

- certificate of occupancy and use (COU)
- building approval (BA)
- receipt or invoice for purchase, installation or construction

An application should include evidence that demonstrates why compliance with the prescribed safety standards would be reasonably likely to require approval under the *Urban Forest Act 2023* to remove a protected tree. This could include:

- information as to how the tree meets the definition of protected tree under the *Urban Forest Act 2023* including any advice provided by the Transport Canberra and City Services Directorate (if it has been sought – it is not a requirement to seek this advice prior to making your application. The decision-maker will seek this advice as part of their decision-making process.)
- photos that show the location of the protected tree
- building or landscaping plans that show the location of the protected tree in relation to the swimming pool and how this impacts compliance with the prescribed safety standards
- written information about the protected tree
- written advice from builder, landscaper or authorised person

An application should also include documentation outlining the alternative safety measure and what standards this alternative safety measure would comply with (elements can comply with different standards – if this is the case, the proposal should make this clear). This could include:

- a written proposal
- written advice from a builder, landscaper or authorised person
- plans that clearly show the proposed alternative safety measure

Heritage significance

This exemption is available to a regulated swimming pool that was built or altered before 1 May 2013 and compliance with the prescribed safety standards 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 *Heritage Act 2004*.

In submitting an application, the applicant must propose an ***alternative safety measure*** as part of their exemption application. Where there is no viable alternative safety measure, the Government may still consider an application.

Documentation

An application should include evidence that demonstrates the date of construction or alteration of the regulated swimming pool. This could include:

- certificate of occupancy and use (COU)

- building approval (BA)
- receipt or invoice for purchase, installation or construction

An application should include evidence that demonstrates why compliance with the prescribed safety standards would be reasonably likely to have a significant adverse effect on the heritage significance of a place or object registered under the *Heritage Act 2004*. This should include as a minimum, evidence that the place or object is listed on the ACT Heritage Register. It could also include:

- photos that show the location of the heritage place or object
- building or landscaping plans that show the location of the heritage place or object
- written information about the heritage place or object
- written advice from builder, landscaper or authorised person

An application should also include documentation outlining the alternative safety measure and what standards this alternative safety measure would comply with (elements can comply with different standards – if this is the case, the proposal should make this clear). This could include:

- a written proposal
- written advice from a builder, landscaper or authorised person
- plans that clearly show the proposed alternative safety measure

Accessibility

Where a person with a disability is, or is to become, an occupier of the premises on which a regulated swimming pool built or altered before 1 May 2023 is situated, and it would be physically impracticable for the person because of the person's disability, to access the regulated swimming pool if it had a safety barrier complying with the prescribed safety standards they can seek an exemption from the prescribed safety standards.

In submitting an application, the applicant must propose an ***alternative safety measure*** as part of their exemption application. Where there is no viable alternative safety measure, the Government may still consider an application.

Documentation

An application should include evidence that demonstrates the date of construction or alteration of the regulated swimming pool. This could include:

- certificate of occupancy and use (COU)
- building approval (BA)
- receipt or invoice for purchase, installation or construction

An application should include evidence:

- that a person with a disability is living, or is going to live, at the premises; and

- that demonstrates why it would be physically impracticable for the person, because of the person’s disability, to access the regulated swimming pool if it had a safety barrier complying with the prescribed safety standards.

Evidence of this could include:

- photos of swimming pool area
- building or landscaping plans
- written advice from a builder, landscaper or authorised person
- documentation providing evidence of disability (such as an NDIS plan or other evidence of the person’s disability) and how meeting the prescribed safety standards would substantially impede the occupier’s access to the pool

An application should also include documentation outlining the alternative safety measure and what standards this alternative safety measure would comply with (elements can comply with different standards – if this is the case, the proposal should make this clear). This could include:

- a written proposal
- written advice from a builder, landscaper or authorised person
- plans that clearly show the proposed alternative safety measure

Conditions

Should the premises cease to be occupied by a person with a disability the exemption will cease to have effect.

Plans to demolish

This exemption is available to a regulated swimming pool that was built or altered before 1 May 2023 and there are documented plans to demolish the regulated swimming pool within 24 months.

Documentation

An application should include evidence that demonstrates the date of construction or alteration of the regulated swimming pool. This could include:

- certificate of occupancy and use (COU)
- building approval (BA)
- receipt or invoice for purchase, installation or construction

An application should include evidence of documented plans to demolish a property with a regulated swimming pool within 24 months. This could include:

- demolition plan
- building approval (BA)
- development approval (DA)
- signed contract to demolish

Conditions

This exemption will come with a standing expiration date of 24 months from the date issued.

MAKING AN APPLICATION

Applications for a Ministerial exemption should be made using the application form published on the [Home Swimming Pool Safety Reforms page](#) on the ACT Planning website (www.planning.act.gov.au) or available by email from EPSDDBuildingReform@act.gov.au.

Application forms can be submitted:

Online	Home Swimming Pool Safety Reforms page
Email	EPSDDBuildingReform@act.gov.au
Post	Building Reform Environment, Planning and Sustainable Development Directorate GPO Box 158 CANBERRA ACT 2601

NOTIFICATION OF DECISION

Notification of the decision on an application for exemption will be provided outlining the reasons for the decision to issue or not issue an exemption.

If a decision is made to grant a full or partial exemption, the notification of decision will include an exemption certificate. An exemption may be issued with conditions.

The exemption certificate will contain details of the exemption, including any conditions, the date the exemption is issued and the date the exemption expires. Exemption certificates will be issued for a maximum period of five years.

REVIEW RIGHTS

The following decisions are reviewable decisions:

- A decision to refuse an application for an exemption
- A decision to issue an exemption with conditions
- A decision to vary an exemption
- A decision to revoke an exemption

If a decision has been made and you, as the entity to whom the decision relates, do not agree with the decision, you are entitled to apply for a review of the decision.

Internal review

To request an internal review of decision, send a request in writing to the Building Reform team via email to: EPSDDBuildingReform@act.gov.au. This should include:

- Your initial application and associated documentation;
- The decision letter; and
- Any additional information you wish to submit to address the reasons for the decision.

A request for a review of decision should be made 28 days from the date of the decision. The time limit can be extended.

There is no fee for an internal review decision.

An internal review decision will be made by a person who was not the original decision maker or involved in the original decision.

Review by the ACT Civil & Administrative Tribunal (ACAT)

The review authority is the ACT Civil & Administrative Tribunal (ACAT). To apply for a review, obtain an application form from the ACAT.

The time limit to make a request for a review is 28 days from the date of the original decision or the internal review decision. The time limit can be extended in some circumstances. Check with the ACAT for more details.

The ACAT is an independent body. It can review on their merits a large number of decisions made by ACT Government ministers, officials and statutory authorities. The ACAT can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with ACAT recommendations.

Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee. Please contact the ACAT or refer to their website regarding current fees and circumstances in which fees can be waived or deferred. For further information please refer to www.acat.act.gov.au/fees.

Location: ACT Civil & Administrative Tribunal
Allara House
15 Constitution Avenue
CANBERRA CITY ACT 2601

Contact details: Website: www.acat.act.gov.au
Email: tribunal@act.gov.au
Telephone: (02) 6207 1740
Facsimile: (02) 6205 4855
Post: GPO Box 370, CANBERRA, ACT, 2601