

Australian Capital Territory

Building (Fees) Determination 2024 (No 1)

Disallowable instrument DI2024-81

made under the

Building Act 2004, s 150 (Determination of fees)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Building (Fees) Determination 2024 (No 1)* as presented to the Legislative Assembly. It has been prepared to assist the reader of the instrument. It does not form part of the instrument and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the instrument. It is not, and is not meant to be, a comprehensive description of the instrument. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Section 150 of the *Building Act 2004* (the *Act*) permits the Minister to determine fees for the purposes of the Act.

This instrument contains seven additional fees relating to the *Building (Swimming Pool Safety) Amendment Act 2023*. All other fees are unchanged. These new fees will not be subject to increases in line with ACT Government Policy until the 2025-26 financial year due to the need to introduce them immediately before the 2024-25 financial year annual indexation to fees.

The instrument commences on 1 May 2024 when new part 5A of the *Act* commences. New section 5A of the *Act* establishes the home swimming pool safety reforms scheme.

This instrument revokes the *Building (Fees) Determination 2023* (DI2023-123).

The determination under section 150 of the Act is a disallowable instrument and must be presented to the Legislative Assembly within 6 sitting days after its notification pursuant to section 64 of the *Legislation Act 2001* (the *Legislation Act*).

Regulatory Impact Statement (RIS)

This fee determination imposes new costs on a part of the community, however these costs are not considered to be appreciable costs. As such, a regulatory impact

statement is not required for this instrument under section 34 (1) of the Legislation Act.

The costs imposed by this fee determination relate to:

- Application fees for appointment as an authorised person, a voluntary decision that results in additional work for the person that can be charged for on a commercial fee for service basis.
- Application fees for seeking a ministerial exemption. These costs are commensurate with the costs to Government of assessing and issuing exemptions. This cost takes into consideration that the granting of an exemption in full means that the pool owner does not need to make their regulated swimming pool compliant with the prescribed safety standards and thus is saved those costs. A partial exemption will also result in reduced costs to the pool owner of compliance.
- Lodgement of compliance certificates with the ACT Government. This fee is commensurate with the administrative costs to Government of processing the lodgement and is consistent with other similar fees.

The reforms in the *Building (Swimming Pool Safety) Amendment Act 2023* are designed to avoid preventable deaths and serious injuries from drownings and near drownings in home swimming pools and spas in the ACT by making sure that home swimming pools and spas in the ACT are fenced in accordance with current safety standards.

It is impossible to assign a monetary value to the trauma to families and communities from a fatal or near fatal drowning, particularly where a young child is involved. This includes those involved in the initial emergency response. In the first year after a child's death a parent is two to three times more likely to be hospitalised for mental health problems.

Costs to the community and Government for life-long care for non-fatal drownings are substantial, in addition to the cost of their loss of life-quality and productivity. Family members, carers and pool owners can also suffer loss of life-quality and productivity as a result of a fatal or non-fatal drowning.

The trauma experienced as a result of fatal and non-fatal drownings can be physical, psychological and financial:

Physical	Insomnia Aches and pains Loss of appetite Confusion Inability to concentrate
Psychological	Guilt or self-blame; Depression; Anxiety Loneliness – breakdown of social groups Helplessness; Abandonment

	<p>Chronic irritation or frustration</p> <p>Jealousy of other families and intense rage at the unfairness of their situation</p> <p>Relationship breakdown</p>
Financial	<p>Decline in income</p> <p>Extensive health bills</p> <p>Funeral arrangements \$4000 to \$15,000 more</p> <p>Loss of employment – a parent who loses a child is 9% more likely to be unemployed than a parent who has not.</p> <p>Difficulty paying bills on time – over 30% of carer families cannot pay their utility bills on time compared to less than 15% of the general population.</p>

Victoria was the latest jurisdiction to introduce swimming pool fencing reforms in 2019. A [Regulatory Impact Statement](http://www.vic.gov.au/regulatory-impact-statements-2019) (www.vic.gov.au/regulatory-impact-statements-2019) undertaken by the Department of Environment, Land, Water and Planning found:

- The consequences of a non-fatal drowning vary. However, research has found that around 20 per cent of non-fatal drowning events result in some form of long-term behavioural and learning impairment.
- Of the 27 fatal drownings in Victoria since 2000, coronial findings reported that in 20 cases the safety barrier was non-compliant with the relevant technical standard and this non-compliance may have played a direct role in the fatal drowning.
- Aside from an absence of adult supervision, the non-compliance of the safety barrier is the single biggest contributing cause to these tragedies.
- There are high levels of non-compliance on initial inspection – between 80 and 90 per cent.

Human Rights

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts, among other matters. In this case, no human rights are impacted.