

SWIMMING POOLS ACT 1990 No. 31

NEW SOUTH WALES



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SWIMMING POOLS ACT 1990 No. 31

NEW SOUTH WALES



Act No. 31, 1990

An Act to require access to private swimming pools to be effectively restricted; and for other purposes. [Assented to 14 June 1990]

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Swimming Pools Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act:

"**Appeal Board**" means the Appeal Board referred to in section 21;

"**Appeal Panel**" means an Appeal Panel referred to in section 22;

"**area**" means:

- (a) the local government area of a council within the meaning of the Local Government Act 1919; or
- (b) the Western Division within the meaning of the Crown Lands Act 1989; or
- (c) Lord Howe Island;

"**Chairperson**" means the Chairperson of the Appeal Board;

"**dividing fence**" has the same meaning as it has in the Dividing Fences Act 1951;

"**fence**" includes any structure declared by the regulations to be a fence for the purposes of this Act;

"**inspector**" means:

- (a) a person who is for the time being appointed as an inspector under section 17; or
- (b) a member of the Police Force;

"**movable dwelling**" has the same meaning as it has in Division 5B of Part 10 of the Local Government Act 1919;

"**occupier**" includes any person who is for the time being in charge of premises;

"**owner**", in relation to premises, has the same meaning as has "owner", in relation to land, in the Local Government Act 1919;

"premises" includes the whole or any part of a structure, building or place, whether built on or not;

"public authority" means a public or local authority constituted by or under an Act, a Government Department or a statutory body representing the Crown;

"relevant authority" means:

- (a) in relation to premises that are situated within a local government area within the meaning of the Local Government Act 1919 - the council of that area; or
- (b) in relation to premises that are situated within the Western Division within the meaning of the Crown Lands Act 1989 - the Western Lands Commissioner; or
- (c) in relation to premises situated on Lord Howe Island - the Lord Howe Island Board;

"residential building" means:

- (a) a building (such as a dwelling-house, residential flat building or boarding-house) that is solely or principally used for residential purposes, other than such a building that merely forms part of a complex of buildings (such as a school or recreational centre) that is solely or principally used for non-residential purposes; or
- (b) a hotel or motel;

"swimming pool" means an excavation, structure or vessel:

- (a) that is capable of being filled with water to a depth of 300mm or more; and
- (b) that is solely or principally used, or that is designed, manufactured or adapted to be solely or principally used, for the purpose of swimming, wading, paddling or of some other human aquatic activity,

and includes a spa pool, tub or the like, but does not include a spa bath, anything that is situated within a bathroom or anything declared by the regulations not to be a swimming pool for the purposes of this Act.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and

- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty, and
- (c) a reference to the owner of any premises includes, where there are 2 or more owners of the premises, a reference to any one of the owners; and
- (d) a reference to the occupier of any premises includes, where there are 2 or more occupiers of the premises, a reference to any one of the occupiers.

Application of Act

4. This Act applies to swimming pools situated in or on any premises on which a residential building or movable dwelling is located, but does not apply to premises occupied by the Crown or by a public authority.

Duties of relevant authorities

5. It is the duty of each relevant authority:
- (a) to take such steps as are appropriate to ensure that it is notified of the existence of all swimming pools within its area; and
 - (b) to promote awareness within its area of the requirements of this Act in relation to swimming pools.

PART 2 - ACCESS TO SWIMMING POOLS

Division 1 - New swimming pools

Application

6. This Division applies to new swimming pools (that is, swimming pools whose construction or installation is begun after the commencement of this section).

Outdoor swimming pools

7. The owner of any premises in or on which a new outdoor swimming pool is situated must ensure that the swimming pool is surrounded by a fence:

- (a) that forms a barrier between the swimming pool (together with its immediate surroundings) and:

- (i) the remainder of the premises; and
 - (ii) any place (whether public or private) adjacent to or adjoining the premises; and
- (b) that contains within its bounds no structure apart from the swimming pool and such other structures (such as diving boards and pool filtration plants) as are wholly ancillary to the swimming pool; and
- (c) that is designed, constructed and installed in accordance with the standards prescribed by the regulations.

Maximum penalty: 10 penalty units.

Indoor swimming pools

8. The owner of any premises in or on which a new indoor swimming pool is situated must ensure that the means of access to the swimming pool are restricted in accordance with the standards prescribed by the regulations.

Maximum penalty: 10 penalty units.

Division 2 - Existing swimming pools

Application

9. (1) This Division applies to existing swimming pools (that is, swimming pools whose construction or installation had been completed, or was in progress, before the commencement of section 6).

(2) The provisions of this Division are subject to the provisions of clause 2 of Schedule 2.

Outdoor swimming pools

10. The owner of any premises in or on which an existing outdoor swimming pool is situated must ensure that the swimming pool is surrounded by a fence:

- (a) that forms a barrier between the swimming pool and:
 - (i) any residential building or movable dwelling situated on the premises; and
 - (ii) any place (whether public or private) adjacent to or adjoining the premises; and

- (b) that is designed, constructed and installed in accordance with the standards prescribed by the regulations.

Maximum penalty: 10 penalty units.

Indoor swimming pools

11. The owner of any premises in or on which an existing indoor swimming pool is situated must ensure that the means of access to the swimming pool are restricted in accordance with the standards prescribed by the regulations.

Maximum penalty: 10 penalty units.

Division 3 - General

Access to swimming pools to be kept securely closed

12. The occupier of any premises in or on which a swimming pool is situated must ensure that:

- (a) in the case of an outdoor swimming pool - any gate that is set in a fence required by or under this Act in connection with the swimming pool; and
- (b) in the case of an indoor swimming pool - the means of access to the swimming pool,

are kept securely closed at all times when the gate or other means of access is not in actual use.

Maximum penalty: 10 penalty units.

Relevant authority may impose additional standards

13. (1) The relevant authority may, by notice in writing served on the owner of any premises in or on which a swimming pool is situated, direct the owner to take, within such time as is specified in the direction, such measures as are so specified.

- (2) The only measures that may be specified in such a direction are:
 - (a) measures to ensure that the swimming pool or premises comply with the requirements of Division 1 or 2, as the case requires; and
 - (b) measures to ensure that the swimming pool or premises comply with such other requirements as the relevant authority considers appropriate to ensure that effective provision is made for restricting access to the swimming pool.

(3) The relevant authority may, by notice in writing served on the owner of any premises to which a direction under this section relates, revoke or vary the direction if, and only if:

- (a) some significant physical change (such as the erection, alteration or demolition of any building or structure or the carrying out of any work) occurs in the immediate vicinity of the swimming pool; or
- (b) the relevant authority and the owner agree to the revocation or variation.

(4) The requirements of a direction under this section are in addition to, and do not derogate from, the requirements of Divisions 1 and 2.

(5) A person on whom a direction under this section is served must not fail to comply with the requirements of the direction.

Maximum penalty: 10 penalty units.

(6) A direction under this section does not cease to have effect merely because there is a change in the ownership of the premises to which the direction relates, but applies to the new owner in the same way as it applied to the old.

Exemptions

14. (1) The relevant authority may, on application made by the owner of any premises in or on which a swimming pool is situated, exempt the swimming pool from the requirements of Division 1 or 2.

- (a) if it is satisfied that:
 - (i) it is impracticable, because of the nature of the premises or because of the design or construction of the swimming pool, for the swimming pool to comply with those requirements; and
 - (ii) alternative provision, no less effective than those requirements, exists for restricting access to the swimming pool; or
- (b) if it is satisfied that, in the case of a swimming pool consisting of a spa pool, tub or the like:
 - (i) it is inappropriate, because of the design or construction of the swimming pool, to comply with those requirements; and

- (ii) alternative provision, no less effective than those requirements, exists for restricting access to the swimming pool or the water contained in it.

(2) An exemption may be granted without conditions or subject to such conditions as the relevant authority considers appropriate to ensure that effective provision is made for restricting access to the swimming pool concerned or the water contained in it.

(3) The relevant authority may, by notice in writing served on the owner of any premises the subject of an exemption under this section, revoke the exemption or vary any condition to which the exemption is subject if, and only if:

- (a) some significant physical change (such as the erection, alteration or demolition of any building or structure or the carrying out of any work) occurs in the immediate vicinity of the swimming pool or, in the case of a swimming pool consisting of a spa pool, tub or the like, some significant physical change occurs to the swimming pool; or
- (b) the relevant authority and the owner agree to the revocation or variation.

(4) A person is not guilty of an offence against a provision of Division 1 or 2 if the swimming pool concerned:

- (a) is the subject of an exemption under this section; and
- (b) complies with any conditions to which the exemption is subject.

Certificates of compliance

15. (1) The relevant authority may, on application made by the owner of any premises in or on which a swimming pool is situated, issue to the owner a certificate to the effect that, as at the date on which it is issued, the swimming pool complies with:

- (a) the requirements of Division 1 or 2, as the case requires; and
- (b) the requirements of any direction in force under section 13 in respect of the swimming pool; and
- (c) the requirements of any condition to which an exemption under section 14 in respect of the swimming pool is subject.

(2) The issue of a certificate under this section does not prevent the relevant authority from giving or varying a direction under section 13, or from revoking an exemption under section 14 or varying a condition

to which such an exemption is subject, in respect of the swimming pool to which the certificate relates.

Defences to proceedings for offences under this Part

16. (1) In any proceedings for an offence against a provision of this Part, it is a sufficient defence if the owner of the premises concerned establishes:

- (a) that he or she was not the occupier of the premises when the alleged offence occurred; and
- (b) that he or she had taken all reasonable steps to ensure that the alleged offence would not occur; and
- (c) that he or she was not aware of, and could not reasonably be expected to have been aware of, the facts giving rise to the alleged offence.

(2) In any proceedings for an offence against a provision of this Part, it is a sufficient defence if the owner of the premises concerned establishes:

- (a) that a certificate has been issued in respect of the swimming pool the subject of the alleged offence; and
- (b) that, since the certificate was issued, no direction under section 13 has been given or varied, and no exemption under section 14 has been revoked or condition to which such an exemption is subject been varied, in respect of the swimming pool; and
- (c) that the fence or other means of restricting access to the swimming pool is the same, and is in substantially the same condition, as that in respect of which the certificate was issued.

(3) In any proceedings for an offence against a provision of this Part, it is a sufficient defence if the owner of the premises concerned establishes that, when the alleged offence occurred:

- (a) the swimming pool was unassembled; or
- (b) the swimming pool was in the course of construction, installation, alteration or renovation and:
 - (i) the swimming pool was empty of water or was filled with water to a depth of less than 300mm; or
 - (ii) appropriate measures had, in the circumstances, been taken for restricting access to the swimming pool.

PART 3 - ENFORCEMENT

Inspectors

17. (1) Each relevant authority may appoint:

- (a) any of its officers or employees; and
- (b) with the approval of the Secretary of the Department of Local Government - any other persons,

to be inspectors for the purposes of this Act.

(2) A relevant authority must issue a certificate of identification, in the form prescribed by the regulations, to each inspector appointed by it.

(3) A member of the Police Force is, by virtue of his or her office as such, an inspector for the purposes of this Act.

(4) An inspector has such functions as are conferred or imposed on inspectors by or under this Act.

(5) An inspector appointed by a relevant authority may not exercise any functions under this Act outside the relevant authority's area.

Powers of entry

18. (1) An inspector may:

- (a) enter any premises in or on which he or she suspects that a swimming pool is situated; and
- (b) examine the premises and, in particular, any swimming pool, and any fence or other means of restricting access to any swimming pool, that is situated in or on the premises.

(2) An inspector may not enter such part of any building as is used for residential purposes, or any movable dwelling, otherwise than with the consent of the occupier of the building or dwelling or under a search warrant under section 19.

(3) Before exercising the powers conferred by this section in respect of any premises, an inspector must seek the consent of the occupier of the premises to the inspector's exercise of those powers.

(4) If an inspector is unable to obtain the consent of the occupier of the premises, the inspector may exercise those powers (in respect only of that portion of premises not comprising such part of a building as is used for residential purposes):

- (a) after 24 hours have elapsed since the inspector has served notice on the occupier of his or her intention to exercise those powers; and
- (b) between 9.00 a.m. and 5.00 p.m. on any day that is not a Saturday, Sunday or public holiday.

(5) An inspector (other than a member of the Police Force) who is exercising the powers conferred by this section in respect of any premises is required, on demand made by any person in or on the premises, to produce his or her certificate of identification for inspection by that person.

Search warrants

19. (1) An inspector may apply to an authorised justice for a search warrant if the inspector has reasonable grounds for believing that an offence against this Act is being or has been committed in or on any premises.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:

- (a) to enter the premises; and
- (b) to search the premises for evidence of an offence against this Act.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the Police Force:

- (a) may accompany an inspector executing a search warrant under this section; and
- (b) may take all reasonable steps to assist the inspector in the exercise of the inspector's powers under this section.

(5) In this section:

"authorised justice" means a Magistrate or a justice of the peace employed in the Attorney General's Department.

Relevant authority may carry out work

20. (1) If the requirements of a direction under section 13 are not complied with within the time allowed by the direction, the relevant

authority may enter the premises concerned and carry out such work as is necessary to ensure that the measures specified in the direction are taken.

(2) The relevant authority may exercise its powers under this section only after 14 days have elapsed since it has served notice on the owner (and, if the owner is not also the occupier, on the occupier) of the premises of its intention to exercise those powers.

(3) The expenses incurred by the relevant authority in carrying out the work may be recovered from the owner of the premises, as a debt, in any court of competent jurisdiction.

(4) In the event of a change in the ownership of premises to which such a debt relates, the new owner of the premises becomes, by virtue of this subsection, subject to the debt to the same extent as was the old owner immediately before the change took place.

PART 4 - APPEALS

The Appeal Board

21. (1) There is to be an Appeal Board.

(2) The Appeal Board is to consist of at least 5 persons, of whom:

(a) at least one is to be an officer of the Department of Local Government appointed by the Minister; and

(b) at least one is to be a person appointed by the Minister on the nomination of the Australian Institute of Building Surveyors, New South Wales Chapter; and

(c) at least one is to be a person appointed by the Minister on the nomination of the Australian Institute of Environmental Health, New South Wales Division; and

(d) at least one is to be a person appointed by the Minister on the nomination of the Fence Industry Association of Australia Incorporated; and

(e) at least one is to be a person appointed by the Minister to represent the general public.

(3) In the event that an organisation referred to in subsection (2) (b), (c) or (d) fails to nominate a person for the purposes of this section within such time as the Minister may allow, the Minister may appoint any other person he or she considers appropriate to represent that organisation.

(4) One of the members of the Appeal Board referred to in subsection (2) (a) is, by the instrument of his or her appointment or by a subsequent instrument, to be appointed as Chairperson of the Appeal Board.

(5) Schedule 1 has effect with respect to the members of the Appeal Board.

Appeal Panels

22. (1) An Appeal Panel is to be constituted for the purposes of hearing and determining an appeal made to the Appeal Board.

(2) An Appeal Panel is to be constituted by 3 members of the Appeal Board, of whom:

- (a) one is to be the Chairperson or a member appointed by the Chairperson from among the persons referred to in section 21 (2) (a); and
- (b) one is to be a member appointed by the Chairperson from among the persons referred to in section 21 (2) (b), (c) or (d); and
- (c) one is to be a member appointed by the Chairperson from among the persons referred to in section 21 (2) (e).

(3) The person referred to in subsection (2) (a) is to be the presiding member of the Appeal Panel for the purposes of the appeal in respect of which the Appeal Panel is constituted.

(4) More than one Appeal Panel may be constituted at any one time.

Appeals

23. A person may appeal to the Appeal Board, in the manner prescribed by the regulations, from any decision by a relevant authority:

- (a) to impose requirements on the person pursuant to a direction given under section 13 or to vary a direction so given; or
- (b) to refuse to grant an exemption under section 14 in respect of a swimming pool situated in or on premises owned by that person or to revoke an exemption so granted; or
- (c) to impose conditions on an exemption under section 14 in respect of a swimming pool situated in or on premises owned by that person or to vary a condition so imposed; or

- (d) to refuse to issue a certificate under section 15.

Determination of appeals

24. (1) An appeal is to be heard and determined in accordance with:

- (a) such procedures as are prescribed by the regulations; and
- (b) such practice directions, not inconsistent with those procedures, as are from time to time given by the Chairperson.

(2) The decision of an Appeal Panel is final and is to be given effect to as if it were the decision of the relevant authority from whose decision the appeal has been made.

PART 5 - MISCELLANEOUS

Operation of other Acts etc.

25. (1) In the event of an inconsistency between:

- (a) the provisions of this Act; and
- (b) the provisions of any other Act or law, or of any agreement, covenant or instrument,

the provisions of this Act are to prevail, but to the extent only of the inconsistency.

(2) Without limiting the generality of subsection (1), the owner of an existing swimming pool (that is, a swimming pool whose construction or installation had been completed, or was in progress, before the commencement of section 6) is not required to obtain any approval under Part 11 of the Local Government Act 1919 in respect of the construction, alteration, repair, replacement or maintenance of a fence in accordance with the requirements of this Act.

Apportionment of expenses of constructing etc. dividing fences

26. (1) The expenses of constructing, altering, repairing, replacing or maintaining a fence that consists of the whole or any part of a dividing fence are, to the extent to which they are attributable to work done for the purpose of complying with the requirements of this Act in respect of a swimming pool, to be borne:

- (a) by the owner of the premises in or on which the swimming pool is situated; or

- (b) if swimming pools are situated in or on more than one of the premises bounded by the dividing fence - by the owners of each of those premises in equal proportions.

(2) This section applies notwithstanding any provision of the Dividing Fences Act 1951 to the contrary.

Service of notices

27. Any notice that is authorised or required by or under this Act to be served on the owner or occupier of any premises may be served:

- (a) personally; or
- (b) by means of a letter addressed to the owner or occupier and sent by post to the premises; or
- (c) by means of a letter addressed to the owner or occupier and left at the premises with a person who appears to be of or above the age of 16 years and to reside or to be employed at the premises; or
- (d) by means of a letter addressed to the owner or occupier and affixed to some conspicuous part of the premises.

Penalty notices for certain offences

28. (1) An inspector may serve a penalty notice on a person if it appears to the inspector that the person has committed an offence against this Act, being an offence prescribed by the regulations for the purposes of this section.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.

(3) If the penalty prescribed for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.

(4) Payment in accordance with this section is not to be regarded as an admission of liability for the purposes of, nor is in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(5) The regulations may:

- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
- (b) prescribe the penalty payable for the offence if dealt with under this section; and
- (c) prescribe different penalties for different offences or classes of offences.

(6) The penalty prescribed for an offence is not to exceed 2 penalty units.

(7) This section does not limit the operation of this or any other Act in relation to proceedings that may be taken in respect of offences.

Proceedings for offences

29. Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Liability

30. No matter or thing done by a member of a relevant authority, by an inspector or by a person acting under the direction of a relevant authority subjects the member, inspector or person so acting personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purpose of executing this Act.

Regulations

31. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:

- (a) the functions of inspectors; and
- (b) the fees payable under this Act; and
- (c) the forms to be used for the purposes of this Act.

(2) A regulation may apply, adopt or incorporate the provisions of any standard, code or rule, as in force for the time being.

Amendment of Justices Act 1902 No. 27

32. The Justices Act 1902 is amended by inserting in paragraph (a) of the definition of "penalty notice" in section 100I (1), in alphabetical order, the following matter:

Swimming Pools Act 1990, section 28;

Amendment of Land and Environment Court Act 1979 No. 204

33. The Land and Environment Court Act 1979 is amended by omitting from section 18 (a) the matter "288C (5)".

Amendment of Liquor Act 1982 No. 147

34. The Liquor Act 1982 is amended:

- (a) by omitting from section 97 (1) the matter ", 288C (2)";
- (b) by inserting after section 97 (1) the following subsection:
 - (1A) A relevant authority within the meaning of the Swimming Pools Act 1990 may serve on the Board a direction under section 13 of that Act with respect to licensed premises.
- (c) by inserting in section 97 (2) after the matter "subsection (1)" the matter "or (1A)".

Amendment of Local Government Act 1919 No. 41

35. The Local Government Act 1919 is amended:

- (a) by omitting section 288C;
- (b) by omitting from section 289 (m) the matter "section 288C" and by inserting instead the words "the Swimming Pools Act 1990";
- (c) by inserting in the definition of "Structure" in section 304 after the word "reserve" the words ", and includes a swimming pool".

Amendment of Search Warrants Act 1985 No. 37

36. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10, in alphabetical order, the following matter:

section 19 of the Swimming Pools Act 1990;

Savings, transitional and other provisions

37. Schedule 2 has effect.

**SCHEDULE 1 - PROVISIONS WITH RESPECT TO THE
MEMBERS OF THE APPEAL BOARD**

(Sec. 21)

Definition

1. In this Schedule:

"**non-Government member**" means a member of the Appeal Board referred to in section 21 (2) (b), (c), (d) or (e).

Term of office

2. Subject to this Schedule, a non-Government member holds office for such period, not exceeding 5 years, as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

3. A non-Government member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Vacancy in office of member

4. (1) The office of a non-Government member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

**SCHEDULE 1 - PROVISIONS WITH RESPECT TO THE
MEMBERS OF THE APPEAL BOARD - *continued***

- (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a non-Government member from office at any time.

Filling of vacancy in office of member

5. If the office of a non-Government member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy for the remainder of the term of office of his or her predecessor.

**SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS**

(Sec. 37)

Part 1 - Preliminary

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act

(2) Such a provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or

SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

**Part 2 - Provisions consequent on the enactment of the Swimming
Pools Act 1990**

Existing swimming pools

2. (1) This clause applies to existing swimming pools (that is, swimming pools whose construction or installation had been completed, or was in progress, before the commencement of section 6).

(2) The owner of any premises in or on which an existing outdoor swimming pool is situated is not guilty of an offence against section 10:

- (a) for the period of 2 years beginning on the commencement of section 6; and
- (b) for such further period (not exceeding 3 years) beginning at the end of the period referred to in paragraph (a) as the relevant authority may, in accordance with subclauses (3) and (4), allow, merely because the swimming pool fails to comply with the requirements of that section.

(3) The relevant authority may, on application made by the owner of any premises in or on which an existing outdoor swimming pool is situated, allow the owner a further period within which to complete such work as is necessary to ensure that the swimming pool complies with the requirements of section 10.

(4) Such a period may not be allowed in relation to an existing outdoor swimming pool unless:

- (a) the swimming pool is surrounded by a fence:
 - (i) that forms a barrier between the swimming pool and any place (whether public or private) adjacent to or adjoining the premises in or on which the swimming pool is situated; and
 - (ii) that is designed, constructed and installed in accordance with the standards prescribed by the regulations; and

SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

(b) the relevant authority is satisfied that it is impracticable, because of the nature of the premises or because of the design or construction of the swimming pool, for the work referred to in subclause (3) to be completed before the expiration of that period.

(5) The owner of any premises in or on which an existing indoor swimming pool is situated is not guilty of an offence against section 11, for the period of 2 years beginning on the commencement of section 6, merely because the swimming pool fails to comply with the requirements of that section.

(6) The owner of any premises in or on which an existing swimming pool is situated is not guilty of an offence against section 13, for the period of 2 years beginning on the commencement of section 6, merely because he or she fails to comply with a direction under that section.

(7) A relevant authority may not, for the period of 2 years beginning on the commencement of section 6, exercise its powers under section 20 in respect of an existing swimming pool.

Directions under section 288C of the Local Government Act 1919

3. A direction in force immediately before the commencement of section 35 of this Act under section 288C of the Local Government Act 1919 is to be taken to be a direction under section 13 of this Act and is enforceable, and may be appealed against, accordingly.

Appeals under section 288C of the Local Government Act 1919

4. (1) An appeal under section 288C of the Local Government Act 1919 that was pending before the Land and Environment Court immediately before the commencement of section 33 of this Act is to be determined as if this Act had not been enacted.

(2) A decision by the Land and Environment Court on any such appeal, whether given before or after the commencement of section 33, is to be taken to be a determination of an Appeal Panel under this Act and is to be given effect to accordingly.

SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

**Recovery of costs under section 288C of the Local Government Act
1919**

5. Any costs incurred by a council under section 288C of the Local Government Act 1919 before the commencement of section 35 of this Act are to be taken to be expenses incurred under section 20 of this Act and may be recovered accordingly.

Recovery of expenses under the Dividing Fences Act 1951

6. Section 26 does not apply to expenses incurred before the commencement of that section in respect of the construction, alteration, repair, replacement or maintenance of a fence referred to in that section.

[*Minister's second reading speech made in -
Legislative Assembly on 17 May 1990
Legislative Council on 30 May 1990*]

FIRST PRINT

SWIMMING POOLS BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to require all swimming pools, whenever constructed or installed, to comply with certain safety standards concerning fencing and other means of restricting access (different provision being made in relation to new and existing swimming pools); and
- (b) to provide for the enforcement of the proposed requirements; and
- (c) to allow appeals to be made from certain decisions regarding the imposition of higher safety standards, regarding exemptions from compliance with the required standards and regarding certificates of compliance; and
- (d) to enact other provisions of a minor, consequential or ancillary nature; and
- (e) to make consequential amendments to the Justices Act 1902, the Land and Environment Court Act 1979, the Liquor Act 1982, the Local Government Act 1919 and the Search Warrants Act 1985.

References in this Bill to monetary penalties are expressed in penalty units. Under section 56 of the Interpretation Act 1987, 1 penalty unit is currently equivalent to \$100.

PART 1 - PRELIMINARY

Clause 1 specifies the short title to the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain expressions (in particular, "relevant authority", "residential building" and "swimming pool") for the purposes of the proposed Act. A relevant authority will generally be a local government council.

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Clause 4 provides that the proposed Act applies to swimming pools situated in or on premises on which a residential building or movable dwelling is situated, but does not apply to premises occupied by the Crown or by a public authority.

Clause 5 provides that each relevant authority has a duty to take appropriate steps to ensure that it is notified of the existence of all swimming pools within its area and to promote awareness within its area of the requirements of the proposed Act in relation to swimming pools.

PART 2 - ACCESS TO SWIMMING POOLS

Division 1 - New swimming pools

Clause 6 applies the proposed Division to new swimming pools (that is, swimming pools whose construction or installation is begun after the commencement of the clause).

Clause 7 requires the owner of any premises in or on which a new outdoor swimming pool is situated to ensure that the swimming pool (together with its immediate surroundings) is surrounded by a fence that separates it from all other parts of the premises, and from adjoining or adjacent premises, and that is designed, constructed and installed in accordance with standards to be prescribed by the regulations. Contravention of the proposed section will be punishable by a maximum fine of 10 penalty units.

Clause 8 requires the owner of any premises in or on which a new indoor swimming pool is situated to ensure that the means of access to the swimming pool are restricted in accordance with standards to be prescribed by the regulations. Contravention of the proposed section will be punishable by a maximum fine of 10 penalty units.

Division 2 - Existing swimming pools

Clause 9 applies the proposed Division to existing swimming pools (that is, swimming pools whose construction or installation had been completed, or was in progress, before the commencement of clause 6). Certain transitional provisions concerning existing swimming pools are contained in clause 2 of Schedule 2.

Clause 10 requires the owner of any premises in or on which an existing outdoor swimming pool is situated to ensure that the swimming pool is surrounded by a fence that separates it from any residential building on the premises, and from any adjacent or adjoining premises, and that is designed, constructed and installed in accordance with standards to be prescribed by the regulations. Contravention of the proposed section will be punishable by a maximum fine of 10 penalty units.

Clause 11 requires the owner of any premises in or on which an existing indoor swimming pool is situated to ensure that the means of access to the swimming pool are restricted in accordance with standards to be prescribed by the regulations. Contravention of the proposed section will be punishable by a maximum fine of 10 penalty units.

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Division 3 - General

Clause 12 requires the occupier of any premises in or on which a swimming pool is situated to ensure that any security gate or other means of access to the swimming pool is kept securely closed at all times when the gate or other means of access is not in actual use. Contravention of the proposed section will be punishable by a maximum fine of 10 penalty units.

Clause 13 enables a relevant authority to direct the owner of any premises in or on which a swimming pool is situated to take measures to improve the means of restricting access to the swimming pool. Such a direction will be capable of being revoked or varied only if some significant physical change occurs in the immediate vicinity of the swimming pool or if the relevant authority and the owner agree. Contravention of such a direction will be punishable by a maximum fine of 10 penalty units. In cases of change of ownership of premises, a direction will bind the new owner in the same way as it bound the old.

Clause 14 enables a relevant authority to exempt a swimming pool from the requirements of proposed Division 1 or 2 if it is satisfied that it is impracticable or inappropriate for the swimming pool to comply with those requirements and that no less effective alternative provision has been made for restricting access to the swimming pool or the water contained in it. Such an exemption will be capable of being revoked or varied only if some significant physical change occurs in the immediate vicinity of the swimming pool or to the swimming pool or if the relevant authority and the owner agree.

Clause 15 enables a relevant authority to issue a certificate of compliance in respect of a swimming pool.

Clause 16 affords certain defences to an owner of premises who is prosecuted for an offence arising under proposed Part 2. To establish a defence, the owner will be required to prove that he or she was not occupying the premises, that he or she had taken all reasonable steps to ensure that such an offence would not occur and that he or she was not aware of the facts giving rise to the offence. Alternatively, the owner will be required to produce a certificate of compliance and to prove that the fence or other means of access to the swimming pool is the same, and is in substantially the same condition, as that in respect of which the certificate was issued. Alternatively again, the owner will be required to establish that the swimming pool was unassembled or in the course of construction, installation, alteration or renovation and was empty of water or otherwise made safe.

PART 3 - ENFORCEMENT

Clause 17 provides for the appointment of inspectors for the purposes of the proposed Act. A member of the Police Force will, by virtue of his or her office as such, be an inspector.

Clause 18 gives an inspector certain powers of entry in respect of premises that he or she suspects contain a swimming pool. Those powers will not authorise an inspector to enter a movable dwelling or such part of a building as is used for residential purposes. An inspector will be required to give the occupier of premises at least 24 hours' notice of his or her intention to enter the premises and may enter

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the premises only during normal business hours. An inspector (other than a member of the Police Force) will also be required to produce his or her certificate of identification to any person in the premises who requests its production.

Clause 19 enables an inspector to apply for, and an authorised justice to grant, a search warrant where it appears that an offence against the proposed Act is being or has been committed in or on any premises. The issue and execution of such a warrant will be governed by the provisions of the Search Warrants Act 1985.

Clause 20 enables a relevant authority to enter premises and carry out such work as is necessary to implement the requirements of a direction referred to in clause 13 if those requirements have not been complied with within the time allowed by the direction. A relevant authority will be required to give the owner (and, if the owner is not also the occupier, the occupier) of the premises concerned at least 14 days' notice of its intention to exercise its powers under the proposed section. A relevant authority will be empowered to recover from the owner of the premises the costs incurred by it in carrying out work under the proposed section. In cases of change of ownership of premises, the new owner will become subject to any debt to which the old owner was subject under the proposed section.

PART 4 - APPEALS

Clause 21 establishes an Appeal Board consisting of persons appointed by the Minister. The members are to comprise officers of the Department of Local Government, persons nominated by the Australian Institute of Building Surveyors, the Australian Institute of Environmental Health and the Fence Industry Association of Australia Incorporated and persons appointed to represent the general public. One of the Departmental members is to be appointed Chairperson of the Appeal Board.

Clause 22 provides for the constitution of an Appeal Panel for the purposes of hearing and determining an appeal. Such a Panel is to be constituted by 3 members of the Appeal Board (including a person from the Department of Local Government, a person representing the general public and one other person). The Departmental officer is to preside at the hearing. Two or more Appeal Panels may be constituted at the same time.

Clause 23 enables a person to appeal from the requirements of a direction referred to in clause 13 and from any decision in relation to an exemption referred to in clause 14 or a certificate of compliance referred to in clause 15.

Clause 24 requires an appeal to be heard and determined in accordance with procedures to be prescribed by the regulations and practice directions to be given by the Chairperson of the Appeal Board, and provides that an Appeal Panel's decision on an appeal is to be final.

PART 5 - MISCELLANEOUS

Clause 25 ensures that in the event of an inconsistency between the provisions of any other Act or law, or of any agreement, covenant or instrument, and the requirements of the proposed Act, the requirements of the proposed Act are to prevail to the extent only of the inconsistency. The clause further ensures that a

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building approval will not be necessary for the construction or alteration of a fence to surround an existing pool in accordance with the requirements of the proposed Act.

Clause 26 provides for the apportionment of expenses in constructing or maintaining a pool safety fence that forms part of a dividing fence.

Clause 27 provides for the service of notices authorised or required to be served on the owner or occupier of any premises.

Clause 28 provides for the issue of penalty notices for offences against the proposed Act. The maximum fine that will be capable of being imposed by means of a penalty notice will be 2 penalty units.

Clause 29 requires proceedings for an offence against the proposed Act to be dealt with summarily before a Local Court.

Clause 30 exempts certain persons from personal liability for matters or things done by them in good faith for the purpose of executing the proposed Act.

Clause 31 enables the Governor to make regulations for the purposes of the proposed Act and provides that a regulation may adopt any standard, code or rule, as in force for the time being.

Clauses 32-36 effect consequential amendments to the Justices Act 1902, the Land and Environment Court Act 1979, the Liquor Act 1982, the Local Government Act 1919 and the Search Warrants Act 1985.

Clause 37 is a formal provision that gives effect to a schedule of savings, transitional and other provisions.

SCHEDULE 1 - PROVISIONS WITH RESPECT TO THE MEMBERS OF THE APPEAL BOARD

Schedule 1 enacts provisions with respect to the members of the Appeal Board, including provisions concerning:

- (a) a definition of "non-Government member" for the purposes of the proposed Schedule (clause 1); and
- (b) the term of office of a non-Government member (clause 2); and
- (c) the remuneration of a non-Government member (clause 3); and
- (d) the circumstances that give rise to a vacancy in the office of a non-Government member (clause 4); and
- (e) the filling of a vacancy in the office of a non-Government member (clause 5).

SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Schedule 2 enacts certain savings, transitional and other provisions. The proposed Schedule comprises 2 Parts.

Part 1 contains a provision concerning the making of regulations of a savings or transitional nature (clause 1).

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Part 2 contains provisions concerning:

- (a) existing swimming pools (clause 2); and
- (b) directions under section 288C of the Local Government Act 1919 (clause 3);
and
- (c) appeals under section 288C of the Local Government Act 1919 (clause 4);
and
- (d) the recovery of costs under section 288C of the Local Government Act 1919
(clause 5); and
- (e) the recovery of expenses under the Dividing Fences Act 1951 (clause 6).

The provision concerning existing swimming pools (clause 2) will allow a lead-in time of 2 years before the requirements of proposed sections 10 and 11, or of directions under proposed section 13, become mandatory. A relevant authority will, in certain circumstances and subject to certain conditions, have a discretionary power to extend that lead-in time by up to 3 years in relation to an existing outdoor swimming pool so as to allow any necessary upgrading of pool safety fencing to be completed.

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SWIMMING POOLS BILL 1990

NEW SOUTH WALES



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APPEAL BOARD

SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

SWIMMING POOLS BILL 1990

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to require access to private swimming pools to be effectively restricted; and for other purposes.

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Swimming Pools Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act:

"**Appeal Board**" means the Appeal Board referred to in section 21;

"**Appeal Panel**" means an Appeal Panel referred to in section 22;

"**area**" means:

- (a) the local government area of a council within the meaning of the Local Government Act 1919; or
- (b) the Western Division within the meaning of the Crown Lands Act 1989; or
- (c) Lord Howe Island;

"**Chairperson**" means the Chairperson of the Appeal Board;

"**dividing fence**" has the same meaning as it has in the Dividing Fences Act 1951;

"**fence**" includes any structure declared by the regulations to be a fence for the purposes of this Act;

"**inspector**" means:

- (a) a person who is for the time being appointed as an inspector under section 17; or
- (b) a member of the Police Force;

"**movable dwelling**" has the same meaning as it has in Division 5B of Part 10 of the Local Government Act 1919;

"**occupier**" includes any person who is for the time being in charge of premises;

"**owner**", in relation to premises, has the same meaning as has "owner", in relation to land, in the Local Government Act 1919;

"premises" includes the whole or any part of a structure, building or place, whether built on or not;

"public authority" means a public or local authority constituted by or under an Act, a Government Department or a statutory body representing the Crown;

"relevant authority" means:

- (a) in relation to premises that are situated within a local government area within the meaning of the Local Government Act 1919 - the council of that area; or
- (b) in relation to premises that are situated within the Western Division within the meaning of the Crown Lands Act 1989 - the Western Lands Commissioner; or
- (c) in relation to premises situated on Lord Howe Island - the Lord Howe Island Board;

"residential building" means:

- (a) a building (such as a dwelling-house, residential flat building or boarding-house) that is solely or principally used for residential purposes, other than such a building that merely forms part of a complex of buildings (such as a school or recreational centre) that is solely or principally used for non-residential purposes; or
- (b) a hotel or motel;

"swimming pool" means an excavation, structure or vessel:

- (a) that is capable of being filled with water to a depth of 300mm or more; and
- (b) that is solely or principally used, or that is designed, manufactured or adapted to be solely or principally used, for the purpose of swimming, wading, paddling or of some other human aquatic activity,

and includes a spa pool, tub or the like, but does not include a spa bath, anything that is situated within a bathroom or anything declared by the regulations not to be a swimming pool for the purposes of this Act.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and

- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty; and
- (c) a reference to the owner of any premises includes, where there are 2 or more owners of the premises, a reference to any one of the owners; and
- (d) a reference to the occupier of any premises includes, where there are 2 or more occupiers of the premises, a reference to any one of the occupiers.

Application of Act

4. This Act applies to swimming pools situated in or on any premises on which a residential building or movable dwelling is located, but does not apply to premises occupied by the Crown or by a public authority.

Duties of relevant authorities

5. It is the duty of each relevant authority:
- (a) to take such steps as are appropriate to ensure that it is notified of the existence of all swimming pools within its area; and
 - (b) to promote awareness within its area of the requirements of this Act in relation to swimming pools.

PART 2 - ACCESS TO SWIMMING POOLS

Division 1 - New swimming pools

Application

6. This Division applies to new swimming pools (that is, swimming pools whose construction or installation is begun after the commencement of this section).

Outdoor swimming pools

7. The owner of any premises in or on which a new outdoor swimming pool is situated must ensure that the swimming pool is surrounded by a fence:

- (a) that forms a barrier between the swimming pool (together with its immediate surroundings) and:

- (i) the remainder of the premises; and
 - (ii) any place (whether public or private) adjacent to or adjoining the premises; and
- (b) that contains within its bounds no structure apart from the swimming pool and such other structures (such as diving boards and pool filtration plants) as are wholly ancillary to the swimming pool; and
- (c) that is designed, constructed and installed in accordance with the standards prescribed by the regulations.

Maximum penalty: 10 penalty units.

Indoor swimming pools

8. The owner of any premises in or on which a new indoor swimming pool is situated must ensure that the means of access to the swimming pool are restricted in accordance with the standards prescribed by the regulations.

Maximum penalty: 10 penalty units.

Division 2 - Existing swimming pools

Application

9. (1) This Division applies to existing swimming pools (that is, swimming pools whose construction or installation had been completed, or was in progress, before the commencement of section 6).

(2) The provisions of this Division are subject to the provisions of clause 2 of Schedule 2.

Outdoor swimming pools

10. The owner of any premises in or on which an existing outdoor swimming pool is situated must ensure that the swimming pool is surrounded by a fence:

- (a) that forms a barrier between the swimming pool and:
 - (i) any residential building or movable dwelling situated on the premises; and
 - (ii) any place (whether public or private) adjacent to or adjoining the premises; and

- (b) that is designed, constructed and installed in accordance with the standards prescribed by the regulations.

Maximum penalty: 10 penalty units.

Indoor swimming pools

11. The owner of any premises in or on which an existing indoor swimming pool is situated must ensure that the means of access to the swimming pool are restricted in accordance with the standards prescribed by the regulations.

Maximum penalty: 10 penalty units.

Division 3 - General

Access to swimming pools to be kept securely closed

12. The occupier of any premises in or on which a swimming pool is situated must ensure that:

- (a) in the case of an outdoor swimming pool - any gate that is set in a fence required by or under this Act in connection with the swimming pool; and
- (b) in the case of an indoor swimming pool - the means of access to the swimming pool,

are kept securely closed at all times when the gate or other means of access is not in actual use.

Maximum penalty: 10 penalty units.

Relevant authority may impose additional standards

13. (1) The relevant authority may, by notice in writing served on the owner of any premises in or on which a swimming pool is situated, direct the owner to take, within such time as is specified in the direction, such measures as are so specified.

- (2) The only measures that may be specified in such a direction are:
 - (a) measures to ensure that the swimming pool or premises comply with the requirements of Division 1 or 2, as the case requires; and
 - (b) measures to ensure that the swimming pool or premises comply with such other requirements as the relevant authority considers appropriate to ensure that effective provision is made for restricting access to the swimming pool.

(3) The relevant authority may, by notice in writing served on the owner of any premises to which a direction under this section relates, revoke or vary the direction if, and only if:

- (a) some significant physical change (such as the erection, alteration or demolition of any building or structure or the carrying out of any work) occurs in the immediate vicinity of the swimming pool; or
- (b) the relevant authority and the owner agree to the revocation or variation.

(4) The requirements of a direction under this section are in addition to, and do not derogate from, the requirements of Divisions 1 and 2.

(5) A person on whom a direction under this section is served must not fail to comply with the requirements of the direction.

Maximum penalty: 10 penalty units.

(6) A direction under this section does not cease to have effect merely because there is a change in the ownership of the premises to which the direction relates, but applies to the new owner in the same way as it applied to the old.

Exemptions

14. (1) The relevant authority may, on application made by the owner of any premises in or on which a swimming pool is situated, exempt the swimming pool from the requirements of Division 1 or 2:

- (a) if it is satisfied that:
 - (i) it is impracticable, because of the nature of the premises or because of the design or construction of the swimming pool, for the swimming pool to comply with those requirements; and
 - (ii) alternative provision, no less effective than those requirements, exists for restricting access to the swimming pool; or
- (b) if it is satisfied that, in the case of a swimming pool consisting of a spa pool, tub or the like:
 - (i) it is inappropriate, because of the design or construction of the swimming pool to comply with those requirements; and

- (ii) alternative provision, no less effective than those requirements, exists for restricting access to the swimming pool or the water contained in it.

(2) An exemption may be granted without conditions or subject to such conditions as the relevant authority considers appropriate to ensure that effective provision is made for restricting access to the swimming pool concerned or the water contained in it.

(3) The relevant authority may, by notice in writing served on the owner of any premises the subject of an exemption under this section, revoke the exemption or vary any condition to which the exemption is subject if, and only if:

- (a) some significant physical change (such as the erection, alteration or demolition of any building or structure or the carrying out of any work) occurs in the immediate vicinity of the swimming pool or, in the case of a swimming pool consisting of a spa pool, tub or the like, some significant physical change occurs to the swimming pool; or
- (b) the relevant authority and the owner agree to the revocation or variation.

(4) A person is not guilty of an offence against a provision of Division 1 or 2 if the swimming pool concerned:

- (a) is the subject of an exemption under this section; and
- (b) complies with any conditions to which the exemption is subject.

Certificates of compliance

15. (1) The relevant authority may, on application made by the owner of any premises in or on which a swimming pool is situated, issue to the owner a certificate to the effect that, as at the date on which it is issued, the swimming pool complies with:

- (a) the requirements of Division 1 or 2, as the case requires; and
- (b) the requirements of any direction in force under section 13 in respect of the swimming pool; and
- (c) the requirements of any condition to which an exemption under section 14 in respect of the swimming pool is subject.

(2) The issue of a certificate under this section does not prevent the relevant authority from giving or varying a direction under section 13, or from revoking an exemption under section 14 or varying a condition

to which such an exemption is subject, in respect of the swimming pool to which the certificate relates.

Defences to proceedings for offences under this Part

16. (1) In any proceedings for an offence against a provision of this Part, it is a sufficient defence if the owner of the premises concerned establishes:

- (a) that he or she was not the occupier of the premises when the alleged offence occurred; and
- (b) that he or she had taken all reasonable steps to ensure that the alleged offence would not occur; and
- (c) that he or she was not aware of, and could not reasonably be expected to have been aware of, the facts giving rise to the alleged offence.

(2) In any proceedings for an offence against a provision of this Part, it is a sufficient defence if the owner of the premises concerned establishes:

- (a) that a certificate has been issued in respect of the swimming pool the subject of the alleged offence; and
- (b) that, since the certificate was issued, no direction under section 13 has been given or varied, and no exemption under section 14 has been revoked or condition to which such an exemption is subject been varied, in respect of the swimming pool; and
- (c) that the fence or other means of restricting access to the swimming pool is the same, and is in substantially the same condition, as that in respect of which the certificate was issued.

(3) In any proceedings for an offence against a provision of this Part, it is a sufficient defence if the owner of the premises concerned establishes that, when the alleged offence occurred:

- (a) the swimming pool was unassembled; or
- (b) the swimming pool was in the course of construction, installation, alteration or renovation and:
 - (i) the swimming pool was empty of water or was filled with water to a depth of less than 300mm; or
 - (ii) appropriate measures had, in the circumstances, been taken for restricting access to the swimming pool.

PART 3 - ENFORCEMENT

Inspectors

17. (1) Each relevant authority may appoint:
- (a) any of its officers or employees; and
 - (b) with the approval of the Secretary of the Department of Local Government - any other persons,
- to be inspectors for the purposes of this Act.
- (2) A relevant authority must issue a certificate of identification, in the form prescribed by the regulations, to each inspector appointed by it.
- (3) A member of the Police Force is, by virtue of his or her office as such, an inspector for the purposes of this Act.
- (4) An inspector has such functions as are conferred or imposed on inspectors by or under this Act.
- (5) An inspector appointed by a relevant authority may not exercise any functions under this Act outside the relevant authority's area.

Powers of entry

18. (1) An inspector may:
- (a) enter any premises in or on which he or she suspects that a swimming pool is situated; and
 - (b) examine the premises and, in particular, any swimming pool, and any fence or other means of restricting access to any swimming pool, that is situated in or on the premises.
- (2) An inspector may not enter such part of any building as is used for residential purposes, or any movable dwelling, otherwise than with the consent of the occupier of the building or dwelling or under a search warrant under section 19.
- (3) Before exercising the powers conferred by this section in respect of any premises, an inspector must seek the consent of the occupier of the premises to the inspector's exercise of those powers.
- (4) If an inspector is unable to obtain the consent of the occupier of the premises, the inspector may exercise those powers (in respect only of that portion of premises not comprising such part of a building as is used for residential purposes):

- (a) after 24 hours have elapsed since the inspector has served notice on the occupier of his or her intention to exercise those powers; and
- (b) between 9.00 a.m. and 5.00 p.m. on any day that is not a Saturday, Sunday or public holiday.

(5) An inspector (other than a member of the Police Force) who is exercising the powers conferred by this section in respect of any premises is required, on demand made by any person in or on the premises, to produce his or her certificate of identification for inspection by that person.

Search warrants

19. (1) An inspector may apply to an authorised justice for a search warrant if the inspector has reasonable grounds for believing that an offence against this Act is being or has been committed in or on any premises.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:

- (a) to enter the premises; and
- (b) to search the premises for evidence of an offence against this Act.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the Police Force:

- (a) may accompany an inspector executing a search warrant under this section; and
- (b) may take all reasonable steps to assist the inspector in the exercise of the inspector's powers under this section.

(5) In this section:

"authorised justice" means a Magistrate or a justice of the peace employed in the Attorney General's Department.

Relevant authority may carry out work

20. (1) If the requirements of a direction under section 13 are not complied with within the time allowed by the direction, the relevant

authority may enter the premises concerned and carry out such work as is necessary to ensure that the measures specified in the direction are taken.

(2) The relevant authority may exercise its powers under this section only after 14 days have elapsed since it has served notice on the owner (and, if the owner is not also the occupier, on the occupier) of the premises of its intention to exercise those powers.

(3) The expenses incurred by the relevant authority in carrying out the work may be recovered from the owner of the premises, as a debt, in any court of competent jurisdiction.

(4) In the event of a change in the ownership of premises to which such a debt relates, the new owner of the premises becomes, by virtue of this subsection, subject to the debt to the same extent as was the old owner immediately before the change took place.

PART 4 - APPEALS

The Appeal Board

21. (1) There is to be an Appeal Board.

(2) The Appeal Board is to consist of at least 5 persons, of whom:

- (a) at least one is to be an officer of the Department of Local Government appointed by the Minister; and
- (b) at least one is to be a person appointed by the Minister on the nomination of the Australian Institute of Building Surveyors, New South Wales Chapter; and
- (c) at least one is to be a person appointed by the Minister on the nomination of the Australian Institute of Environmental Health, New South Wales Division; and
- (d) at least one is to be a person appointed by the Minister on the nomination of the Fence Industry Association of Australia Incorporated; and
- (e) at least one is to be a person appointed by the Minister to represent the general public.

(3) In the event that an organisation referred to in subsection (2) (b), (c) or (d) fails to nominate a person for the purposes of this section within such time as the Minister may allow, the Minister may appoint any other person he or she considers appropriate to represent that organisation.

(4) One of the members of the Appeal Board referred to in subsection (2) (a) is, by the instrument of his or her appointment or by a subsequent instrument, to be appointed as Chairperson of the Appeal Board.

(5) Schedule 1 has effect with respect to the members of the Appeal Board.

Appeal Panels

22. (1) An Appeal Panel is to be constituted for the purposes of hearing and determining an appeal made to the Appeal Board.

(2) An Appeal Panel is to be constituted by 3 members of the Appeal Board, of whom:

- (a) one is to be the Chairperson or a member appointed by the Chairperson from among the persons referred to in section 21 (2) (a); and
- (b) one is to be a member appointed by the Chairperson from among the persons referred to in section 21 (2) (b), (c) or (d); and
- (c) one is to be a member appointed by the Chairperson from among the persons referred to in section 21 (2) (e).

(3) The person referred to in subsection (2) (a) is to be the presiding member of the Appeal Panel for the purposes of the appeal in respect of which the Appeal Panel is constituted.

(4) More than one Appeal Panel may be constituted at any one time.

Appeals

23. A person may appeal to the Appeal Board, in the manner prescribed by the regulations, from any decision by a relevant authority:

- (a) to impose requirements on the person pursuant to a direction given under section 13 or to vary a direction so given; or
- (b) to refuse to grant an exemption under section 14 in respect of a swimming pool situated in or on premises owned by that person or to revoke an exemption so granted; or
- (c) to impose conditions on an exemption under section 14 in respect of a swimming pool situated in or on premises owned by that person or to vary a condition so imposed; or

- (d) to refuse to issue a certificate under section 15.

Determination of appeals

24. (1) An appeal is to be heard and determined in accordance with:

- (a) such procedures as are prescribed by the regulations; and
- (b) such practice directions, not inconsistent with those procedures, as are from time to time given by the Chairperson.

(2) The decision of an Appeal Panel is final and is to be given effect to as if it were the decision of the relevant authority from whose decision the appeal has been made.

PART 5 - MISCELLANEOUS

Operation of other Acts etc.

25. (1) In the event of an inconsistency between:

- (a) the provisions of this Act; and
- (b) the provisions of any other Act or law, or of any agreement, covenant or instrument,

the provisions of this Act are to prevail, but to the extent only of the inconsistency.

(2) Without limiting the generality of subsection (1), the owner of an existing swimming pool (that is, a swimming pool whose construction or installation had been completed, or was in progress, before the commencement of section 6) is not required to obtain any approval under Part 11 of the Local Government Act 1919 in respect of the construction, alteration, repair, replacement or maintenance of a fence in accordance with the requirements of this Act.

Apportionment of expenses of constructing etc. dividing fences

26. (1) The expenses of constructing, altering, repairing, replacing or maintaining a fence that consists of the whole or any part of a dividing fence are, to the extent to which they are attributable to work done for the purpose of complying with the requirements of this Act in respect of a swimming pool, to be borne:

- (a) by the owner of the premises in or on which the swimming pool is situated; or

(b) if swimming pools are situated in or on more than one of the premises bounded by the dividing fence - by the owners of each of those premises in equal proportions.

(2) This section applies notwithstanding any provision of the Dividing Fences Act 1951 to the contrary.

Service of notices

27. Any notice that is authorised or required by or under this Act to be served on the owner or occupier of any premises may be served:

- (a) personally; or
- (b) by means of a letter addressed to the owner or occupier and sent by post to the premises; or
- (c) by means of a letter addressed to the owner or occupier and left at the premises with a person who appears to be of or above the age of 16 years and to reside or to be employed at the premises; or
- (d) by means of a letter addressed to the owner or occupier and affixed to some conspicuous part of the premises.

Penalty notices for certain offences

28. (1) An inspector may serve a penalty notice on a person if it appears to the inspector that the person has committed an offence against this Act, being an offence prescribed by the regulations for the purposes of this section.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.

(3) If the penalty prescribed for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.

(4) Payment in accordance with this section is not to be regarded as an admission of liability for the purposes of, nor is in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(5) The regulations may:

- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
- (b) prescribe the penalty payable for the offence if dealt with under this section; and
- (c) prescribe different penalties for different offences or classes of offences.

(6) The penalty prescribed for an offence is not to exceed 2 penalty units.

(7) This section does not limit the operation of this or any other Act in relation to proceedings that may be taken in respect of offences.

Proceedings for offences

29. Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Liability

30. No matter or thing done by a member of a relevant authority, by an inspector or by a person acting under the direction of a relevant authority subjects the member, inspector or person so acting personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purpose of executing this Act.

Regulations

31. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:

- (a) the functions of inspectors; and
- (b) the fees payable under this Act; and
- (c) the forms to be used for the purposes of this Act.

(2) A regulation may apply, adopt or incorporate the provisions of any standard, code or rule, as in force for the time being.

Amendment of Justices Act 1902 No. 27

32. The Justices Act 1902 is amended by inserting in paragraph (a) of the definition of "penalty notice" in section 100I (1), in alphabetical order, the following matter:

Swimming Pools Act 1990, section 28;

Amendment of Land and Environment Court Act 1979 No. 204

33. The Land and Environment Court Act 1979 is amended by omitting from section 18 (a) the matter "288C (5)".

Amendment of Liquor Act 1982 No. 147

34. The Liquor Act 1982 is amended:

- (a) by omitting from section 97 (1) the matter ", 288C (2)";
- (b) by inserting after section 97 (1) the following subsection:
 - (1A) A relevant authority within the meaning of the Swimming Pools Act 1990 may serve on the Board a direction under section 13 of that Act with respect to licensed premises.
- (c) by inserting in section 97 (2) after the matter "subsection (1)" the matter "or (1A)".

Amendment of Local Government Act 1919 No. 41

35. The Local Government Act 1919 is amended:

- (a) by omitting section 288C;
- (b) by omitting from section 289 (m) the matter "section 288C" and by inserting instead the words "the Swimming Pools Act 1990";
- (c) by inserting in the definition of "Structure" in section 304 after the word "reserve" the words ", and includes a swimming pool".

Amendment of Search Warrants Act 1985 No. 37

36. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10, in alphabetical order, the following matter:

section 19 of the Swimming Pools Act 1990;

Savings, transitional and other provisions

37. Schedule 2 has effect.

**SCHEDULE 1 - PROVISIONS WITH RESPECT TO THE
MEMBERS OF THE APPEAL BOARD**

(Sec. 21)

Definition

1. In this Schedule:

"**non-Government member**" means a member of the Appeal Board referred to in section 21 (2) (b), (c), (d) or (e).

Term of office

2. Subject to this Schedule, a non-Government member holds office for such period, not exceeding 5 years, as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

3. A non-Government member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Vacancy in office of member

4. (1) The office of a non-Government member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

**SCHEDULE 1 - PROVISIONS WITH RESPECT TO THE
MEMBERS OF THE APPEAL BOARD - *continued***

- (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a non-Government member from office at any time.

Filling of vacancy in office of member

5. If the office of a non-Government member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy for the remainder of the term of office of his or her predecessor.

**SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS**

(Sec. 37)

Part 1 - Preliminary

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act

(2) Such a provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or

SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued*

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

Part 2 - Provisions consequent on the enactment of the Swimming Pools Act 1990

Existing swimming pools

2. (1) This clause applies to existing swimming pools (that is, swimming pools whose construction or installation had been completed, or was in progress, before the commencement of section 6).

(2) The owner of any premises in or on which an existing outdoor swimming pool is situated is not guilty of an offence against section 10:

- (a) for the period of 2 years beginning on the commencement of section 6; and
- (b) for such further period (not exceeding 3 years) beginning at the end of the period referred to in paragraph (a) as the relevant authority may, in accordance with subclauses (3) and (4), allow, merely because the swimming pool fails to comply with the requirements of that section.

(3) The relevant authority may, on application made by the owner of any premises in or on which an existing outdoor swimming pool is situated, allow the owner a further period within which to complete such work as is necessary to ensure that the swimming pool complies with the requirements of section 10.

(4) Such a period may not be allowed in relation to an existing outdoor swimming pool unless:

- (a) the swimming pool is surrounded by a fence:
 - (i) that forms a barrier between the swimming pool and any place (whether public or private) adjacent to or adjoining the premises in or on which the swimming pool is situated; and
 - (ii) that is designed, constructed and installed in accordance with the standards prescribed by the regulations; and

SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued*

(b) the relevant authority is satisfied that it is impracticable, because of the nature of the premises or because of the design or construction of the swimming pool, for the work referred to in subclause (3) to be completed before the expiration of that period.

(5) The owner of any premises in or on which an existing indoor swimming pool is situated is not guilty of an offence against section 11, for the period of 2 years beginning on the commencement of section 6, merely because the swimming pool fails to comply with the requirements of that section.

(6) The owner of any premises in or on which an existing swimming pool is situated is not guilty of an offence against section 13, for the period of 2 years beginning on the commencement of section 6, merely because he or she fails to comply with a direction under that section.

(7) A relevant authority may not, for the period of 2 years beginning on the commencement of section 6, exercise its powers under section 20 in respect of an existing swimming pool.

Directions under section 288C of the Local Government Act 1919

3. A direction in force immediately before the commencement of section 35 of this Act under section 288C of the Local Government Act 1919 is to be taken to be a direction under section 13 of this Act and is enforceable, and may be appealed against, accordingly.

Appeals under section 288C of the Local Government Act 1919

4. (1) An appeal under section 288C of the Local Government Act 1919 that was pending before the Land and Environment Court immediately before the commencement of section 33 of this Act is to be determined as if this Act had not been enacted.

(2) A decision by the Land and Environment Court on any such appeal, whether given before or after the commencement of section 33, is to be taken to be a determination of an Appeal Panel under this Act and is to be given effect to accordingly.

**SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued***

**Recovery of costs under section 288C of the Local Government Act
1919**

5. Any costs incurred by a council under section 288C of the Local Government Act 1919 before the commencement of section 35 of this Act are to be taken to be expenses incurred under section 20 of this Act and may be recovered accordingly.

Recovery of expenses under the Dividing Fences Act 1951

6. Section 26 does not apply to expenses incurred before the commencement of that section in respect of the construction, alteration, repair, replacement or maintenance of a fence referred to in that section.
