

Division 3 Control of public swimming pools and spa pools

34 Definitions

In this Division:

prescribed operating requirements means requirements prescribed by the regulations with respect to the operation of a public swimming pool or spa pool.

public swimming pool or spa pool means a swimming pool or spa pool to which the public is admitted, whether free of charge, on payment of a fee or otherwise, including:

- (a) a pool to which the public is admitted as an entitlement of membership of a club, or
 - (b) a pool provided at a workplace for the use of employees, or
 - (c) a pool provided at a hotel, motel or guest house or at holiday units, or similar facility, for the use of guests, or
 - (d) a pool provided at a school or hospital,
- but not including a pool situated at private residential premises.

spa pool includes any structure (other than a swimming pool) that:

- (a) holds more than 680 litres of water, and
- (b) is used or intended to be used for human bathing, and
- (c) has facilities for injecting jets of water or air into the water.

swimming pool includes any structure that is used or intended to be used for human bathing, swimming or diving, and includes a water slide or other recreational aquatic structure.

35 Operation of premises where public pools are situated

(1) If an occupier of any premises at which a public swimming pool or spa pool is situated fails to ensure that the prescribed operating requirements are complied with, the occupier is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual—100 penalty units, or
- (b) in the case of a corporation—500 penalty units.

(2) The occupier of premises at which a public swimming pool or spa pool is situated must not allow a person to use the pool unless the occupier has caused notice of the pool's existence to be given to the person prescribed by the regulations in the approved form and in the manner prescribed by the regulations.

Maximum penalty: 10 penalty units.

36 Disinfection and cleaning of public pools

(1) The occupier of premises at which a public swimming pool or spa pool is situated must not allow a person to use the pool unless the water in the pool is disinfected in such a way as to minimise the transmission of disease to the other users of the pool.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(2) The occupier of premises at which a public swimming pool or spa pool is situated must ensure that the pool surrounds, including any toilets or change rooms, are kept clean and in such condition as to minimise the transmission of disease.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(3) It is a defence to proceedings for an offence under this section if the defendant satisfies the court that the public swimming pool or spa pool was maintained in accordance with any standards prescribed by the regulations for the purposes of this section.

37 Pools subject to prohibition orders

The occupier of premises at which there is a public swimming pool or spa pool the subject of a prohibition order must display a copy of the order in a conspicuous place at or near each entrance to the premises concerned.

Maximum penalty: 10 penalty units.

Division 5 Improvement notices and prohibition orders

40 Definitions

In this Division:

enforceable requirement means:

- (a) a prescribed installation requirement, prescribed maintenance requirement or prescribed operating requirement with respect to a regulated system under Division 2, or
- (b) a prescribed operating requirement with respect to a public swimming pool or spa pool under Division 3, or
- (c) a requirement prescribed with respect to premises at which skin penetration procedures are carried out under section 38.

public swimming pool or spa pool has the same meaning as it has in Division 3.

41 Non-complying premises or procedures

An authorised officer may serve an improvement notice on the occupier of premises at which there is a regulated system or a public swimming pool or spa pool or premises at which a person carries out skin penetration procedures if the officer believes, on reasonable grounds, that:

- (a) the premises, or a regulated system, public swimming pool or spa pool at those premises, does not comply with an enforceable requirement, or
- (b) a regulated system, public swimming pool or spa pool at the premises is not being maintained or operated in accordance with an enforceable requirement.

42 Improvement notices

(1) An improvement notice is to take the form of a direction that requires a specified enforceable requirement to be complied with within a period of 72 hours (or such longer period as is specified in the notice) after the service of the notice on the occupier or person.

(2) The notice may specify the actions to be taken to comply with the requirement.

(3) An improvement notice is to state that it is issued under this section and to specify any provision of the regulations to which it relates.

43 Compliance with improvement notice

(1) If an improvement notice is complied with, an authorised officer is to note the date of compliance on the notice.

(2) An authorised officer must give a copy of an improvement notice, noted in accordance with this section, to the person on whom the improvement notice was served if requested to do so by the person.

44 Failure to comply with notice relating to regulated system

(1) The Director-General, a local government authority or the General Manager of a council may take action under this section or section 45 if the occupier of premises at which there is a regulated system fails to comply with an improvement notice.

(2) The Director-General, local government authority or General Manager may take the action referred to in the notice and:

- (a) unless the occupier represents the Crown, may recover an amount equal to the cost of doing so as a debt owed by the person to the Crown or to the local government authority, as the case may be, or
- (b) if the occupier represents the Crown, may require the occupier to pay to the Director-General or to the local government authority an amount equal to the cost of doing so.

(3) An employee assigned, or a contractor engaged, by the Director-General or a local government authority to do any work on regulated premises under this section may, at any reasonable time, enter the premises and do the work or have it done.

45 Prohibition order

(1) The Director-General, a local government authority or a General Manager of a council may serve a prohibition order on the occupier of premises if the Director-General, authority or General Manager believes on reasonable grounds:

- (a) that any of the circumstances in which an improvement notice may be issued exist and that:
 - (i) the occupier has not complied with an improvement notice within the time required under the notice, and

- (ii) the issue of the prohibition order is necessary to prevent or mitigate a serious risk to public health, or
 - (b) that any of the circumstances in which an improvement notice may be issued exist and that the issue of the order (without first issuing an improvement notice) is urgently necessary to prevent or mitigate a serious risk to public health.
- (2) A prohibition order made against the occupier of premises at which there is a regulated system is to take the form of an order that the system must not be operated until the occupier has been given a clearance certificate stating that the system may be operated.
- (3) A prohibition order made against the occupier of premises at which there is a public swimming pool or spa pool is to take the form of an order that the swimming pool or spa pool must not be opened for use by the public until the occupier has been given a clearance certificate stating that the swimming pool or spa pool may be opened for use by the public.
- (4) A prohibition order made against the occupier of premises at which skin penetration procedures are carried out is to take the form of an order that such procedures must not be carried out at the premises until the occupier has been given a clearance certificate stating that skin penetration procedures may be carried out at the premises.
- (5) A prohibition order is to state that it is issued under this section and to specify any provision of the regulations to which it relates.
- (6) The Director-General, local government authority or General Manager who made the prohibition order must give a certificate of clearance if, after an inspection of the premises subject to the order, an authorised officer is satisfied that there is no serious danger to public health.

46 Request for re-inspection

- (1) An occupier of premises who is subject to a prohibition order may at any time after the order has been served make a written request to the person who made the order to cause the premises to be inspected by an authorised officer.
- (2) If a request for inspection is made under this section and, through no fault of the person who made the request, the inspection does not take place within 2 working days of the request being received by the person who made the prohibition order, a certificate of clearance is taken to have been given under this Division to the person who made the request.

47 Contravention of prohibition order

A person must not fail to comply with a prohibition order served on the person under this Part.

Maximum penalty (for an offence in respect of a public swimming pool or spa pool or premises where skin penetration procedures are carried out):

- (a) in the case of an individual—200 penalty units, or 12 months imprisonment, or both, and, in the case of a continuing offence, a further 100 penalty units for each day the offence continues, or
- (b) in the case of a corporation—1,000 penalty units and, in the case of a continuing offence, a further 500 penalty units for each day the offence continues.

Maximum penalty (for an offence in respect of a regulated system):

- (a) in the case of an individual—500 penalty units, or 12 months imprisonment, or both, and, in the case of a continuing offence, a further 250 penalty units for each day the offence continues, or
- (b) in the case of a corporation—2,500 penalty units and, in the case of a continuing offence, a further 1,250 penalty units for each day the offence continues.

48 Review of decision to refuse certificate of clearance

An occupier of premises on whom a prohibition order has been served may apply to the Administrative Decisions Tribunal for a review of a decision of the person who made the order to refuse to give a certificate of clearance under this Part to the occupier.

49 Compensation

- (1) A person against whom a prohibition order is made who suffers loss as a result of the making of the order may apply to the person who made the order for compensation if the person against whom the order is made considers that the order was not made in good faith or that there were no grounds for the making of the order.

- (2) If the order was not made in good faith or there were no grounds for the making of the order, the Director-General, the local government authority or the council (if the order was issued by the General Manager of the council) is to pay such compensation to the applicant as is just and reasonable.
- (3) The person who made the prohibition order is to determine the compensation payable in accordance with subsection (2).
- (4) The person who made the prohibition order is to send written notification of its determination as to the payment of compensation under this section to each applicant for the payment of such compensation.
- (5) If an application for compensation under this section is not determined by the person who made the prohibition order within 28 days of receiving the application, the application is taken to have been refused.
- (6) An applicant for the payment of compensation under this section who is dissatisfied with a determination as to the refusal to pay compensation or as to the amount of compensation may apply to the Administrative Decisions Tribunal for a review of the determination:
- (a) within 28 days after the day on which notification of the determination was received, or
 - (b) in a case to which subsection (5) applies, within 28 days after the expiration of the 28-day period referred to in that subsection.

50 Environmental health registers

- (1) The regulations may provide for the establishment and maintenance of registers of regulated systems, public swimming pools and spa pools and premises where skin penetration procedures are carried out.
- (2) Without limiting subsection (1), the regulations may provide for the following:
- (a) the information to be provided by occupiers of premises required to be registered,
 - (b) the matters to be included in a register,
 - (c) the form of the register.

134 Regulations

(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.

Note. Section 100 requires a code of conduct prescribed by the regulations under that section to have undergone public consultation before the regulation is made.

- (2) In particular, the regulations may make provision for or with respect to any of the following:
- (a) the prevention, mitigation and eradication of risks to public health,
 - (b) the places at which, and the conditions subject to which, a person may be detained under a public health order,
 - (c) regulating public health standards for public swimming pools and spa pools and premises where skin penetration procedures are carried out, including standards for cleanliness, hygiene and infection control,
 - (d) the closure of public swimming pools and spa pools for any period during which they are a risk to public health,

- (4) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.
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