

Building Amendment (Swimming Pool and Spa) Regulations

Exposure Draft

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Victoria

Building Amendment (Swimming Pool and Spa) Regulations

1 Objective

The objective of these Regulations is to amend the **Building Regulations 2018**—

- (a) to provide for the registration and inspection of swimming pools and spas; and
- (b) to prescribe offences in relation to the registration and inspection of swimming pools and spas; and
- (c) to prescribe maximum fees for registration, and matters relating to the inspection, of swimming pools and spas; and
- (d) to make other related amendments to those Regulations.

2 Authorising provisions

These Regulations are made under sections 7, 9, 15A, 261 and 262 of, and Schedule 1 to, the **Building Act 1993**.

3 Commencement

These Regulations come into operation on 1 December 2019.

4 Principal Regulations

In these Regulations, the Building Regulations 2018¹ are called the Principal Regulations.

5 Objectives of Principal Regulations

For regulation 1(g) of the Principal Regulations **substitute**—

- "(g) to prescribe requirements for swimming pools and spas including—
- (i) swimming pool and spa safety; and
 - (ii) registration of swimming pools and spas; and
 - (iii) inspection of swimming pools and spas; and
 - (iv) prescribing maximum fees relating to the registration of, and lodgement of documents relating to, swimming pools and spas."

6 Definitions

In regulation 5(1) of the Principal Regulations **insert** the following definitions—

applicable barrier standard, in relation to a swimming pool or spa barrier means—

- (a) the requirements of the Act and these Regulations with which the barrier must comply (the ***barrier requirements***) in force at the date of construction of the swimming pool or spa; or
 - (b) if after the date of construction of the swimming pool or spa, building work is carried out on the whole or part of the barrier resulting in the whole or part of the barrier having to comply with any subsequent barrier requirements—
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- (i) the subsequent barrier requirements in force at the date of the issue of any building permit for the building work; or
- (ii) the subsequent barrier requirements in force at the date of the commencement of the building work if no building permit was issued for the building work;

date of construction of a swimming pool or spa means the date the swimming pool or spa was constructed as determined by the relevant council under regulation 147U;

register in relation to a swimming pool or spa, means the swimming pool and spa register of a council;

registered spa means a spa that is registered under Division 4 of Part 9A on a swimming pool and spa register;

registered swimming pool means a swimming pool that is registered under Division 4 of Part 9A on a swimming pool and spa register;

relocatable spa means a spa that is capable of being relocated;

relocatable swimming pool means a swimming pool that is capable of being relocated;

spa unless otherwise stated includes a relocatable spa;

swimming pool unless otherwise stated includes a relocatable swimming pool.

7 Heading to Part 9 substituted

For the heading to Part 9 of the Principal Regulations **substitute—**

"Part 9—Fire safety requirements".

8 Divisions 1 and 2 of Part 9 revoked

Divisions 1 and 2 of Part 9 of the Principal Regulations are **revoked**.

9 Heading to Division 3 of Part 9 revoked

The heading to Division 3 of Part 9 of the Principal Regulations is **revoked**.

10 Definition of owner

In regulation 144 of the Principal Regulations, for "In this Division " **substitute** " In this Part ".

11 New Part 9A inserted

After regulation 147 of the Principal Regulations **insert—**

"Part 9A—Safety requirements, registration of, and certification of barriers for, swimming pools and spas

Division 1—Application of Part

147A Application of this Part

This Part applies to land on which a swimming pool or spa (other than a spa situated in a bathroom in a building on that land) is located if the swimming pool or spa—

- (a) is appurtenant to a Class 1, 2, 3 or 10 building or a Class 4 part of a building; and
- (b) has the capacity to contain water that is more than 300 mm deep.

Note

Swimming pools or spas with a depth not exceeding 300mm are exempt from these Regulations—see item 8 of the Table in Schedule 3.

Division 2—Requirements for barriers for swimming pools and spas

147B Application of Division

This Division applies to a swimming pool or spa that was constructed, or for which a building permit was granted, before 8 April 1991.

Note

Building permit includes a building approval or a building permit under the **Building Control Act 1981**—see clause 8 of Schedule 4 to the **Building Act 1993**.

147C Requirement for barriers

The owner of the land on which a swimming pool or spa is located must ensure that one or more of the following barriers are in place to restrict access to the part of the land on which the swimming pool or spa is located—

- (a) a wall of a building, but only if—
 - (i) any door or gate in the wall complies with regulation 147D; and
 - (ii) any openable part of any window in the wall complies with regulation 147E;
- (b) a fence and gate complying with AS 1926.1—1993 Swimming pool safety Part 1: Fencing for swimming pools, published 26 July 1993 as in force or as issued from time to time;
- (c) a paling or imperforate fence if—

- (i) it is at least 1·5 m in height measured above the ground level on the approach side; and
- (ii) any door or gate in the fence complies with regulation 147D.

Penalty: 50 penalty units.

147D Requirements for doors or gates

For the purposes of regulation 147C(a)(i) and (c)(ii)—

- (a) the door or gate must have a self-locking or self-latching device that prevents the door or gate, if the door or gate is in its closed position, from being opened by a person unable to reach the opening mechanism for the door or gate; and
- (b) the opening mechanism on the door or gate must be located not less than 1·5 m above the ground level or the internal floor level (as the case requires), measured from the approach side; and
- (c) the door or gate must be fitted with a device that returns the door or gate to its closed position—
 - (i) from any position in the range of positions from fully open to resting on the lock or latch; and
 - (ii) from a stationary start from any position within that range without the application of manual force.

147E Requirements for windows in walls used as barriers

For the purposes of regulation 147C(a)(ii), the openable part of the window in the wall—

- (a) must be not less than 2.4 m above the ground or paving immediately external to the window; or
- (b) must be not less than 1.5 m above the floor of the room containing the window; or
- (c) must have a catch, bolt, lock or other stop located not less than 1.5 m above the floor of the room containing the window so that the openable part of the window cannot be opened more than 125 mm; or
- (d) must have a securely fitted fly screen.

Division 3—Maintenance and operation of barriers for swimming pools and spas

147F Swimming pool and spa barrier maintenance

The owner of the land on which a swimming pool or spa is located must take all reasonable steps to ensure that a barrier restricting access to the swimming pool or spa is properly maintained.

Penalty: 50 penalty units.

147G Swimming pool and spa barrier operation

An occupier of the land on which a swimming pool or spa is located must take all reasonable steps to ensure that a barrier restricting access to the swimming pool or spa is operating effectively.

Penalty: 50 penalty units.

147H Swimming pool and spa barrier gate must remain closed

- (1) An occupier of the land on which a swimming pool or spa is located must take all reasonable steps to ensure that any gate or door forming part of a barrier restricting access to the swimming pool or spa remains closed except when a person

is entering or leaving the part of the land on which the swimming pool or spa is located.

Penalty: 50 penalty units.

- (2) A person who opens a gate or door forming part of a barrier restricting access to the swimming pool or spa must ensure that the gate or door is closed immediately after entering or leaving the part of the land on which the swimming pool or spa is located.

Penalty: 50 penalty units.

Division 4—Registration of swimming pools and spas

147I Certain swimming pools and spas exempted from section 216D of the Act

Section 216D of the Act does not apply to—

- (a) any swimming pool or spa that has a depth not exceeding 300mm; or
- (b) a spa situated in a bathroom in a building on land.

147J Prescribed information for swimming pool and spa registers

- (1) For the purposes of section 216D(3)(a) of the Act, the prescribed information for a registered swimming pool or registered spa is—
- (a) the address of the land on which the swimming pool or spa is located;
 - (b) the name of the owner of the land;
 - (c) whether the swimming pool or spa is a relocatable swimming pool or a relocatable spa;
 - (d) the date of construction of the swimming pool or spa as determined by the relevant council under regulation 147T;
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- (e) the applicable barrier standard for the swimming pool or spa;
 - (f) the date of the most recent certificate of pool and spa barrier compliance lodged with the relevant council in relation to the swimming pool or spa barrier;
 - (g) if the relevant council has granted an exemption under regulation 147W, the date any document was accepted by the relevant council under that regulation;
 - (h) the date by which the next certificate of pool and spa barrier compliance for the swimming pool or spa is required to be lodged with the relevant council;
 - (i) the dates and the permit numbers of any building permits issued after the date of construction of the swimming pool or spa for building work for the alteration, modification, replacement or renewal of the whole or part of the swimming pool or spa barrier.
- (2) For the purposes of section 216D(3)(b) of the Act, the prescribed information is the address of the land on which the swimming pool or spa is located.

147K The register must be maintained in the following form and manner

For the purposes of section 216D(4) of the Act, a register must be maintained in electronic form or in document form.

147L Application for registration of swimming pools and spas constructed, or where construction commenced, before 14 April 2020

- (1) This regulation applies to a swimming pool or spa (other than a relocatable swimming pool or spa)—
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- (a) constructed before 14 April 2020; or
 - (b) in respect of which construction was commenced but not completed before 14 April 2020.
- (2) The owner of the land on which the swimming pool or spa is located must apply to the relevant council for registration of the swimming pool or spa by the later of—
- (a) 14 April 2020; or
 - (b) 30 days after the date the occupancy permit or certificate of final inspection for the swimming pool or spa is issued.

Penalty: 10 penalty units

- (3) An application for registration of a swimming pool or spa must be made under this regulation despite information relating to the swimming pool or spa having been entered on the register by the relevant council under section 216D(3)(b) of the Act.

147M Application for registration of swimming pools and spas constructed on or after 14 April 2020

- (1) This regulation applies to a swimming pool or spa (other than a relocatable swimming pool or relocatable spa) for which a building permit for construction of the swimming pool or spa was issued—
- (a) on or after 14 April 2020; or
 - (b) before 14 April 2020 but construction of the swimming pool or spa did not commence until on or after that date.
- (2) The owner of the land on which the swimming pool or spa is located must apply to the relevant council for registration of the swimming pool or spa within 30 days after the date on which the
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owner receives the occupancy permit or certificate of final inspection for the swimming pool or spa.

Penalty: 10 penalty units

- (3) The owner of the land on which the swimming pool or spa is located must lodge the certificate of pool and spa barrier compliance issued by the relevant building surveyor under regulation 147Y with the relevant council at the time of applying for registration of the swimming pool or spa.

147N Application for registration of relocatable swimming pools and relocatable spas

An owner of land on which a relocatable swimming pool or relocatable spa is located must apply to register the relocatable swimming pool or relocatable spa with the relevant council—

- (a) if the relocatable swimming pool or relocatable spa was erected before 14 April 2020 and remains erected for at least 3 consecutive days immediately before 14 April 2020, by 14 April 2020; or
- (b) if the relocatable swimming pool or relocatable spa is erected less than 3 days before, or on or after, 14 April 2020 and remains erected for at least 3 consecutive days, on the fourth day after it was erected.

Penalty: 10 penalty units

147O Relevant council may require owner to apply for registration of swimming pool

- (1) If a relevant council has entered information relating to a swimming pool or spa in the register under section 216D(3)(b) of the Act, but the owner has not applied for registration of the swimming pool or spa under regulation 147L, 147M or 147N, the relevant council may, by written notice, require the owner to apply for
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registration of the swimming pool or spa within a period specified in the notice of not less than 14 days after the owner receives the notice.

- (2) An owner must comply with a notice given to the owner under subregulation (1).

Penalty: 10 penalty units

147P Form and fee for registration application

- (1) An application for registration under this Division must be made in the form of Form 22 and be accompanied by—
- (a) any documents required in that Form if available; and
 - (b) the fee determined by the relevant council in accordance with the **Local Government Act 1989**.
- (2) The maximum fee payable to the relevant council for an application for registration under this Part is 3.46 fee units.

147Q Council must register swimming pool or spa on receipt of application

On receiving an application that complies with regulation 147P under regulation 147L, 147M or 147N, the relevant council must enter information relating to a swimming pool or spa in the register of that council.

147R Relevant council must give notice to the applicant of registration of swimming pool or spa and certain other matters

- (1) After registering a swimming pool or spa on the register, the relevant council must give notice in writing to the applicant for registration of the swimming pool or spa of the following matters—
- (a) that the swimming pool or spa has been registered;
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- (b) the date of construction of the swimming pool or spa determined under regulation 147T;
 - (c) the applicable barrier standard for the swimming pool or spa barrier;
 - (d) that the owner may appeal to the Building Appeals Board under section 144(2) of the Act against a determination by the relevant council of the date of construction of the swimming pool or spa within 30 days after the owner receives the determination;
 - (e) for a swimming pool or spa registered under regulation 147L, the date by which the first certificate of pool and spa barrier compliance is required to be lodged with the relevant council;
 - (f) for a swimming pool or spa registered under regulation 147M, the date by which the next certificate of pool and spa barrier compliance is required to be lodged with the relevant council
 - (g) for a relocatable swimming pool or relocatable spa registered under regulation 147N, the date by which the first certificate of pool and spa barrier compliance is required to be lodged with the relevant council.
- (2) For the purposes of subregulation (1)(e), the date specified in the notice must be—
- (a) 30 October 2020, for a swimming pool or spa with a date of construction on or before 30 June 1994;
 - (b) 30 April 2021 for a swimming pool or spa with a date of construction on or after 1 July 1994 and before 1 May 2010;
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- (c) 29 October 2021, for a swimming pool or spa with a date of construction on or after 1 May 2010.
- (3) For the purposes of subregulation (1)(f), the date specified in the notice must be 3 years after the date that the first certificate of pool and spa barrier compliance was lodged with the relevant council.
- (4) For the purposes of subregulation (1)(g), the relevant council must specify a date that is no later than 30 days after the date that the relocatable swimming pool or relocatable spa was registered with that council.
- (5) Despite regulation (1), if a relevant council is satisfied that a registered swimming pool or registered spa (other than a relocatable swimming pool or relocatable spa) was constructed before 14 April 2020 without a building permit in force, the relevant council may specify in the notice under subregulation (1) a date that is no earlier than 30 October 2020.

147S Removal of swimming pool or spa from a register

- (1) If an owner of land on which a registered swimming pool or registered spa is or was located demonstrates to the satisfaction of the relevant council that a registered swimming pool or registered spa no longer exists or no longer has the capacity to contain water that is more than 300 mm deep, the relevant council must remove the information about the swimming pool or spa from the register set out in regulation 147J as soon as practicable.
 - (2) After removing the information about the swimming pool or spa from the register, the relevant council must give notice in writing to the owner stating that—
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- (a) the information about the swimming pool or spa has been removed from the register; and
- (b) the owner is no longer required under these Regulations to lodge a further certificate of pool and spa barrier compliance with the relevant council for the swimming pool or spa.

Division 5—Inspection and certification of compliance of barriers

Subdivision 1—Date of construction of a swimming pool or spa

147T Determination by the relevant council of the date of construction of a swimming pool or spa

- (1) On an application for registration of a swimming pool or spa (other than a relocatable swimming pool or relocatable spa) under Division 4, the relevant council must determine the date of construction of the swimming pool or spa.
- (2) In determining the date of construction under subregulation (1) the relevant council may have regard to—
 - (a) any information regarding the period of construction or the date of any building permit issued in relation to the construction of the swimming pool or spa provided in the application; or
 - (b) any information contained in the records of the relevant council; or
 - (c) any other relevant information obtained by the relevant council.

Note

In subregulation (2)(a), a building permit includes a building approval or a building permit under the **Building Control**

Act 1981—see clause 8 of Schedule 4 to the **Building Act 1993**.

147U Determination by the relevant council of the date of construction of a relocatable swimming pool or relocatable spa

- (1) On an application for registration of a relocatable swimming pool or relocatable spa under Division 4, the relevant council must determine the date of construction of the relocatable swimming pool or relocatable spa.
- (2) The date of construction of a relocatable swimming pool or relocatable spa is the date determined by the relevant council that the relocatable swimming pool or relocatable spa was last erected on the land specified in the application for registration as being the land on which the swimming pool or spa is located.

Subdivision 2—Certificates of pool and spa barrier compliance

147V Obligation to lodge certificate of pool and spa barrier compliance

- (1) The owner of land on which a swimming pool or spa is located must lodge a certificate of pool and spa barrier compliance with the relevant council by the applicable date most recently notified to the owner by the relevant council under—
 - (a) regulation 147R(1)(e); or
 - (b) regulation 147R(1)(f); or
 - (c) regulation 147R(1)(g); or
 - (d) subregulation (3)(b); or
 - (e) regulation 147W(2)(b); or
 - (f) regulation 147Z(3); or
 - (g) regulation 147ZE(b); or
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(h) regulation 147ZJ(2)(c); or

(i) regulation 147ZK(2)(c).

Penalty: 10 penalty units.

- (2) A certificate of pool and spa barrier compliance lodged by an owner with a relevant council, under this regulation other than in accordance with regulation 147M(3), must be dated not more than 30 days before the date it is lodged.
- (3) Following lodgement of a certificate of pool and spa barrier compliance with the relevant council, other than under regulation 147M(3), the council must give notice in writing to the owner of—
- (a) the date the certificate of pool and spa barrier compliance was lodged with the relevant council; and
 - (b) the date by which the next certificate of pool and spa barrier compliance is required to be lodged with the relevant council which must be 3 years after the previous certificate was lodged with the relevant council.

147W Exemption from requirement to provide first certificate of pool and spa barrier compliance for certain swimming pools and spas

- (1) A relevant council may exempt an owner from the requirement under regulation 147V(1)(a) to lodge a certificate of pool and spa barrier compliance with the relevant council in relation to a barrier for a swimming pool or spa required to be registered under regulation 147L if—
- (a) the owner lodges an occupancy permit or certificate of final inspection with the relevant council which—
 - (i) relates to a building permit issued in relation to the barrier before 1 December 2019; and
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- (ii) was issued after an inspection of the barrier carried out on or after 14 April 2017 and within 3 years before the date of lodgement of the occupancy permit or certificate of final inspection; or
 - (b) the owner lodges a document with the relevant council—
 - (i) signed by a registered building surveyor or registered building inspector who inspected the barrier on or after 14 April 2017 and within 3 years before the date of the lodgement of the document; and
 - (ii) the registered building surveyor or registered building inspector states in the document that the barrier complied with the applicable barrier standard at the time of the inspection.
 - (2) If an owner is exempted under subregulation (1), the relevant council must give notice to the owner in writing stating—
 - (a) that the owner is exempted from the requirement to lodge the next certificate of pool and spa barrier compliance by the applicable date under regulation 147V(1)(a) in relation to the barrier; and
 - (b) the date by which the next certificate of pool and spa barrier compliance is required to be lodged with the relevant council, which must be not more than 3 years after the date of the inspection of the barrier relating to the occupancy permit, certificate of final inspection or the document.
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147X Fees for lodging a certificate of pool and spa barrier compliance with a relevant council

- (1) A fee, determined by the relevant council in accordance with the **Local Government Act 1989**, is payable to the relevant council by the owner for the lodgement of a certificate of pool and spa barrier compliance with the relevant council by the owner under regulation 147V(1).
- (2) The maximum fee that a relevant council may determine under subregulation (1) is 2.07 fee units.
- (3) An owner must pay the fee under subregulation (1) at the time of lodging the certificate of pool and spa barrier compliance with the relevant council.

Penalty: 10 penalty units.

147Y Issuing of certificates of pool and spa barrier compliance

- (1) If, following an inspection on or after 14 April 2020 of a swimming pool or spa and related barrier under regulation 169(d), the relevant building surveyor is satisfied that the barrier complies with the applicable barrier standard, the relevant building surveyor must issue a certificate of pool and spa barrier compliance and give the certificate to the owner of the land on which the swimming pool or spa is located.
 - (2) A swimming pool and spa inspector engaged by the owner of land on which a swimming pool or spa is located must issue a certificate of pool and spa barrier compliance to the owner if—
 - (a) the inspector has inspected the barrier relating to the swimming pool or spa; and
 - (b) the inspector is satisfied that the barrier complies with the applicable barrier standard.
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- (3) A municipal building surveyor carrying out functions under Part 8 or acting as an authorised person under section 228 of the Act may issue a certificate of pool and spa barrier compliance at any time in relation to a swimming pool or spa barrier.
- (4) A certificate of pool and spa barrier compliance must be in the form of Form 23.
- (5) If a person issues a certificate of pool and spa barrier compliance under this regulation, the person must give the certificate to the owner of the land on which the swimming pool or spa is located.

147Z Relevant council may extend time for lodgement of a certificate of pool and spa barrier compliance

- (1) The relevant council may at any time on its own motion, or at the request of the owner of land on which a swimming pool or spa is located, extend the period for lodgement of a certificate of pool and spa barrier compliance for the swimming pool or spa, if the relevant council is satisfied that—
 - (a) the owner has provided a reasonable excuse as to why it was not possible to lodge the certificate of pool and spa barrier compliance by the applicable date under regulation 147V(1); or
 - (b) arrangements have been put in place by the owner for an inspection by a swimming pool and spa inspector to inspect the barrier; or
 - (c) arrangements have been put in place by the owner for building work to be carried out to rectify—
 - (i) non-compliances of the barrier with the applicable barrier standard listed in a

certificate of pool and spa barrier non-compliance; or

- (ii) non-compliances of the barrier with the applicable barrier standard specified in a written notice provided by a swimming pool and spa inspector under regulation 147ZG(3)(a); or
 - (d) building work being carried out on the land means an inspection of the barrier would not be appropriate; or
 - (e) a building notice, a building order or an emergency order under Part 8 of the Act has been issued in relation to the swimming pool or spa barrier.
- (2) The relevant council may extend the period for provision of a certificate of pool and spa barrier compliance by not more than 6 months at a time.
 - (3) If the relevant council decides to grant an extension under subregulation (1), the relevant council must specify a new due date for the lodgement of a certificate of pool and spa barrier compliance in writing to the owner as soon as practicable after that decision is made.

Subdivision 3—Alterations to a registered swimming pool or spa or related barrier

147ZA Application of this Subdivision

This Subdivision applies to any building work that is carried out in relation to a registered swimming pool barrier or registered spa barrier for which a building permit is required.

147ZB Issue of certificate of pool and spa barrier compliance by relevant building surveyor following completion of work

- (1) On the completion of the building work, the relevant building surveyor must—
 - (a) inspect the barrier; and
 - (b) determine if the barrier complies with the applicable barrier standard.
- (2) If, following an inspection under subregulation (1), the relevant building surveyor determines that the barrier complies with the applicable barrier standard, the relevant building surveyor must issue a certificate of pool and spa barrier compliance and give the certificate to the owner of the land on which the swimming pool or spa is located.

147ZC Owner must lodge compliant barrier certificate with relevant council following certain work

An owner given a certificate of pool and spa barrier compliance under regulation 147ZB(2) must lodge the certificate with the relevant council within 14 days after receiving the certificate.

Penalty: 10 penalty units

147ZD Relevant council must update applicable barrier standard in register

If a certificate of pool and spa barrier compliance is lodged by an owner under regulation 147ZC and the relevant building surveyor has certified that the barrier complies with the applicable barrier standard in the certificate which differs from the applicable barrier standard specified in the register, the relevant council must update the applicable barrier standard on the register to include the applicable barrier standard referred to in the certificate.

147ZE Relevant council must confirm receipt of compliant barrier certificate

Following lodgment of a certificate of pool and spa barrier compliance under regulation 147ZC, the relevant council must give a notice in writing to the owner as soon as practicable of—

- (a) the lodgment of the certificate of pool and spa barrier compliance; and
- (b) the date by which the next certificate of pool and spa barrier compliance is required to be lodged with the relevant council; and
- (c) if the applicable barrier standard has been updated in accordance with regulation 147ZD—
 - (i) that the applicable barrier standard for the pool or spa has been updated; and
 - (ii) details of the applicable barrier standard that now applies to the swimming pool or spa barrier.

Division 6—Issuing of certificates of pool and spa barrier non-compliance and related matters

147ZF Circumstances in which a certificate of pool and spa barrier non-compliance must be immediately issued

If following the inspection of a swimming pool or spa barrier, a swimming pool and spa inspector is of the opinion that any of the following circumstances exist, the inspector must immediately issue a certificate of pool and spa barrier non-compliance to the owner of the land on which the pool or spa is located—

- (a) within 20 business days of the inspection—
 - (i) the barrier is not capable of being made compliant with applicable barrier standard; or
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- (ii) the owner is unlikely to bring the barrier into compliance with the applicable barrier standard; or
- (b) the non-compliance of the barrier with the applicable barrier standard poses a significant and immediate risk to life or safety; or
- (c) the barrier does not comply with applicable barrier standard in any of the following ways—
 - (i) a gate forming part of the barrier is unable to be locked;
 - (ii) a gate forming part of the barrier is unable to be completely closed;
 - (iii) a part of the barrier is missing;
 - (iv) any part of the barrier is less than 1 metre in height measured above ground level from the approach side.

147ZG Procedure if a barrier does not meet the applicable barrier standard

- (1) If a swimming pool and spa inspector, inspects a barrier of a swimming pool or spa and determines that the barrier does not meet the applicable barrier standard, and regulation 147ZF does not apply, the inspector must give the owner of the land on which the swimming pool or spa is located a notice in writing in accordance with subregulation (3).
 - (2) The swimming pool and spa inspector must give the notice under subregulation (1) to the owner as soon as practicable after the inspection of the barrier.
 - (3) A notice under subregulation (1) must—
-

- (a) state that the barrier must be brought into compliance with the applicable barrier standard; and
 - (b) specify the matters in respect of which the barrier does not comply with the applicable barrier standard; and
 - (c) specify the date, being not more than 20 business days after the owner receives the notice, by which the matters specified in paragraph (a) must be brought into compliance with the applicable barrier standard; and
 - (d) specify the date and time that the swimming pool and spa inspector proposes to reinspect the barrier to check if it complies with the applicable barrier standard.
- (4) Following the reinspection of the barrier, if the swimming pool and spa inspector—
- (a) is satisfied that the barrier complies with the applicable barrier standard, the inspector must issue a certificate of pool and spa barrier compliance and give the certificate to the owner; or
 - (b) is not satisfied that the barrier complies with the applicable barrier standard, the inspector must issue a certificate of pool and spa barrier non-compliance.

147ZH Issuing a certificate of pool and spa barrier non-compliance under this Division

- (1) A certificate of pool and spa barrier non-compliance issued under this Division must be in the form of Form 24.
 - (2) If a swimming pool and spa inspector issues a certificate of pool and spa barrier non-compliance under this Division, the inspector—
-

- (a) must lodge that certificate as soon as practicable with the relevant council; and
- (b) must give a copy of the certificate to the owner.

147ZI Fees for lodging a certificate of pool and spa barrier non-compliance with a relevant council

- (1) A fee, determined by the relevant council in accordance with the **Local Government Act 1989**, is payable to the relevant council by the owner of land on which a swimming pool or spa is located for the lodgement of a certificate of pool and spa barrier non-compliance that relates to the swimming pool or spa barrier with the relevant council under regulation 147ZH(2)(a).
- (2) The maximum fee that a relevant council may determine under subregulation (1) is 26 fee units.
- (3) If a certificate of pool and spa barrier non-compliance is lodged with the relevant council under regulation 147ZH(2)(a), the relevant council must give a notice in writing to the owner of the land on which the swimming pool or spa relating to the barrier is located that states—
 - (a) the fee determined by the relevant council under subregulation (1); and
 - (b) that the fee must be paid by the owner within a period of not less than 28 days after the date the notice is received by the owner.
- (4) An owner must pay the fee determined under subregulation (1) within the period specified in the notice given under subregulation (3).

Penalty: 10 penalty units.

147ZJ Procedure if a certificate of pool and spa barrier non-compliance is lodged with a relevant council

- (1) If a certificate of pool and spa barrier non-compliance for a swimming pool or spa barrier is lodged with a relevant council, the council may issue in writing a barrier improvement notice in accordance with subregulation (2) to the owner of the land on which the swimming pool or spa is located requiring the owner to lodge with that council a certificate of pool and spa barrier compliance within a period specified in the notice of not less than 14 days after the owner receives the notice.
 - (2) A barrier improvement notice issued to an owner under subregulation (1) must—
 - (a) specify the date on which the certificate of pool and spa barrier non-compliance was lodged with the relevant council; and
 - (b) list the matters in respect of which the barrier does not comply with the applicable barrier standard set out in the certificate of pool and spa barrier non-compliance; and
 - (c) specify the date by which the owner must lodge a certificate of pool and spa barrier compliance with the relevant council; and
 - (d) inform the owner that the owner must comply with the notice and set out the penalty for non-compliance.
 - (3) The relevant council must not issue a barrier improvement notice in relation to a swimming pool or spa barrier under this regulation—
 - (a) if the municipal building surveyor has issued a notice or order under Part 8 of the Act in relation to the barrier; or
-

- (b) a person has applied for an injunction under Part 13 of the Act in relation to the barrier;
or
- (c) if a prosecution has commenced against a person in relation to the barrier under Part 13 of the Act.

Division 7—General

147ZK Relevant council's actions following transfer of land containing a registered swimming pool

- (1) On receipt of a notice of acquisition under the **Local Government Act 1989** that relates to land on which a registered swimming pool or registered spa is located, the relevant council must update the register with details of the name of the new owner of the land as soon as practicable.
- (2) The relevant council must give notice in writing to the new owner of the following matters—
 - (a) confirmation that their name has been recorded on the register; and
 - (b) the applicable barrier standard that applies to the swimming pool or spa; and
 - (c) the date by which the next certificate of pool and spa barrier compliance is required to be provided to the relevant council by the new owner.

147ZL Relevant council to provide information from register to the Authority

For the purposes of section 216D(5) of the Act, on request from the Authority a relevant council must submit the requested information to the Authority in the form approved by the Authority."

12 Authorised officers

In regulation 276(c) of the Principal Regulations, for "137, " **substitute** "147C, 147L(2), 147M(2),

147N, 147O(2), 147V(1), 147X(2), 147ZC,
147ZI(3), "

13 Prescribed offences

In regulation 277 of the Principal Regulations, for "137, " **substitute** "147C, 147L(2), 147M(2), 147N, 147O(2), 147V(1), 147X(2), 147ZC, 147ZI(3), "

14 Amendments to Schedule 3

- (1) In Item 7 in the Table in Schedule 3 to the Principal Regulations after "regulation 207" **insert** "or Item 21".
- (2) Item 9 in the Table in Schedule 3 to the Principal Regulations is **revoked**.
- (3) After Item 19 in the Table in Schedule 3 to the Principal Regulations **insert**—

"20	Assembling, erecting or installing a relocatable swimming pool or a relocatable spa	Parts 3 to 9, 10 to 19
21	Assembling, erecting or installing a relocatable swimming pool or spa barrier	Parts 3 to 9, 10 to 19
22	Replacement of any part of a barrier for a swimming pool or spa if the building work is being carried out to rectify the non-compliance of the barrier with the applicable barrier standard identified in an inspection carried out by a swimming pool and spa inspector unless the building work involves— <ol style="list-style-type: none">(a) replacement of sections, parts or components of the barrier that when combined, comprise more than 50% of the existing length of the barrier; or(b) replacement of posts or footings of the barrier; or	Parts 3 to 9, 10 to 19

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-
- (c) the use of materials in the barrier that are not commonly used for the same purpose as the material being replaced in the barrier; or
 - (d) an increase or decrease in the length of the barrier, or the size of the area enclosed by the barrier; or
 - (e) replacement of any part of a retaining wall that forms part of the barrier.

."

15 New Forms 22, 23 and 24 inserted—Schedule 4

After Form 21 in Schedule 4 to the Principal Regulations **insert—**

"FORM 22

Regulation 147P(1)

Building Regulations 2018

APPLICATION TO REGISTER A SWIMMING POOL OR SPA

Ownership details

Name of owner of the land (the *property*) on which the swimming pool or spa is located:

Postal address:

Telephone number:

Email address:

Property details [*include title details as and if applicable*]

Number	Street/road	City/suburb/town	Postcode
Lot/s	LP/PS	Volume	Folio
Crown allotment		Section	Parish
County	Municipal district		

Type of swimming pool or spa [*please tick*]:

Permanent swimming pool

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-
- | | |
|---------------------------|--------------------------|
| Permanent spa | <input type="checkbox"/> |
| Relocatable swimming pool | <input type="checkbox"/> |
| Relocatable spa | <input type="checkbox"/> |

For permanent swimming pools and spas, the approximate date that the swimming pool or spa was constructed:

[please provide copies of any relevant building permit if available and/or any other documentation that provides evidence of when the swimming pool or spa was constructed.]

For relocatable swimming pools and relocatable spas, the date that the relocatable swimming pool or relocatable spa was erected:

Is there any other building work that has altered or resulted in changes to the barrier since the swimming pool or spa was constructed or erected:

[if yes, please provide details and copies of any relevant building permit or other documentation]

FORM 23

Regulation 147Y(4)

Building Regulations 2018

CERTIFICATE OF POOL AND SPA BARRIER COMPLIANCE

Issued to:

1. Name of owner of the land (the *property*) on which the swimming pool or spa is located:
2. Postal address:
3. Telephone number:
4. Email address:

Property details:

Number	Street/road	City/suburb/to	Postcode
Lot/s	LP/PS	Volume	Folio
Crown allotment	Section	Parish	County
Municipal district			

Type of swimming pool or spa: *[please tick]*

- | | |
|---------------------------|--------------------------|
| Permanent swimming pool | <input type="checkbox"/> |
| Permanent spa | <input type="checkbox"/> |
| Relocatable swimming pool | <input type="checkbox"/> |
| Relocatable spa | <input type="checkbox"/> |
5. Date of construction of the swimming pool or spa:
 6. Applicable barrier standard:
 7. The applicable barrier standard applies under the relevant: *[please tick]*
 - division 2 of Part 9A of the Building Regulations 2018
 - deemed to satisfy provisions of the BCA
 - a performance solution in accordance with the BCA
 8. Date/s of inspection/s of the swimming pool or spa barrier:
-

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Certification of compliance

Following inspection of the *swimming pool barrier/*spa barrier on the date/s referred to in paragraph 8 of this certificate, I certify that the barrier complies with the applicable barrier standard.

Signature of swimming pool and spa inspector:

Date:

Inspector details

9. Name of swimming pool and spa inspector:
.....

10. *ACN/*ARBN.....

11. Address:

12. Email:

13. Building practitioner registration no.:

14. *Municipal district/*council name:

** Delete whichever is inapplicable*

FORM 24

Regulation 147ZH(1)

Building Regulations 2018

**CERTIFICATE OF POOL AND SPA BARRIER
NON-COMPLIANCE**

Issued to:

1. Name of owner of the land (the *property*) on which the swimming pool or spa is located:
2. Postal address:
3. Telephone number:
4. Email address:

Property details:

Number	Street/road	City/suburb/to	Postcode
Lot/s	LP/PS	Volume	Folio
Crown allotment	Section	Parish	County
Municipal district			

Type of swimming pool or spa: [*please tick*]

- | | |
|---------------------------|--------------------------|
| Permanent swimming pool | <input type="checkbox"/> |
| Permanent spa | <input type="checkbox"/> |
| Relocatable swimming pool | <input type="checkbox"/> |
| Relocatable spa | <input type="checkbox"/> |
5. Date of construction of the swimming pool or spa:
 6. Applicable barrier standard:
 7. The applicable barrier standard applies under the relevant: [*please tick*]
 - division 2 of Part 9A of the Building Regulations 2018
 - deemed to satisfy provisions of the BCA
 - a performance solution in accordance with the BCA
 8. Date/s of inspection/s of the swimming pool or spa barrier:
-

Building Amendment (Swimming Pool and Spa) Regulations

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Certification of non-compliance

Following inspection of the *swimming pool/*spa barrier on the date/s referred to in paragraph 8 of this certificate, I certify that the barrier does not comply with the applicable barrier standard.

This certificate of pool and spa barrier non-compliance has been issued because:

- the barrier cannot or will not be made compliance with the applicable barrier standard within 20 business days;
- the barrier non-compliance poses a significant and immediate risk to life or safety;
- the barrier is non-compliant with the applicable barrier standard in one or more ways specified in paragraph (c) of regulation 147ZF of the Building Regulations 2018

List of non-compliant items (required):

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item number</i>	<i>Items/components of swimming pool or spa barrier that are non-compliant with the applicable barrier standard [insert ways in which barrier is non-compliant with the applicable barrier standard]</i>	<i>Rectification work required [set out the building work required to make the barrier compliant with the applicable barrier standard]</i>

- 1
- 2
- 3
- 4
- 5
- 6

[More rows may be added as required]

Any additional comments:

.....
.....
.....

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Signature of swimming pool and spa inspector:

.....

Date:

Inspector details:

9. Name of swimming pool and spa inspector:

.....

10. *ACN/*ARBN.....

11. Address:

12. Email:

13. Building practitioner registration no.:

14. *Municipal district/*council name:

** Delete whichever is inapplicable*

".

16 Schedule 9 amended – Category of building inspector

- (1) In clause 3(b) of Schedule 9 to the Principal Regulations for "(limited)." **substitute** "(limited);".
- (2) After clause 3(b) of Schedule 9 to the Principal Regulations **insert—**
"(c) class of building inspector (pool safety).".

17 New clause 12A inserted in Schedule 9

After clause 12 of Schedule 9 to the Principal Regulations **insert—**

"12A Class of building inspector (pool safety)

The prescribed qualifications for registration in the class of building inspector (pool safety) are—

- (a) the successful completion of a course in swimming pool and spa barrier inspection approved by the Authority from a Registered Training Organisation; and
- (b) at least 6 months of practical experience."

18 Schedule 11 amended

After Item 2 in the Table in Schedule 11 of the Principal Regulations **insert—**

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"3	Category of building inspector, class of building inspector (pool safety)	Performance of all of the functions that a swimming pool and spa inspector is authorised or required to perform under the Act and Part 9A of these Regulations including the following— (a) undertaking inspections of swimming pool and spa barriers to determine compliance with the applicable barrier standard; (b) issuing certificates of pool and spa barrier compliance; (c) issuing certificates of pool and spa barrier non-compliance; (d) lodging certificates of pool and spa barrier non-compliance with the relevant council.
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Endnotes

Fee Units

These Regulations provide for fees by reference to fee units within the meaning of the **Monetary Units Act 2004**.

The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2019 is \$14.81. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.

Penalty Units

These Regulations provide for penalties by reference to penalty units within the meaning of section 110 of the **Sentencing Act 1991**. The amount of the penalty is to be calculated, in accordance with section 7 of the **Monetary Units Act 2004**, by multiplying the number of penalty units applicable by the value of a penalty unit.

The value of a penalty unit for the financial year commencing 1 July 2019 is \$165.22.

The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a penalty unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.

¹ Reg. 4: S.R. No. 38/2018 as amended by S.R. Nos 38/2018, 75/2018, 100/2018, 180/2018 and 40/2019