



Western Australia

Health (Miscellaneous Provisions) Act 1911

Health (Aquatic Facilities) Regulations 2007

Health (Aquatic Facilities) Regulations 2007

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Health (Aquatic Facilities) Regulations 2007

Part 1 — Introduction

1. Citation

These regulations are the *Health (Aquatic Facilities) Regulations 2007*.

2. Commencement

These regulations come into operation as follows:

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations —
 - (i) on 1 October 2007; or
 - (ii) if these regulations are published in the *Gazette* on a later day — on that day.

3. Regulations to operate as local laws

These regulations apply to all districts as if they were local laws made under the Act.

4. Terms used in these regulations

- (1) In these regulations, unless the contrary intention appears — *alter*, an aquatic facility, means to do work on the facility other than work associated with maintenance or repair of the facility or replacement of plant, equipment or systems that are part of

the facility with plant, equipment or systems that have substantially the same function and performance;

approved form has the meaning given to that term in regulation 30;

aquatic facility has the meaning given to that term in regulation 5;

class, in relation to an aquatic facility or water body that is a part of a facility, means the class, determined in accordance with the classification in the Code, of aquatic facility that the facility or water body may be, or is being, operated as (that is, as a Class 1, 2, 3 or 4 facility);

Code means the “Code of practice for the design, construction, operation, management and maintenance of aquatic facilities”, published by the Chief Health Officer under the Act on 1 June 2007 as amended by the Chief Health Officer from time to time, and any code of practice under the Act that replaces the Code;

dwelling unit means a room or suite of rooms, and any associated parts of a building, constituting a single dwelling for the exclusive occupation of the occupant;

improvement order means an order given under regulation 22;

operational requirement means a requirement of the Code concerning the ongoing operation of aquatic facilities as compared to a requirement concerning the design and construction of aquatic facilities;

operator, of an aquatic facility, means —

- (a) the occupier of the land or premises on or in which the facility is located; and
- (b) any other person concerned with the operation of the facility other than as an employee;

residential lot means a lot used, or intended to be used, as a place of residence, but does not include a lot used, or intended to be used, in the course of carrying on a business of providing

holiday or temporary accommodation for persons away from their normal place of residence;

water body means a spa pool, swimming pool, swimming bath, water slide, wave pool, and any other aquatic amenity or facility that is controlled or used by or in connection with any club, school, business, association or body corporate.

- (2) A standard, guide or other document that is adopted, applied or referred to by the Code but is not adopted, applied or referred to as at a particular time, is the version of the standard, guide or document as in force at the time these regulations first came into operation.

[Regulation 4 amended: Gazette 8 Dec 2009 p. 4998-9; 10 Jan 2017 p. 258 and 259.]

5. Aquatic facilities

- (1) An **aquatic facility** consists of —
- (a) one or more water bodies; and
 - (b) the plant associated with each water body; and
 - (c) the concourse for each water body; and
 - (d) the toilets, change rooms and similar facilities provided as part of the facility; and
 - (e) the lighting for the facility; and
 - (f) the fence or fences, and any other structure that excludes access, around each water body; and
 - (g) any other structure, building or plant necessary for the operation of each water body.
- (2) The following are not aquatic facilities for the purposes of these regulations —
- (a) an aquatic facility operated by a strata company (as defined in the *Strata Titles Act 1985* section 3) for a scheme (as defined in that section) in which there are less than 30 lots, each of which is a residential lot;

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- (ba) an aquatic facility, that is part of a complex that consists of or includes dwelling units, if —
 - (i) there are less than 30 dwelling units in the complex; and
 - (ii) only long-term residents of the complex and their guests are permitted to have access to the aquatic facility;
 - (b) an aquatic facility that only uses water directly from the ocean;
 - (c) a naturally occurring water body;
 - (d) an aquatic facility that is exempt under subregulation (3).
- (3) The Chief Health Officer may exempt an aquatic facility for the purposes of subregulation (2)(d) if satisfied that —
- (a) only persons who have a long-term connection with the facility and their guests are permitted to have access to it; and
 - (b) the health and safety of persons using the facility will not be compromised; and
 - (c) it is in the public interest to exempt the facility.

*[Regulation 5 amended: Gazette 8 Dec 2009 p. 4999;
10 Jan 2017 p. 259.]*

6. Adoption of Code and relationship to these regulations

- (1) The Code is adopted to the extent to which it is applied by these regulations.
- (2) These regulations prevail over the provisions of the Code to the extent to which the provisions of the Code are inconsistent with these regulations.

Part 2 — Construction, alteration and extension of aquatic facilities

Division 1 — Approval of construction, alteration and extension of aquatic facilities

7. Approval required to construct, alter or extend an aquatic facility

A person must not construct, alter or extend an aquatic facility other than in accordance with the approval of the Chief Health Officer under this Division.

[Regulation 7 amended: Gazette 10 Jan 2017 p. 259.]

8. Applying for approval to construct, alter or extend an aquatic facility

- (1) The occupier of land or premises on or in which it is proposed to construct an aquatic facility may apply to the Chief Health Officer for approval to construct the facility.
- (2) The occupier of land or premises on or in which an aquatic facility is located may apply to the Chief Health Officer for approval to alter or extend the facility.
- (3) The application must be in the approved form and must be accompanied by —
 - (a) 2 copies of the plans and specifications for, and a description of, the proposed aquatic facility, alteration or extension which, for the construction or extension of a water body, must include how the water body is to be drained, ventilated and lit, the quantity of water to be held and the capacity of the filtration and other water treatment units; and
 - (b) a block plan showing the position of the water body or bodies in relation to the position and distribution of toilets, change rooms and other similar facilities, and the

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Division 1 Approval of construction, alteration and extension of aquatic facilities

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lands to which the aquatic facility abuts and the purposes for which those lands are used; and

- (c) all other information necessary for the Chief Health Officer to assess the application.

[Regulation 8 amended: Gazette 10 Jan 2017 p. 259.]

9. Approval of construction, alteration or extension of an aquatic facility

- (1) The Chief Health Officer may grant the occupier approval to construct, alter or extend the aquatic facility if satisfied that the facility to be constructed, the part of the facility to be altered or the extension would comply with the requirements of the Code as in force at the time of the application.
- (2) The Chief Health Officer may grant the occupier approval to construct, alter or extend the aquatic facility even though not satisfied as required by subregulation (1) if satisfied that the health and safety of persons using the facility will not be compromised and that either —
- (a) the function and performance of those parts or aspects of the facility to be constructed or altered or of the extension that do not comply with the requirements of the Code as required by subregulation (1) is the same as, or better than, that which is required by the Code for that part or aspect; or
- (b) there is a public interest in approving the construction, alteration or extension.

[Regulation 9 amended: Gazette 10 Jan 2017 p. 259.]

10. Approval of construction etc. — variations after approval granted

- (1) The Chief Health Officer may, after granting approval under regulation 9 for the construction, alteration or extension of an aquatic facility (the *original approval*), approve of a variation in the plans and specifications for the construction, alteration or

extension if satisfied that the facility to be constructed, the part of the facility to be altered or the extension, as varied, would —

- (a) comply with the requirements of the Code as in force at the time of the application for the original application; or
 - (b) meet the requirements of regulation 9(2).
- (2) The occupier granted the original approval may apply for an approval of a variation under this regulation which must be in the approved form and must be accompanied by 2 copies of the plans and specifications for the proposed aquatic facility, alteration or extension as varied.
- (3) For the purposes of Division 2, the approval of the variation is to be treated as part of the original approval.

[Regulation 10 amended: Gazette 10 Jan 2017 p. 259.]

11. Approval of construction etc. — staged construction

- (1) The Chief Health Officer may, under regulation 9, grant approval for one or more stages of the construction, alteration or extension of an aquatic facility and, for that purpose, need only be satisfied that the stage or those stages of the construction, alteration or extension would comply with the requirements of the Code (to the extent to which they are relevant) as in force at the time of the application.
- (2) For the purposes of Division 2, the approvals granted in relation to a particular aquatic facility in accordance with this regulation are to be treated as a single approval.

[Regulation 11 amended: Gazette 10 Jan 2017 p. 259.]

Division 2 — Certificate of compliance

12. Certificate of compliance required to operate an aquatic facility

A person must not operate an aquatic facility unless there is, in force, a certificate of compliance that covers, or a number of

certificates of compliance that between them cover, all of the facility.

13. Certificate of compliance

- (1) A certificate of compliance for an aquatic facility, or a water body that is a part of an aquatic facility, must specify the class, or classes, of aquatic facility that the facility or water body may be operated as.
- (2) If there are a number of certificates of compliance in force covering an aquatic facility, they are to be read together, and, of any 2 certificates, the later prevails over the earlier to the extent of any inconsistency.
- (3) The Chief Health Officer may issue a certificate of compliance that is a consolidation of a number of certificates.

[Regulation 13 amended: Gazette 10 Jan 2017 p. 259.]

14. Applying for a certificate of compliance

- (1) A person may apply to have a certificate of compliance issued by the Chief Health Officer for an aquatic facility, or a part of an aquatic facility.
- (2) The application must be in the approved form.

[Regulation 14 amended: Gazette 10 Jan 2017 p. 259.]

15. Issue of certificate of compliance

- (1) The Chief Health Officer may issue a certificate of compliance for an aquatic facility if satisfied that it has been constructed in accordance with the approval to construct the facility granted under Division 1.
- (2) The Chief Health Officer may issue a certificate of compliance for an aquatic facility in respect of an alteration or extension of the facility if satisfied that it has been altered or extended in accordance with the approval to alter or extend the facility granted under Division 1.

- (3) In the case of —
- (a) an aquatic facility for which no approval to construct was granted under Division 1; or
 - (b) an alteration or extension of an aquatic facility for which alteration or extension no approval was granted under Division 1,

the Chief Health Officer may issue a certificate of compliance for the facility or in respect of the alteration or extension (whichever is relevant) if satisfied that the facility, or alteration or extension, complies with the requirements of the Code as in force at the time of the application for the certificate.

- (4) Subregulation (5) applies to and in relation to an aquatic facility if —
- (a) the facility was in use, to some extent, during the 12 months immediately prior to 1 October 2007; and
 - (b) there is no certificate of compliance in force in respect of the facility.
- (5) If this subregulation applies, the Chief Health Officer may issue a certificate of compliance for the facility even though not satisfied as required by subregulation (3) if satisfied that the health and safety of persons using the facility will not be compromised and that there is a public interest in issuing the certificate of compliance.

*[Regulation 15 amended: Gazette 8 Dec 2009 p. 5000;
10 Jan 2017 p. 259.]*

Part 3 — Operation of aquatic facilities

Division 1 — Permit to operate an aquatic facility

16. Permit required to operate an aquatic facility

- (1) A person must not operate an aquatic facility, or a water body that is part of an aquatic facility, as an aquatic facility of a particular class unless the operator, or one of the operators, has a permit to operate the facility or water body as an aquatic facility of that class or a higher class.
- (2) Subregulation (1) does not apply to a person who operates an aquatic facility as an employee only.
- (3) For the purposes of these regulations, a Class 1 aquatic facility is the highest class of facility.

17. Applying for a permit to operate

- (1) An operator may apply to the Chief Health Officer for a permit to operate a particular aquatic facility, or a water body that is a part of the aquatic facility, as an aquatic facility of a class specified in the application.
- (2) The application must be in the approved form.

[Regulation 17 amended: Gazette 10 Jan 2017 p. 259.]

18. Permit to operate an aquatic facility

- (1) The Chief Health Officer may grant an operator a permit to operate an aquatic facility, or a water body that is part of an aquatic facility, as an aquatic facility of a particular class, if satisfied that —
 - (a) there is in force a certificate of compliance that covers, or a number of certificates of compliance that between them cover, all of the facility; and
 - (b) on being tested, the water quality meets the requirements of the Code; and

- (c) staff, with the qualifications required by the Code for an aquatic facility that is being operated as an aquatic facility of that class, are engaged.
- (2) A permit to operate an aquatic facility, or a water body that is part of an aquatic facility, is not transferable.

[Regulation 18 amended: Gazette 10 Jan 2017 p. 259.]

Division 2 — Operation of aquatic facilities

19. Operation of aquatic facilities

- (1) The operator of an aquatic facility must operate the facility, or ensure that the facility is operated, in accordance with —
 - (a) the operational requirements of the Code, except to the extent to which a variation in operational requirements approved by the Chief Health Officer under regulation 20 is inconsistent with those requirements of the Code; and
 - (b) any variations in operational requirements approved by the Chief Health Officer under regulation 20.
- (2) The operator of an aquatic facility must ensure that clauses 2.12, 2.22, 2.23, 2.24 and 2.25 of the Code are complied with for that facility.

[Regulation 19 amended: Gazette 10 Jan 2017 p. 259.]

20. Variation in operational requirements

- (1) The Chief Health Officer may approve a variation in operational requirements for a particular aquatic facility if satisfied that the operational requirement, as varied —
 - (a) will provide the same or better health and safety protection to persons using the facility as that provided by the operational requirement unvaried; or

- (b) will not compromise the health and safety of persons using the facility and that there is a public interest in approving the variation.
- (2) A variation in operational requirements must be in writing and a copy of it must be given to the person, at the facility, who is in charge of the day-to-day operations of the facility.

[Regulation 20 amended: Gazette 10 Jan 2017 p. 259.]

Division 3 — Quality control

21. Water sampling

- (1) The local government of each district must ensure that —
 - (a) an authorised officer, or a person under the direction of an authorised officer, collects 2 water samples (one for bacteria, one for amoeba) from each water body of each aquatic facility in the district at least once per month; and
 - (b) the water samples are given to a laboratory approved by the Chief Health Officer for microbiological analysis; and
 - (c) the water samples are collected, stored and transported to the laboratory in accordance with the requirements of the laboratory.
- (2A) For the purposes of subregulation (1)(a), a person is under the direction of an authorised officer if the person is under the regular and frequent, but not necessarily continuous and personal, supervision of the officer.
- (2) The Chief Health Officer may approve a laboratory if it is accredited by the National Association of Testing Authorities (NATA).
- (3) A local government need not comply with subregulation (1) in relation to a particular aquatic facility if the Chief Health

Officer has granted the local government an exemption in relation to the facility.

- (4) The Chief Health Officer may grant an exemption if satisfied that —
- (a) it is impractical for an authorised officer of the local government to comply with one or more of the requirements of subregulation (1); and
 - (b) the operator of the facility can ensure that the water samples are taken at least once per month and that the other requirements of subregulation (1) are complied with.
- (5) The Chief Health Officer may revoke an exemption if —
- (a) satisfied that the circumstance in subregulation (4)(a) is no longer the case; or
 - (b) the operator has not ensured that the water samples are taken at least once per month and that the other requirements of subregulation (1) are complied with.
- (6) If the Chief Health Officer grants an exemption under subregulation (4), the operator must ensure that the water samples are taken at least once per month and that the other requirements of subregulation (1) are complied with.

[Regulation 21 amended: Gazette 8 Dec 2009 p. 5000; 10 Jan 2017 p. 259.]

22. Improvement orders

- (1) The Chief Health Officer or an authorised officer of the local government of the district in which an aquatic facility is located may give the operator of the facility an improvement order if satisfied that —
- (a) the operator is not complying with regulation 19(1) or (2) to the extent to which the operator must comply with that provision; or

- (b) the facility is a risk to the health of persons using the facility or the operation of it is likely to cause such a risk.
- (2) An improvement order must be in the approved form and must specify, to the extent relevant —
 - (a) the operational requirements of the Code, or any variation in operational requirements approved by the Chief Health Officer, that are not being complied with; and
 - (b) the measures to be taken to comply with those requirements or to reduce the risk referred to in subregulation (1)(b); and
 - (c) the time within which the operator must comply with the order.
- (3) An improvement order may include ancillary or incidental directions.
- (4) If the operator of an aquatic facility is given an improvement order, the operator of the facility, or each operator if there is more than one, must ensure that the order is complied with.
- (5) The time within which an order must be complied with may, before that time has expired, be extended by the Chief Health Officer or, in the case of an order given by an authorised officer, an authorised officer of the local government.
- (6) If an improvement order is complied with, the Chief Health Officer or, in the case of an order given by an authorised officer, an authorised officer of the local government must note the date of compliance on the order or a copy of it and, if asked to do so by the operator of the facility, give a copy of the order as noted to the operator.

[Regulation 22 amended: Gazette 10 Jan 2017 p. 259 and 260.]

23. Closing facilities

- (1) The Chief Health Officer or an authorised officer of the local government of the district in which an aquatic facility is located may give the operator of the facility a closure order in respect of the facility if satisfied that —
 - (a) the operator is not complying with regulation 19(1) or (2) to the extent to which the operator must comply with that provision and either —
 - (i) that the facility is a serious risk to the health of persons using the facility; or
 - (ii) the operation of it is likely to cause such a risk;
 - or
 - (b) the operator has failed to ensure that an improvement order given in respect of the facility is complied with.
- (2) The Chief Health Officer may give the operator of an aquatic facility a closure order in respect of a water body at the facility if satisfied that the water body is not covered by one or more certificates of compliance.
- (3) If an authorised officer gives a closure order, the local government must give the Chief Health Officer a copy of the order as soon as practicable, and in any event within 48 hours after it is given.
- (4) If an authorised officer gives a closure order, the Chief Health Officer must —
 - (a) confirm the order (with or without amendment); or
 - (b) cancel the order,and may do so orally and then in writing.

- (5) If an order given by an authorised officer is not confirmed by the Chief Health Officer within 48 hours of it being given, it expires on the earlier of —
- (a) the time at which it is cancelled by the Chief Health Officer; or
 - (b) the end of the 48 hour period after it is given.
- (6) A closure order must be in the approved form and must specify, to the extent relevant —
- (a) the grounds for giving the closure order; and
 - (b) the measures to be taken to comply with the requirements of the Code or any variation in operational requirements approved by the Chief Health Officer; and
 - (c) the measures to be taken to reduce the risk referred to in subregulation (1)(a); and
 - (d) that the operator of the facility will commit an offence unless the operator ensures that the facility or water body (which ever is relevant) remains closed while the closure order is in force.
- (7) The operator of an aquatic facility, or each operator if there is more than one, must ensure that the facility or water body (which ever is relevant) remains closed while a closure order is in force in respect of the facility or water body.
- (8) A closure order given or confirmed by the Chief Health Officer remains in force until —
- (a) the Chief Health Officer is satisfied that the grounds for giving the order have ceased or been remedied; and
 - (b) where relevant — the measures required to be taken have been taken; and
 - (c) the Chief Health Officer directs that the closure order cease to be in force (which may be given or confirmed in writing).

- (9) The measures referred to in subregulation (8)(b) are those required to be taken by the closure order (if any) and the improvement order, if the closure order was issued, at least in part, because of a failure to comply with an improvement order.

[Regulation 23 amended: Gazette 10 Jan 2017 p. 259 and 260.]

Part 4 — General provisions

Division 1 — Hygiene and use of facilities

24. Certain persons not to enter or use water body

- (1) A person must not enter or use, or attempt to enter or use, a water body of an aquatic facility if the person is —
 - (a) suffering from any gastrointestinal disease, skin infection or other disease that is communicable in an aquatic environment; or
 - (b) in an unclean condition; or
 - (c) wearing unclean clothes; or
 - (d) under the apparent influence of alcohol, drugs or alcohol and drugs; or
 - (e) if the person is a baby or young child who ordinarily wears a nappy — not wearing an aqua-nappy.
- (2) Subregulation (1)(a) does not apply to a person who has a written statement by a medical practitioner to the effect that the person will not be a health hazard to other users of the water body.

25. Pollution of water bodies

A person must not —

- (a) pollute, or deposit any rubbish or offensive matter in a water body of an aquatic facility; or
- (b) intentionally release bodily material or waste into a water body, other than that which is released in the ordinary course of using the water body.

26. Animals not to enter aquatic facilities etc.

- (1) A person must not permit any animal belonging to the person, or under his or her control, to enter or remain in an aquatic facility.
- (2) This regulation does not apply to a person using —

- (a) a guide dog; or
 - (b) a dog trained to assist the person in activities where hearing is required; or
 - (c) any other animal trained to assist the person to alleviate the effect of a disability the person has.
- (3) However, the person referred to in subregulation (2) must ensure that the animal does not enter a water body.

Division 2 — Miscellaneous provisions

27. Reasons for certain decisions

If the Chief Health Officer —

- (a) refuses to grant an approval under regulation 9; or
- (b) refuses to issue a certificate of compliance under regulation 15; or
- (c) refuses to grant a permit to operate an aquatic facility under regulation 18,

the Chief Health Officer must give the reasons for so doing to the applicant.

[Regulation 27 amended: Gazette 10 Jan 2017 p. 259.]

28. Review of certain decisions

- (1) A person listed in the Table to subregulation (2) as a person affected by a reviewable decision of the Chief Health Officer or of an authorised officer may apply to the State Administrative Tribunal for a review of the decision.
- (2) The Table to this subregulation sets out each reviewable decision and the person affected by it.

Table

person affected	reviewable decision — a decision of the Chief Health Officer
applicant	to refuse to grant an approval (to construct, alter or extend an aquatic facility) under regulation 9
applicant	to refuse to grant an approval (to construct, alter or extend an aquatic facility) in stages under regulation 9
applicant	to refuse to approve of a variation (in plans and specifications) under regulation 10
applicant	to refuse to issue a certificate of compliance under regulation 15
applicant	as to the class, or classes, of aquatic facility specified in a certificate of compliance under regulation 15
operator	to refuse to grant a permit (to operate an aquatic facility or water body) under regulation 18
operator	as to the class of aquatic facility specified in a permit to operate under regulation 18
operator	to refuse to approve a variation (in operational requirements) under regulation 20
local government	to refuse to grant an exemption (from the water sampling requirements) under regulation 21(4)
local government	to revoke an exemption (from the water sampling requirements) under regulation 21(5)
operator	to give the operator an improvement order under regulation 22
operator	as to the measures specified in an improvement order under regulation 22 or the time within which to comply with the order
operator	to refuse to extend the time within which to comply with an improvement order given under regulation 22
operator	to give the operator a closure order under regulation 23

person affected	reviewable decision — a decision of the Chief Health Officer
operator	to confirm a closure order given by an authorised officer under regulation 23
operator	as to the measures specified in a closure order under regulation 23
operator	not to direct that a closure order given under regulation 23 cease to be in force

person affected	reviewable decision — a decision of an authorised officer
operator	to give the operator an improvement order under regulation 22
operator	as to the measures specified in an improvement order given under regulation 22 or the time within which to comply with the order
operator	to refuse to extend the time within which to comply with an improvement order given under regulation 22
operator	to give the operator a closure order under regulation 23
operator	as to the measures specified in a closure order under regulation 23

[Regulation 28 amended: Gazette 10 Jan 2017 p. 258, 259 and 260.]

29. Informing local governments

- (1) If the Chief Health Officer makes one of the decisions set out in subregulation (2), the Chief Health Officer must inform the local government of the district in which the aquatic facility is located of the making of the decision and, where relevant, give the local government a copy of the approval, certificate, permit, variation, exemption or order.

- (2) The decisions are —
- (a) a decision under regulation 9 to grant or refuse to grant an approval to construct, alter or extend an aquatic facility;
 - (b) a decision under regulation 10 to approve of a variation in plans and specification for an aquatic facility;
 - (c) a decision under regulation 15 to issue a certificate of compliance for an aquatic facility;
 - (d) a decision under regulation 18 to grant a permit to operate an aquatic facility;
 - (e) a decision under regulation 20 to approve a variation in operational requirements for an aquatic facility;
 - (f) a decision under regulation 22 to give an improvement order to the operator of an aquatic facility;
 - (g) a decision under regulation 22 to extend the time within which an improvement order given to the operator of an aquatic facility must be complied with;
 - (h) a decision under regulation 23 to give a closure order to the operator of an aquatic facility;
 - (i) a decision under regulation 23 to confirm or cancel a closure order given to the operator of an aquatic facility;
 - (j) a decision under regulation 23 to direct that a closure order given to the operator of an aquatic facility ceases to be in force.

[Regulation 29 amended: Gazette 10 Jan 2017 p. 259.]

30. Approved forms

An application, order or other document is in the ***approved form*** if —

- (a) it is in the form approved in writing by the Chief Health Officer in relation to that kind of application, order or other document; and

- (b) it contains the information that the form requires, and is accompanied by such further information or documents as the form requires.

[Regulation 30 amended: Gazette 10 Jan 2017 p. 259.]

31. Offences and penalties

A person who contravenes regulation 7, 12, 16, 19(1) or (2), 21(6), 22(4), 23(7), 24(1), 25 or 26(1) or (3) commits an offence against that provision.

Penalty:

- (a) for a first offence against that provision — a fine of not more than \$1 000 and not less than \$100; and
- (b) for a second offence against that provision — a fine of not more than \$1 000 and not less than \$200; and
- (c) for a third or subsequent offence against that provision — a fine of not more than \$1 000 and not less than \$500; and
- (d) if that offence is a continuing offence — a fine of not more than \$100 and not less than \$50 for each day or part of a day during which the offence continues.

32. Availability of the Code

The CEO must make copies of the Code available to the public by —

- (a) publishing the Code on the Department's internet website; and
- (b) having copies available for inspection at the Department's offices at 227 Stubbs Terrace, Shenton Park, Western Australia.

Part 5 — Transitional provisions

Division 1 — Preliminary

33. Terms used in this Part

In this Part —

commencement day means the day on which these regulations come into operation;

old regulations means the *Health (Swimming Pools) Regulations 1964*.

34. Repeal of old regulations

The *Health (Swimming Pools) Regulations 1964* are repealed.

Division 2 — Existing facilities that are in use

35. Application of this Division

This Division applies to and in relation to an aquatic facility that was in use, to some extent, during the 12 months immediately prior to the commencement day.

36. Certificates of compliance and permits to operate

- (1) The provisions of Part 2 Division 2 and Part 3 Division 1 do not apply to or in relation to the aquatic facility —
 - (a) if the facility was operated as if it were a Class 1 facility for the majority of the time that it was in use during the 12 months immediately prior to the commencement day — until the latter of —
 - (i) the end of the 6 month period commencing on commencement day; or
 - (ii) if the operator applied for a review of a decision of the Chief Health Officer under regulation 37 — the day on which the final

decision of the State Administrative Tribunal is given;

or

- (b) if paragraph (a) does not apply to the facility — until the latter of —
 - (i) the end of the 12 month period commencing on commencement day; or
 - (ii) if the operator applied for a review of a decision of the Chief Health Officer under regulation 37 — the day on which the final decision of the State Administrative Tribunal is given.
- (2) If approval has been obtained under regulation 4 of the old regulations in respect of all of the aquatic facility, the Chief Health Officer may —
 - (a) issue a certificate of compliance for the facility specifying the class or classes of aquatic facility that the facility may be operated as; and
 - (b) grant the operator a permit to operate the facility specifying that the operator may operate the facility as an aquatic facility of the specified class.
- (3) If approval has not been obtained under regulation 4 of the old regulations in respect of all of the aquatic facility, the Chief Health Officer may, if the facility complies with the requirements of the old regulations as in force immediately before commencement day —
 - (a) issue a certificate of compliance for the facility specifying the class or classes of aquatic facility that the facility may be operated as; and
 - (b) grant the operator a permit to operate the facility specifying that the operator may operate the facility as an aquatic facility of the specified class.

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Part 5 Transitional provisions

Division 2 Existing facilities that are in use

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- (4) For the purposes of subregulations (2)(a) and (3)(a), the Chief Health Officer may specify a class of aquatic facility that the facility may be operated as, if satisfied that the facility is constructed in a way that substantially complies with the requirements of the Code for that class of aquatic facility.
- (5) For the purposes of subregulations (2)(b) and (3)(b), the Chief Health Officer is to specify the class that most closely approximates the use made of the facility for the majority of the time that it was in use during the 12 months immediately prior to the commencement day.
- (6) A certificate of compliance issued or a permit to operate an aquatic facility granted under this regulation has effect as if it were issued under regulation 15 or granted under regulation 18 (which ever is relevant).
- (7) The Chief Health Officer may not exercise a power in subregulation (2) or (3) after the day on which the provisions of Part 2 Division 2 and Part 3 Division 1 commence to apply to the facility under subregulation (1) unless otherwise directed by the State Administrative Tribunal or a court.
- (8) If the Chief Health Officer has not made a decision to, or to refuse to, issue a certificate of compliance for the facility and grant the operator a permit to operate the facility within —
 - (a) if subregulation (1)(a) applies to the facility — the 5 month period commencing on commencement day; or
 - (b) if subregulation (1)(b) applies to the facility — the 11 month period commencing on commencement day,the Chief Health Officer is to be taken, for the purposes of regulation 37, to have refused to issue the certificate and grant the permit.

[Regulation 36 amended: Gazette 10 Jan 2017 p. 259.]

37. Review of certain decisions made under this Division

The operator of an aquatic facility in respect of which the Chief Health Officer has made one of the following decisions under regulation 36 may apply to the State Administrative Tribunal for a review of the decision —

- (a) a decision to refuse to issue a certificate of compliance for the facility;
- (b) a decision to refuse to grant the operator a permit to operate the facility;
- (c) a decision as to the class or classes of aquatic facility to be specified in the certificate of compliance for the facility;
- (d) a decision as to the class of aquatic facility to be specified in the permit to operate the facility.

[Regulation 37 amended: Gazette 10 Jan 2017 p. 259-60.]

38. Compliance with certain operational requirements of the Code

- (1) Despite regulation 19(1), the operator of the aquatic facility need not comply, nor ensure compliance, with the operational requirements of the Code, other than those in sections 5, 6 and 7.
- (2) Despite subregulation (1), the operator need not comply, nor ensure compliance, with the operational requirements of sections 5, 6 and 7 of the Code —
 - (a) if the facility was operated as if it were a Class 1 facility for the majority of the time that it was in use during the 12 months immediately prior to the commencement day — until the end of the 6 month period commencing on commencement day; or
 - (b) if paragraph (a) does not apply to the facility — until the end of the 12 month period commencing on commencement day.

- (3) While sections 5, 6 and 7 of the Code do not apply to the facility, regulations 4A(1), 8, 9(1), 10, 11, 12, 13, 14(2), (4), (5) and (6), 15, 16, 17, 18, 19 and 19A, and regulations 20 and 21 (to the extent necessary), of the old regulations continue to apply to the facility, despite the repeal of the old regulations.
- (4) Despite regulation 19(2), the operator of the aquatic facility need not ensure that clauses 2.12, 2.22, 2.23, 2.24 and 2.25 of the Code are complied with for the facility until the end of the 24 month period commencing on commencement day.
- (5) While clauses 2.12, 2.22, 2.23, 2.24 and 2.25 of the Code do not apply to the facility, regulations 7A(1)(a) and 14(1), and regulations 20 and 21 (to the extent necessary), of the old regulations continue to apply to the facility, despite the repeal of the old regulations.

39. Exemptions under the old regulations

- (1) A exemption under regulation 6 or 7A of the old regulations that was in force immediately before the commencement day in relation to the aquatic facility continues in force under this regulation until revoked by the Chief Health Officer under this regulation.
- (2) An exemption under regulation 13A or 14 of the old regulations that was in force immediately before the commencement day in relation to the aquatic facility continues in force under this regulation until the earlier of —
 - (a) the exemption being revoked by the Chief Health Officer under this regulation; or
 - (b) sections 5, 6 and 7 of the Code commencing to apply to the facility.
- (3) An exemption in relation to the facility under regulation 14(4) of the old regulations in its continued application under regulation 38(3) continues in force until the earlier of —
 - (a) the exemption being revoked by the Chief Health Officer; or

- (b) sections 5, 6 and 7 of the Code commencing to apply to the facility.
- (4) An exemption that has effect under this regulation has effect according to its terms.
- (5) To the extent to which an exemption that has effect under this regulation is inconsistent with these regulations or the Code, the exemption prevails.

[Regulation 39 amended: Gazette 10 Jan 2017 p. 259-60.]

Division 3 — Other matters under the old regulations

40. Notices under regulation 3 of the old regulations

- (1) This regulation applies to a notice given under regulation 3 of the old regulations in respect of a swimming pool if no approval has been obtained under regulation 4 of the old regulations in relation to the swimming pool.
- (2) The notice has effect as if it were an application under regulation 8.
- (3) This regulation does not prevent the Chief Health Officer from requesting further information in relation to the application.

[Regulation 40 amended: Gazette 10 Jan 2017 p. 259-60.]

41. Approvals under regulation 4 of the old regulations

- (1) This regulation applies to an approval under regulation 4 of the old regulations in relation to a swimming pool if —
 - (a) some construction, alteration or extension of the swimming pool under the approval has taken place in the 12 months immediately prior to the commencement day; and
 - (b) the pool constructed or being constructed, the alteration or the extension has not been used before the commencement day.

- (2) The approval has effect as if it were an approval granted under regulation 9.
- (3) The Chief Health Officer may specify a class of aquatic facility that the facility or a water body of it may be operated as in a certificate issued under regulation 15 in reliance upon the approval referred to in this regulation, if satisfied that the facility or the water body is constructed in a way that substantially complies with the requirements of the Code for that class of aquatic facility.

[Regulation 41 amended: Gazette 10 Jan 2017 p. 259-60.]

42. Closure notices

A notice under regulation 4A of the old regulations that was in force immediately before the commencement day or a notice under that regulation in its continued application under regulation 38(3) —

- (a) has effect as if it were a closure order issued by the Chief Health Officer under regulation 23; and
- (b) as such, has effect according to its terms, which, to the extent of any inconsistency, prevail over regulation 23.

[Regulation 42 amended: Gazette 10 Jan 2017 p. 259-60.]

Notes

- ¹ This is a compilation of the *Health (Aquatic Facilities) Regulations 2007* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Health (Aquatic Facilities) Regulations 2007</i>	28 Sep 2007 p. 4889-923	r. 1 and 2: 28 Sep 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Oct 2007 (see r. 2(b)(i))
<i>Health (Aquatic Facilities) Amendment Regulations 2009</i>	8 Dec 2009 p. 4998-5000	r. 1 and 2: 8 Dec 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 9 Dec 2009 (see r. 2(b))
<i>Health Regulations Amendment (Public Health) Regulations 2016 Pt. 9</i>	10 Jan 2017 p. 237-308	24 Jan 2017 (see r. 2(b) and <i>Gazette</i> 10 Jan 2017 p. 165)

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
alter	4(1)
approved form.....	4(1), 30
aquatic facility.....	4(1), 5(1)
class	4(1)
Code.....	4(1)
commencement day	33
dwelling unit	4(1)
improvement order.....	4(1)
old regulations	33
operational requirement	4(1)
operator	4(1)
original approval.....	10(1)
residential lot	4(1)
water body	4(1)