

LG306\*

Local Government (Miscellaneous Provisions) Act 1960

## **Building Amendment Regulations (No. 2) 2001**

Made by the Lieutenant-Governor and deputy of the Governor in Executive Council under section 433A of the Act and section 9.60 of the *Local Government Act 1995*.

**1. Citation**

These regulations may be cited as the *Building Amendment Regulations (No. 2) 2001*.

**2. Commencement**

These regulations come into operation on 18 March 2002.

**3. The regulations amended**

The amendments in these regulations are to the *Building Regulations 1989\**.

[\* Reprinted as at 2 March 2001.

For amendments to 3 December 2001 see Gazette 19 October 2001.]

**4. Regulation 38A amended**

Regulation 38A is amended by deleting the definitions of “person with a disability”, “pre-July 1992 pool” and “pre-November 2001 pool” and inserting instead —

“

“**access through a building**” means access between the area within an enclosure and a part of a building to which there is direct or indirect access from outside the enclosure;

”.

**5. Regulations 38B, 38C and 38D replaced**

Regulations 38B, 38C and 38D are repealed and the following regulations are inserted instead —

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**38B. Enclosure of pool**

- (1) Except as provided in subregulation (2) and regulation 38D(2), the owner or occupier of premises on which there is a swimming pool is to install or provide around the pool an enclosure suitable to restrict access by young children to it and its immediate surrounds.  
Penalty: \$5 000 and a daily penalty of \$250.
- (2) If the pool is at the rear of the premises, a person does not contravene subregulation (1) only because the area enclosed includes, as well as the pool and its immediate surrounds, any other part of the rear portion of the premises.
- (3) A building, whether or not it is a Class 10a building under the Building Code, cannot be included within the enclosed area unless all external doors and windows in that building satisfy the requirements of Australian Standard AS 1926.1.
- (4) Except as provided by this Part, the enclosure is not suitable for the purposes of subregulation (1) unless —
  - (a) it consists of a fence, wall, gate or other barrier, or a combination of them;
  - (b) any fence, wall, gate or other barrier included in the enclosure is in accordance with the requirements of Australian Standard AS 1926.1 or alternative requirements that the local government approves; and
  - (c) any wall that it includes contains no means of access through a building other than —
    - (i) a window that is in accordance with the requirements of AS 1926.1; or
    - (ii) a door that is approved by the local government under regulation 38C.
- (5) The local government is not to approve alternative requirements under subregulation (4)(b) unless it is satisfied that the requirements will restrict access by young children to the swimming pool as effectively as Australian Standard AS 1926.1.
- (6) If a boundary fence of the premises is a part of the enclosure of a pool, the boundary fence satisfies the requirements of clauses 2.3, 2.6 and 2.7 of Australian Standard AS 1926.1 if all those requirements are satisfied in relation to either side of the fence.

**38C. Approval of doors by local government**

- (1) The local government may approve a door for the purposes of regulation 38B(4)(c)(ii) if the door is in accordance with the requirements of Australian Standard AS 1926.1 and —
  - (a) in the opinion of the local government, to install between the building and the pool a fence or barrier satisfying regulation 38B would involve —
    - (i) a sufficient problem of a structural nature; or
    - (ii) a sufficient problem of any other nature, the cause of which is neither within the control of the owner nor occupier;
  - (b) the pool is totally enclosed by a building; or
  - (c) in the opinion of the local government, the existence between the building and the pool of a fence or barrier satisfying regulation 38B would create a sufficient problem for a person with a disability who is resident at the premises and wishes to have access to the pool.
- (2) In deciding whether to give approval under subregulation (1) a local government is to place particular weight on whether or not a young child resides at the premises.
- (3) In this regulation —

**“person with a disability”** means a person who is able to produce a certificate given by ACROD Limited (Western Australian Division) (ACN 008445485), registered under the *Corporations Act 2001* of the Commonwealth, certifying that the person has a disability that makes it difficult for the person to use a gate of the kind that would be required by these regulations in a swimming pool fence.

**38D. Concessions for pre-November 2001 pools**

- (1) This regulation applies to a swimming pool —
  - (a) installed before 5 November 2001; or
  - (b) installed on or after 5 November 2001 in accordance with plans, drawings and specifications submitted to the local government for approval before that day.
- (2) Even though the pool is not one to which regulation 38B(2) applies, a person does not contravene regulation 38B(1) only because the area enclosed includes, as well as the pool and its immediate surrounds, any other part of the premises.

- (3) The enclosure required by regulation 38B(1) may include a wall that contains a door permitting access through a building if that door satisfies the requirements of Australian Standard AS 1926.1.

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#### 6. Regulation 38H amended

- (1) Regulation 38H(2)(a) is amended by deleting “\$100;” and inserting instead —  
“ \$200; ”.
- (2) Regulation 38H(2)(b) is amended by deleting “\$75.” and inserting instead —  
“ \$100. ”.

#### 7. Transitional

- (1) In this regulation —  
“**access through a building not of Class 10a**” means access between the area within an enclosure and a part of a building, other than a Class 10a building under the Building Code, to which there is direct or indirect access from outside the enclosure;  
“**pre-July 1992 pool**” means a swimming pool that —
  - (a) was installed before 1 July 1992; or
  - (b) was installed on or after 1 July 1992 in accordance with plans, drawings and specifications that were submitted to the local government for approval before that day;“**transitional period**” means the period beginning on the day on which these regulations come into operation and —
  - (a) unless paragraph (b) applies, ending on 17 December 2006; or
  - (b) if the swimming pool is on premises sold within the period referred to in paragraph (a), ending on the day 3 months after the settlement day for that sale.
- (2) During the transitional period an enclosure for a pre-July 1992 pool may, for the purposes of regulation 38B(1) of the *Building Regulations 1989*, include a wall containing a door or window permitting access through a building not of Class 10a even though —
  - (a) the door or window may not satisfy the requirements of Australian Standard AS 1926.1; and
  - (b) the door may not have been approved by the local government.
- (3) If a swimming pool was installed before 28 July 1989, during the transitional period a gate in its enclosure may open in any direction.

By Command of the Lieutenant-Governor  
and deputy of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.