

LG302*

Local Government (Miscellaneous Provisions) Act 1960

Building Amendment Regulations 2001

Made by 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 2001*.

2. Commencement

These regulations come into operation on 5 November 2001.

3. The regulations amended

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

[* Reprinted as at 2 March 2001.]

4. Regulation 38A amended

Regulation 38A is amended by inserting in the appropriate alphabetical positions the following definitions —

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“**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;

“**pre-November 2001 pool**” means a swimming pool that —

- (a) was installed before 5 November 2001; or
- (b) was installed on or after 5 November 2001 in accordance with plans, drawings and specifications that were submitted to the local government for approval before that day;

”.

5. Regulation 38B amended

(1) Regulation 38B(1) is amended as follows:

- (a) by deleting “The” and inserting instead —

“

Except as provided in subregulations (2) and (2a), the

”;

- (b) by deleting “to the pool.” and inserting instead —

“ to it and its immediate surrounds. ”.

(2) Regulation 38B(2), (3) and (3a) are repealed and the following subregulations are inserted instead —

“

(2) If the pool is a pre-November 2001 pool, a person does not contravene subregulation (1) only because the area enclosed includes, as well as the pool, any other part of the premises.

(2a) If the pool is not a pre-November 2001 pool and 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) Except as otherwise 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 wall that it includes contains no means of access between the enclosed area and a part of a building to which there is direct or indirect access from outside the enclosure; and
 - (c) 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.
- (3a) The local government is not to approve alternative requirements under subregulation (3)(c) 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. Regulation 38C amended

- (1) Regulation 38C(2) is repealed and the following subregulations are inserted instead —

- “
- (2) If a swimming pool is not a pre-July 1992 pool but is a pre-November 2001 pool its enclosure may include a wall that contains a door or window permitting access as described in subregulation (1) if that door or window satisfies the requirements of Australian Standard AS 1926.1.
 - (3) If a swimming pool is not a pre-July 1992 pool, the area enclosed may include a building, but where the building is not a Class 10a building under the Building Code, only if all external doors and windows in that building satisfy the requirements of Australian Standard AS 1926.1.
 - (4) Although a swimming pool is not a pre-November 2001 pool, its enclosure may include a wall that contains a door permitting access as described in subregulation (1) if —
 - (a) the door satisfies the requirements of Australian Standard AS 1926.1; and
 - (b) the local government declares that it would not be practicable to enclose the pool in accordance with regulation 38B.
 - (5) Although a swimming pool is not a pre-November 2001 pool, its enclosure may include a wall that contains a window permitting access as described in subregulation (1) if the window satisfies the requirements of Australian Standard AS 1926.1.
- ”

7. Regulation 38D inserted

After regulation 38C, the following regulation is inserted —

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38D. Declarations by local government

- (1) A local government is not to make a declaration under regulation 38C(4) unless —
 - (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 make a declaration under regulation 38C(4) a local government is to place particular weight on whether or not a young child resides at the premises.

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By Command of the Governor,

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