

Australian Capital Territory

# Common Boundaries Regulation 2024

Subordinate law SL2024-29

made under the

**Common Boundaries Act 1981**

## EXPLANATORY STATEMENT

---

This explanatory statement relates to the *Common Boundaries Regulation 2024* (the **regulation**) as made by the Executive. It has been prepared to assist the reader of the regulation. It does not form part of the regulation and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

### OVERVIEW

The regulation is made under the *Common Boundaries Act 1981* (the *Act*).

The regulation supports the implementation of the home swimming pool safety reforms scheme, which came into effect on 1 May 2024 through the *Building (Swimming Pool Safety) Amendment Act 2023*.

The scheme requires home swimming pools and spas in the ACT to have a safety barrier that meets current safety standards by 1 May 2028, or have an exemption. There will be circumstances when a dividing fence will need to be repaired or replaced to comply with the safety standards prescribed under the scheme, where it makes up part of a pool safety barrier for a regulated swimming pool.

The regulation prescribes matters to be taken into account by the ACT Civil and Administrative Tribunal (ACAT) in making a determination relating to a dividing fence which makes up part of a safety barrier for a regulated swimming pool.

This regulation commences on the day after its notification.

### CONSULTATION ON THE PROPOSED APPROACH

In developing the regulation the Government consulted with key stakeholders on the matters that should be taken into account by the ACAT in making a determination

relating to a dividing fence which makes up part of a safety barrier for a regulated swimming pool.

Stakeholders consulted include the Environment, Planning and Sustainable Development Directorate and the Justice and Community Safety Directorate.

Consultation was undertaken with community, industry and other Government stakeholders throughout the development of the *Building (Swimming Pool Safety) Amendment Act 2023*. The ACAT was consulted on matters that relate to the regulation at this time.

## **REGULATORY IMPACT STATEMENT**

A regulatory impact statement is not required for the regulation as they do not impose any appreciable costs on the community, or part of a community under section 34 (1) of the *Legislation Act 2001*.

There are cost impacts to the community from the implementation of the home swimming pool safety reforms scheme, which came into effect on 1 May 2024 through the *Building (Swimming Pool Safety) Amendment Act 2023*.

These impacts do not arise from the regulation, which simply allows ACAT to take into account the requirements of this scheme when determining disputes in relation to fences.

## **CONSISTENCY WITH HUMAN RIGHTS**

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) terms of reference require consideration of human rights impacts of subordinate legislation, among other matters.

The regulation does not engage any human rights under the *Human Rights Act 2004*. The human rights engaged by the implementation of the home swimming pool safety reforms scheme were addressed through the explanatory statement for the *Building (Swimming Pool Safety) Amendment Act 2023*.

## **SCRUTINY COMMITTEE PRINCIPLES**

This regulation and explanatory statement has been developed in accordance with the Committee principles and technical and stylistic standards expected by the Assembly.

## **CLAUSE NOTES**

### **Clause 1      Name of regulation**

This clause provides that the name of the regulation is the *Common Boundaries Regulation 2024*.

### **Clause 2      Commencement**

This clause provides for the commencement of regulation. The regulation commences on the day after its notification day.

**Clause 3 Matters to be taken into account by ACAT—dividing fences a safety barrier for regulated swimming pool—Act, s 13A (2)**

This provision prescribes the matters that the ACAT must take into account when making a determination under division 2.1 of the *Common Boundaries Act 1981*.

This provision prescribes that when making a determination the ACAT must take into account whether each party must have a fence that complies with the requirements for regulated swimming pools under part 5A of the *Building Act 2004*.

This provision prescribes that when making a determination the ACAT must take into account whether the cost of erecting, repairing or replacing a fence that will be a compliant fence for a regulated swimming pool is different to the cost of erecting, repairing or replacing a fence that will not be a compliant fence for a regulated swimming pool.

This provision prescribes that when making a determination where the cost of the compliant fence for a regulated swimming pool is more than the cost of a fence that is not a compliant fence for a regulated swimming pool, the ACAT must take into account:

- whether the amount that should be contributed to the cost by the party who is not the party responsible for erecting the fence should be adjusted because 1 party must comply with all or part of the swimming pool safety requirements to a greater extent than the other party, for a determination mentioned in section 10 (2) (d) of the *Common Boundaries Act 1981*; or
- whether 1 party should bear a greater proportion of the cost of repairing or replacing the fence because that party must comply with all or part of the swimming pool safety requirements to a greater extent than the other party for a determination mentioned in section 11 (3) (e) or section 12 (3) (a) of the *Common Boundaries Act 1981*; or
- whether it is reasonable that the party who is not the applicant is required to contribute to the cost of the applicant erecting, repairing or replacing the fence because the applicant must comply with all or part of the swimming pool safety requirements to a greater extent than the other party for a determination mentioned in section 12 (2) or section 13 (2) of the *Common Boundaries Act 1981*; or
- whether it is reasonable for the amount to be adjusted because the applicant must comply with all or part of the swimming pool safety requirements to a greater extent than the other party for a determination mentioned section 13 (3) (a) of the *Common Boundaries Act 1981* if the circumstance mentioned in section 13 (4) (b) applies.

This provision defines compliant fence to mean a fence that complies with all the swimming pool safety requirements each party to the application for a determination must comply with.

This provision signposts that the below terms defined are in section 83 (1) of the *Building Act 2004*:

- Ministerial exemption, in relation to a regulated swimming pool;
- Safety barrier; and

- Standing exemption.

This provision signposts that the term regulated swimming pool is defined in section 83B (1) of the *Building Act 2004*.