

HEALTH, BUILDING & REGULATORY SERVICES

Swimming Pool Barrier Inspection Program

14 November 2019

D03309978

Contents

1. Purpose	3
1.1. Relevant Legislation and Standards	3
1.2. Introduction	3
1.3. The Importance of Pool Safety	4
2. State-wide Swimming Pool Register	4
3. Sale and Lease Provisions	5
4. Certificates of compliance & Certificates of non-compliance	5
4.1. What is a Swimming Pool Certificate of Compliance?	5
4.2. What happens if a Certificate of Compliance cannot be issued?	5
4.3. What is a Certificate of Non-Compliance?	6
4.4. What is a Relevant Occupation Certificate?	6
4.5. What is the “applicable standard” that applies?	6
5. Council’s Inspection Program	6
5.1. Aim of the inspection program	6
5.2. Types of swimming pools required to be inspected every three years	7
5.3. Inspection of other private swimming pools	7
5.4. Implementation of a proposed inspection program	7
6. Fees	8
6.1. Registration Fee	8
6.2. Inspection Fee	8
7. The Role of Certifiers	9
8. Exemptions	9
9. Education and Awareness	9
10. Enforcement	10
11. Offences and Penalties	10
12. Review period	10
Annexure 1	11

1. Purpose

On 29 October 2012, the *Swimming Pools Act 1992* (“the Act”) was amended¹ to require all NSW councils to develop and implement a Swimming Pool Barrier Inspection program.

Councils are required to inspect privately owned swimming pools situated in their local government area in accordance with the adopted program, to ensure compliance with the requirements of Part 2 of the Act, which relates to access to swimming pools and swimming pool barriers.

Council’s Swimming Pool Barrier Inspection program aims to increase pool safety awareness and compliance in the Randwick City Council local government area and to explain the scope of Council’s inspection program, to ensure compliance with the Act and relevant Standards.

1.1. Relevant Legislation and Standards

The Legislation, Regulation and Standards that apply to this Swimming Pool Barrier Inspection Program include the following, as may be amended from time-to-time:

- *Swimming Pools Act 1992*
- *Swimming Pools Regulation 2018*
- *Conveyancing (Sale of Land) Amendment (Swimming Pools) Regulation 2016*
- *Residential Tenancies Amendment (Swimming Pools) Regulation 2016*
- Building Code of Australia
- Australian Standard AS1926 - Swimming Pool Safety, Part 1: Safety barriers for swimming pools (2012)
- Australian Standard AS1926 - Swimming Pool Safety, Part 2: Location of safety barriers for swimming pools (2007)

1.2. Introduction

A number of important changes have been made to the *Swimming Pools Act* and *Residential Tenancies Regulation* regarding swimming pool safety and the sale or lease of properties with a swimming pool, including:

- a. The establishment of a state-wide on line register of all private swimming pools in NSW where pool owners may self-register their pools and certify to the best of their knowledge whether or not their pool complies with the relevant requirements;
- b. A requirement that all councils in NSW develop and adopt a locally appropriate and affordable inspection program in consultation with their communities;
- c. A requirement that all councils in NSW conduct mandatory periodic inspections of pools associated with tourist and visitor accommodation and multi-dwelling properties; and
- d. Requirements relating to inspections and certificates prior to the sale or lease of a property containing a swimming pool.

Under the Act, Councils are required to carry out an inspection of swimming pools associated with *tourist and visitor accommodation*, as well as properties that contain more than two (2) dwellings (i.e. includes pools in hotels, motels, serviced apartments, backpacker accommodation, residential flat buildings), every three years.

¹ The *Swimming Pools Amendment Act 2012*, which commenced on the 29 October 2012, is an Act to amend the *Swimming Pools Act 1992* and other legislation with respect to the registration, inspection and certification of swimming pools; and for other purposes.

1.3. The Importance of Pool Safety

Private swimming pools offer additional social amenity to properties upon which they are situated. With this, however, comes a statutory obligation on the owner of the property to maintain the pool and its barrier in a safe and compliant condition.

The regulatory regime for pools situated on privately owned property has been the subject of ongoing legislative review and reform for the last decade. This reform has been as a result of an increase in infant and toddler injuries and fatalities that have occurred, predominantly, in backyard swimming pools.

Children 4 years of age and under are the most vulnerable. They are completely dependent on their parents or carers for their safety. The personal and social cost associated with the death of a child is enormous and cannot be adequately described. The death of a young child in circumstances that could have been prevented is a tragedy for all.

While it is recognised that the most effective way to prevent drownings is for children to be adequately supervised by a parent or other responsible adult it is also acknowledged that there is a need for the installation and maintenance of appropriately designed swimming pool safety barriers.

To this end, the NSW State Coroner has made recommendations to the NSW Government on a number of occasions for a mandatory pool inspection program requiring an ongoing inspection regime to assess statutory swimming pool safety barrier compliance. This has been endorsed by organisations such as Royal Life Saving Society, Australian Resuscitation Council, Westmead Children's Hospital - Kids Safe, NSW Commission for Children and Young Adults.

In his commentary the Coroner said:

*"I have no doubt that the children involved in this inquest, if they were able to have their say, would ask that all efforts be taken to ensure that the numbers of children who follow them be reduced. The loss of even one innocent life is too many."*²

A local council swimming pool barrier inspection program aims to increase the level of compliant swimming pool barriers.

2. State-wide Swimming Pool Register

In accordance with the Act, the NSW Government, has introduced an "on-line" state-wide Swimming Pool Register [<http://www.swimmingpoolregister.nsw.gov.au/>].

All owners of a residential premises or tourist and visitor accommodation on which a swimming pool is located must register their pools on the state-wide Register. A pool owner who fails to register their pool is guilty of an offence which attracts a maximum penalty of \$2200. Alternatively a \$220 penalty infringement notice may be issued for the offence.

The Swimming Pools Register will record whether or not a swimming pool has been inspected by Council or an Accredited Certifier and if a current certificate of compliance has been issued.

Councils are provided with access to the Swimming Pools Register to assist with the administration of councils' swimming pool barrier inspection programs.

Council will rely upon the NSW Swimming Pools Register to determine what swimming pools are required to be inspected in accordance with this program.

² State Coroner's Report, delivered 30 April 2010 – Inquest touching deaths of 8 Children who drowned in backyard swimming pools between June 2006 & January 2009

3. Sale and Lease Provisions

In accordance with the *Swimming Pools Amendment (Inspections) Regulation 2016*, a contract for the sale of land for a property with a swimming pool must have one of the following attached:

- A Certificate of Compliance; or
- A relevant Occupation Certificate and a Certificate of Registration; or
- A Certificate of Non-compliance.

Properties with swimming pools that are being 'leased' after 29 April 2016, must have a valid swimming pool Certificate of Compliance, issued by an Accredited Certifier or Council.

These provisions however, do not apply to properties with more than two dwellings and a shared pool, such as units in strata complexes or community schemes.

4. Certificates of compliance & Certificates of non-compliance

4.1. What is a Swimming Pool Certificate of Compliance?

The owner of a pool may apply to an Accredited Certifier or Council for a swimming pool *certificate of compliance*.

If the swimming pool meets the requirements of Part 2 of the Act, including the *Swimming Pools Regulation 2018* and relevant Australian Standard, the Accredited Certifier or Council will issue a *certificate of compliance*.

A *certificate of compliance* is valid for three years as long as the pool barrier remains compliant with the requirements of the Act and relevant Standards.

A *certificate of compliance* is not required to be obtained if a *relevant occupation certificate* has been issued which authorises the use of the swimming pool and compliance with the Act.

An *Occupation Certificate* certifying compliance with the Act will also remain valid for three (3) years from the date of issue as long as the swimming pool safety barrier remains compliant with the Act and there are no grounds for a 'direction' to be issued by Council.

A pool owner who obtains a certificate from an *accredited certifier* should ensure that their Certifier promptly updates the information on the statewide on-line Swimming Pool Register.

Premises with a current *certificate of compliance* or *relevant occupation certificate* do not require a Council inspection unless Council receives a complaint or is made aware that the swimming pool barriers may be non-compliant.

4.2. What happens if a Certificate of Compliance cannot be issued?

A *certificate of compliance* cannot be issued if the swimming pool barrier does not comply with the requirements of Part 2 of the Act. In these circumstances the Accredited Certifier or Council will issue:

- a notice specifying the works required to be undertaken to bring the swimming pool barrier into compliance with the Act; and
- a *certificate of non-compliance* (if the application relates to the sale of a property).

If the works are not undertaken and the swimming pool does not comply with the Act and relevant standards, Council may take regulatory action as provided for by the Act, which includes issuing a direction to carry out specified works and/or a penalty notice or, commencing Court proceedings (see Part 3 for information on the sale or lease of properties with swimming pools).

4.3. What is a Certificate of Non-Compliance?

If an application for a *certificate of compliance* is made in relation to the sale of a property and the swimming pool barrier has been inspected and found not to comply with Part 2 of the Act, the Accredited Certifier or Council (as applicable), will issue a *certificate of non-compliance*.

A *certificate of non-compliance* is valid for one year. However, if the property is sold, the purchaser of the property has 90 days from the date of 'settlement' to bring the pool barrier into compliance.

These provisions do not apply to properties that are part of a strata or community scheme that comprise more than 2 lots.

Failure to undertake the necessary works within the specified timeframe is an offence, which may result in penalties and issue of a direction to comply with the requirements of the Act.

4.4. What is a Relevant Occupation Certificate?

A relevant occupation certificate means an occupation certificate issued under the *Environmental Planning and Assessment Act 1979* that is less than 3 years old and that authorises the use of the swimming pool.

4.5. What is the “applicable standard” that applies?

A swimming pool barrier must comply with Part 2 of the Act. In general terms, this means that access to the swimming pool must be restricted by a compliant child-resistant barrier.

It is important to recognise that swimming pool barrier “standards” have changed a number of times since the Act commenced in 1992. In certain circumstances a swimming pool may not be required to comply with the current pool safety standards depending on when the pool was built and if and when the pool barrier or access to the pool was substantially altered or rebuilt.

However, there are circumstances where swimming pool barriers will be required to be brought into compliance with the current standard. For example, if the pool barrier did not comply and has not continued to comply with the relevant standard that applied at the time the pool was installed. Or, if the pool barrier did not comply with the relevant Standards at the time the Act, Regulation or Standard was introduced, amended or replaced.

Relevant Standards, which may apply:

- AS 1926 – 1986, Fences and gates for private swimming pools
- AS 1926.1 – 2007, Swimming pool safety, Part 1: Safety barriers for swimming pools
- AS 1926.1 – 2012, Swimming pool safety, Part 1: Safety barriers for swimming pools.

The rules that determine what pool barrier standards apply are complex and can only be determined on a “pool-by-pool” basis by an authorised Council officer or Accredited Certifier, at the particular time.

The specific requirements and relevant Standards which apply may also change at a future date, due to the regulatory provisions, standards and site conditions and pool barrier considerations which apply at the time of the inspection and assessment.

5. Council’s Inspection Program

5.1. Aim of the inspection program

The primary aim of a swimming pool barrier inspection program is to increase the levels of swimming pool barrier compliance.

Research suggests that the non-compliant swimming pool barrier rate is over 50%. However, based on feedback from other councils and recent inspections of properties with a swimming pool by Council officers, the non-compliance rate has been found to be much higher. Therefore pool owners should not

wait for a council inspection and should take immediate steps to ensure their swimming pool barriers are compliant.

From October 2013 all councils across New South Wales were required to have in place a program for the inspection of privately owned swimming pools. The purpose of inspections is to assess whether or not pool barriers comply with relevant pool safety requirements. Where a swimming pool complies with these requirements, a *Certificate of Compliance* is required to be issued, which remains valid for a period of three (3) years.

Council's swimming pool inspections will be carried out by Council officers that are duly authorised by the General Manager in accordance with the *Swimming Pools Act 1992*.

5.2. Types of swimming pools required to be inspected every three years

The Act requires properties with swimming pools that are *tourist and visitor accommodation* or that contain more than 2 dwellings (includes hotels, motels, serviced apartments, backpacker accommodation, residential flat buildings and dual occupancies) to be inspected every three (3) years. Council's swimming pools inspection program must include the inspection of swimming pools on these properties.

5.3. Inspection of other private swimming pools

From 29 April 2016 all properties with a swimming pool being sold must have a *certificate of compliance* or a *certificate of non-compliance* attached to the contract of sale. If a property is being leased it must have a current swimming pool *certificate of compliance*. Therefore, the pool barrier must comply with the *Swimming Pools Act 1992* and relevant Standards to obtain a *certificate of compliance* and be able to lease a property with a swimming pool. Where a property with a swimming pool is being sold or leased, the property owner must request an inspection from an *accredited certifier* or Council so the appropriate certificate can be issued beforehand (see Part 4 for further information).

5.4. Implementation of a proposed inspection program

It is estimated that there are in excess of 3,500 pools located within the boundaries of the Randwick City Council local government area.

A risk-based inspection program is proposed to be implemented in order to improve the levels of compliance relating to swimming pool fencing and to satisfy Council's obligations under the Act.

Council's inspection program will consist of a mandatory component and a pro-active component, comprising:

- a. A mandatory three year inspection regime, for pools situated on land used for tourist and visitor accommodation, residential flat buildings and properties containing more than two dwellings;
- b. Upon receipt of an application made to Council for an inspection and *certificate of compliance* in relation to the sale or lease of a property containing a swimming pool, in accordance with the *Conveyancing (Sale of Land) Regulation 2010* and the *Residential Tenancies Regulation 2010*;
- c. Upon receipt of an application by the owner of a property containing a swimming pool for an inspection and *certificate of compliance* under section 22C of the Act;
- d. In response to a report or complaint made to the Council concerning an inadequately fenced or unauthorised swimming pool on a specific property;
- e. In response to receiving notification from an Accredited Certifier, under section 22E (4) of the Act, who is unable to issue *certificate of non-compliance* e.g. if the Accredited Certifier is of the opinion that the swimming pool poses a significant risk to public safety;
- f. Swimming pools on properties for which an application has been made to Council for a Building Information Certificate (made pursuant to the *Environmental Planning and Assessment Act 1979*);
- g. Proactive observations, where it has been identified (i.e. by a Council officer) that the swimming pool barrier appears to be deficient or may otherwise not be compliant with the Act, Regulations or Standards.

Subject to operational and resource constraints the following criteria could be used as an inspection priority for other private swimming pools in the area:

- Swimming Pools that have an “exemption” pursuant to s. 22 of the Act
- Swimming pools constructed or installed before 1 August 1990
- Swimming pools constructed or installed after 1 August 1990

The above inspection program does not apply to swimming pools the subject of an *Occupation Certificate* or a *Swimming Pool Certificate of Compliance* that has been issued within the past three (3) years. Unless Council receives a complaint or is made aware that the swimming pool barriers are non-compliant.

It is important that Councils and Accredited Certifiers record such certificates on the statewide Swimming Pool Register to ensure that the register contains up-to-date information about the property and swimming pool.

Council’s Swimming Pool Barrier Inspection Program will be based on the properties identified in the NSW Swimming Pool Register as having a swimming pool or spa pool upon the property.

Inspections of swimming pools will be carried out in accordance with relevant prescribed timeframes (subject to arrangements being made for access to the premises to undertake the inspection).

6. Fees

6.1. Registration Fee

All privately owned swimming pools must be registered on the NSW Swimming Pool Register as prescribed by Part 3A of the Act.

A pool owner (or agent) who registers their pool on the on-line NSW Swimming Register under Part 3A of the Act does so free of charge.

The *Swimming Pool Regulation 2018* (amended in April 2013) prescribes that a maximum fee of \$10 is payable where a pool owner requests Council to register the swimming pool on statewide Swimming Pool Register. The charging of this fee is at the discretion of Council.

6.2. Inspection Fee

A pool inspection fee applies for conducting inspections under the pool inspection program. The maximum fee which may be charged by Council under the *Swimming Pool Regulation 2018* is:

- \$150 fee for the initial inspection, and
- \$100 fee for the second (re-inspection).

The current maximum fee payable to Council is \$250, including necessary re-inspections.

The inspection fee includes the issue of a *certificate of compliance* if the pool complies with the relevant pool safety standards.

The initial application fee is payable with the application for a certificate of compliance and any required additional fees are payable prior to determination of the application.

A total fee of \$250 may be paid upon lodgement of the application to cover the complete assessment of the application and all necessary inspections, for expediency.

Should the Regulation specify a greater maximum inspection and/or reinspection fee, the maximum regulated fee shall apply.

Fees for applications made to an accredited certifiers are not regulated and are determined by the individual Accredited Certifier.

7. The Role of Certifiers

The Act provides that a pool owner may apply to an *accredited certifier* to provide a *certificate of compliance* for the swimming pool. *Accredited certifiers* will set their own application and inspection fees.

Once inspected, if the pool does not meet the applicable standard, the *accredited certifier* may allow a pool owner 6 weeks to rectify the deficiencies before advising Council. If the pool is considered to pose a significant risk to public safety the certifier may notify Council immediately. Upon notification, Council may undertake an inspection and issue a penalty notice for any breach of the Act and/or Council may issue a notice or direction to carry out specified works to meet the requirements of the Act and relevant Standards.

Under such circumstances Council's fees for inspection identified in section 6.2 will also be required to be paid.

Certifiers are accredited by the NSW Building Professionals Board and are subject to the provisions of the *Building Professionals Act 2005*. Any concerns or complaints regarding accredited certifiers should be referred directly to the Building Professionals Board for their investigation and action.

8. Exemptions

The owner of a property with a swimming pool may apply to the Council for an exemption from all or any of the requirements of Part 2 of the Act.

An exemption can only be granted in very specific limited circumstances as specified in section 22 of the Act and as outlined in Practice Note No. 17, issued by the NSW Office of Local Government, March 2014.

Applications for an exemption must include comprehensive details of the proposal, reasons and supporting documentation (e.g. a report from an Accredited Building Surveyor or Swimming Pool Certifier), together with the applicable application fee, currently \$250.

Council's office will consider and determine applications for an exemption in accordance with the *Swimming Pools Act 1992* and *Swimming Pools Regulation 2018*. If the application is approved, specific conditions may be imposed and any exemption is limited to a maximum period of three years. If the application is refused, the applicant has the right of appeal to the Land & Environment Court.

9. Education and Awareness

Pool owner education and awareness is an important contributing factor in lifting swimming pool safety compliance rates.

Regular community education and awareness program will be delivered through community publications, media releases, web based information, owner self-assessment checklists and customer enquires with Council officers during the inspection process. The importance of pool barrier maintenance and adult supervision are the core pool safety messages.

The overall rate of pool barrier compliance is expected to progressively rise as a result of the inspection program and as a result of greater community awareness of swimming pool safety requirements.

10. Enforcement

In addition to pool safety education and awareness, the enforcement of pool safety laws is an essential element in addressing non-compliant pool fencing. In this regard, the Act provides Council's authorised offices powers of entry and the power to give "notices" and "directions" to require swimming pool safety work to be carried out.

The Land and Environment Court of New South Wales has jurisdiction to hear appeals against decisions of Council in respect to the following:

- a. refusal to grant an exemption under section 22 in accordance with the terms of the relevant application;
- b. imposition of a condition on an exemption under section 22;
- c. refusal to grant a certificate of compliance under section 22D; and
- d. issue of a direction under section 23.

Appeals must be made within 28 days after the date on which the decision was made or is taken to have been made.

11. Offences and Penalties

The Act provides that failing to comply with swimming pool safety requirements may constitute an offence under the Act. In addition to the authority to issue notices and directions to undertake specific work to comply with the requirements of the Act or Standards, Council's authorised officers have the power to issue a Penalty Notice for certain offences. The Act also confers jurisdiction on the Local Court to hear and dispose of proceedings brought by Council for offences against the Act.

Refer to Annexure 1 attached for further details and current penalties.

The enforcement action initiated or the penalties issued will be determined in accordance with Council's adopted *Compliance & Enforcement Policy*.

12. Review period

This policy document is to be reviewed within five (5) years of being adopted by Council.

Annexure 1

The following Table describes the offences and current corresponding penalty amounts under the Act.

Offence under the Act	Penalty Notice (issued by Council)	Court Maximum Penalty
Section 7 (1): Failure to comply with general requirements for outdoor pools associated with dwelling	\$550	50 penalty units = \$5,500
Section 12: Failure to comply with general requirements for outdoor pools associated with movable dwelling and tourist and visitor accommodation	\$550	50 penalty units = \$5,500
Section 14: Failure to comply with general requirements for indoor pools	\$550	50 penalty units = \$5,500
Section 15 (1): Failure to maintain child-resistant barrier	\$550	50 penalty units = \$5,500
Section 16: Failure of Occupier to keep access to pool securely closed	\$550	50 penalty units = \$5,500
Section 17 (1): Failure to display or maintain prescribed warning notice near pool	\$110	5 penalty units = \$550
Section 23 (3): Failure to comply with direction (pool safety order)	\$550	50 penalty units = \$5,500
Section 30B (1): Failure to register a pool	\$220	20 penalty units = \$2,200

Revenue NSW – Local Court – Fixed Penalty Handbook - Swimming Pools Act 1992

Offence Code	Reg. Code	SL	Short Title	Issue To	\$	Section/ Clause
General requirements for outdoor swimming pools						
6609	QAJ	6	Residential pool not have complying barrier - Owner	N	550	7(1)
6610	QBA	6	Movable dwelling pool not have complying barrier - Owner	N	550	12
77982	QDE	6	Not surround tourist and visitor pool with barrier	N	550	12
Indoor swimming pools						
6613	QBD	6	Fail to restrict access to indoor pool – Owner	N	550	14
General						
70830	LQO	6	Fail to maintain child-resistant barrier effective and safe	N	550	15(1)
6615	QBF	6	Not keep access to pool securely closed – Occupier	N	550	16
6617	QBH	6	Fail to erect prescribed warning notice – Occupier	N	110	17(1)
6616	QBG	6	Not comply with written direction - Owner	N	550	23(3)
Registration of swimming pools						
78032	UBS	6	Fail to ensure registration information entered on Register	N	220	30B(1)

The abovementioned penalties may also be subject to change as provided for in the current legislation.

