



Randwick City
Council
a sense of community

Swimming Pools Inspection Program

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1. Purpose

On the 29 October 2012, the *Swimming Pools Act 1992* was amended¹ to require all NSW councils to develop and implement a Swimming Pools Inspection program. Having regard to these amendments, section 22B of the *Swimming Pools Act 1992* requires Randwick City Council to have in place a program to inspect privately owned swimming pools situated in the Randwick Local Government Area to ensure compliance with the requirements of Part 2 – Access to swimming pools - of the *Swimming Pools Act 1992* (“the Act”).

This program must be in place to commence implementation by 29 October 2013. Councils are then required to inspect swimming pools in accordance with the adopted program.

1.1. Relevant Legislation and Standards

The relevant Legislation, Regulation and Standards that apply to this Swimming Pool Inspection Program include:

- *Swimming Pools Act 1992*
- *Swimming Pools Regulations 2008*
- *Swimming Pools Amendment Act 2012*
- *Swimming Pools Amendment (Consequential Amendments) Regulation 2013*
- Building Code of Australia
- Australian Standards AS1926.1

1.2. Introduction

The recent amendments to the Act introduced staged commencement provisions for the following requirements:

- (a) to establish a State-wide on line register of all private swimming pools in NSW to require that pool owners self-register, free of charge, and certify to the best of their knowledge their pool complies with the relevant requirements (commenced on the 29 April 2013);
- (b) to require that councils develop and adopt a locally appropriate and affordable inspection program in consultation with their communities (to be adopted by Council by the 29 October 2013);
- (c) to require that councils conduct mandatory periodic inspections of pools associated with tourist and visitor

accommodation and multi-dwelling properties (mandatory inspections to be conducted from the 29 October 2013); and

- (d) to amend the Conveyancing and Residential Tenancy legislation to require that vendors and landlords have a valid swimming pool compliance certificate before they may offer the property for sale or lease (commences on the 29 April 2014).

Relevantly, the Act requires that Council must conduct inspections every three years 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 and dual occupancies).

Council is also required to develop, in consultation with the community, a program regarding the inspection of all other privately owned swimming pools in the City of Randwick.

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 to maintain the pool 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.

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.

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.

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 inspection program aims to increase the level of compliant swimming pool barriers. Along with an effective pool barrier, the most critical element in reducing children drowning in backyard swimming pools is constant adult supervision of young children when at properties with swimming pools.

2. State-wide Swimming Pool Register

The NSW Division of Local Government, in accordance with the Act, has introduced an "on-line" State-wide Swimming Pool Register.

Swimming pool owners are required to register their pools on the State-wide Register before the 29 October 2013. A pool owner who fails to register their pool prior to the 29 October 2013 is guilty of an offence which attracts a maximum penalty of \$220.

A swimming pool compliance Self Assessment forms part of the online registration process and can be completed by the pool owner. Councils are provided access to the State Swimming Pools Register which will be used to assist with the administration of councils' swimming pools inspection programs.

3. The Inspection Program

The primary aim of a swimming pools inspection program is to increase the levels of swimming pool barrier compliance. Research into drowning prevention in backyard swimming pools conducted over many years evidences that a compliant pool barrier and, more critically, constant adult supervision provide the greatest prevention against children drowning in private swimming pools. Research also suggests that the non-compliant swimming pool barrier rate is around 50%. However, based on feedback from other councils and recent inspections of properties with a swimming pool by Council officers, it is expected that the non-compliance rate may be much higher.

From October 2013 all councils across New South Wales are 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 (i.e. Building Surveyors and Compliance Officers) duly authorised by the General Manager in accordance with the *Swimming Pools Act 1992*.

3.1. What is a Pool Certificate of Compliance?

Under the Act a swimming pool 'Certificate of Compliance' is issued once a pool has been inspected against the relevant pool safety requirements. A Certificate of Compliance is valid for three years. A swimming pool may be inspected more frequently than three years if a complaint has been received with respect to pool safety or there is good reason to suspect the pool no longer complies with the statutory swimming pool safety requirements.

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

A Certificate of Compliance cannot be issued if the swimming pool to which it relates does not comply with the requirements of Part 2 of the Act. In these circumstances Council or an accredited certifier are able to issue a notice specifying the works required to be undertaken to bring the swimming pool into compliance with the Act. If the works are not undertaken and the swimming pool remains in a non-compliant condition Council may take regulatory action as provided for by the Act, which includes the issuing of Penalty Notices and/or giving an s. 23 Direction or, commencing Court proceedings.

3.3. What is the "applicable standard" that applies?

A swimming pool 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 today's pool safety standards depending on

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.

when the pool was built and if and when the pool barrier was substantially altered or rebuilt.

The rules that determine what pool barrier standards apply are complex and can only be determined on a "pool-by-pool" basis. For example, a swimming pool if constructed or installed before 1 August 1990, may not require full isolation fencing, whereas a pool constructed presently would require to be fully isolated from other buildings on the property.

3.4. Types of swimming pools 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.

3.5. Inspection of other private swimming pools

From 29 April 2014 all properties with a swimming pool being sold or leased must have a current swimming pool Certificate of Compliance. Where a property with a swimming pool is being sold or leased, the property owner must request an inspection and comply with the requirements of the inspection before a Pool Certificate of Compliance can be issued.

It is estimated that under these requirements Council may be required to inspect up to 300 swimming pools annually.

3.6. 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 Local Government Area.

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

The proposed inspection program will consist of a mandatory component and a pro-active component.

- (a) Mandatory three year inspection regime required to commence from the 29 October 2013, for pools situated on land used for tourist and visitor

accommodation, residential flat buildings and dual occupancies.

- (b) Mandatory inspections to commence from the 29 April 2014, for pools on properties that are being sold or leased that are subject to an application to Council for a Certificate of Compliance as prescribed for by the *Conveyancing (Sale of Land) Regulation 2010* and the *Residential Tenancies Regulation 2010*.
- (c) Swimming pools that have been identified as potentially having non-compliant barriers (e.g. via an external referral from an accredited certifier or complaint from a member of the public or other inspection undertaken by an authorised Council officer)
- (d) Swimming pools on properties for which an application has been made to Council for a Building Certificate (made pursuant to s. 149A of the *Environmental Planning & Assessment Act 1979*)
- (e) Upon receipt of an application by the owner for an inspection and Certificate of Compliance

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 Act³
- Swimming pools constructed or installed before the 1 August 1990
- Swimming pools constructed or installed after the 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.

Council's Swimming Pool 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.

³ S. 22 of the Act provides that Council may, on application by a pool owner, grant an exemption to comply with the pool barrier requirements where it is impracticable or unreasonable (because of the physical nature of the premises, because of the design or construction of the swimming pool or because of special circumstances of a kind recognised by the regulations as justifying the granting of an exemption) for the swimming pool to comply with those requirements, or where an alternative provision, no less effective than those requirements, exists for restricting access to the swimming pool.

4. Fees

4.1. Registration Fee

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

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

The *Swimming Pool Regulation 2008* (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 State-wide Swimming Pool Register. The charging of this fee is at the discretion of Council.

4.2. Inspection Fee

A pool inspection fee applies for conducting inspections under the pool inspection program. The *Swimming Pool Regulation 2008* (April 2013) prescribes a maximum initial inspection fee of \$150 is payable and a second inspection fee of \$100 is payable. No further inspection fee may be charged for any subsequent inspection (e.g. no charge for the second or third re-inspection or more).

The inspection fee includes the issue of a Certificate of Compliance if the pool complies with the relevant pool safety standards.

The initial fee is payable within twenty-one (21) days of the inspection with a subsequent inspection fee (one fee covers all subsequent re-inspections) payable at the time of the first reinspection.

5. 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 may set their own 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 be a significant public hazard the certifier may notify council immediately. Upon notification, Council may commence compliance action (e.g. undertake an inspection and issue a direction/order or Penalty Notice).

6. Education and Awareness

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

An on-going community education and awareness program will be delivered through community publications, media releases, web based information, owner self-assessment checklists and interaction with Council officers during the inspection cycle. 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.

7. 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;
- (d) issue of a direction under section 23.

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

8. 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.

The following Table describes the offences and 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

This inspection program does not prevent Council from issuing a Penalty Notice or commencing proceeding for offences against the Act in accordance with the *Swimming Pools Act 1992* and the civil enforcement and prosecution principles contained in Council's Enforcement Policy.