



SWIMMING POOLS INSPECTION PROGRAM

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Contents

1	Purpose	2
1.1	Relevant Legislation and Standards	2
1.2	Background	2
1.3	The Importance of Pool Safety	3
2	The Inspection Program	3
2.1	What is a Pool Certificate of Compliance?	3
2.2	What happens if a Pool Certificate of Compliance cannot be issued?	4
2.3	What is the "applicable standard?"	4
2.4	High risk pools inspected every three years	4
2.5	Domestic / Residential Pools inspected every five years	4
2.6	More frequent inspection regime	4
2.7	Staged implementation of the inspection program	5
3	Fees	5
3.1	Inspection fee	6
4	Penalties	6
5	The Role of Certifiers	7

1 Purpose

The *Swimming Pools Act 1992*, section 22B requires the development and adoption by councils of a program for the inspection of swimming pools in its area to ensure compliance with the requirements of Part 2 – access to swimming pools - of the *Swimming Pools Act 1992*.

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 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
- Australian Standards AS1926.2

1.2 Background

Under the legislation local government has a regulatory responsibility for swimming pool safety. Councils must conduct inspections every three years of swimming pools associated with tourist and visitor accommodation, as well as other multi-occupancy developments (includes pools in hotels, motels, serviced apartments, backpacker accommodation and unit complexes)

A three yearly inspection regime is required as pools co-located with these types of activities are perceived as having a higher risk associated with them due to more frequent use by a wider range of people.

Each council area must develop and consult the community regarding the frequency of swimming pool inspections on privately owned pools.

1.3 The Importance of Pool Safety

Swimming pools offer a social amenity that is of great benefit to those who have use and access to it. With this however goes an obligation outlined in legislation to maintain the pool in a safe manner.

The regulatory regime of pools on private property has been the subject of ongoing legislative review and reform since 2008 due to the tragic increase of infant and toddler injury and death in swimming pools.

Children aged 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 vulnerable 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 pool inspection program requiring an ongoing inspection regime of pool safety barriers. 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 The Inspection Program

From October 2013 all councils are required to have in place and to implement a program of swimming pool inspections. The purpose of inspections is to issue a certificate indicating that the pool barriers in place comply with pool safety requirements.

2.1 What is a Pool Certificate of Compliance?

A Pool Certificate of Compliance is issued once a pool has been inspected against the relevant pool safety requirements. A pool certificate is valid for three years. A 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 pool safety requirements

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

A Pool Certificate of Compliance cannot be issued if the pool is not passed at inspection as meeting the various requirements under the applicable standards. In such a case either Council or an accredited certifier must issue a notice specifying the works required. If the works are not undertaken or the pool cannot pass a subsequent inspection then a Penalty Infringement Notice will be issued. Continuing refusal to comply will result in legal action.

2.3 What is the “applicable standard” that applies?

In certain, very limited circumstances an older pool may be exempted from the current pool safety standards. The rules around exemptions are many and can be quite complex. An exemption may apply to a swimming pool provided the owner can demonstrate that the pool has always complied with the swimming pool standard at the time the pool was installed. For pools constructed prior to 1 August 1990 the minimum standard is set as Swimming Pools Regulations 1992 and AS1926.1-1986. The exemption is lost if the pool has not continuously been maintained to the standard required or if significant building works have taken place impacting on the pool barrier or means of access to the pool.

In such cases the pool must be upgraded to the current standard.

2.4 High risk pools inspected every three years

The legislation requires certain properties considered as a high risk to have the pool inspected every 3 years. This includes pools associated with

- a moveable dwelling, hotel, motel, tourist/ visitor accommodation and other multi-occupancy developments.
- backpackers, bed and breakfast, hotel, motel, serviced apartments (includes short term rental accommodation) and residence of more than 2 occupancies
- child care centre/ family day care or premises accessed regularly by children for other than domestic purposes.

2.5 Domestic / Residential Pools inspected every five years

All pools other than high risk pools will be inspected on a five yearly program unless a more frequent inspection is required or requested.

2.6 More frequent inspection regime

From 29 April 2014 all properties with a pool being sold or leased/ rented must have a current pool certificate of compliance. A Pool Certificate of Compliance is current for a period of 3 years. Where a property with a pool is being sold or leased, the pool owners must request an inspection and comply with the requirements of the inspection before a Pool Certificate of Compliance can be issued.

2.7 Staged implementation of the inspection program

There are in excess of 20,000 pools located within the boundaries of the Sutherland Shire; residents of the Shire have amongst the highest rate of pool ownership in New South Wales.

A staged implementation of the inspection program is therefore proposed in order to move pools toward compliance with the legislation while maintaining a reasonable and balanced approach to resourcing pool inspections.

First stage and immediate implementation of the three year inspection regime is proposed for

- pools associated with a moveable dwelling, hotel, motel, tourist/ visitor accommodation and other multi-occupancy developments
- pools associated with high risk locations such as child care or family day care premises
- Pools on properties that are being sold or tenanted and the pool owner has requested a current certificate of compliance (which has a life of three years)
- pools reported as being leased or rented that do not have a current certificate of compliance
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The following criterion identifies pools that would also come under the first stage of the pool inspection program in order of priority:-

- pools that have been identified as having non compliant barriers
- pools that have not been inspected in the past 10 years
- pools where there has been a change of ownership and no pool inspection has been carried out
- pools that have an exemption under section 22 of the *Swimming Pools Act 1992* that is more than 5 years old.
- All other pools

It is anticipated that stage one may take eight years to complete. Upon completion stage 2 will commence which is regular reinspection of all pools every five years.

3. Fees

No registration fee is payable for those pool owners unable to register their pool themselves on the New South Wales Swimming Pools Register. Nor is a fee required for inclusion on Sutherland Shire Council's own register.

A pool inspection fee applies in the conducting of inspections under the pool inspection program. The fee is limited under the legislation. The initial fee is payable at the time of booking the inspection with a subsequent fee payable at the time of booking a reinspection.

3.1 Inspection Fee

At time of gazettal of the Swimming Pool Regulation (April 2013) a maximum initial inspection fee of \$150 is payable and a second inspection fee of \$100 is payable. No fee may be charged for further inspections.

Sutherland Shire Council sets out and updates the fee payable for inspections in its annual Schedule of Fees and Charges.

4. Penalties

There are a number of offences under the Act which attract fines, as follows:

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 program does not prevent Council from issuing penalty infringement notices for a breach of the Swimming Pools Act and Regulation.

5. The Role of Certifiers

Pool Owners may request an accredited certifier to provide a Pool Certificate of Compliance. Accredited certifiers may set their own fees. Having conducted an inspection, 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, or if the pool is considered to be a significant public hazard the certifier must notify council immediately. Upon notification Council will commence investigation and this may result in compliance action against the Pool Owner.