



Blue Mountains City Council

# **SWIMMING POOL BARRIER INSPECTION PROGRAM**

**Revised  
August 2014**

# SWIMMING POOL INSPECTION PROGRAM

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## 1 Purpose

The *Swimming Pools Act 1992*, section 22B requires councils to develop and adopt 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*.

Councils are then required to inspect swimming pools in accordance with their adopted program.

### 1.1 Relevant Legislation and Standards

The legislation, regulation and standards that apply to this Swimming Pool Safety Barrier Inspection Program include:

- Swimming Pools Act 1992
- Swimming Pools Regulation 2008
- Swimming Pools Amendment Act 2012
- Swimming Pools (Consequential Amendments) Regulation 2013
- Building Code of Australia
- Australian Standards AS1926.1 & 1926.2

NSW Government, Swimming Pools and Spas can be accessed by the following link:

<http://www.swimmingpoolregister.nsw.gov.au>

### 1.2 Background

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

Pools associated with these types of developments require a three year inspection regime because they are perceived as having a higher risk factor due to more frequent use by a wider range of people.

Blue Mountains City Council has for a number of years conducted a pro-active pool inspection program. This Swimming Pool Inspection Program maintains the pro-active service element and incorporates the now mandatory inspection requirements. It specifies an affordable level of service that is responsive to the feedback from the community about the high priority of pool safety.

### **1.3 The Importance of Swimming Pool Safety**

Swimming pools offer a social amenity that is of great benefit to those who have use and access to them. 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 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, NSW Commission for Children and Young Adults.

## **2 The Inspection Program**

All Councils are required to have in place and to implement a program for swimming pool inspections. The purpose of the 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 met the relevant pool safety requirements. A pool certificate of compliance is valid for a period of three years. A pool may be inspected more frequently 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 does not meet the various requirements under the applicable standards. In such cases either Council or an accredited certifier must issue a Notice of Intent to Issue a Direction, specifying the works required. If the works are not undertaken or the pool does not pass a subsequent inspection then a Direction Notice will be issued. Failure to comply with a written Direction may result in a Penalty Infringement Notice being issued. Continued refusal to comply could result in legal action.

### **2.3 What is the “applicable standard” that applies?**

The Swimming Pools Act & Regulations and Australian Standard 1926.1 have been amended on a number of occasions over the years. A swimming pool must comply with the requirements of the Act and standards that was applicable at the time the pool was installed, or be brought into compliance with current standards.

### **2.4 Exemptions to the Standard**

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.

The exemption is void if the pool has not continuously been maintained to the standard at the time of installation or if significant building works has taken place elsewhere on the site that affect the pool barrier.

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

## **2.5 High risk pools**

The legislation requires properties considered as a high risk to be inspected every 3 years. This includes pools associated with:

- hotel, motel, backpackers, bed and breakfast and other tourist/visitor accommodation.
- Serviced apartments and multi residential developments comprising more than 2 occupancies.

Under the Public Health Act 2010 Council presently undertakes annual inspections of public swimming pools and spas to monitor the water quality (such as those associated with hotel/motel type accommodation).

In conjunction with this inspection program, Council will also inspect the barriers and fencing to those pools on an annual basis for compliance with the relevant standards.

Council will also undertake an annual inspection of swimming pools located on the same property as a child care centre in conjunction with the annual inspection of the food preparation/kitchen areas of these premises under Council's Food Partnership Agreement.

Pools associated with other high risk premises such as multi-residential premises and serviced apartments will be inspected every 3 years.

## **2.6 Properties for Sale or Lease**

From 29 April 2015 all properties with a pool that are being sold or leased/rented must have a current pool certificate of compliance. A pool certificate of compliance is valid for a period of 3 years.

Where a property with a pool is being sold or leased, the pool owners must make application in writing for a pool certificate of compliance unless they already have a valid certificate. This application can be made to Council or to a private accredited certifier.

Site specific exemptions issued by Council under section 22 of the *Swimming Pools Act 1992* may contain conditions requiring more frequent inspections.

## **2.7 Routine Inspection of Domestic/residential pools**

All pools, other than high risk pools, will generally be subject to routine inspections on a rolling program unless a more frequent inspection is required or requested. This program aims to ensure all pools are inspected approximately every 5 years on average. The actual frequency of inspections will depend on a range of factors including staff resources, the time elapsed since the pool was last inspected, whether a compliance certificate has been issued in respect to the pool in the preceding 5 years.

## 2.8 Staged implementation of the inspection program

A staged implementation of the expanded inspection program is proposed in order to achieve the newer higher level of service and comply with the legislation. Appendix 1 summarizes the recommended program.

### 2.8.1 Stage 1 - Commencing Immediately:

- Pools that are subject to a complaint.

On receipt of a complaint by Council concerning an alleged defective swimming pool barrier, a written request will be forwarded to the owner of the swimming pool to arrange access for an inspection.

- Pools that are subject to an application under Section 22 of the *Swimming Pools Act* for an exemption from all or any of the requirements of Part 2 of the Act.

On receipt of an application and the appropriate fee, Council will undertake an inspection of the swimming pool.

- Pools that are subject to a Notice under Section 22E of the *Swimming Pools Act 1992* from a private accredited certifier advising Council that the swimming pool barrier is not compliant with the relevant standard.

On receipt of a notification from an Accredited Certifier, a written request will be forwarded to the owner of the swimming pool to arrange access for an inspection to be undertaken and payment of an inspection fee in accordance with Section 22F of the Act.

- Pools that are subject to an application under Section 22C of the *Swimming Pools Act* for an inspection, which includes advice about swimming pool compliance.

On receipt of an application and payment of the inspection fee, an inspection of the swimming pool will be undertaken.

- Pools that have been identified by a Council officer from casual observation as having non-compliant barriers during an inspection of the property for another purpose, e.g. where Council is undertaking an inspection of the property as the Certifying Authority for a development under construction or receipt of an application for a Building Certificate for a property which has a swimming pool etc.

Where a pool barrier is identified as being potentially non-compliant, a written request will be forwarded to the owner of the swimming pool to arrange access for an inspection to be undertaken and request payment of the inspection fee in accordance with Section 22F of the Act.

- Public swimming pools that have been identified as posing a high risk to young children including pools associated with a child care centre, hotel, motel, tourist/visitor accommodation and similar developments.

These pools are inspected as part of Council's annual water quality inspection program under the Public Health Act 2010. Fees will be charged in accordance with Council's adopted fees and charges.

- Pools that were scheduled for a follow-up inspection as part of Council's previous swimming pool inspection program.

Commence review of the swimming pool register and the BMCC data base to target higher risk premises on a prioritized basis, these will include premises such as those that do not have a valid Certificate of Compliance or a relevant Occupation Certificate and Council has not carried out an inspection of the swimming pool in the past 10 years.

The aim is to develop an inspection program that transitions from a frequency of one in twelve years to an inspection frequency of approximately one in five years.

A written request will be forwarded to the owner of the swimming pool to arrange access for an inspection to be undertaken and payment of the inspection fee in accordance with Section 22F of the Act.

### **2.8.2 Stage 2 – Commencing 29 April 2014:**

- Pools on properties that are being sold or tenanted and the pool owner has made application for a current certificate of compliance under Section 22D of the *Swimming Pools Act*. (commence date: 29 April 2015)

On receipt of an application and payment of the inspection fee, Council will undertake an inspection of the swimming pool. Where the application form indicates that it relates to the sale or lease of the premises, the inspection will be undertaken within ten (10) business days after receiving the application and inspection fee.

- Swimming pools associated with multi residential developments and serviced apartments.

A written request will be forwarded to the owner of the swimming pool to arrange access for an inspection to be undertaken and payment of the inspection fee in accordance with Section 22F of the Act and as part of Council's three (3) year inspection program.

## **2.9 Notice of Proposed Direction**

Where an inspection identifies a defective swimming pool barrier, the swimming pool owner will be advised of the areas of non-compliance initially as an inspection report. The report will have the option of giving a Notice of Intent to issue a Direction to Comply. The Notice of Intent will require the owner to undertake, within a reasonable time specified in the report; such measures that will ensure the swimming pool safety barrier or premises comply with the requirements of the *Swimming Pools Act*.

The purpose of the Notice is to encourage the swimming pool owner to bring the swimming pool into compliance with the Act, before a formal Direction is subsequently issued.

Where a Notice has been issued, Council will carry out a reinspection of the pool generally after a period of thirty (30) days from the date of the Notice. If the swimming pool barrier/fence remains non-compliant with the relevant Standard Council will forward the final Direction to comply to the swimming pool owner. The Direction is a legally enforceable document and provides the swimming pool owner with a right of appeal to the Land and Environment Court.

After the time period for compliance with the Direction has expired, a further reinspection of the swimming pool will be carried out by Council to determine if compliance has been achieved. Given the safety issues, any failures to comply may result in Council issuing a penalty infringement notice or seeking legal enforcement of the Direction through an application to the Land and Environment Court.

A Notice of a proposed Direction will not be issued where, in the opinion of the inspecting officer, a swimming pool poses a significant threat to public safety. In those circumstances Council will immediately issue the owner with a Direction to take such measures as specified.

### **3 Inspection and re-inspection fees**

Section 22F of the Act allows Council to charge a fee for the initial inspection and the first follow up inspection carried out under Division 5 of the Act.

Where an application is made by an owner for Council to carry out an inspection of a swimming pool or to issue of a compliance certificate, an initial inspection fee will be payable at the time of lodging the application or request. An application will not be taken as being lodged until payment of the application fee has been received by Council.

Pool owners will be encouraged to complete the self-assessment checklist, in order to reduce the need for a reinspection. The link for the self-assessment is as follows:

<http://www.swimmingpoolregister.nsw.gov.au>

Where Council has initiated the need for an inspection in accordance with this program, other than an inspection carried out as a result of a complaint, an invoice will be forwarded to the owner of the swimming pool. The fee is payable within twenty one (21) days from the date of inspection.

Where a re-inspection is necessary, a once only re-inspection fee will be payable by the swimming pool owner. In such cases, Council will issue an invoice to the swimming pool owner. All inspection fees will be charged in accordance with Council's schedule of fees and charges.

At the time of adoption of this Program, the fees for inspection are:

- |  |           |
|--|-----------|
| (a) in the case of the initial inspection of the swimming pool,  | \$150, or |
| (b) in the case of the first re-inspection of the swimming pool, | \$100.    |

### **4 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 barrier/fence does not meet the applicable standard, the accredited certifier must issue a written Notice to the owner of the swimming pool advising of the matters that need to be addressed. The accredited certifier may allow a pool owner 6 weeks to rectify the deficiencies.

If the barrier/fence remains outstanding after this 6 week period the accredited certifier must forward a copy of the Notice to Council. If the pool is considered to be a significant public hazard the certifier must notify Council immediately.

Upon receipt of such Notices Council may commence compliance action.

### **5 Community Consultation Survey**

As part of Council's obligations to establish a swimming pool safety inspection program in consultation with the community an online survey was conducted between 22 April and 31 May 2013. Notification of the survey and an invitation to participate was included in the News from the Hill newsletter that was enclosed with the May installment of the Rates Notice. Notification of the survey was also published in two editions of the Blue Mountains Gazette (24 April and 8 May).

The on-line survey was made available on Council's Have Your Say webpage and provided



participants an opportunity to lodge a submission regarding the form and nature of the proposed inspection program.

This recommended program was also exhibited for community comment prior to adoption.

## 6 Penalties

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

<b>Offence under the Act</b>	<b>Penalty Notice (Issued by Council)</b>	<b>Court Maximum Penalty</b>
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 moveable 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

## Appendix 1 Summary of Swimming Pool Barrier Inspection Program

Summary – Swimming Pool Barrier Inspection Program				
*See Risk Criteria - Appendix 2				
Inspection priority	Types of pool inspections	Time frame of inspections	Legislation	Commencement date
<b>Stage 1</b>				
1.	Where council is made aware of pool barriers that do not comply with the standards enforced when they were built:			
	a) During inspections of other works (not associated with swimming pools)	*Within 3 days or based on risk	Not specified	Immediately
	b) Complaints made in writing to council	Within 3 days	<i>Swimming Pools Act 1992, Part 3, section 29A</i>	Immediately
	c) When a notice is received from an accredited certifier who inspected the pool and is not satisfied that the requirements for the issue of a certificate of compliance have been met.	*Within 3 days or based on risk	<i>Swimming Pools Act 1992, Part 2, Division 5, section 22E</i>	Immediately
	d) Complaints made verbally to council staff	*Within 3 days or based on risk	Not specified	Immediately
2.	Where an inspection request is received or based on risk	*Within 3 days	<i>Swimming Pools Act 1992 Section 22C</i>	Immediately
3.	Pools that are subject to an existing exemption under section 22 of the Swimming Pools Act 1992 that is more than 5 years old	*Within 3 days or based on risk	Not specified	Immediately
4.	Swimming pools that have been identified as being on sites that pose a high risk to young children including pools associated with: <ul style="list-style-type: none"> <li>- Bed and breakfast accommodation</li> <li>- Backpacker accommodation</li> <li>- Other tourist/visitor accommodation</li> </ul> <p>Public swimming pools and spas at hotels, motels and Council’s aquatic centres</p>	Three (3) yearly	<i>Swimming Pools Act 1992, Part 2, Division 5, section 22B</i>	Immediately
		Annually in conjunction with Council’s water quality monitoring program for public swimming pools and spas	<i>Public Health Act 2010 Section 36</i>	Existing

## Summary – Swimming Pool Barrier Inspection Program

Inspection priority	Types of pool inspections	Time frame of inspections	Legislation	Commencement date
5.	Swimming pools located on the same property as a child care centre.	Annually in conjunction with Councils annual inspection of the food preparation/ kitchen areas of these premises under the Council's Food Partnership Agreement.	Not specified	Immediately
6.	<p>Pools that were scheduled for inspection as part of Council's previous swimming pool inspection program.</p> <p>The aim is to transition from the current inspection frequency, approximately one in twelve year to approximately one in five year frequency within 2 years</p>	TBC	Not specified	Immediately
<b>Stage 2</b>				
7.	Where an inspection request is received prior to the sale/lease of properties with pools	Within 10 business days, after receiving a request for an inspection	<i>Swimming Pools Regulation 2008</i> , Part 5, clause 17	29 April 2015
8.	Serviced apartments and Multi-residential developments with more than two dwellings	Once every three years	<i>Swimming Pools Act 1992</i> , Part 2, Division 5, section 22B	29 April 2014
9.	Other pools without a valid certificate of compliance or occupation certificate	TBC	Not specified	29 April 2014

## Appendix 2 Private Swimming Pool Compliant Inspection Risk Matrix

Risk Level (H, M, L)	Compliant Type	Timeframe for inspection
High	General Public -Portable Pool – No fencing	Within 24 - 48 hours
High	General Public – Non Portable Pool installed – no fencing	Within 24 - 48 hours
High	Private Certifier – no fencing installed	Within 24 – 48 hours
Medium	Private Certifier – new pool fencing installed does not meet requirements	Within 3 - 5 days
Low	Private Certifier –fencing installed minor issues	Within 4 week period as per standard inspection program
High	Council Certifier / Officer – fencing missing and/or in poor condition	Within 24 – 48 hours
Medium	Council Certifier / Officer – fencing installed does not meet requirements	Within 3 - 5 days
Low	Council Certifier / Officer – fencing install minor issue	Within 4 week period as per standard inspection program