



Swimming Pool Inspection Program 2013



Document Status -Version Control

Version	Date	Author	Change Description
0	4 October 2013	M Brewer	Original Document

INTRODUCTION

Amendments to the Swimming Pools Act 1992 (the Act) came into effect on 29 April 2013, with the aim to improve the compliance of pool barriers in NSW and lower the risk of children drowning in swimming pools on private properties. Section 22B of the Act requires that Council develop and implement a mandatory pool inspection program by 29 October 2013. Council must then inspect all swimming pools in accordance with their Pool Inspection Program.

Additionally, the Swimming Pools Amendment Act 2012 (the Amendment Act) specifies amendments to the Conveyancing (Sale of Land) Regulation 2010 and the Residential Tenancies Regulation 2010 which commence operation on 29 April 2014. These amendments will require owners and/or landlords of properties with swimming pools to obtain a valid Certificate of Compliance (Section 22D of the Act), prior to the sale or lease of their properties.

This document outlines the proposed Pool Inspection Program for Muswellbrook Shire Council. It aims to reduce the risk of children drowning in swimming pools in the community by developing a comprehensive inspection schedule for all swimming pools in the local government area. The hierarchy of inspections to be carried out is based on the risk assessment undertaken by Muswellbrook Shire Council.

PROGRAM OBJECTIVE

The objective of this program is to establish clear guidelines for the management of Muswellbrook Shire Council's mandatory Swimming Pool Inspection Program and subsequent regulatory activities and enforcement action.

SWIMMING POOL DEFINITION

The Act defines a swimming pool as an excavation, structure or vessel:

- that is capable of being filled with water to a depth of greater than 300 millimetres, and
- that is solely or principally used, or that is designed, manufactured or adapted to be solely or principally used for the purpose of swimming, wading, paddling or any other human aquatic activity, and includes a spa pool, but does not include a spa bath, anything that is situated within a bathroom or anything declared by the regulations not to be a swimming pool for the purposes of this Act."

This term not only includes backyard pools but also includes pools that may be inside (or partially inside) a dwelling, townhouse, an apartment, motel, hotel etc.

GENERAL REQUIREMENTS FOR OUTDOOR SWIMMING POOLS

According to Section 7 of the Act:

"The owner of the premises on which a swimming pool is situated must ensure that the swimming pool is at all times surrounded by a child-resistant barrier:

- a) that separates the swimming pool from any residential building situated on the premises

- and from any place (whether public or private) adjoining the premises, and
- b) that is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations."

OBLIGATIONS FOR POOL OWNERS

The changes to the Act now require swimming pool owners to:

- Register their pool before 29 October 2013 on the NSW Department of Local Government Swimming Pool Register.
- Ensure other development does not impact on the effectiveness of their pool barrier.
- Maintain an effective and compliant pool barrier.
- Obtain and continue to hold a valid Certificate of Compliance where there is a pool on tourist/ visitor accommodation premises and multi-occupancy dwellings (commences 29 April 2014).
- Obtain and continue to hold a valid Certificate of Compliance where the property is to be sold or leased (commences 29 April 2014).

CERTIFICATE OF COMPLIANCE

A Certificate of Compliance is issued once a pool has been inspected against the relevant pool safety requirements. It certifies that the installed pool barrier complies with the requirements of the Act, Regulations and Standard at the time of inspection and cannot be issued if the pool fails to meet the requirements of the applicable standards.

In order to obtain a Certificate of Compliance under Section 22D of the Act, the swimming pool must:

- be registered on the NSW Department of Local Government Swimming Pool Register;
- be inspected by Council's authorised officer or an accredited certifier; and
- comply with the requirements of Part 2 of the Act.

A Certificate of Compliance is valid for 3 years from the date of issue. A Certificate ceases to be valid if a subsequent Direction is issued under the Act because the barrier is later found to be defective and requires rectification works. Where a barrier is found to be defective, 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 may be issued. Continuing refusal to comply may result in legal action.

AUTHORISED PERSONS

Council must inspect the swimming pools in its local area in accordance with its Pool Inspection Program and check the pool barriers comply with the requirements of the Act (Section 22B(4)). Inspections can be performed by Council's authorised officers or a qualified accredited certifier (Section 22A of the Act). Council's power of entry is consistent with the Local Government Act 1993.

Pool Owners may request an accredited certifier to provide a Swimming 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 may notify council immediately. Upon notification Council may commence compliance action.

TIMEFRAME FOR CHANGES:

- Pools are to be registered by pool owners no later than **29 October 2013**. The NSW Department of Local Government Swimming Pools Register is **now available** to register pools at <http://www.swimmingpoolregister.nsw.gov.au/>;
- Council's inspection program for private pools to be developed and commenced by no later than **29 October 2013**;
- Owners of land where there is a pool on tourist/ visitor accommodation premises and multi-occupancy dwellings to obtain a Certificate of Compliance (from **29 April 2014**).
- Owners of land where the property is to be sold or leased to obtain a Certificate of Compliance (from **29 April 2014**).
- Mandatory inspections by Council of tourist, visitor and multi-occupancy developments, and pools associated with property sale and lease are to commence by no later than **29 April 2014**.

IMPLEMENTATION OF THE PROGRAM

Muswellbrook LGA has in excess of 630 pools on the statewide register. Council's Pool Inspection Program will be implemented in three stages based on legislative requirements, available and affordable resources and the perceived risk to the community. This staged process, as shown in **Figure 1** below, will ensure that priority tasks are completed while also identifying future resource requirements.

Figure 1: Pool Inspection Program Stages:



The Pool Inspection Program is detailed in Tables 1 and 2. It is a continuous program, relating to pools on private properties, not on public land in accordance with Section 4 of the Act.

STAGE 1

The first stage of the Program will be carried out between 29 October 2013 and 29 April 2014 with the focus as shown in **Figure 2** below:

Figure 2: Pool Inspection Program – Stage 1:



These activities will continue to be undertaken after 29 April 2014 in conjunction with other auditing activities outlined in Stages 2 and 3.

STAGE 2

Stage 2 of the Program will commence on 29 April 2014 and will the following:

Table 1 - Pool Inspection Timeframes – Stage 2

Inspection priority	Types of pool inspections	Time frame	Legislation	Start date
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 on the same site (not associated with swimming pools)	Within 3 days	Swimming Pools Act 1992, Part 3	Immediately
	b) When complaints are made in writing or verbally to Council or identified via surveillance/ local knowledge	Within 3 days	Part 3 and Section 29A of the Act	Immediately
	c) When a notice is received from an accredited certifier who inspected the pool and is not satisfied that the requirements of the Act have been met	Within 3 days	Part 2, Division 5, Section 22E of the Act	Immediately
	d) When Council suspects a pool contravenes the Act (for example, pools constructed without approval and pools that are not registered).	Within 3 days	Part 2, Division 5, Section 22C of the Act	Immediately
2	When an inspection request is received prior to the sale/lease of properties with	Within 10 business days	Part 2, Division 5, Section 22C	29 April 2014

Inspection priority	Types of pool inspections	Time frame	Legislation	Start date
	pools,)	of receiving the request	of the Act	
3	When an inspection request is received voluntarily from pool owner	Within 10 business days of receiving the request	Part 2, Division 5, Section 22B of the Act	Immediately
4	Tourist and visitor accommodation consisting of hotels, motels, serviced apartment, bed and breakfast accommodation, caravan parks and backpackers' accommodation.	Every 3 years (mandatory)	Part 2, Division 5, Section 22B of the Act	29 April 2014
5	Multi-residential dwellings with more than two dwellings.	Every 3 years (mandatory)	Part 2, Division 5, Section 22B of the Act	29 April 2014
6	Pools with an exemption Under Section 22A of the Act.	Once every 3 years	Part 2, Division 5, Section 22B of the Act	Immediately
7	Other pools without a valid Compliance Certificate	Priority given to older pools	Part 2, Division 5, Section 22B of the Act	Immediately

Inspections must be carried out within 10 days of the application being made and fees paid.

It is estimated that this stage of the Program will be the most resource-intensive given the prescribed 10 day timeframe to inspect and assess the large number of applications that are anticipated Council will receive after 29 April 2014.

Council will undertake inspections on 10% of all swimming pools located within the Muswellbrook LGA each financial year. Pools will be selected from the NSW Swimming Pools Register or Council's records, with preference given to older pools or pools without a valid Certificate of Compliance or Occupation Certificate issued within a previous three year period.

Note also that all tourist, visitor and multi-occupancy developments must renew their Certificates every three years.

STAGE 3

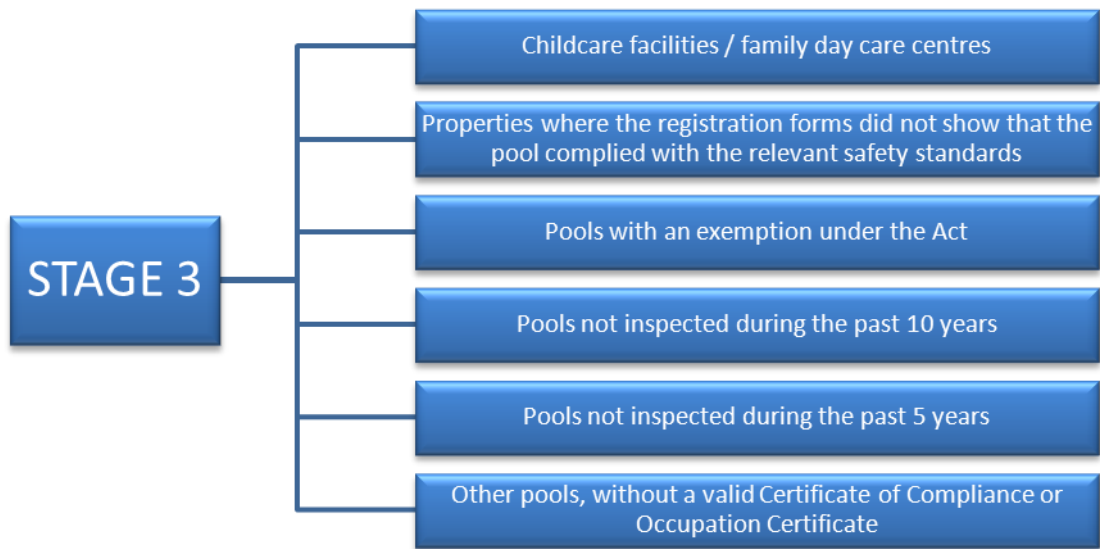
The third stage of inspections is not mandatory under the Act, and will therefore be implemented after the completion of the first two stages the Program. These inspections have been added to the inspection program, in order to mitigate the detrimental risk of young children drowning in swimming pools.

This stage of the Program is expected to be the most challenging and may be met with some

resistance from property owners. Targeting these high-risk areas is considered to be the most important element in the reduction of drownings and near-drownings.

Stage 3 of the Program will involve proactive inspections of high-risk private pools in the LGA and will only become operational once the mandatory requirements of Stages 1 and 2 are being met. This stage will focus on high-risk areas, as shown in Figure 3 below:

Figure 3: Pool Inspection Program – Stage 3



INSPECTION PROCEDURES

For the purposes of inspections under this program, occupiers of subject premises will generally be given 14 days written notice of Council’s intention to carry out an inspection prior to the inspection occurring.

For the purposes of inspections of properties subject to an exemption, a complaint, a request by the owner, an application made to enable the sale or lease of the premises or where a certifier has notified Council of a defective barrier, access to any such premises shall be undertaken in accordance with the provisions of Part 3 of the Swimming Pools Act.

Where the consent of the occupier of a premise has not been obtained, Council’s authorised officer may access the premises in accordance with the provisions of 27A of the Swimming Pools Act between 9am and sunset.

A Pool Certificate of Compliance will be issued once a pool has been satisfactorily inspected against 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.).

STRATEGY FOR CHECKING POOL BARRIERS ARE COMPLIANT

During a pool barrier inspection, the qualified pool inspector will be taking measurements and using a comprehensive checklist to determine whether the pool barriers comply with the relevant

safety standards. If the pool barriers have:

- Not been altered, then the pool barriers will be required to comply with the safety standards that were applicable at the time of construction.
- Been substantially altered or the means of access to the pool has been rebuilt, then the pool barriers will be required to comply with the safety standards that were applicable when the modifications were assessed.
- Never complied with the safety standards that were applicable at the time of construction, then the pool barriers will be required to comply with the current safety standards.

ONGOING INVESTIGATIONS OF COMPLAINTS

As well as implementing Stages 1, 2 and 3 of the program, Council will continue to respond to and investigate complaints regarding swimming pools and pool barriers. Where a complaint has been received by Council concerning an alleged defective swimming pool barrier, the following shall occur:

- a) Council will respond to complaints about Swimming Pool fencing/barriers within 72 hours of receipt;
- b) an authorised officer will firstly check whether a life threatening circumstance exists, and if so determine an immediate course of action and appropriate timeframe. If nobody is home, council's authorized officer may utilize the Powers of Entry under the Swimming Pools Act and Local government Act to undertake an inspection of the pool enclosure;
- c) in the event that the incidence is not considered to be immediately life threatening, the authorized officer will prioritise the matter accordingly and arrange a suitable time for inspection to ensure an acceptable outcome within the specified timeframe; and
- d) as a standard practice the authorized officer will check Council's register and the NSW register to ensure that the swimming pool has been registered in accordance with the legislation.

Where a complaint is substantiated after an inspection, a letter will be issued to the owner of the swimming pool outlining required rectification works to bring the barrier into compliance. The pool owner will be given a period of time in which to have the works complete and to arrange for a re-inspection.

APPLICATIONS FOR SWIMMING POOL CERTIFICATE OF COMPLIANCE

Upon application being made for a Certificate of Compliance and applicable fee satisfied, Council will undertake an inspection of the swimming pool. Inspections will be undertaken within ten (10) business days of receiving the application and inspection fee. Where a defective barrier has been identified, a letter will be issued to the swimming pool owner.

Where necessary, re-inspection will be undertaken by Council and the appropriate re-inspection fee will be paid by the swimming pool owner. A Certificate of Compliance will be issued in respect of a swimming pool that is registered on the Department of Local Government Swimming Pools

Register and that complies with the requirements of Part 2 of the Act.

ACTIONS TAKEN IF POOL BARRIERS ARE NON-COMPLIANT

Where a defective barrier is identified, a letter or Notice outlining works to be undertaken will be issued to the swimming pool owner. If the upgrade works are not performed within the timeframe specified, then a final Direction will be issued. Following this, an inspection will be undertaken. If all works have been satisfactorily completed, a Certificate of Compliance may be issued. If the works are defective or remain outstanding, then Council may issue a Penalty Infringement Notice and legal action may also be taken (in accordance with the legislation).

NOTICES ISSUED BY AN ACCREDITED CERTIFIER

Pool owners may request an accredited certifier to provide a Pool Certificate of Compliance. If the Accredited Certifier determines that the barrier does not comply, then pursuant to Section 22E of the Act, the Certifier must provide a Notice to the owner of a swimming pool outlining the matters to be rectified, with a copy sent to Council. The 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 may notify Council immediately. Council will then investigate the noncompliant pool barriers.

PENALTY INFRINGEMENT NOTICES

Specific legislative provisions are contained within legislation relating to the appointment of Authorised Officers, Powers of Entry, Inspections & Investigations, Search Warrants, Issuing of Notices & Orders, Issuing Penalty Infringement Notices, Legal Proceedings, Appeals, Court Orders, Penalties, Compensation and other associated activities in accordance with the *Swimming Pools Act* and *Swimming Pools Regulations*.

Council has discretion in determining whether or not enforcement action should be taken in relation to a particular matter having regard to evidence available; the nature, extent and impact of the offence or breach; the circumstances of the case and the public interest. Reference is made to the provisions of the *Swimming Pools Act* and Council's Compliance Policy.

There are a range of Penalty Infringement Notices (on the spot fines) that can be issued by Council for non-compliance with the requirements of the Act. These will not be used as an initial response by Council but rather as a deterrent for continued failure to comply. This program does not prevent Council from issuing penalty infringement notices for a breach of the Swimming Pool Act and Regulation. Any fines collected through this process will be directed towards the funding of Council's Swimming Pool Inspection Program and raising public awareness. Penalties can relate to the following matters:

- Section 7(1): failure to comply with general requirements for outdoor pools associated with dwelling
- Section 12: failure to comply with general requirements for outdoor pools associated with moveable dwelling and tourist and visitor accommodation
- Section 14: failure to comply with general requirements for indoor pools
- Section 15(1): failure to maintain child resistant barrier

- Section 16: failure of occupier to keep access to pool securely closed
- Section 17(1): failure to display or maintain prescribed warning notice near pool
- Section 23(3): failure to comply with direction (pool safety order)
- Section 30B(1): failure to register a pool

UNAUTHORISED POOL INSTALLATION

Where an inspection has been carried out and has revealed that the pool in question was not approved prior to its installation, retrospective approval may be required through the development application process to validate the use of the pool. An application for a Building Certificate under Section 149(d) of the Environmental Planning and Assessment Act 1979 shall be lodged in order to legalise the building work, concurrent to a Certificate of Compliance being sought for the pool and barrier, which will be required to comply with current legislative requirements.

EXEMPTIONS

In limited circumstances, Council can issue exemptions under the Act. Section 22 of the Act allows Council to grant exemptions for swimming pools situated on complex sites, “in the particular circumstances of the case:

- a) That 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
- b) That alternative provision, no less effective than those requirements, exists for restricting access to the swimming pool.”

The exemption is lost if the pool has not continuously been maintained to the standard at the time of installation or if significant building works have taken place elsewhere on the site – in such cases the pool must be upgraded to the current standard

On receipt of an application and the appropriate fee, council will undertake an inspection of the swimming pool. After determination of the exemption application, if further works are necessary to make the swimming pool barrier compliant, Council will issue a Notice of Proposed Direction to the swimming pool owner.

POOL INSPECTION FEES

- No fee is required for pool owners to register their pool on the NSW Swimming Pool Register.
- Residents who do not have access to the internet can lodge their registration by completing the written form and submitting it to Council. Council will then register the information on the NSW Swimming Pool Register for a fee of \$10.00.
- For the purposes of issuing a Certificate of Compliance, Council will charge an inspection fee of \$150 for the first inspection carried out, as per Section 18A of the Swimming Pools Regulation 2008. This fee is payable to Council within 14 days of the inspection.

- Should a further inspection be required, then an additional inspection fee of \$100 will be satisfied at the time of booking the reinspection. Subsequent pool inspections will not incur further inspection fees.

REPORTING AND REVIEW

Councils are required to report annually to the State Government on the inspection program. The report will be made available to Council and the public for information. Council's Swimming Pool Safety Inspection Program will be reviewed annually and any amendments reported as required.

RELATED LEGISLATION

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 Amendment (Consequential Amendments) Regulation 2013
- Building Code of Australia
- Australian Standards AS1926.1
- Australian Standards AS1926.2