

DRAFT

Pool Inspection Program

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Mandatory under the Swimming Pools Act 1992
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Front Cover image, courtesy of Kids Health at The Children's Hospital at Westmead



1. Executive Summary

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 Councils to develop and adopt a mandatory pool inspection program, in consultation with their local communities, by 29 October 2013. Councils must then inspect the swimming pools in accordance with their Pool Inspection Program.

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



2. Background

Swimming pool safety is a critical issue that affects the entire community. Every year, many toddlers drown or are severely injured in swimming pools on private properties throughout Australia (www.royallifesaving.com.au).

The Royal Life Saving Society (RLSS) has partnered with the NSW Government to promote pool safety for children under 5 years of age. One aspect of their pool safety campaign is to highlight the importance of restricting access to backyard pools, with the correct installation and maintenance of barriers around pools, in accordance with the relevant safety standards. According to the RLSS, “restricting access when combined with the other Keep Watch actions of Supervise, Water Awareness and Resuscitate are highly effective in preventing child drowning.”

Alarming, the NSW Government has identified a high level of non-compliant pool barriers around swimming pools on private properties. To improve the level of compliant pool barriers in NSW and lower the risk of young children drowning in swimming pools on private properties, the NSW Government adopted the *Swimming Pools Amendment Act 2012* on 29 October 2012. It outlined a number of amendments to the *Swimming Pools Act 1992* and other legislation, with delayed commencement provisions.

The following amendments were inserted into the Act and came into effect on 29 April 2013, including the:

- Mandatory statewide registration of swimming pools (refer to www.waverley.nsw.gov.au/building_and_development/pools for more information)
- Mandatory pool inspection program to be developed and adopted by each council in consultation with their local community by 29 October 2013 (Section 22B of the Act).

Additionally, the *Swimming Pools Amendment Act 2012* 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 / landlords of properties with swimming pools to obtain a valid Certificate of Compliance (Section 22D of the Act), prior to the sale / lease of their properties.



3. Introduction

Councils in NSW are required to develop and adopt a mandatory pool inspection program, in consultation with their local communities, by 29 October 2013 (Section 22B of the Act).

This document outlines Waverley Council's proposed Pool Inspection Program. It aims to lower the risk of children drowning in swimming pools in the Waverley community, by improving the compliance level of pool barriers in the LGA.

This document begins with a risk assessment and an outline of Council's Pool Inspection Program. It then describes the compliance checks that will need to be carried out before a Certificate of Compliance can be issued. Finally, it details the pool inspection fees and other useful resources



4. Risk Assessment

Waverley Council is committed to minimising the risk of young children drowning in swimming pools. The following risk assessment was undertaken during the development of Council's Pool Inspection Program.

Hazard: Swimming pools on private properties. There are approximately 1800 swimming pools in the Waverley Council area. The Act defines a swimming pool as an "excavation, structure or vessel:

- a) that is capable of being filled with water to a depth of greater than 300 millimetres, and
- b) 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."

Risk: Deaths and injuries of children (predominantly under 5 years age) occurring in swimming pools

Hierarchy of inspections on the Pool Inspection Program:

A sequence of pool barrier inspections will be carried out, in order of level of risk to comply with the swimming pools legislation.

Pools deemed by Council to be higher risk will be inspected first. These include:

- Pools that Council is made aware do not have compliant pool barriers
- Pools on properties that are visited by a high quantity of people who are unfamiliar with the surrounding
- When Council receives a request for a pool inspection

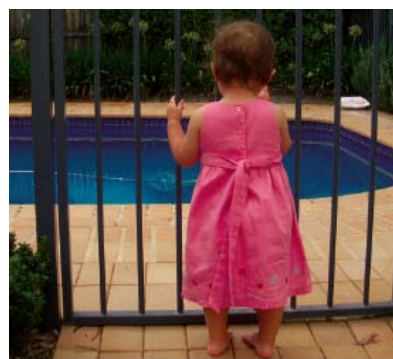


Photo courtesy of the Royal Life Saving Society.



Council cannot remove the hazard. However, it can reduce the risk by inspecting all swimming pools in the Waverley Council LGA, checking that the barriers adequately restrict access to the pools in accordance with the relevant safety standards.

Whilst compliant pool barriers help to reduce the risk of drowning, there are other measures that should also be implemented by owners to further reduce the risk. These include adult supervision at all times, greater water safety awareness and resuscitation training.



5. Pool Inspection Program

Waverley Council's Pool Inspection Program will be implemented in two stages, to improve the compliance of pool barriers in the local area, whilst ensuring the resourcing of pool inspectors is affordable. The Waverley Council 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.

Swimming pools with a valid Certificate of Compliance or a relevant Occupation Certificate are not required to be inspected as part of this Pool Inspection Program for three years from the date of issue of the Certificate of Compliance or a relevant Occupation Certificate (Section 22B(3) of the Act). However, if Council is made aware of a pool that no longer has compliant pool barriers, then the pool may be inspected earlier.

STAGE 1

The first stage of inspections, identified in Table 1, is mandatory (required under the Act and associated legislation) and will take effect on 29 October 2013, unless noted otherwise.

Table 1: Pool Inspection Program – Stage 1

Hierarchy of Inspections	Types of pool inspections
1.	<p>When Council is made aware of pool barriers that do not comply with the standards enforced when they were built:</p> <ul style="list-style-type: none">a) During inspections of other works (not associated with swimming pools)b) When complaints are made in writing to Council (investigations to commence by Council within 3 days, as specified in Section 29A of the Act)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 (Section 22E of the Act)d) When complaints are made verbally to Council staffe) When Council suspects a pool contravenes the Act (for example, pools constructed without approval and pools that are not registered).



2.	<p>When an inspection request is received:</p> <p>a) Prior to the sale/lease of properties with pools, mandatory after 29 April 2014 (Schedule 2 of the <i>Swimming Pools Amendment Act 2012</i>)</p> <p>b) Voluntarily from pool owners (Section 22C of the Act).</p> <p>Council must carry out these inspections within 10 business days of receiving the inspection requests (Section 17 of the Swimming Pools Regulation 2008).</p>
3.	<p>Tourist and visitor accommodation every 3 years, mandatory after 29 April 2014 (Section 22B(2) of the Act) consisting of:</p> <p>a) Hotels b) Motels c) Serviced apartments d) Bed and breakfast accommodation e) Backpackers' accommodation,</p> <p>but does not include: f) camping grounds g) caravan grounds h) eco-tourist facilities.</p>
4.	<p>Multi-residential dwellings, with more than two dwellings, every 3 years, mandatory after 29 April 2014 (Section 22B(2) of the Act).</p>



STAGE 2

The second stage of inspections, listed in Table 2, is not mandatory under the Act, and will therefore be implemented after the completion of the first stage of inspections. These inspections have been added to the proposed inspection program, in order to mitigate the detrimental risk of young children drowning in swimming pools.

Table 2: Pool Inspection Program – Stage 2

Hierarchy of Inspections	Types of pool inspections
1.	Childcare facilities / family day care centres
2.	Properties of pool owners who submitted their registration forms to council and did not tick that their pool complies with the relevant safety standards
3.	Pools not inspected during the past 10 years
4.	Pools not inspected during the past 5 years
5.	Pools with an exemption under the Act
6.	Other pools, without a valid Certificate of Compliance or Occupation Certificate



6. Pool Barrier Compliance

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*.

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."

CURRENT SWIMMING POOLS STANDARDS AND LEGISLATION

The standards and legislation that are currently applicable to swimming pools are the:

- *Swimming Pools Act 1992*
- *Swimming Pools Amendment Act 2012*
- Swimming Pools Regulation 2008
- Swimming Pools Amendment (Consequential Amendments) Regulation 2013
- Building Code of Australia -Volumes 1 and 2
- Australian Standards AS1926.1 and AS1926.2.

CERTIFICATE OF COMPLIANCE

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

- be registered on the statewide Register of Swimming Pools
- 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.



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:

- a) Not been altered, then the pool barriers will be required to comply with the safety standards that were applicable at the time of construction.
- b) 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.
- c) 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.

ACTIONS TAKEN IF POOL BARRIERS ARE NON COMPLIANT

A Certificate of Compliance cannot be issued by a qualified pool inspector when the pool barriers do not satisfy the requirements of the Act. Consequently, if the pool barriers were inspected by:

- An accredited certifier, then the accredited certifier will need to give a written notice to the pool owner and forward a copy of the notice to Council (Section 22E of the Act). Council will then investigate the non-compliant pool barriers.
- Council's authorised officer, then a notice or order will be sent to the owner, which states the upgrade works required. If the upgrade works are not performed within the timeframe specified, then a Penalty Infringement Notice may be issued and legal action may be taken (in accordance with the swimming pools legislation).

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."



7. Pool Inspection fees

For the purposes of issuing a Certificate of Compliance, Council will charge a pool barrier inspection fee of \$150 for the first inspection carried out, in accordance with 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 need to be paid at the time of booking the reinspection. Subsequent pool barrier inspections will not incur further inspection fees.



8. Resources

A wide range of information is available online about swimming pool safety, amendments to the Act, and the responsibilities of Councils and swimming pool owners. Some websites that are particularly comprehensive include the:

- Division of Local Government (DLG) website at www.dlg.nsw.gov.au
- Royal Life Saving Society website at www.bepoolsafe.com.au and www.royallifesaving.com.au
- NSW Register of Swimming Pools website at www.swimmingpoolregister.nsw.gov.au
- Westmead Children's Hospital website at <http://kidshealth.schn.health.nsw.gov.au/projects/drowning-prevention/swimming-pool-fencing>



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