

## POLICY REGISTER

# PRIVATE SWIMMING POOL AND BARRIER INSPECTION POLICY

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## DOCUMENT CONTROL

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## 1. PURPOSE & SCOPE

This policy document has been developed in response to Section 22B of the *Swimming Pools Act 1992* (the “Act”) and details a program for the inspection of swimming pools<sup>1</sup> (both outdoor and indoor) that are situated, or proposed to be constructed or installed, on premises on which a residential building, a moveable dwelling or tourist and visitor accommodation is located.

### **22B Mandatory pool inspection program by local authority**

- (1) *A local authority must, within 6 months after the commencement of this section, develop and adopt a program for the inspection of swimming pools in its area to ensure compliance with the requirements of this Part.*
- (2) *Within 12 months after the commencement of this section, the program must make provision for the inspection, at least once every 3 years, of any swimming pool situated on premises on which there is tourist and visitor accommodation or more than 2 dwellings.*
- (3) *The program is not to require the inspection of a swimming pool in respect of which there is a valid certificate of compliance or a relevant occupation certificate.*
- (4) *A local authority must inspect swimming pools in its area in accordance with its program.*
- (5) *The regulations may make provision for or with respect to the development and adoption of programs for the inspection of swimming pools including:*
  - (a) *the form and content of programs, and*
  - (b) *the manner in which the public is to be consulted during the development of any such program, and*
  - (c) *the carrying out of inspections under the program.*
- (6) *In this section:*  
*dwelling has the same meaning as in the Standard Instrument.*

This document aims to;

- I. increase pool safety in the Warren Local Government Area; and
- II. explain the steps that Council will take to inspect swimming pool safety barriers to ensure compliance with the requirements of ‘Part 2 - Access to Swimming Pools’ of the Act and the relevant Australian Standards.

## 2. INTERPRETATION & RELATED LEGISLATION

The legislation & regulation that apply to this program include the following, as amended from time-to-time;

- *Swimming Pools Act 1992* (the Act);
- *Swimming Pools Regulation 2008* (the Regulation);

All relevant definitions are as per the above documents. Where there is any inconsistency between this policy document and the Act and Regulation, the Act and Regulation shall prevail.

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<sup>1</sup> Section 3 of the Act states that a “**swimming pool** means an excavation, structure or vessel:

- (a) that is capable of being filled with water to a depth 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.”

**Note**, this Policy is not a substitute for the Act and Regulation. It is to be read and followed in conjunction with the Act and Regulation. All Staff undertaking duties or work relating to swimming pool barrier inspections (including but not limited to inspections, reporting, compliance, certification and enforcement) must comply with the provisions of the Act and Regulation.

### **3. BACKGROUND**

The Office of Local Government (OLG) has undertaken a comprehensive review of swimming pool legislation resulting in amendments to the Act and Regulations aimed at improving child safety in and around swimming pools and reducing the number of preventable child drownings.

While it is recognised by the OLG that **the most effective way to prevent drownings is for children to be adequately supervised by a parent or other responsible adult** they have also identified the need for the installation and maintenance of appropriately designed swimming pool safety barriers.

To this end the Act and Regulation requires all councils in New South Wales to develop and implement a program for the inspection of swimming pools in their area to ensure swimming pool safety barriers are being maintained in accordance with the relevant standard. Such a program must be developed in consultation with the local community.

This program has been developed in accordance with the statutory requirements of the Act and Regulation.

### **4. INSPECTION PROGRAM**

#### **4.1 Swimming Pool Register**

All owners of a residential premise or tourist and visitor accommodation on which a swimming pool is located must register their pool on the NSW Government Swimming Pool Register. An owner's failure to register a swimming pool is an offence that can attract a penalty<sup>2</sup>

The Swimming Pool Register will also record whether or not a swimming pool has been inspected by an appropriately qualified person and if a current 'Certificate of Compliance' has been issued.

Council will rely on the Swimming Pool Register to determine what swimming pools are required to be inspected from time-to-time.

#### **4.2 Certificate of Compliance & Non-Compliance**

When a swimming pool has been inspected and it is found to comply with the relevant pool safety barrier requirements a satisfactory inspection will be recorded in the Swimming Pool Register and a swimming pool Certificate of Compliance will be issued. A Certificate of Compliance cannot be issued if a swimming pool has not been registered on the state-wide register.

Either the Council or an accredited certifier can issue a Certificate of Compliance, which remains valid for three (3) years from the date of issue as long as the swimming pool safety barrier is maintained and there are no grounds for a formal direction to be issued.

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<sup>2</sup> At the date of adopting this policy the maximum penalty for this offence is 20 penalty units.

Similarly, a newly constructed swimming pool that is constructed pursuant to a development consent or a complying development certificate should be issued with an Occupation Certificate at the conclusion of the development certifying that the swimming pool safety barrier complies with the Act.

An Occupation Certificate certifying compliance with the Act will also remain valid for three (3) years from the date of issue as long as the swimming pool safety barrier is maintained and there are no grounds for a formal direction to be issued.

Premises with a current Certificate of Compliance or a relevant Occupation Certificate will not require a Council inspection unless Council receives a complaint and there is good reason to believe that the swimming pool safety barrier no longer complies.

If a pool is found non-compliant, the owner must be issued with a certificate of non-compliance via the NSW Swimming Pool Register within seven days of the inspection. A certificate of non-compliance is valid for 12 months from the date of issue. A written notice (inspection report) detailing reasons for the noncompliance and steps to be taken to meet the requirements for compliance must also be issued (Regulation clause 18B & 18BA)

A certificate of non-compliance must be in the form approved by the Chief Executive of the Office of Local Government.

#### **4.3 Inspection Regime**

Council will aim to undertake inspections of swimming pools (both outdoor and indoor) that are situated on premises on which a residential building, a moveable dwelling or tourist and visitor accommodation is in accordance with the following guidelines to ensure compliance with the Act and Regulation;

- (a) In response to complaints - All complaints received by Council concerning inadequately fenced or unauthorised swimming pools are recorded in Council's Customer Request Management system and will be inspected as a matter of priority **within 72 hours** as prescribed by the Act. Generally, the investigation of complaints will be undertaken in accordance with the requirements of Section 29A of the Act.
- (b) Assessment of building certificate applications - All building certificate applications for properties on which there is a swimming pool will include an inspection of the swimming pool safety barrier.
- (c) Proactive observations - Where a swimming pool is observed by Council's Building and other Compliance Officers and the swimming pool safety barrier appears deficient and/or there is no current Certificate of Compliance or relevant Occupation Certificate the matter will be recorded in Council's Customer Request Management system and inspections will be undertaken as per item (a) above.
- (d) Notifications from accredited certifiers - Any accredited certifier who is unable to issue a Certificate of Compliance and issues a notice under Section 22E of the Act is required to provide Council with a copy of the notice. On receipt of the notice Council will undertake an inspection of the swimming pool under this program.
- (e) Inspection requests by owner - All inspections requested under Section 22C of the Act by the owner of a premises on which a swimming pool is situated will be carried out within **ten (10) days**.
- (f) Sale of land inspection requests - The *Conveyancing (Sale of Land) Regulation 2010* will require any contract for the sale of land on which there is a swimming pool to include a copy of either a valid Certificate of Compliance or a relevant Occupation Certificate. Inspections requested by the owner of the land to enable the sale of a premises or part of a premises, will be carried out by Council within **ten (10) days**, as prescribed by the Regulation.

- (g) Lease of land inspection requests - The *Residential Tenancies Regulation 2010* will require landlords of premises on which there is a swimming pool to provide a copy of a valid Certificate of Compliance or a relevant Occupation Certificate at the time a residential tenancy is entered into. Inspections requested by the owner of the land to enable the lease of a premises or part of a premises, will be carried out within **ten (10) days**, as prescribed by the Regulation.
- (h) Random checks from state-wide Swimming Pool register - As resources permit, Council may randomly select properties from the state-wide Swimming Pool register that do not have a current Certificate of Compliance (or relevant Occupation Certificate). Priority will be given to inspecting older swimming pools that have never had a Certificate of Compliance (or relevant Occupation Certificate). Once a property has been selected, Council will write to the owner and request that they make arrangements for an inspection either by a Council Officer or an accredited certifier.

#### **4.4 Inspection Fees**

Any inspection of a swimming pool safety barrier carried out by Council pursuant to this program will be charged an inspection fee in accordance with Clause 18A of the Regulation.

The required inspection fees are adopted annually by Council and listed in Council's 'Fees and Charges' schedule. Any request for an inspection must be accompanied by the prescribed fee.

Council will not issue a Certificate of Compliance until all required inspection fees are paid, as prescribed by Section 22D of the Act.

### **5. ENFORCEMENT**

While Council aims to achieve compliance through the effective education and engagement of swimming pool owners, it is likely that the initiation of enforcement action will be required from time-to-time. In this regard the Act details the enforcement action that is available including 'notices of intention to give a direction', directions and penalties.

**Where a Council inspection demonstrates that the pool poses a significant risk to public safety, action should be taken under section 23 of the Swimming Pools Act 1992 immediately.**

### **6. REPORTING OBLIGATIONS**

Pursuant to Regulation clause 18BC, Council must report for the the purposes of section 22F (2) of the Act, in its annual report, the number of inspections under Division 5 of Part 2 of the Act that:

- (a) were inspections of tourist and visitor accommodation, or
- (b) were inspections of premises on which there are more than 2 dwellings, or
- (c) resulted in the council issuing:
  - (i) a certificate of compliance under section 22D of the Act, or
  - (ii) a certificate of non-compliance under clause 18BA of this Regulation.

### **7. REVIEW PERIOD**

Warren Shire Council reserves the right to vary, replace or terminate this policy at any time. This policy will be reviewed every 4 years or earlier if there are relevant statutory or State Government policy changes.