



**Penrith City Council
Swimming Pool Barrier
Inspection Program
2023**

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1. INTRODUCTION

The New South Wales (NSW) Division of Local Government has recognised swimming pool safety as a critical issue and in doing so, made significant amendments to the Swimming Pools Act 1992 (the Act). These amendments include, Inspection fees and penalties, swimming pool registration and certification requirements and requirements for local Councils to develop and carry out a swimming pool inspection program.

The changes were aimed at reducing drowning and near drowning instances of children under the age of five.

The Swimming Pools Act 1992 - Section 22B, requires that Council inspect swimming pools in accordance with its adopted program.

In 2013 a draft Swimming Pool Barrier Inspection Program (Program) was developed in consultation with the community and based on legislative requirements, resourcing, and perceived risk to the community. The Program has an emphasis in providing relevant, up to date information to residents, to assist in improving the safety of all swimming pools within the Penrith Local Government Area (LGA).

The Program focuses on inspections of premises with swimming pools and to ensure the swimming pool barrier complies with the relevant standard. Once a barrier complies to standard, a Certificate of Compliance (Certificate) will be issued to the property owner. This Certificate is valid for three years.

To assist financing the Program and ensuring the required safety standards are achieved, an array of fees and Penalty Notices were included in the amendment to the Act.

2. SCOPE

The main objectives of this program are to:

- i. Save and protect lives by preventing drownings in backyard swimming pools.
- ii. Inform swimming pool owners of their responsibilities and obligations under the Swimming Pools Act 1992

In October 2023, the NSW Swimming Pool Register recorded more than 17,000 registered swimming pool located within the Penrith Local Government Area. Swimming pools offer a social amenity that is commonly found in many Australian properties. With this however comes a responsibility outlined in legislation to maintain the swimming pool in a safe manner.

The NSW Swimming Pools Act 1992 and the Swimming Pools Regulation 2018 identify several requirements designed to enhance the safety of children under the age of five years around private swimming pools in NSW. Local government has a regulatory responsibility for swimming pool safety.

Council must make provision for the inspection, at least once every three years of swimming pools associated with tourist and visitor accommodation, as well as other multi-occupancy developments (includes swimming pools in hotels, motels, serviced apartments, backpacker accommodation and unit complexes). A three yearly inspection regime is required as swimming pools of this type are perceived as having a higher risk associated with them due

to more frequent use by a wider range of people. Council is also obliged to investigate any complaint or information that suggests that a swimming pool barrier is non-compliant.

3. LEGISLATIVE CONTEXT

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

- Swimming Pools Act 1992
- Swimming Pools Regulation 1990, 1992, 1998, 2008 and 2018
- National Construction Code (NCC) 2022
- Australian Standard AS1926 - 1986
- Australian Standard AS1926.1 - 2007
- Australian Standard AS1926.1 - 2012

4. DEFINITIONS

i. **Swimming Pool** - means:

“an excavation, structure, or vessel:

- a. *that is capable of being filled with water to a depth greater than 300mm 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 the Swimming Pools Act 1992.”

ii. **Certificate of Compliance** – a certificate issued under the provisions of the Swimming Pools Act 1992.

iii. **Accredited Certifier** – means an accredited certifier within the meaning of the Building Professionals Act holding category A 1, A2, A3 or E 1.

iv. **Reasonable Time** – a period of ten (10) business days as prescribed in Part 5, section 17 of the Swimming Pool regulations 2018.

5. LEGISLATIVE REQUIREMENTS FOR SWIMMING POOL OWNERS

The Swimming Pools Act 1992 require swimming pool owners to:

1. Register their swimming pool on the NSW Government Swimming Pool Register.
2. Ensure other development does not impact the effectiveness of their swimming pool barrier.
3. Maintain an effective and compliant swimming pool barrier.
4. Tourist/visitor accommodation and multi- occupancy dwellings must have a valid Compliance Certificate and have the swimming pool inspected every 3 years.
5. Owners will need to obtain a valid Compliance Certificate or Certificate of Non-Compliance for the sale of the property with a swimming pool.

6. Landlords are required to have a valid Compliance Certificate before entering a new residential tenancy agreement of the property with a swimming pool.

6. REASON FOR INSPECTION

Penrith City Council will inspect properties with swimming pools under the following circumstances. If required, priority will be given in the following order:

- a) Inspection arising from complaint information (Section 29A). Section 29A of the Swimming Pools Act, 1992 requires the commencement of an investigation made to a local authority in writing within 72 hours after the complaint is received.
- b) Referral of a complaint from Council's internal staff. Council Officers, including Town Planner, Building Surveyors and Health Inspectors regularly attend properties that have swimming pools. Should concerns be raised that the swimming pool barrier may not be compliant, the property will be referred to the Development Compliance Team for inspection.
- c) Inspection of a tourist, visitor, multi occupancy development Section 22B (2). Section 22B (2) requires that Council must make provision for the inspection, at least once every three years, of a swimming pool situated on a premise on which there is a tourist and visitor accommodation or more that two dwellings. Swimming pools included within this section include, backpackers, bed and breakfast, hotel, motel, serviced apartments, and residence of more than two occupancies.
- d) Inspection of a childcare centres / family daycare premises. Council staff will make the provision for the inspection, at least once every three years, of a swimming pool situated on childcare centres / family daycare premises.
- e) Inspection at the request of an owner - General (Section 22C (1)). Section 22C (1) of the Swimming Pools Act 2012 requires that a Local Authority or an accredited certifier may carry out an inspection of a swimming pool upon request from an owner. The inspection must be carried out within a reasonable time.
- f) Inspection at the request of an owner – sale or lease (Section 22C (3)). Section 22C (3) of the Swimming Pools Act 2012 requires that a local authority must carry out an inspection within a reasonable time if the request is in writing and states that the inspection is required to enable the sale or lease of a premises on which there is a swimming pool.
- g) Inspection in receipt of a (Section 22E) notification - notice by an accredited certifier if swimming pool does not comply. Section 22E requires that an accredited certifier notify Council in writing of any swimming pool that the accredited certifier has inspected if it remains non-complaint six weeks after the inspection date.

7. NON-COMPLIANT BARRIERS

When an inspection has been undertaken and a swimming pool barrier is found to not comply with relevant legislative requirements the owner will be notified through the issuing of a Notice of Proposed Direction (Notice).

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After a period of twenty-eight (28) days from the date of the Notice, a Direction to Comply (Direction) will be served. The Direction will require the owner to undertake measures to ensure that the swimming pool or premises comply with the requirements of the Act. A reasonable period to meet compliance will be provided within the Direction.

If Council deems a swimming pool to be of high risk, Council may issue a Direction in the first instance. Should Council deem a swimming pool to be life threatening and considers the safety of the community may be at risk if measures are not carried out as soon as possible, an Emergency Order will be issued requiring immediate action be taken. The required action to be taken and the time for completion will be outlined in the Emergency Order.

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

8. FEES

Inspection fees will be charged in accordance with Division 5 of the Swimming Pools Act, 1992, Part 5 - Section 19 of the Swimming Pools Regulation 2018 and as prescribed in Councils Fees and Charges schedule.