



3603 - SWIMMING POOL BARRIER INSPECTION PROGRAM FOR THE OBERON LOCAL GOVERNMENT AREA

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1 Introduction

1.1 Purpose

The *Swimming Pools Act 1992*, Section 22B requires the development and adoption by Oberon Council of a program for the inspection of swimming and spa pools in its area to ensure compliance with the requirements of Part 2 – access to swimming pools – of the *Swimming Pools Act 1992*.

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

1.3 Background

A comprehensive review of swimming pool legislation has been undertaken by the NSW Division of Local Government. The change in legislation has been brought about because of the rate of preventable drowning's and near drowning's in privately owned swimming pools and the high rate of non-compliance of swimming pool barriers in NSW.

Under the legislation local government has a regulatory responsibility for swimming and spa pool safety. Oberon Council is required to develop and implement a locally appropriate swimming pool barrier inspection program in consultation with the community, for privately owned swimming pools.

1.4 The Importance of Pool Safety

Swimming and spa pools offer a social amenity that is of great benefit to those who have use and access to it. With this however goes an obligation outlined in legislation to maintain the pool in a safe manner.

The regulatory regime of pools and spas 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 and spa 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.

2 Swimming Pool Registration

2.1 To what properties does this program apply?

The program applies to swimming pools, both indoor and outdoor, and spas that are situated or installed, on a premises on which a residential building, a moveable dwelling or tourist and visitor accommodation is located, but does not apply to swimming pools and spas that are situated, or proposed to be constructed or installed, on any premises occupied by the crown or by a public authority.

2.2 Is registration of a swimming pool compulsory?

The owner of the premises on which a swimming pool or spa is located must register their pool(s) on an online register provided by the Department of Local Government. The owner is also required to self –assess, and state in the register that, to the best of their knowledge, their swimming pool barrier complies with the applicable standard when registering their pool.

2.3 Promoting awareness of swimming pool registration

Oberon Council in August of 2012 actively promoted the implementation of the swimming pool inspection program requirements by advertising an amnesty for all unauthorised and non-compliant swimming pools in the local government area. The purpose of the amnesty was to enable swimming pool and spa owners to legitimise unauthorised swimming pool installations and to ensure authorised pools were compliant.

Of the 8 inspection requests received by Council, 7 of the pools inspected were deemed non-compliant. Council staff has worked with those pool owners to ensure the non-compliant issues identified were rectified.

The next step for Oberon Council will be the placement of an advertisement, in the Oberon Review, of the requirements to register all existing pools and spas in the local government area. Letters will also be sent to those pool owners on Councils existing swimming pool register as well as the local real estate agents.

Failure to register a swimming pool within the required time frames is an offence under the Swimming Pools Act 1992. However, given that a formal register has not been previously in place prior to this policy and associated program, the following compliance and enforcement elements are considered reasonable given the importance if the matter:

- Initially a breach will be brought to the attention of the owner in writing with a strict time frame for rectification. It is considered that 5 working days is an adequate timeframe to comply with the registration requirements.
- Failure to comply will result in a penalty infringement being issued in accordance with the requirements of the Swimming Pools Act 1992.

3 The Inspection program

3.1 Introduction

From October 2013 Oberon Council are required to have in place and to implement a program of swimming pool inspections. The purpose of inspections is to issue a certificate indicating that the pool barriers in place comply with pool safety requirements.

3.2 In what circumstances will Council inspect swimming pools and spa pools as part of the barrier inspection program?

Circumstance requiring inspection	Time Frame for inspection
Mandatory Inspections – Perceived high risk scenarios	
Where the swimming pool or spa barrier is subject of a complaint	3 working days
Where a request has been received to inspect the pool barrier by the owner for pool registration	3 working days
Where a request has been received to inspect the pool barrier by the owner or an agent of the owner prior to the sale or lease of the premises – applicable from 29 April 2014.	5 working days
Where an inspection by a Council officer reveals an inadequately fenced pool or spa or unauthorised pool or spa at the subject premises or at a neighboring premises	3 working days
Where the premises is subject of a Building Certificate inspection, regardless if it relates to the swimming pool or spa.	5 working days
Pools associated to multi unit developments	3 yearly intervals
Child care center/family day care or premises accessed regularly by children other than domestic purposes.	3 yearly intervals
Pools associated to tourist and visitor accommodation	1 yearly intervals to coincide with the Public Health Act requirements associated to water quality guidelines for public swimming pools.
Where Council has been informed that a swimming pool has been removed from the state register	5 working days
Non-Mandatory Inspections – Perceived low risk scenarios	
Where a swimming pool exists on premise subject to a Development Application	As staff resources are available
Where a swimming pool exists on a premises subject to a complying Development Certificate Application lodged with Council	As staff resources are available
Random inspections of any other registered pool that is not considered high risk.	As staff resources are available

3.3 In what circumstances will Council not inspect a swimming pool barrier?

Random inspections will not be undertaken on a swimming pool or spa in respect of which there is a valid certificate of compliance or a relevant occupation certificate. A relevant occupation certificate is an occupation certificate issued under the Environmental Planning and Assessment Act 1979 that is less than 3 years old and that authorises the use of the swimming pool.

3.4 What type of swimming pools and spa pool structures are subject of the barrier inspection program?

- Swimming pools including inflatable pools which are capable of being filled to a depth of water greater than 300mm
- Spa pools

3.5 Inspection fees

The Swimming Pool Act provides that Oberon Council may charge a fee for inspection conducted by an authorised officer, being a fee that is not greater than the maximum fee prescribed by the swimming pools regulation. In such cases Oberon Council may not charge a separate fee for issuing a certificate of compliance.

In addition, the Swimming Pools Act provides that Council may charge a fee for one reinspection.

Council will charge a fee of \$60 for an initial inspection (which includes the issue of a certificate of compliance of compliance for complying pool fences) and \$60 for one follow up inspection. Council will not charge additional fees for the conduct of subsequent inspections.

3.6 What is a Pool Certificate of Compliance?

A Certificate of Compliance is issued once a pool and/or spa has been 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.

3.7 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 a case 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 could result in legal action.

3.8 What is the “applicable standard” that applies?

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. An exemption may apply to a swimming pool provided the owner can demonstrate that the pool has always complied with the swimming pool standard at the time the pool was installed.

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.

3.9 What are the relevant standards for swimming pool and spa barriers?

All swimming pools are at all times to be surrounded by a child resistant barrier 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 that is designed, constructed, installed and maintained in accordance with the standards prescribed by the Swimming Pools Regulations.

Generally this means that a child resistant barrier is required to comply with the Swimming Pools Act 1992 and the relevant Australian Standard 1926.

Access to spa pools is to be restricted in accordance with the Swimming Pools Act 1992 which includes being fitted with a lockable lid.

3.10 What is the methodology of investigating complaints?

An authorised officer will firstly check whether a life threatening circumstance exists, and if so determine an immediate course of action. In the event the incidence is not considered immediately life threatening, the matter will be prioritised accordingly by the authorised officer.

3.11 What is the methodology of undertaking random inspections?

Council will compare its records with the public register held by the Division of Local Government to identify swimming pools and spas which have not been registered. Council will then contact the owners of unregistered pools in writing to arrange a suitable time for an inspection. If no contact is made Council will then utilise its entry powers under the Swimming Pools Act and Local Government Act to inspect these swimming and spa pools and the surrounding child resistant barrier.

In addition to the above and where resources permit, Council will undertake random inspections of child resistant barriers surrounding swimming pools. Pool owners who have been selected will be notified in writing prior to the inspection.

3.12 What are the standard investigation and inspection procedures?

In determining the extent of the upgrade and the period of compliance, the following factors will be taken into consideration:

- Whether there is an immediate threat to life safety
- Accessibility from public land
- The year the pool was constructed
- Conditions of approval relating to the pool and barrier
- The condition of the existing pool barrier
- The location of the swimming pool and the barrier
- Any special characteristics or uses of the pool e.g. a physiotherapy pool
- The type and use of building on the site where the pool is constructed
- Previously issued compliance certificates, occupation certificates and building certificates
- The relevant legislation and Australian Standards

The rules of evidence collection apply and are critical in the event that an immediate threat to life safety is present and/or if enforcement action is required to rectify a breach.

The Swimming Pools Act 1992 has very specific provisions in terms of pool safety compliance. Specifically for taking action after investigations, the Notices, Directions, Penalty Infringement Notices and Offences provisions under the Act are applicable.

In addition, the following procedures will generally apply:

- i) Owners of swimming and spa pools will be contacted by Council to arrange a time for an inspection of the premises.
- ii) Swimming pools and barriers will be inspected by Council's officer in the presence of owners or their representatives (if preferred).
- iii) Photos and/or videos may be taken of the pool fence for record purposes.
- iv) Where it is identified there are outstanding pool safety matters, Council will issue a Notice of Intention, followed by a Direction under Section 23 of the Swimming Pools Act. Where there is an immediate safety threat a Direction will be served without a preceding Notice of Intention.
- v) The Direction will outline what works are required and give a prescribed period of time for the works to be completed. Council may review the time period for completion where it is considered reasonable to do so. All requests for extension in time are to be in writing and must provide reasons for such a request, including a schedule for completion of the works if appropriate.
- vi) An owner who is the recipient of a Direction has a right of appeal to the Land and Environment Court.
- vii) Failure to carry out the works within the prescribed period may result in the issue of Penalty Infringement Notices and/or the instigation of legal proceedings to enforce Council's Direction.
- viii) Inspection fees will be charged in accordance with Council's Schedule of Fees and Charges and the requirements of the Swimming Pools Act and Regulations thereunder.

Council will view pool safety offences as serious and issue Notices and Directions as standard procedure. Penalty notices will be issued at the discretion of the authorised officer.

3.13 Ongoing education and awareness

Pool owner education and awareness is essential in contributing to the success of the inspection program.

An ongoing and complementary community education and awareness program will be delivered through community publications, media releases, website information, owner self assessment pool fence checklists and public interaction with the pool safety inspection officers.

4 Dictionary

Barrier: means a fence or a wall, and includes:

- (a) Any gate or door set in the fence or wall, and
- (b) Any other structure or thing declared by the regulations to be a barrier for the purposes of the Swimming Pools Act.

Certificate of compliance: means a certificate issued under Section 22D of the Swimming Pools Act.

Direction: The local authority may, by order in writing served on the owner of any premises in or on which a swimming pool is situated, direct the owner to take, within such reasonable time as is specified in the direction, such measures as are so specified to ensure that the swimming pool or premises comply with the requirements of Part 2 of the Swimming Pools Act.

Emergency Direction: A direction given where there is serious risk to safety. An emergency direction can require immediate action without service of a notice of intention beforehand.

Notice of Intention: Before giving a direction, the local authority who gives the direction must give notice to the person to whom the direction is proposed to be given of the intention to give the direction.

Relevant Occupation Certificate: In respect of a swimming pool means an occupation certificate issued under the *Environmental Planning and Assessment Act 1979* that is less than 3 years old and that authorises the use of the swimming pool.

Residential building: means a building (such as a dwelling-house, residential flat building or boarding-house) that is solely or principally used for residential purposes, and includes any structure (such as a garage or shed) that is ancillary to any such building, but does not include:

- (a) A building that merely forms part of a complex of buildings (such as a school or recreational centre) that is principally used for non-residential purposes, or
- (b) A moveable dwelling, or
- (c) Tourist and visitor accommodation, or
- (d) A shed that is ancillary to a swimming pool and the primary purpose of which is to store equipment that is used in connection with the swimming pool (but not a shed of a kind prescribed by the regulations), or
- (e) A building or structure of a kind prescribed by the regulations.

Spa pool includes any excavation, structure or vessel in the nature of a spa pool, flotation tank, tub or the like.

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 the Swimming Pool.

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