

With over 300,000 backyard swimming pools in New South Wales, swimming pool safety is a vital issue that affects the whole community. Supervising young children in and around swimming pools and developing water confidence through water familiarisation programs can save lives. Effective pool barriers also help keep young children safe.

WHAT'S NEW?

New laws about swimming pool safety come into force from 29 April 2016.

What do you need to do?

From 29 April 2016, all properties with a swimming pool or spa pool that are sold must have a valid swimming pool certificate of compliance. This includes any property with a swimming pool or spa pool that is on the market for sale at 29 April 2016.

What type of pool is included?

'Swimming pools and spa pools' includes in ground, above-ground, indoor, portable and other types of pools and spa pools that are capable of being filled to a depth of 300mm or more of water. Bathroom spas that are used as baths and emptied after use are not included.

Which pools does this apply to?

The new laws apply to swimming pools or spa pools associated with:

- Private houses, townhouses, units and other strata and community schemes, and moveable dwellings
- Hotels, motels and serviced apartments
- Backpackers' accommodation
- Homestay, farm stay and bed and breakfast accommodation
- Other tourist and visitor accommodation (excluding camping grounds, caravan parks and eco-tourist facilities).

What is a 'pool'?

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 or anything that is situated within a bathroom.

Therefore, in ground, above-ground, indoor, portable and other types of swimming pools and spa pools are included in these new swimming pool safety laws.

What is a swimming pool certificate of compliance?

A swimming pool certificate of compliance certifies that the pool and pool barrier meet the safety requirements.

Contracts for the sale of land

Before entering into a contract:

A valid swimming pool certificate of compliance must be attached to the contract for sale of properties with a swimming pool or spa pool from 29 April 2016. Therefore, from 29 April 2016, when a property with a swimming pool is being sold, a valid swimming pool certificate of compliance (or an occupation certificate issued within the last three years) and a valid Certificate of Registration must be attached to the Contract for the Sale of Land. Failure to attach the certificate means that the purchaser may be entitled to rescind the Contract at any time within 14 days of exchange, unless settlement has already occurred.

Swimming pool certificate of compliance

Q: How do I get a swimming pool certificate of compliance?

A: Your local council or an accredited certifier under the Building Professional Act can conduct an inspection, and issue a certificate of compliance if the swimming pool or spa pool meets all the safety requirements.

Q: How can I check if a swimming pool already has a certificate of compliance?

A: The NSW Swimming Pool Register provides information on registered pools and whether a certificate of compliance has been issued. You can search the register by the property address. Go to www.swimmingpoolregister.nsw.gov.au.

Q: Is an Occupation Certificate adequate?

A: An Occupation Certificate that is less than three years old and that authorises the use of the swimming pool can take the place of a certificate of compliance. If such an Occupation Certificate is annexed to the Contract for Sale, the swimming pool registration certificate (created when the pool was registered on the NSW Swimming Pool Register) should also be provided.

Q: How long does the certificate of compliance remain valid?

A: A swimming pool certificate of compliance is valid for a period of three years from the date of its issue.

Q: Where there is a pool on common property, such as strata or community title property, does every unit owner need to have the pool inspected separately?

A: No. In case of strata, the owners corporation (the body corporate) should arrange for the swimming pool to be inspected and obtain the certificate of compliance. Individual lot owners may access the certificate of compliance through the Swimming Pool Register website (at www.swimmingpoolregister.nsw.gov.au).

Q: How much does it cost to get a certificate of compliance?

A: Local councils may charge up to \$150 for an initial pool safety inspection. If a second inspection is required as a follow-up, a fee of up to \$100 may be charged. No further charges may be made for inspections by a local council. Accredited certifiers set their own schedule of fees.

Non compliance

Q: What happens if the pool doesn't comply at inspection?

A: If a pool is inspected by a local council and the pool barrier is found to be non-compliant with the pool safety requirements, the council will provide an owner with a list of requirements to achieve compliance. However, if after the second inspection, the pool barrier has not been fixed, the council may issue an order directing the owner to undertake the required actions within a reasonable time, as specified in the order.

B: If an accredited certifier inspects a pool and the pool barrier is found to be non-compliant with the pool safety requirements, the certifier must issue a Notice. This Notice advises the pool owner how the pool does not comply and what work needs to be done to make it comply.

If the accredited certifier is of the opinion that the swimming pool poses a significant risk to public safety a copy of the Notice will be forwarded to Council immediately. If the certifier does not consider that the pool poses a significant risk, the Notice will allow the owner a period of six weeks to attend to the items of non-compliance. If the certifier is not able to issue a certificate of compliance for the pool by the end of the six week period, the certifier must send a copy of the Notice to the Council.

The local council can then take any necessary compliance and enforcement action to ensure the pool complies with the relevant standard, including issuing a 'direction'. If a pool owner disagrees with the 'direction' given by a local council, they may appeal to the Land and Environment Court.

Q: What are the penalties for non-compliance?

A: The owner of the pool may be liable for a penalty of up to \$5,500 for non-compliance with the pool safety requirements. On-the-spot fines of \$550 can also apply.

Enforcement action is taken by local councils, and may be triggered by a complaint or concern by a neighbour, or during a routine inspection of the swimming pool as part of the council's pool safety inspection program.

Disclaimer: The information contained in this fact sheet is of a general nature only, and is not a substitute for legal advice.

BE POOL SAFE:

- When using the pool are you always within arms' reach of any child under 5 years of age?
- Are you aware of the dangers of leaving older children to supervise younger children when they are using the pool?
- During parties is an adult designated 'child supervisor' duties around the pool?
- Is your pool/spa fenced effectively?
Complete checklist from www.swimmingpoolregister.nsw.gov.au
- Do you regularly inspect your pool/spa fence and gate?
- Have climbable objects near the pool fence been removed? I.e. chairs, ladders, trees, pot plants, BBQ's.
- Are toys always removed from the pool and stored securely after use?
- Have trees or shrubs near the fence been trimmed so that children can't use them to climb the fence?
- Do you or your family members have up to date Resuscitation and First Aid skills?
- Does your house have a First Aid Kit handy?
- Is there a current Resuscitation Sign displayed prominently in the pool area?

Visit the Pool Safety website at www.bepoolsafe.com.au for more water safety information.

NSW LEGISLATION

The Swimming Pools Act 1992 & Swimming Pools Regulation 2008

Applies to all types of pools (both indoor and outdoor) on premises where there is a residential building, a moveable dwelling (such as a caravan), a hotel, a motel, tourist/visitor accommodation and other multi-occupancy developments (either as a common area pool or private pool).

Conveyancing (Sale of Land) Regulation 2010

Amendments made to the Conveyancing (Sale of Land) Regulation 2010 mean that from 1 September 2010 contracts for the sale of land must include a warning in relation to a land owner's obligations under the Swimming Pools Act 1992 which states that: "An owner of a property on which a swimming pool is situated must ensure that the pool complies with the requirements of the Swimming Pools Act 1992. Penalties apply. Before purchasing a property on which a swimming pool is situated, a purchaser is strongly advised to ensure that the swimming pool complies with the requirements of that Act."

Residential Tenancies Act 2010

Section 52 of the Residential Tenancies Act provides that a landlord must comply with a landlord's statutory obligations relating to the health or safety of the residential premises. Section 52 includes the following note:

"Note. Such obligations include obligations relating to swimming pools under the Swimming Pools Act 1992."

For further information contact your local council.
To download all the fact sheets visit: bepoolsafe.com.au

To register your pool visit:
www.swimmingpoolregister.nsw.gov.au



Proudly Supported by

