

Port Stephens Council

Swimming Pool Inspection Program

Port Stephens
C.O.U.N.C.I.L





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1.0 Introduction

With more than 4500 swimming pools in Port Stephens, pool safety is a big community issue. Backyard swimming pools can be great fun, however they are a significant responsibility for the landowner and occupier as drowning of young children can happen quickly and silently.

While fencing and barriers may help reduce drowning of young children in swimming pools, there is no protection or safety equipment that can replace **adequate supervision of children by a parent or another responsible adult.**

Research on child drownings in backyard swimming pools indicates that the most common contributing factors are inadequately fenced pools and human error (for example, people leaving the gate open, or fences not being maintained in good condition).

It is the responsibility of the owner/occupier to keep the pool fence in a state of good repair, and ensure all gates providing access to the swimming area are maintained so they are self-closing and self-latching. Pool users and owners should be aware that if there is a death or injury in a pool, legal liability may fall on the person responsible for the pool at the time, even if a safety fence is installed.

Early in 2013 the NSW government introduced new laws affecting swimming pools which emphasize owners' responsibilities and improve safety. The new laws resulted in a number of changes to the Act including the creation of a state-wide web-based swimming pool register, increasing the roles and responsibilities of Council in relation to swimming pool inspections and the issue of compliance certificates.

Owners of swimming pools and spas must register their details on the NSW government swimming pool register - <http://www.swimmingpoolregister.nsw.gov.au/>. Offenders may be fined for an unregistered pool/spa after 29 October. Swimming pool registration is free. Please note that there are provisions in the legislation to fine owners who fail to register their swimming pool by 29 October 2013. (Penalty Notice of \$220).

2.0 Scope

This program applies to all swimming pools within the Port Stephens Local Government area.

Under Section 22B of the Act, Council is required to develop and implement a swimming pool inspection program in consultation with the community. The Act requires for Council to implement this program by the 29 October 2013. The need

to conduct a Swimming Pool Safety Program is identified within the Port Stephens Community Strategic Plan and Operational Plan 2013-14 at 1.1.1.11 "conduct the swimming pools safety programs".

Under section 5 of the Act Council is also required promote registration of swimming pools within its area; and to promote awareness of the Act in relation to swimming pools; and to investigate complaints about breaches.

For the purposes of the Swimming Pool Act 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.

Importantly, portable and/or inflatable swimming pools or children wading pools that are capable of being filled with water to a depth greater than 300 millimetres meet the definition of **"swimming pool"** under the Act and therefore temporary pool owners are subject to the same legislative requirements and obligations as those who have permanently installed pools.

3.0 Relevant Legislation and Standards

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

- Swimming Pools Act 1992
- Swimming Pools Regulation 1998 (repealed)
- Swimming Pools Regulations 2008
- Building Code of Australia
- Australian Standards
 - AS1926.1 – 1986
 - AS1926.1 – 1993
 - AS1926.1 – 2007
 - AS1926.2 – 2007
 - AS1926.1 – 2012

Each legislative article and standard specifically relate to a swimming pool dependant on when the pool was installed or constructed. The following table indicates what standard applies to which pools. It is important to note the relevant standard is when the swimming pool was constructed.

Date Constructed	Legislative Reference	Aspect Controlled	Applicable Standard
Prior to 1 August 1990	Act: s8(1)(a) and 8(2) Reg: cl 22 and 6	Child Resistant Barrier not required to separate pool from residential building (restricted access applies)	AS1926-1986
1 August 1990 to 31 August 2008	Act: s7(1)(a) and (b)	Child Resistant Barrier not required to separate pool from residential building (restricted access applies)	AS1926-1986
1 September 2008 to 30 April 2013	Act: s7(1)(a) and (b)	Child Resistant Barrier required to separate pool from residential building	AS1926.1-2007
1 May 2013 to date	Act: s7(1)(a) and (b) Reg: cl 5	Child Resistant Barrier required to separate pool from residential building	Building Code of Australia

It is also important to note that the Act provides exemptions in certain circumstances for existing swimming pools situated on small or large rural properties. These exemptions continue to apply unless the swimming pool has undergone significant alteration or rebuilding. Council however can still require the upgrading of these pools if the requirements of the Act are not being complied with.

4.0 Registration of swimming pools

All swimming pool owners must register their swimming pool on the **NSW state-wide web-based swimming pool register** (www.swimmingpoolregister.nsw.gov.au). Self registration of your swimming pool is free via the internet. Council will also register swimming pools for the statutory limited fee of \$10 on behalf of owners who do not have access to the internet. A swimming pool registration application form is available from Council's website (www.portstephens.nsw.gov.au) or Council's administration building.

When registering a swimming pool, the property owner must identify the address of the property where the pool is located, the type of premises (eg residential or tourist accommodation etc) and the type of pool (eg inground or aboveground).

After the 29 October 2013, it is an offence under the Act to have an unregistered swimming pool. Please note that there are provisions in the legislation to fine owners who fail to register their swimming pool by 29 October 2013. (Penalty Notice of \$220).

5.0 The Inspection Program

In accordance with Section 22B of the Act, Council has developed this inspection program based on Council and community affordability and risk. The need to conduct a Swimming Pool Safety Program is identified within the Port Stephens Community Strategic Plan 2013-14 and Operational Plan at 1.1.1.11 "conduct the swimming pools safety programs".

The primary objectives of the Port Stephens Council Swimming Pool Inspection Program are:

- 1) As of and from 29 April 2014, Council shall 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**.
- 2) The inspection of a swimming pool in paragraph (1), above, is not required within 3 years from the date of issue of a valid **certificate of compliance** in respect of the swimming pool or a relevant occupation certificate that authorises the use of the swimming pool;
- 3) Council may carry out an inspection of a swimming pool under Section 22C of the Swimming Pools Act 1992 where the owner of the premises on which a swimming pool is situated in Council's area requests Council to inspect the swimming pool;
- 4) Council must carry out an inspection of a swimming pool in its area under section 22C of the Swimming Pools Act 1992, and must carry out that inspection within a reasonable time, if the request to Council is in writing and states that the inspection is required to enable the sale or lease of the premises or part of the premises on which the swimming pool is situated. A reasonable time is within 10 business days after Council receives a request.
- 5) Council must determine applications for swimming Pool compliance Certificates under the provisions of the section 22D. Swimming Pool Certificates will be compulsory from April 2014 for all pools associated with property for sale and lease.
- 6) Council must investigate a complaint made to it in writing that alleges a contravention of the Swimming Pools Act 1992 in accordance with that Act.

5.1 Mandatory inspections

The following inspections are mandatory and therefore must be undertaken by Council.

5.1.1 Swimming Pool Complaints and compliance matters lodged with Council

Under Section 29A of the Act, Council must respond to complaints. All complaints received in writing must be commenced within 3 days of the complaint being received. All complaints received verbally are investigated based on the information available. This requirement for swimming pool complaint investigation is a continuation of Council's current functions under the Act and Council's current Compliance Policy.

Council will investigate all rectification notices for swimming pool compliance matters that pose a significant risk to public safety. Rectification notices for matters other than significant risk to public safety will be investigated in accordance with Council's current compliance policy.

5.1.2 Tourist/Visitor accommodation and Multi-unit developments

All tourist and visitor accommodation buildings and Multi-unit premises (ie. more than 2 dwellings) within the local government area that have a swimming pool installed will be inspected once every three (3) years or upon receipt of any complaint. These buildings include motel/hotel accommodation, serviced apartments, boarding and guest houses, bed and breakfast, backpacker accommodation and the like.

Alternatively, premises that have a current swimming pool compliance certificate will not require an additional inspection but will remain subject to any complaint inspection.

5.1.3 Certificates of Compliance

A certificate of compliance issued by Council certifies that the pool is registered and complies with the requirements of the Act, Regulations and relevant Australian Standard. A certificate of compliance is valid for 3 years. It is important to note, however, that the swimming pool owner can be subject to Council inspection and legal action where the swimming pool and/or the child resistant barrier is not maintained during the 3 year validity period.

Council is required under clause 17 of the Regulation to undertake an inspection of a swimming pool associated with a property being sold or leased within 10 days

after receiving the certificate of compliance application, subject to suitable access being provided.

Application forms for a certificate of compliance are available from Council's website (www.portstephens.nsw.gov.au) or administration office. A completed application form is submitted to Council and the required fee paid (statutory limited fee of \$150). Council officers will undertake an inspection of the swimming pool and provide a written notice as to the result of the inspection. In the case of defective matters requiring a reinspection, a fee applies (statutory limited fee of \$100).

5.1.4 Property Sales or Lease containing a swimming pool

It is a mandatory requirement of the State government legislation, effective from 29th April 2014, that a property cannot be sold or leased unless a valid certificate of compliance has been issued for the swimming pool.

6.0 Swimming Pool Education and Awareness

Section 5 of the Act requires Council to promote awareness of the requirements of Swimming Pools Act and associated Australian Standards. Council has over the years implemented swimming pool education campaigns aimed at increasing the awareness of the community regarding pool safety and legislative requirements. Swimming pool safety and awareness continues to remain a part of Council Swimming Pool Inspection Program. Education materials, information brochures, multimedia advertisements and website information will continue to be used by Council, the State governmental and the Royal Lifesaving Society. Clause 21 of the Regulation requires Council to ensure that certain swimming pool related documents are made available and accessible to the community. These include the following:

· Australian Standard AS1926.1-2007 "Swimming pool safety – Location of safety barriers for swimming pools" (Hardcopy only)

- The Building Code of Australia (Hardcopy Only)
- Cardiopulmonary Resuscitation Guideline (Hardcopy and electronic on Council's website at www.portstephens.nsw.gov.au).

These documents are available for free public viewing at Council administration offices during normal business hours. Due to copyright laws, Council will not allow these documents to be taken away from the building, printed or copied. The Australian Standards are available for purchase from SAI Global at www.saiglobal.com.

The Building Code of Australia is available for purchase from the Australian Building Codes Board at www.abcb.gov.au .

The Australian Resuscitation Council have the Cardiopulmonary Resuscitation Guideline (Guideline 8) available for viewing at www.resus.org.au . By registering at the website visitors can access and print the guideline free of charge.

7.0 Reporting

It is a requirement of the Section 22F of the Act that Council include in its annual report under Section 428 of the Local Government Act 1993 information in relation to swimming pool inspections undertaken by Council.

8.0 Program Review

Every 12 months the program will be subject to an internal review to enable amendments, modifications and the like to be incorporated into the program as required by changes to relevant legislation and/or standards or based on the needs and expectations of Council or the community.

9.0 Swimming Pool Inspection Program - Community Engagement

Clause 16 of the Swimming Pool Regulation requires Council to establish and implement a strategy for engagement with the local community when developing a program for the inspection of swimming pools in its area. This has been and will continue to be done on an ongoing basis as part of the integrated Port Stephens community strategic planning process which is based on social justice principles of equity, access, participation and rights.

The need to conduct a Swimming Pool Safety Program has been identified within the current Port Stephens Community Strategic Plan and Operational Plan 2013-14 at 1.1.1.11 "conduct the swimming pools safety programs".

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