

ADOPTED BY COUNCIL: 28 NOVEMBER 2022

## PURPOSE

Drowning in swimming pools is a significant cause of preventable death in children under five years of age. Council must have a formal, planned, documented, and published program of swimming pool safety barrier inspections across its Local Government Area (LGA). Council has an important regulatory and educational role with respect to these laws which is the purpose of this policy.

Pool owners are required by law to maintain the safety of their pool area and must ensure that children are properly supervised. All pool owners need to be aware of the relevant laws.

## POLICY INTENT

This Policy aims to provide a holistic approach to how Council will undertake its Swimming Pool Safety Barrier Inspection Program, Swimming Pool Safety Barrier Education Program, and associated activities across the Wollongong LGA.

The main objectives of this policy are to:

- 1 Aim to reduce infant drowning and near drowning events within the Wollongong Local Government Area
- 2 Provide Council, the community and stakeholders with a strategic, consistent and comprehensive approach to managing swimming pool safety barriers across the Wollongong LGA
- 3 Provide a functional and transparent framework to direct Council's response in the management of swimming pool safety barriers (registration, certification and complaints)
- 4 Raise community awareness of the importance of swimming pool safety barriers and complying swimming pool safety barriers
- 5 Ensure Council satisfies its legal obligations under the Swimming Pool Act 1992
- 6 Ensure consistency in the application and enforcement of the Swimming Pool Act 1992
- 7 Increase pool safety awareness

## WOLLONGONG 2028 OBJECTIVES

Swimming Pool Safety Barrier Policy links to the Council's Operational Plan and Community Strategic Plan 2022-2023 which outlines all the actions we are committed to delivering for our City and our community including specifically in relation to this policy:

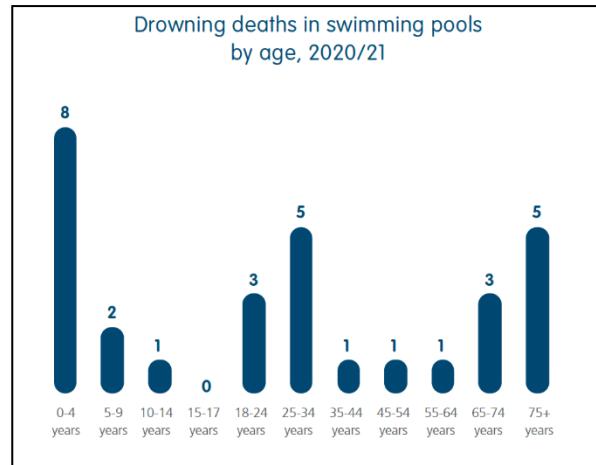
- Goal 1 - We value and protect our environment
  - How - Undertake regulatory inspections of swimming pool safety barriers.
- Goal 5 - We have a healthy community in a liveable city
  - How - Inspect and register places of shared accommodation (boarding houses), private swimming pools, and mortuaries

## POLICY

### 1. Introduction

Drowning is one of the major causes of death for NSW children. On average, ten children under five drown in backyard swimming pools and many more suffer brain damage and other serious injuries associated with near-drowning experiences each year in Australia.

Royal Life Saving National Drowning Report 2021 identified that during the 12-month period from 1 July 2020 to 30 June 2021, 294 people lost their lives to drowning in Australian waterways, from which 30 deaths were reported in swimming pools, one third of these deaths were children under the age of ten.



### 2. Legislative Arrangements

In 1992 the *Swimming Pools Act* (Act) was enacted, to curb the number of child related fatalities in swimming pools.

The purpose of the Act was to ensure that swimming pools and spa pools were adequately fenced with compliant safety barriers and to prevent further drownings. Some other safety requirements are prescribed, including the requirement for a warning notice to be displayed near the swimming pool.

On 29 October 2012, additional amendments were made to the Act. The following key responsibilities for Councils were introduced:

- Develop and implement a Swimming Pool Safety Barrier Inspection Program in consultation with the community
- Inspect swimming pool safety barriers at three (3) year intervals associated with tourist and visitor accommodation and multi-occupancy residential developments with swimming pools in communal areas
- Inspect swimming pool safety barriers at the request of a pool owner, prior to sale or lease of the property
- Issue Compliance Certificates after an inspection which finds a pool safety barrier compliant with the requirements of the legislation. Compliance Certificates are valid for three (3) years.
- Report annually on the number of pool safety barrier inspections undertaken and the level of compliance with the requirements including signage

From 29 April 2016 further amendments were made which required all premises that are to be sold, leased or rented to have a valid Swimming Pool Certificate of Compliance within the contract. The issuing of a Certificate of Non-Compliance would allow a property with a swimming pool to be sold without the barrier being compliant.

In addition to the Act, a number of legislative instruments also exist in NSW to guide backyard swimming pool safety, such as the Swimming Pools Regulation 2018, Conveyancing (Sale of Land) Regulation 2010, Residential Tenancies Act 2013, State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, Australian Standard 1926.1 (Fencing for Swimming Pools), National Construction Code of Australia and the Cardiopulmonary Resuscitation (CPR) Guideline.

From 1 January 2018 the NSW Government transferred the swimming pool regulatory scheme from the office of Local Government (OLG) to the Department of Finance, Service & Innovation (DFSI). Therefore, the administrative responsibility for the *Swimming Pool Act 1992* and *Swimming Pool Regulation 2018*, has been transferred to a wider Government program.

#### 2.1. Swimming Pool Laws

The Swimming Pools Act 1992 applies to swimming pools and spa pools that are located (or being built) on sites with a residential building, movable dwelling or tourist and visitor accommodation.

These laws apply to the owner of a property with a swimming pool or spa pool.

In a strata or community scheme, all of the lot owners jointly own any swimming pool or spa pool that is on common property. The owner's corporation (or body corporate) is responsible for ensuring such pools are compliant with the Swimming Pools Act 1992.

The law applies to any excavation, structure or vessel including swimming pools and spa pools that are:

- capable of being filled with water to a depth greater than 30cm, and
- used, designed, manufactured or adapted for swimming, wading, paddling or any other human aquatic activity.

## **2.2. Owner Responsibilities**

### **2.2.1. Swimming Pool Registration**

Importantly, pool owners must register their pools online on the NSW Swimming Pool Register. Owners may pay a fee to Council to do this on their behalf.

A certificate of registration will be issued to the pool owner. Owners can go to the NSW Swimming Pool Register website to check that their pool has been registered.

### **2.2.2. Swimming Pool Safety Barrier Fencing**

Owners of properties with swimming pools must at all times:

- ensure that pools are surrounded with a child-resistant safety barrier that separates the swimming pool(s) from any residential building and any place adjoining the property
- keep closed the doors and gates that provide access to the swimming pool
- ensure that fences surrounding pools are designed, constructed, installed and maintained to comply with the relevant Australian Standards.

Visit the pool safety checklists page on the NSW Government's Swimming Pool Register for more information.

Note that portable and inflatable pools that are capable of being filled to a depth of 30cm (300mm) or more must also be surrounded by a swimming pool safety barrier and meet the requirements listed above.

### **2.2.3. Swimming Pool CPR Signage**

In case of an emergency the law requires that a cardiopulmonary resuscitation (CPR) sign is displayed near the pool.

From 1 September 2019, new CPR signs came into effect. From this time, all new pools must use the updated signage.

Owners of existing pools aren't required to update their signage unless the pool barrier is substantially altered or rebuilt.

CPR signs are available from local pool shops or community organisations such as St John Ambulance, the Australian Red Cross or Royal Life Saving.

The sign must be in good condition and able to be read easily from 3 metres.

### **2.2.4. Signage for pools under construction or renovation**

For pools under construction a sign must be displayed that states:

*"This swimming pool isn't to be occupied or used".*

The sign must be displayed at all times while the pool is under construction and only removed once a *Certificate of Compliance or Occupation Certificate* has been issued.

## **2.3. Council responsibilities**

According to NSW Government's swimming pool register (NSW register), there are more than 10,000 swimming pools registered within Wollongong City Council Local Government Area (LGA).

Wollongong City Council is required to:

- develop and implement a swimming pool safety barrier inspection program in consultation with their communities
- investigate complaints about breaches of the Swimming Pools Act 1992
- inspect pools associated with tourist and visitor accommodation at three-year intervals
- at the request of a pool owner prior to the sale or lease of the property, inspect a swimming pool or spa pool for compliance
- issue either a Certificate of Compliance or Non-compliance after an inspection
- where necessary, direct pool owners to take action to ensure that legislated pool barrier requirements are met
- make publicly available a relevant extract of the National Construction Code of Australia, Cardiopulmonary Resuscitation Guideline, and applicable Australian Standards
- report annually on the number of pool inspections undertaken and the level of compliance with the requirements.

## **2.4. NSW Fair Trading - Private Certifier responsibilities**

NSW Fair Trading registers professionals to inspect and certify private swimming pools under NSW swimming pool laws.

Registered swimming pool inspectors (certifiers) are required to:

- at the request of a pool owner, inspect a swimming pool or spa pool prior to the sale or lease of the property
- issue either a Certificate of Compliance or Non-compliance after an inspection
- provide written Notice to owners and council when a pool does not comply.
- Registered swimming pool inspectors may only certify existing (not new) pools and cannot certify any pool that achieves compliance with the National Construction Code of Australia by means of a 'performance solution'.

### Minor Repairs by Registered Certifiers

Some certifiers may do minor repairs (up to \$1,000 including materials and labour) to enable them to issue a Certificate of Compliance.

To do so, those Certifiers must have an endorsed contractor's licence or qualified supervisor's certificate under the Home Building Act, authorising them to build a swimming pool or structural landscaping. However, the pool owner is free to hire another tradesperson to do the work.

## **2.5. Certification**

### **2.5.1. Certificate of Compliance**

Council pool inspectors and registered swimming pool inspectors (certifiers) can inspect swimming pool and spa pool safety barriers and issue a *Certificate of Compliance* if the barrier meets requirements.

Pool owners should contact Council or a private certifier early, to allow time to organise an inspection before renting or selling a property.

A certificate of compliance is valid for three (3) years.

Pool owners can visit the NSW Swimming Pool Register website to check if a certificate of compliance has been issued for their particular property.

### **2.5.2. Selling a property with a swimming pool or spa pool**

Owners who are selling a property with a swimming pool or spa pool must ensure the contract for sale includes a registration certificate issued from the Swimming Pool Register, and one of the following:

- a valid swimming pool certificate of compliance, or
- a relevant occupation certificate issued within the last 3 years, or
- a certificate of non-compliance.

If one of the above isn't included, the purchaser may rescind the contract within 14 days of exchange, unless settlement has already occurred.

If a certificate of non-compliance is attached to the contract, the purchaser takes on the obligation to obtain a certificate of compliance. They will have 90 days from settlement to rectify defects listed in the certificate of non-compliance and obtain a certificate of compliance.

This requirement does not apply to a lot in a strata scheme or in a community scheme if that strata or community scheme has more than two lots, or if the sales contract is for an off-the-plan property.

### **2.5.3. Renting a property with a swimming pool or spa pool**

When a residential tenancy agreement is entered into for a property with a swimming pool or spa pool, the landlord or real estate agent must provide the tenant with a copy of the certificate of compliance or Occupation Certificate.

A certificate of non-compliance cannot be used to rent a property.

If a certificate of non-compliance is issued, Council is obligated to issue a written directions notice to remedy the non-compliance before the premises may be rented.

If you have any concerns about the actions of a real estate agent, contact Fair Trading.

## **3. Education and Awareness Program**

Council has over the years implemented swimming pool safety barrier education campaigns aimed at increasing the awareness of the community regarding pool safety and legislative requirements. Swimming pool safety and awareness continues to be part of Council Swimming Pool Safety Barrier Inspection Program.

Education materials, information brochures, multimedia advertisements and website information will continue to be developed and used by Council, the State government and the Royal Lifesaving Society.

Section 5 of the Act requires Council to promote awareness of the requirements of Swimming Pools Act and associated Australian Standards.

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 National Construction Code of Australia (Hardcopy Only)
- Cardiopulmonary Resuscitation Guideline (Hardcopy and electronic on Council's website at [www.wollongong.nsw.gov.au](http://www.wollongong.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](http://www.saiglobal.com) .

The Building Code of Australia is available for purchase from the Australian Building Codes Board at [www.abcb.gov.au](http://www.abcb.gov.au)

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

#### 4. More information

Owners can search the NSW Swimming Pool Register to check if a pool has been registered and whether a Certificate of Compliance (valid for three years) has been issued.

Visit the Royal Life Saving NSW website or contact council for more information, fact sheets and water safety requirements.

#### 5. Other resources

- [Royal Life Saving NSW website](#) - Information on swimming pool/spa and water safety requirements.
- [Swimming Pool and Spa Association of Australia](#)
- [Spa Pools](#) - Safety guidelines for spa pools.
- [Inflatable Swimming Pools](#) - Safety guidelines for inflatable or portable pools.
- [Office Of Local Government Website](#) - Search for your local council contact details.
- [Find A Private Certifier](#) - NSW Swimming Pool Register authorised swimming pool inspectors

### REPORTING

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

### ROLES AND RESPONSIBILITIES

Wollongong City Council first developed the “*Swimming Pool Safety Barrier Policy*” in April 2018.

Swimming pool compliance activities at WCC are administered by specially trained Development Compliance Officers trained as Pool Safety Barrier Specialists, who are appointed on a full-time basis.

NSW Fair Trading registers professionals to inspect and certify private swimming pools under NSW swimming pool laws.

### RELATED PROCEDURES

- Wollongong City Council - Compliance and Enforcement Policy
- Swimming Pool Safety Barrier – Inspection Program Procedure
- Swimming Pool Safety Barrier– Education Program Procedure

APPROVAL AND REVIEW	
Responsible Division	Regulation and Enforcement Division
Date/s adopted:	November 2022
Date/s of previous adoptions	April 2018
Date of next review	November 2024