

Registering, Selling or Leasing a Property with a Swimming Pool and/or Spa



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Registering your swimming pool and/or spa

It is compulsory for all residential pools and spas to be registered on the NSW Government Swimming Pool Register Website:

www.swimmingpoolregister.nsw.gov.au

To register your swimming pool or spa pool you will need to know the following -

- the address of the pool/spa (as it appears on your rates notice).
- the type of property such as a private residence, multi-occupancy (units etc) or tourist and visitor accommodation.
- if the property is waterfront, or on land greater than 2 hectares or less than 230 square metres.
- when the pool/spa was built (three date ranges apply).
- if the pool barrier has been substantially modified or rebuilt, and when that work took place (three date ranges apply).

On the [NSW Swimming Pool Register website](http://www.swimmingpoolregister.nsw.gov.au) you can self-register your pool online as well as access the site's self assessment checklists to assist with safety questions at the time of registration.

Selling or leasing a property with a pool and/or spa

From **29 April 2016**, properties sold with a pool must have one of: a 'relevant occupation certificate'; a 'certificate of compliance'; or a 'certificate of non-compliance', issued from the NSW Swimming Pool Register.

This means that from 29 April 2016:

1. Vendors are now able to transfer the obligation of obtaining a 'certificate of compliance' to the purchaser. A 'certificate of non-compliance' can now be attached to the contract of sale.
2. The buyer of a property with a non-compliant swimming pool has 90 days from the date of settlement to address any issues of pool barrier non-compliance and obtain a certificate of compliance.
3. Properties with more than two (2) dwellings are **exempt** from the requirement to provide a compliant pool barrier on sale or lease, as they are already regulated through mandatory three (3)-yearly council inspections.

The owner of a property with two (2) or fewer dwellings and a pool must have a certificate of compliance before entering into a lease.

A relevant occupation certificate 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.

Allowing the transfer of obligation for swimming pool barrier compliance provides greater flexibility to the sales process, while ensuring that incidents of non-compliance are addressed. However, this flexibility does not extend to the leasing of properties. Landlords are to ensure that the tenant is provided a copy of a valid 'certificate of compliance' at the time the lease is entered into because landlords have a responsibility to provide a safe environment for their tenants.

Key Points

- All properties with a swimming pool or spa pool being sold or leased on or after 29 April 2016 will need a valid certificate of compliance, certificate of non-compliance or a relevant occupation certificate.
- A 'certificate of non-compliance' will enable the seller to transfer the responsibility to obtain a certificate of compliance to the buyer.
- This transfer will be realised through the attachment of a certificate of noncompliance to the contract for sale.
- The buyer will have 90 days from the date of settlement to rectify defects listed in the certificate of non-compliance and obtain a certificate of compliance.

Who to contact about a swimming pool Certificate of Compliance

Your local council or an accredited E1 certifier registered with the Building Professionals Board (BPB) can conduct an inspection and issue a certificate if the pool meets all the safety requirements.

SPASA has a number of E1 Certifier members that you can access here in the “Find a Member” section of our website.

Important Note:

- A swimming pool and/or spa pool certificate of compliance cannot be issued to an unregistered pool/spa.
- A swimming pool and/or spa Certificate of Compliance is valid for a period of three years from the date of issue, so long as the fencing remains compliant in that time.

How can I check if a pool has a certificate of compliance?

- You can check if a property with a swimming pool has a current certificate of compliance by accessing the NSW Swimming Pool Register online at www.swimmingpoolregister.nsw.gov.au and selecting “Lookup pool”.
- Enter the street number, street name (do not type in road, street, lane etc.) and the suburb.
- Select “Find property” and the address will appear if the property has a valid certificate of compliance.

What happens if a pool doesn't comply at the time of inspection?

If a pool and/or spa is inspected and the barrier is found to be non-compliant with the pool safety requirements, the council inspector or private certifier will provide the owner with written details of any non-compliances found as well as what is required to achieve compliance.

NOTE: Home owners should **never rely on verbal advice or directions provided** by a Council inspector or Private Certifier in relation to alleged non-compliances.

Home owners should demand that any advice be in writing and that the advice properly articulates any non-compliance as well as identifies and lists the relevant clauses within the legislation, Standard and Building Code of Australia they are asking the home owner to comply with.

What are the penalties for non-compliance?

The owner of the pool and/or spa 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 raised by a neighbour, or during a routine inspection of the swimming pool as part of the council's pool safety inspection program.

Resources

The Swimming Pools Act

In NSW, private or 'backyard' swimming pool safety is legislated by the Swimming Pools Act 1992 (the Act) and the Swimming Pools Regulation 2008 (the Regulation). The legislation also applies to moveable dwellings, hotels and motels.

The *Swimming Pools Act 1992* prescribes the fencing requirements of backyard swimming pools in NSW. Some other safety requirements are prescribed including the requirement for a CPR sign to be displayed near the pool.

The Swimming Pools Regulation

The *Swimming Pools Regulation 2008* was re-made on 1 September 2008. It calls up *AS1926.1-2007 Swimming Pool Safety, Part 1: Safety barriers for swimming pools*, which includes new requirements for non-climbable zones, mesh sizes for fences, retaining walls that form part of a barrier and balconies that project into the pool area.

On 1 May 2011 the Swimming Pools Regulation was amended to replace certain references to the Australian Standard 1926.1-2007 Part 1: Safety barriers for swimming pools (the standard) with references to the Building Code of Australia (BCA). The BCA in turn will refer to the Standard.

The Regulation also requires that councils and the Division have the following documentation available for public inspection at no cost:

Guideline 8 Cardiopulmonary Resuscitation- This Guideline is available at the Australian Resuscitation Council website at www.resus.org.au. By registering at the website visitors can access and print the guideline free of charge. Councils and others should consider subscribing as this will allow them to access an extensive range of related material.

AS1926.1-2007, Australian Standard Swimming Pool Safety Part 1: Safety barriers for swimming pools

- This Standard (as amended 5 May 2008) is available for purchase at www.saiglobal.com.

Building Code of Australia - the Division and councils are required to make available a copy of the BCA for free public inspection.

The Australian Standard

For copyright reasons, the Division cannot make copies of the Australian Standard, *AS1926.1-2007 Swimming Pool Safety, Part 1: Safety barriers for swimming pools*, available to councils or other persons or bodies.

It is important to note that the maximum requirement of the clause as it relates to the Standard is that the Division and councils allow members of the public to attend any of their respective offices, libraries or outlets to look at (but not print or take any copy away of) the Standard during ordinary business hours. If a body or agency exceeds this maximum standard, this may raise serious copyright implications for that agency or body.

If councils or others wish to allow public inspection of the Standard in any way other than by personal inspection at offices, branches or outlets, they must first contact SAI Global's copyright section for

further information to ensure that copyright of the Standard is not breached. SAI Global may be contacted on (02) 82066355.

The Regulation refers to AS1926.1-2007 as published on 12 July 2007 as the relevant Standard. The 5 May 2008 version may be used for reference purposes as it corrects typographical errors and makes minor clarification to the 12 July 2007 version of the Standard.

Conveyancing (Sale of Land) Regulation 2010

Amendments made to the Conveyancing (Sale of Land) Regulation 2010 mean that from 1st 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*."*

This note makes it explicit that, in accordance with the *Swimming Pools Act*, a landlord must ensure that a swimming pool situated on a tenanted premises must be at all times surrounded by a child-resistant barrier that separates it from any residential building on the premises and from any public or private place adjoining the premises. The barrier must be designed, constructed, installed and maintained to the standards prescribed in the swimming pools legislation applicable at the time the pool was constructed or installed, unless it has been substantially altered. In this case, the standard applicable at the time the barrier was altered applies. Landlords should contact their local council in relation to the appropriate barrier standard that applies to their rental property pool.

Tenants are urged to notify landlords immediately of any damage they detect to any barrier surrounding a pool on a residential property that they are renting. Tenants are also reminded that section 64 of the Act enables tenants to carry out urgent repairs and be reimbursed up to \$1,000 for any fault or damage that causes the premises to be unsafe under certain circumstances, including if the landlord or agent cannot be contacted or does not carry out urgent repairs within a reasonable time.

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Every swimming pool or spa barrier environment is different and homeowners should seek independent expert advice in relation to a particular pool or spa barrier installation.

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