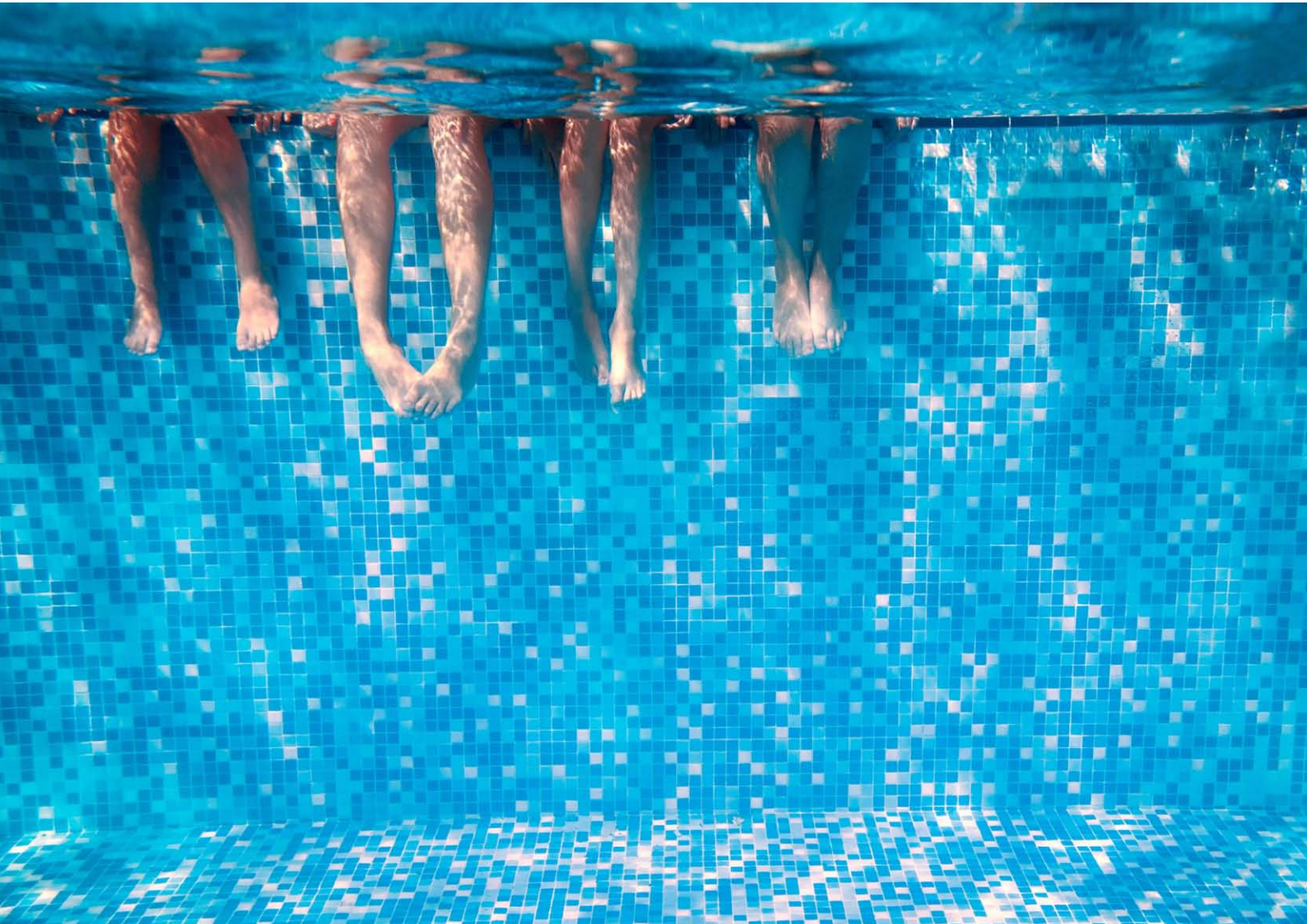


# Swimming Pool Inspection Program



# Contents



<b>1</b>	<b>Introduction</b>	<b>3</b>
1.1	Purpose	3
1.2	Land to which the Policy applies	3
1.3	Relevant legislation and standards	3
1.4	Relevant definitions	4
1.5	General requirements for outdoor swimming	5
1.6	What are the responsibilities of the pool owner under the legislation?	5
1.7	What is a Certificate of Compliance?	6
1.8	Exemptions	6
1.9	The role of accredited certifiers	6
<b>2</b>	<b>The Inspection Program</b>	<b>7</b>
2.1	Valid Certificate of Compliance or a relevant Occupation Certificate	7
2.2	All pools inspected every three years	7
2.3	More frequent inspection regime	7
2.4	Implementation of the inspection program	8
2.5	Strategy for checking pool barrier compliance	8
2.6	Actions taken – Pool barriers that are non-compliant	10
<b>3</b>	<b>Ongoing Education &amp; Awareness</b>	<b>11</b>
<b>4</b>	<b>Pool Inspection Fees</b>	<b>11</b>
<b>5</b>	<b>Penalties</b>	<b>11</b>



# 1 Introduction

## 1.1 Purpose

Changes have been made to the NSW *Swimming Pool Act 1992* which include new responsibilities for Bayside Council and owners of swimming or spa pool/s. The purpose of these changes is intended to improve the safety of children at all properties that have a swimming or spa pool/s.

Under Section 22B of the NSW *Swimming Pool Act 1992* Bayside Council are required to develop and adopt a 'Swimming Pool Program' for the scheduling of inspections of swimming or spa pool/s. The 'Swimming Pool Program' will ensure compliance of Part 2 – Access to swimming pools of the NSW *Swimming Pool Act 1992* is satisfied.

## 1.2 Land to which the Policy applies

Land to which the Policy applies.



## 1.3 Relevant legislation and standards

The legislation, regulation and standards that apply to this Swimming Pool 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. Safety barriers for Swimming Pools; and
- ✦ Australian Standards AS1926 – 2. Swimming Pool Location of Safety barriers for swimming.

The following link will take you to the swimming pool register, where you will find further information  
[www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au)

## 1.4 Relevant definitions

- ✦ **Australian Standards** – is documents that set out specifications, procedures and guidelines that aim to ensure products, services, and systems are safe, consistent, and reliable.
- ✦ **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 purpose of the *Swimming Pools Act*.
- ✦ **Certificate of Compliance** – In respect of swimming pools means a certificate issued under the Section 22D of the *Swimming Pool 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 Pool Act*.
- ✦ **Emergency Direction** – A direction given where there is serious risk to safety. An emergency direction can require immediate action without services of a notice of intention beforehand.
- ✦ **Multi-occupancy Development** – A building or buildings that is, or are situated on premises that consists of two or more dwellings.
- ✦ **Not Significant to Public Risk** – Includes non-complaint gates, barriers, vegetation, windows, doors, lack of CPR signs etc. as these defects are contained within the premise and access is controlled by owner/resident/tenant and not accessible by “members of the public”.
- ✦ **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, which 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.
- ✦ **Spa Pool** – Includes an excavation, structure or vessel in the nature of a spa pool, floatation tank, tub or the like.
- ✦ **Significant public risk** – A fence (mostly likely boundary) that forms part of the pool barrier has been removed or damaged whereby unimpeded access is possible by members of the public from a public place or from an adjoining residences. (i.e. where a person can walk unimpeded from the street/park/footpath or from an adjoining property in top a pool area that does not have a barrier at all, but does not include a non-compliant barrier or any of the defects listed as “Not significant public risk”.
- ✦ **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.



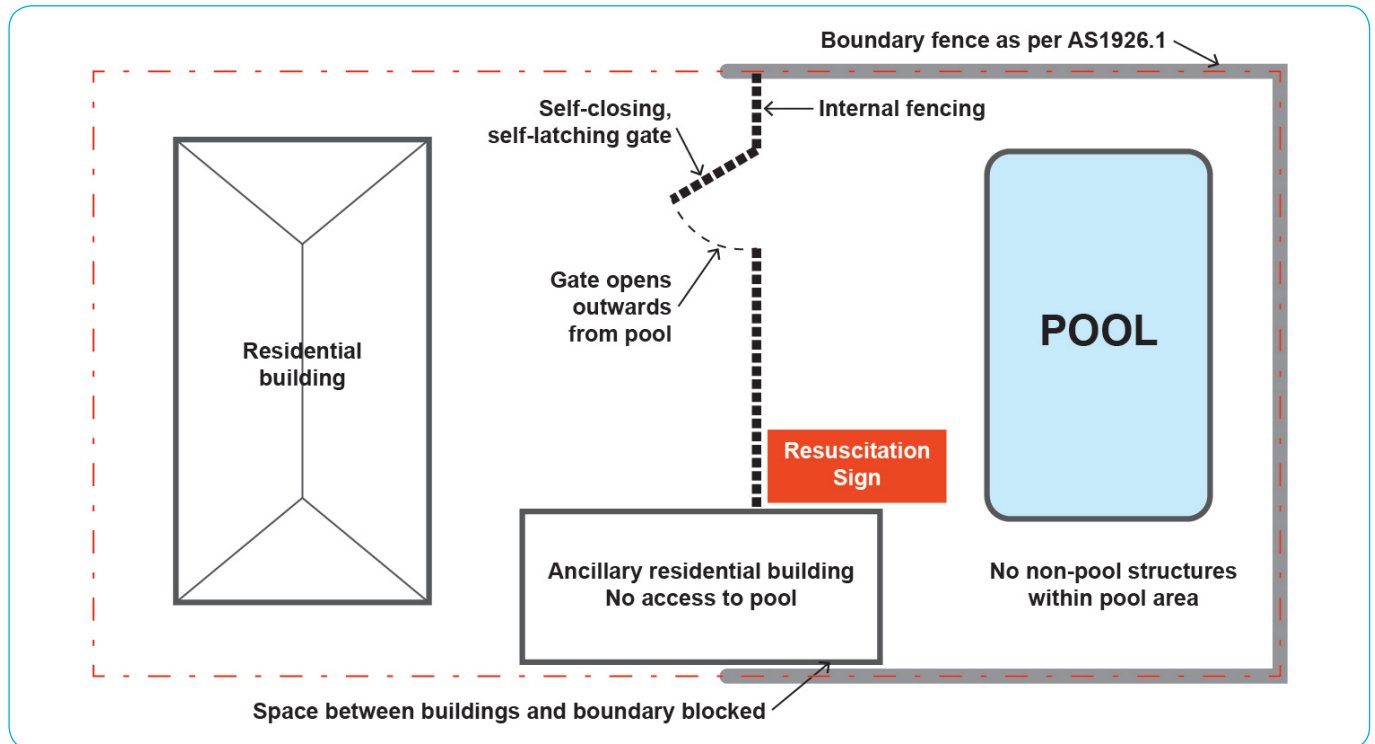
*Different types of pools.*

## 1.5 General requirements for swimming pools

Section 7 of the *Swimming Pool Acts 1992* is stated as the following:

“The owner of the premises on which a swimming pool is situated must ensure that the swimming pool is at all times surrounded by a child resistant barrier:

- (a) 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
- (b) That is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations.”



*Example of swimming pool with a compliant barrier.*

## 1.6 What are the responsibilities of the pool owner under the new legislation?

The *Swimming Pool Act 1992* places a responsibility on owners of properties that have a swimming pool (this includes all forms of pools that are over 300mm deep).

1. Swimming pool owners are required to register their pools on an online registers provided by the NSW State Government.
2. Swimming pool owners will, at the best of their knowledge, carry out a self-assessment of their pool that it complies with the relevant standards, when registering their pool.
3. Registration are free online at [www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au) there is a penalty for owners who fail to register a swimming pool.
4. Swimming pool owners will be required to provide a valid swimming pool compliance certificate before being able to sell or rent a property with a swimming pool.
5. Hotels, multi-occupancy developments and serviced apartments will also require a compliance certificate.

## 1.7 What is a Certificate of Compliance?

A Certificate of Compliance may be issued once a swimming or spa pool/s has been inspected and assessed against the relevant pool safety requirements in accordance of the NSW *Swimming Pool Act 1992*. A swimming or spa pool/s may be inspected more frequently than three (3) years 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.

In order to obtain a Certificate of Compliance, under Section 22D of the Act, the swimming pool must:

- ✦ Be registered on the statewide Register of Swimming Pools;
- ✦ Be inspected by Council's authorised officer or an accredited certifier; and
- ✦ Comply with the requirements of Part 2 of the Act.

A Certificate of Compliance is valid for 3 years from the date of issue and it is important that during this period that the swimming pool remains to be compliant.

Register



Inspect



Comply

## 1.8 Exemptions

In limited circumstances, Council can issue exemptions under Section 22 of the Act. This allows Council to grant exemptions for swimming pools situated on complex sites, in the particular circumstances of the case:

- That it is impracticable or unreasonable (because of the physical nature of the premises, because of the design or construction of the swimming pool or because of special circumstances of a kind recognised by the regulations as justifying the granting of an exemption) for the swimming pool to comply with those requirements; or
- That alternative provision, no less effective than those requirements, exists for restricting access to the swimming pool.

## 1.9 The role of accredited certifiers

Pool owners may request either Council or an accredited certifier to provide a Certificate of Compliance. Accredited certifiers may set their own fees.

Having conducted an inspection, if the pool does not meet the applicable standard, the accredited certifier may allow a pool owner 6 weeks to rectify the deficiencies before advising Council, or if the pool is considered to be a significant public risk the accredited certifier may notify Council immediately. Upon notification Council may commence compliance action.

# 2 The Inspection Program

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

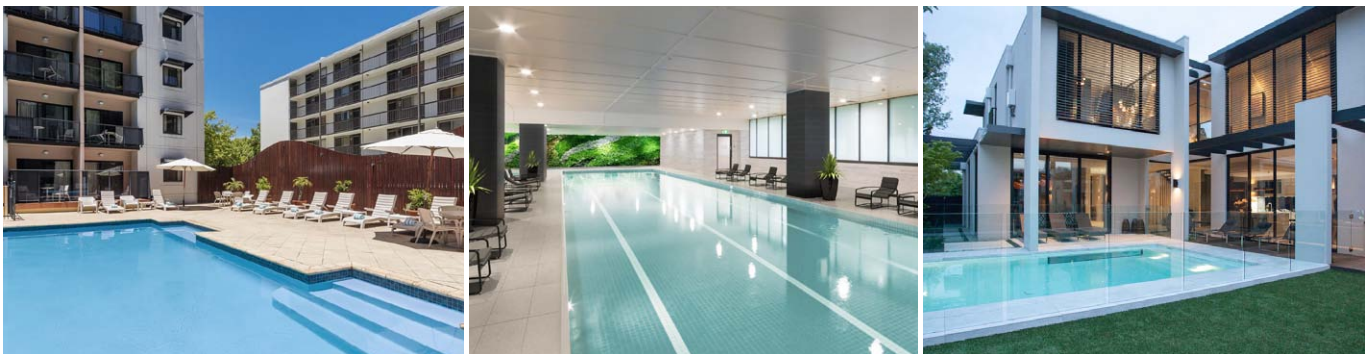
## 2.1 Valid Certificate of Compliance or a relevant Occupation Certificate

Swimming pools with a valid Certificate of Compliance or a relevant Occupation Certificate are not required to be inspected as part of this Pool Inspection Program for three years from the date of issue of the Certificate of Compliance or relevant Occupation Certificate (Section 22B(3) of the Act). However, if Council is made aware of a pool that no longer has compliant pool barriers, then the pool may be inspected earlier.

## 2.2 All pools inspected every three years

The legislation requires properties that all pool are to be inspected every three years. This includes pools associated with:

- ✦ Hotels and other multi-occupancy developments;
- ✦ Backpackers, bed and breakfast, hotel, motel, serviced apartments and residence of more than two occupancies;
- ✦ Child care centre/family day care or premises accessed regularly by children for other than domestic purposes; and
- ✦ Domestic swimming pools associated with dwellings.



## 2.3 More frequent inspection regime

From 29 April 2014 all properties with a pool being sold or leased/rented must have a current pool certificate of compliance. A pool Certificate of Compliance is current for a period of three years.

Where a property with a pool is being sold or leased, the pool owners must request an inspection and comply with the Swimming Pool Inspection Policy requirements of the inspection before a pool Certificate of Compliance can be issued.



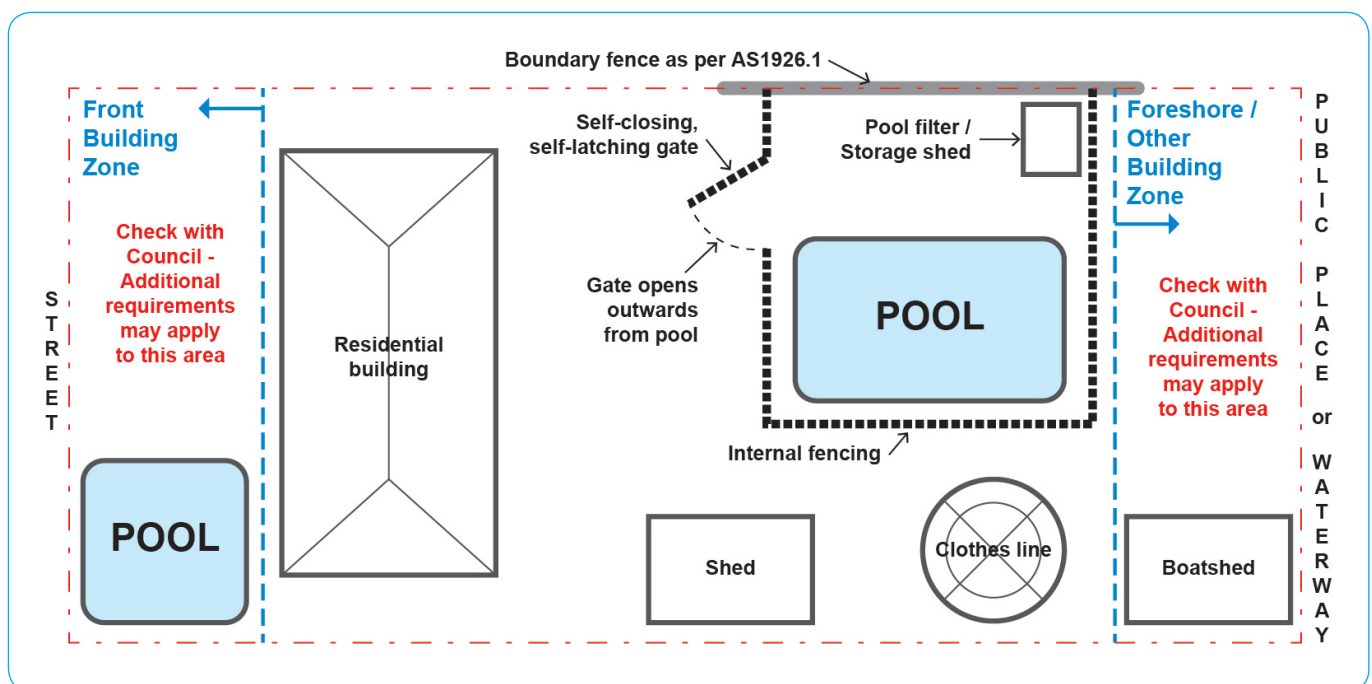
## 2.4 Implementation of the inspection program

Council will aim to undertake inspection of swimming pools (both outdoor and indoor) that are situated on premises that is either a residential building, moveable dwelling, tourist and visitor accommodation, hotels, motels, and residential flat buildings including aged care facilities and child care centres is located in accordance with the following guidelines to ensure compliance with the relevant legislation:

- ✦ **Complaints** – When a complaint is received by Council in concerning swimming pool safety and is registered on Councils Customer Request Management system (CRM), these requests will be inspected as a priority.
- ✦ **Inspection by Request of Owner** – When an owners requests an inspection under Section 22C of Act, and inspection will be conducted as per the requirements of the Act and Regulations.
- ✦ **Inspection for the Sale of Land** – Under the *Conveyancing (Sale of Land) Regulations 2010* will require any contract of sale of land to include either a Certificate of Compliance or Certificate of Non-compliance to be attached to any contract of sale. These inspections requested by owners/agents will be conducted within 10 days as prescribed by the Regulations.
- ✦ **Inspections for the Lease of Land** – Under the *Residential Tenancies Regulations 2010* it requires landlords of premises on which there is a swimming pool to provide a copy of a valid Certificate of Compliance (or Occupation Certificate). These inspections requested by owners/agents will be conducted within 10 days as prescribed by the Regulations.
- ✦ **Building Information Certificate (BCI)** – Where Council receives a BCI application which involves a property with a swimming pool, a barrier inspection will be conducted where there is no Certificate of Compliance or Occupation Certificate.
- ✦ **Notification from Accredited Certifiers** – Where an accredited certifier is unable to issue a Certificate of Compliance and have issued a notice. Upon receiving the notice, Council will undertake an inspection.
- ✦ **Proactive Inspections** – Where Council Officers have observed a non-complaint swimming pool and there if no current certificate of compliance or occupation certificate. The property will be recorded in Council's CRM system and an inspection conducted as per the requirements of the Act and Regulations.

## 2.5 Strategy for checking pool barrier compliance

During a pool barrier inspection, an authorised person will be taking measurements and using a comprehensive checklist to determine whether the pool barriers comply with the relevant safety standards.

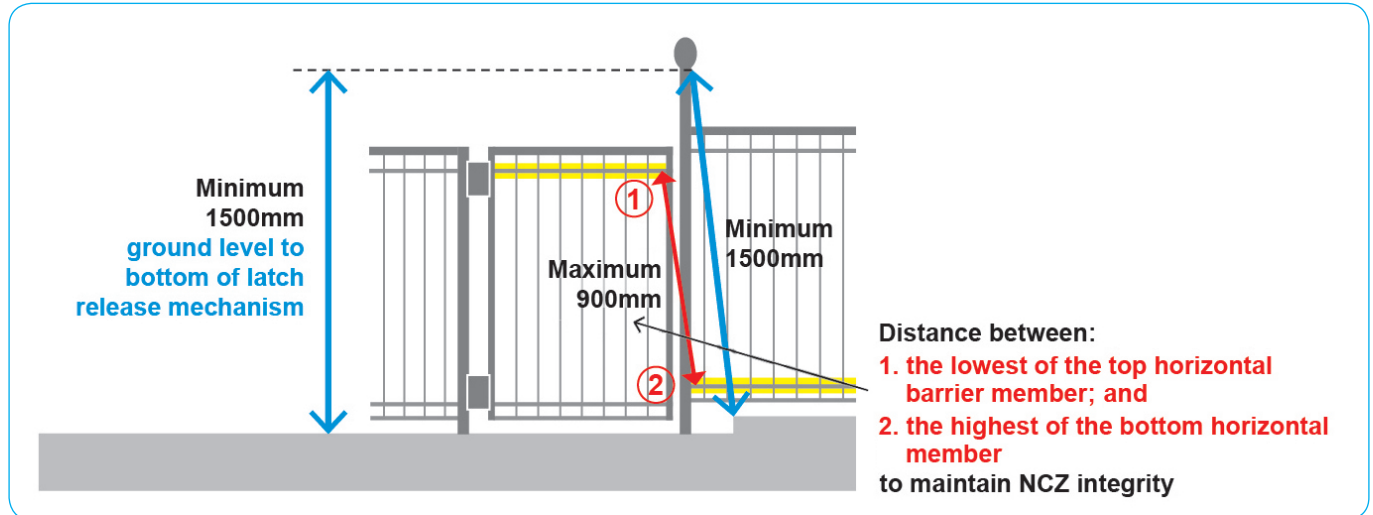


Example of swimming pool with a compliant barrier.



If the pool barriers have:

- a) Not been altered, then the pool barriers will be required to comply with the safety standards that were applicable at the time of the pool's construction;
- b) Been substantially altered, or the means of access to the pool has been rebuilt, then the pool barriers will be required to comply with the current safety standards; and
- c) Never complied with the safety standards that were applicable at the time of construction, then the pool barriers will be required to comply with the current safety standards.



*Example of a compliant pool barrier.*

The following factors are taken into consideration in determine the extent of the upgrade works:

- ✦ Is there an immediate threat to life?
- ✦ Can the pool be accessed from a public area?
- ✦ What year was the pool constructed?
- ✦ The condition of the existing pool barrier?
- ✦ The location of the swimming pool and the barrier;
- ✦ Are there any special characteristics or uses of the pool? (ie hydrotherapy pool)
- ✦ Any previously issued compliance certificates, occupation certificates and building certificates?
- ✦ The relevant legislation and Australian standards applying.

The rules of evidence collection applying 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.

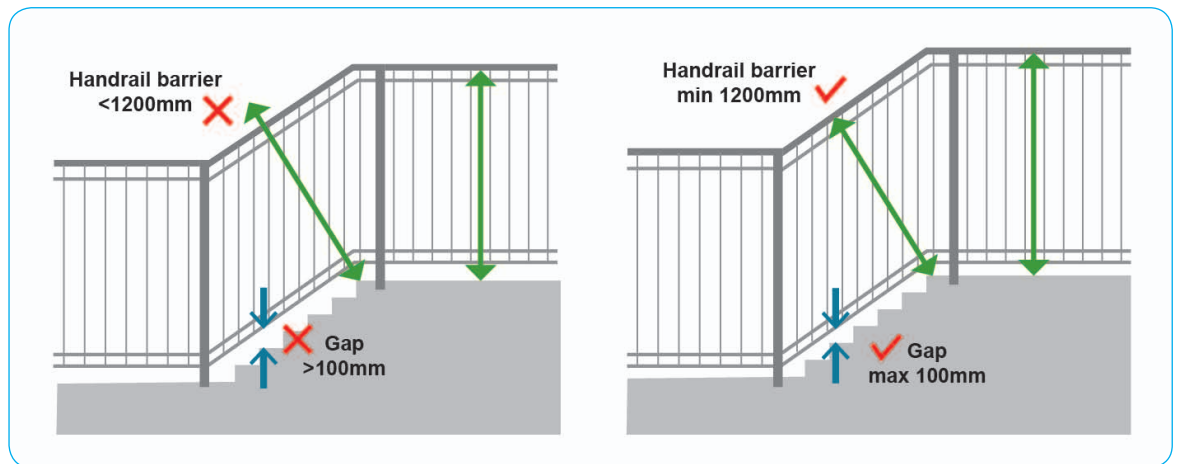
Please note the *Swimming Pools Act* has very specific provisions in terms of pool safety compliance. Specifically for taking action after investigations, the Notices, Directions, penalty Infringement Notices and Offences provisions under the Act are applicable.

## 2.6 Actions taken – Pool barriers that are non-compliant

Certificate of Compliance cannot be issued when the pool barriers do not satisfy the requirements of the Act. Consequently, if the pool barrier was inspected by:

- ✦ An accredited certifier, then the accredited certifier will be required to give a written notice to the pool owner and forward a copy of the notice to Council (Section 22E of the Act). Council will then investigate the non-compliant pool barriers;
- ✦ Council's authorised officer will then send a notice or order to the owner, which states the upgrade works required. If the upgrade works are not performed within the time frame specified, then a Penalty Infringement Notice may be issued and legal action may be taken (in accordance with the swimming pools legislation); or
- ✦ Certificates of non-compliance following inspection by a local authority or an accredited certifier must be issued to the landowner within seven days of the inspection.

*Example of non-compliant barrier and a compliant barrier.*



## 3 Ongoing Education and Awareness

Council will provide 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 interactions with the swimming pool safety inspections officers.

## 4 Pool Inspection Fees

For the purposes of issuing a Certificate of Compliance, Council will charge a pool barrier inspection fee of \$150 for the first inspection carried out, in accordance with the *Swimming Pools Regulation 2018*. Subsequent pool barrier inspections will incur a further inspection fee of \$100 and will need to be paid at the time of booking the re-inspection.

Fee payment is subject to a tax invoice.

It should be noted that a Certificate of Compliance is valid for three years from the date of issue in accordance with the Act. After the certificate ceases to be valid, Council may charge a fee in accordance with the above to carry out a new inspection for the purpose of issuing a new certificate of compliance.

## 5 Penalties

The Act provides that failing to comply with swimming pool safety requirements may constitute an offence under the Act. In addition to the authority to issue notices and directions to carry out specific work to comply with the requirements of the Act or Standards, Councils authorised officers have the power to issue a Penalty Infringement Notice for certain offences. The Act also allows for proceedings for an offence against the Act or Regulations to be dealt with before the Local Court.





Eastgardens Customer Service Centre,  
152 Bunnerong Road  
Eastgardens NSW 2036

Rockdale Customer Service Centre  
444-446 Princes Highway  
Rockdale NSW 2216

Tel **1300 581 299 | 9562 1666**  
Email **[council@bayside.nsw.gov.au](mailto:council@bayside.nsw.gov.au)**  
Web **[www.bayside.nsw.gov.au](http://www.bayside.nsw.gov.au)**