

Newsplash

Saving precious lives



Issue 7, April 2014

Pool safety certificates

When is a pool safety certificate required?

Recently, the Pool Safety Council received complaints about pool safety inspectors incorrectly informing pool owners that they need to obtain a pool safety certificate by 30 November 2015, even if they do not sell or lease the property.

A pool safety certificate is generally only required if there is a sale or lease of a property with a regulated swimming pool. The only other situation where a pool safety certificate is required is when the owner of a class 1a property (single dwelling) is constructing a pool fence and obtains a pool safety certificate in place of applying for a building development application under schedule 2C of the *Building Regulation 2006*.

What is required after 30 November 2015?

By 30 November 2015, all regulated swimming pools in Queensland will be required to have barriers that comply with the pool safety standard. This does not mean that all properties require a pool safety certificate by this date. Put simply, if a local government inspects a regulated swimming pool today (where no sale or lease has occurred), it will assess the barriers on the standard that was in effect at the time of construction. After 30 November 2015, any local government that inspects a regulated swimming pool in Queensland will assess the barriers against the current pool safety standard.

Many people have questioned how a pool owner is expected to have the knowledge to undertake a self-assessment of their pool barriers by 30 November 2015. The Department of Housing and Public Works has published a number of documents to assist pool owners with this. Fact sheets are available at www.hpw.qld.gov.au.

The department also advises owners to engage a pool safety inspector in a consultancy capacity for site-specific advice.

Relying on photographs or video footage as evidence to issue pool safety certificates

In order to issue a pool safety certificate, a pool safety inspector must have inspected the pool and be reasonably satisfied that it complies with the pool safety standard. The Pool Safety Council is aware of instances where pool safety inspectors have failed



to re-inspect a property prior to issuing a pool safety certificate because they have relied on photographs or video footage as evidence of compliance. This is not an acceptable practice and should not be undertaken by a pool safety inspector.

Unless a regulated pool is located within a prescribed remote local government area (listed under schedule 2A of the *Building Regulation 2006*) and that local government has, by resolution, declared the area to be remote, a pool safety inspector must personally inspect the pool before issuing a pool safety certificate.

Giving pool safety certificates to owners

Section 246AA of the *Building Act 1975* requires that, if a pool safety inspector inspects a regulated pool and is reasonably satisfied the pool is compliant, they must, within two business days after the inspection, give the owner a pool safety certificate.

The Pool Safety Council has received a number of complaints from pool owners regarding pool safety inspectors not giving a pool safety certificate until the fee for the inspection or reinspection is paid to the pool safety inspector.

If a pool safety inspector finds that the pool owner will not pay for the services that the pool safety inspector has performed, then the pool safety inspector should seek legal advice to recover any debts owed.

A pool safety inspector must also not refuse to issue a pool safety certificate only on the grounds that there is no development approval to carry out building work that is the construction of, or alteration to, the pool (the pool work) or the pool work does not comply.

Conflicts of interest

The Pool Safety Council is aware of a few occasions where pool safety inspectors have engaged the services of a relative to undertake repair work (building work) to a pool barrier and have then issued pool safety certificates for the properties. Section 4 of the *Code of Conduct for swimming pool safety inspectors* outlines that potential for a conflict of interest occurs when an inspector performs a pool safety inspection when a person with whom they have a personal, professional, commercial or financial relationship has carried out building work to which the pool safety standard has applied. This section of the Code of Conduct ensures that inspections remain separate to avoid any conflict of interest.

The Pool Safety Council considers that if a pool safety inspector issues a pool safety certificate in relation to work completed by a family member it is a conflict of interest.

The Pool Safety Council is also aware of pool safety inspectors who have attended properties to perform a pool safety inspection function and have also issued quotes for building work other than minor repairs. This also constitutes a breach of section 4 of the Code of Conduct. It is imperative that the roles are completely separated and that a pool safety inspector remains independent of any quotations for building work.

Fire exits

There will be some situations where compliance with the pool safety standard may impact on fire safety measures. In these cases, more detailed analysis is required to develop a solution that accommodates the separate laws. For example, if a fire exit for a building provides direct access to an outdoor pool area, a barrier may be required between the pool area and fire exit to satisfy the pool safety standard.

Fire doors and exits must be clearly marked in accordance with the National Construction Code. Under no circumstances should a fire door or exit be locked or blocked in order to meet the pool safety requirements. If a pool safety inspector is unsure whether the pool safety requirements will interfere with fire safety measures, they should contact a building certifier for specific advice.

In certain cases where it is impossible to meet the requirements of both the pool safety laws and the fire safety laws, the pool owner may make an application to their local government for an impracticality exemption.



Nonconformity notices

When do I NOT have to issue a nonconformity notice?

Section 246AB(2) of the *Building Act 1975* outlines the process that must be followed if a pool safety inspector inspects a regulated pool and is not satisfied that the pool is compliant. Subsection (3) of this section outlines two scenarios in which a pool safety inspector is not required to issue a nonconformity notice following an inspection.

Scenario one provides that a pool safety inspector is not required to issue a nonconformity notice if within two business days of the inspection, the pool safety inspector re-inspects and is satisfied the barrier is compliant.

If a pool safety inspector re-inspects the pool and it is not compliant, the pool safety inspector is required to issue a nonconformity notice within two business days.

Scenario two provides that a pool safety inspector is not required to issue a nonconformity notice if:

- the pool safety inspector holds an unconditional licence and the pool owner agrees that the pool safety inspector will carry out minor repairs to make the pool a complying pool, and
- within 20 business days after making the agreement the pool safety inspector undertakes the repairs and is satisfied that the barrier complies.

If the pool safety inspector does not carry out the minor repairs, or on re-inspection of the pool is not satisfied that the barrier complies, a nonconformity notice must be issued within a further two business days.

The Pool Safety Council recommends that any arrangement made under this section be made in writing and communicated clearly to pool owners.





Prescribed minor repairs

A pool safety inspector and pool owner can agree for the pool safety inspector to carry out minor repairs to make the pool comply with the pool safety standard. However, a pool safety inspector can carry out minor repairs only if they hold an unconditional licence.

If a pool safety inspector is unclear about whether their licence is unconditional, they should check the back of their licence. If nothing is written on the back of the licence, they have been issued with an unconditional licence. If the licence states 'Not permitted to carry out minor repairs on regulated pools' then the pool safety inspector cannot perform any work on a pool barrier. In this situation their functions are restricted to inspecting the barrier and issuing either a pool safety certificate or nonconformity notice.

Schedule 2B of the *Building Regulation 2006* (Appendix 2) defines minor repairs and limits the repairs a pool safety inspector can carry out. Minor repairs can be undertaken over the monetary value of \$3,300 only if the pool safety inspector also holds the relevant licence issued by the Queensland Building and Construction Commission (formerly the Queensland Building Services Authority).

The Pool Safety Council has recently finalised an investigation relating to a pool safety inspector performing unsatisfactory minor repairs. This is a timely reminder that when carrying out minor repairs to a pool barrier, the work must be performed in accordance with industry best practice, in a professional manner and using good quality materials. Failure to perform work in this manner is a breach of section 7 of the Code of Conduct.

Glass pool fence panels

When inspecting pool barriers with glass panels, pool safety inspectors should be aware that as the ground (or other foundations) expand and contract with weather conditions, the glass panels may move out of position or be dislodged. When inspecting, each of the joins should be inspected, and the panel shaken, to ensure that foundation movement has not created a situation where the panel may fall out or break.

If the panels are secure and all other sections of the barrier are compliant, a pool safety certificate should be issued. However, as a matter of good business practice, the pool safety inspector may also advise pool owners to regularly check the joins in case of any movement.

Partial inspection of a swimming pool barrier

There have been instances where pool safety inspectors have been asked to leave a property part way through an inspection. If this occurs and the pool safety inspector has already identified nonconformities, a nonconformity notice should still be issued to the pool owner.

In this instance, it is recommended that the pool safety inspector list any nonconformities that they have identified during their inspection and also outline that they were requested to leave the property and that a full inspection was not undertaken.

If not called back to re-inspect within the reinspection period, the pool safety inspector is then required to forward a copy of the nonconformity notice to the relevant local government. This referral mechanism will ensure that the local government is made aware of noncompliant pools in their area and will enable them to take the appropriate enforcement action.

Consultancy work

A pool safety inspector may be engaged to consult or provide general advice to a pool owner about their pool's compliance with the pool safety standard, as opposed to being engaged to give a pool safety certificate or a nonconformity notice. For example, a pool owner may not be selling or leasing the property but wants to know if the pool complies with the current standard.

A pool safety inspector who is only engaged to provide advice should consider their duty to act in the public interest. This may involve notifying the local government of a noncompliant pool where the circumstances pose a serious safety risk.

A pool safety inspector should take care to ensure the scope of their engagement is always clearly documented. It is not appropriate for a pool safety inspector to agree to provide an advisory or consulting service (a 'pre-inspection inspection') and subsequently agree to give either a pool safety certificate or a nonconformity notice for the same pool. They should advise the pool owner that another pool safety inspector ought to be engaged to complete this function. By following this practice, the pool safety inspector will avoid any allegation that they were engaged to carry out a pool safety inspection function and failed to give a pool safety certificate or a nonconformity notice within the required time after the inspection, which would leave them at risk of disciplinary action.

Pool latches that are able to be locked in the open position

The Australian Standard stipulates that the latching device for a pool gate shall not be able to be:

- inadvertently adjusted during operation
- locked in the 'open' position, or
- adjusted without the use of tools.

The Pool Safety Council has received information that some older pool latches are able to be locked in the open position. Please ensure that you test for this when assessing a pool gate.

Investigations – recent decisions

Since July 2013, the Pool Safety Council has finalised 63 complaints about pool safety inspectors. The Pool Safety Council decided to:

- issue monetary penalties in 44 instances
- require the pool safety inspectors to report on their practices in two instances
- require the pool safety inspectors to refund the fee paid for a pool inspection in three instances
- reprimand the pool safety inspector in three instances
- issue demerit points in three instances
- issue advisory notices in four instances *and*

found no grounds for disciplinary action in 16 instances.

During this period, the Pool Safety Council also investigated 27 complaints against pool owners in Queensland not complying with the pool safety laws. Outcomes from the investigations included the issuing of penalty infringement notices and warning letters, referral to local government for investigation, and finding no grounds for action.

Continuing professional development

As most pool safety inspectors have now undertaken continuing professional development, the Pool Safety Council is seeking your valuable feedback. If you would like to provide any comment relating to continuing professional development, including any feedback for the course providers or any future topics that you feel would be beneficial, please email psc@qld.gov.au.



Can I delegate my pool safety inspector functions?

It is common practice in the building certification system for inspections to be carried out by a person other than the building certifier signing the final inspection form. This practice is not permitted when performing pool safety inspection functions. The *Building Act 1975* requires a pool safety inspector to personally inspect the pool and issue either a nonconformity notice or pool safety certificate.

If circumstances arise where a pool safety inspector is not available to re-inspect a property, the pool owner must apply to the Pool Safety Council for a change of pool safety inspector. These applications are processed quickly to avoid delay in the pool owner achieving compliance with the pool safety standard.

LinkedIn for pool safety inspectors

The Swimming Pool and Spa Association Qld has established two groups on LinkedIn for professionals operating in the Queensland pool and spa industry to join together and share experiences, knowledge and information relevant to your business operations.

Are you on LinkedIn? If not, you can join at www.linkedin.com.au then go to Qld Pool and Spa Professionals and Qld Pool Safety Inspectors to sign up and join the conversation. These groups are open to anyone with an interest in the pool and spa industry.

The administrator invites you to ask questions or post your thoughts on anything to do with the industry. Some rules apply. See the 'Group Rules' tab on the top right-hand side of the home page.



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