

Newsplash

Saving precious lives



Issue 2, May 2012

Investigations

Since the last Pool Safety Council (PSC) newsletter in December 2011, the PSC has finalised 20 complaints about pool safety inspectors (PSIs). The PSC decided to:

- not take further action in four cases
- impose monetary fines in 10 cases including one in which the PSI was required to refund the inspection fee charged to the pool owner
- formally reprimand three PSIs
- impose monetary fines and issue demerit points in three cases.

The following four cases are examples of complaints dealt with by the PSC.

- **Case study 1**—The PSI issued a pool safety certificate in circumstances where they could not have been reasonably satisfied that the pool was a complying pool. The pool gate was found not to be self-closing as required by the pool safety standard. A penalty of \$1600 was imposed in this case.
- **Case study 2**—The PSC found that the PSI, by failing to respond to several communications received from the PSC's investigator, had breached the obligation to cooperate with the investigation. Also, the PSI had given incorrect advice to a member of the public by asserting that the law requires a pool safety certificate to be obtained for all swimming pools in Queensland without mentioning that such a certificate is only required where there is a relevant sale or accommodation agreement. The PSC found that by giving this advice the PSI had engaged in conduct that was of a lesser standard than might reasonably be expected of the PSI by the public or the PSI's professional peers. The PSC imposed a penalty of \$400 for the failure to cooperate and \$200 for the giving of incorrect advice.
- **Case study 3**—A PSI failed to lodge 24 nonconformity notices with the local government within five business days after the end of the reinspection period. The PSC imposed a \$2400 fine and two demerit points.
- **Case study 4**—A PSI issued a pool safety certificate for a barrier. The complainant agreed the gate was checked by him and latching correctly. However over the following weeks the complainant alleged the gate failed to latch upon closing as required by the pool safety standard. The PSI was able to produce video evidence of his inspection and testing the gate. The PSC was satisfied the PSI had acted appropriately and decided to take no further action.



When the PSC receives a complaint about a PSI, it will contact the PSI in writing, outlining the allegations and inviting a response within a stated period. PSIs should endeavour to respond as the investigation will otherwise proceed on the basis of the available information.

Providing nonconformity notices to local government

The PSC has received enquiries from PSIs about the requirements for providing a nonconformity notice to local government. Under the *Building Act 1975* (BA) section 246AC(4), a PSI is only required to provide a copy of a nonconformity notice to local government if the pool owner fails to ask the PSI to reinspect the pool within three months of giving the nonconformity notice (the reinspection period). The nonconformity notice must be given to local government within five business days of the reinspection period expiring.

In some cases, a PSI may conduct a reinspection and determine that the pool is still noncompliant. The PSI must issue a further nonconformity notice and a further three-month reinspection period then applies. This sequence may be repeated so long as the owner continues to ask for a reinspection within the reinspection period and the pool continues to be noncompliant. Where this occurs, the PSI is not obliged under section 246AC(4) to give any notice to the local government about the pool's noncompliance.

GPO Box 907, Brisbane Qld 4001

tel: 1800 340 634

fax: (07) 3237 1248

email: psc@dlgp.qld.gov.au

www.dlgp.qld.gov.au/poolsafetycouncil



The PSI should however keep in mind that where the PSI reasonably believes that a pool does not comply with the pool safety standard and is an extreme danger to young children, the PSI should give a pool safety complaint notice to local government under section 246ADA of the BA.

Where a property having a non-shared pool is sold with no pool safety certificate in effect, the purchaser is required under section 246ATJ of the BA to obtain a pool safety certificate within 90 days after settlement. The issuing of a nonconformity notice does not extend this 90-day period.

Latching requirements

The PSC has received enquiries from PSIs and members of the public about acceptable solutions for gate latches. Gates must be fitted with a latching device that will automatically operate on the closing of the gate and will prevent the gate from being re-opened without being manually released. The latching device must not be able to be locked when in the 'open' position. If the latching device can be locked while in the open position, it will not comply with the pool safety standard because gates must automatically self-latch.

Can a pool barrier be constructed from corrugated iron?

A pool barrier may be constructed from corrugated metal, however, there are rules about when corrugated metal can be placed horizontally. As stated in Appendix D of AS 1926.1:2007, any pool barrier less than 1800 millimetres in height must not have corrugated metal placed horizontally. If a pool barrier is greater than 1800 millimetres in height, corrugated metal may be used vertically or horizontally.

Pool owners should be aware that corrugated metal, when placed horizontally, may be considered to be climbable and may require shielding in order to comply with the pool safety standard.

Pool safety inspector conduct

Conduct towards fellow PSIs

The PSC is aware of instances where PSIs have made public statements about the practices or behaviours of other PSIs that may be considered disparaging or inappropriate. PSIs are expected to maintain a high level of professionalism and abide by moral and ethical standards when undertaking pool safety inspection functions and related duties. Failure to abide by these standards may be considered professional misconduct in breach of section 7 of the code of conduct for swimming pool safety inspectors (code of conduct) and can result in disciplinary action. If a PSI is concerned about the actions of another PSI, the appropriate avenue is to lodge a complaint with the PSC.

Conflict of interest—real estate agents

The PSC has received complaints about the practice of some property managers (real estate agents) who are also licensed PSIs conducting pool safety inspections for properties which they manage or that are managed by their employing agency.

PSIs are bound by the code of conduct which outlines a number of common scenarios that may constitute a conflict of interest. Real estate agents who are also PSIs should be aware that this activity potentially breaches the code of conduct on the grounds that the PSI has a 'direct or indirect pecuniary interest in the building on the subject land' and a relationship with the person for whom they are conducting the pool safety inspection i.e. their employer or employee. PSC staff will be investigating instances where this conduct may have occurred.



Pool Safety Council auditing program

The PSC has developed a statewide auditing program to help ensure PSIs maintain a high standard of ethical and professional conduct in performing pool safety inspection functions.

Audits will be conducted on a regional basis. All licensed PSIs in a region will be expected to participate in the auditing process. PSIs will be contacted by the PSC via email regarding the details of when and where the audit will take place. An audit will generally take half an hour during which time PSIs will be assessed on different aspects of the pool laws, such as their knowledge of legislative requirements and the code of conduct. PSIs may be requested to produce documentation relating to their pool safety inspection functions. A PSI is obliged under section 246CP of the BA to comply with this request unless they have a reasonable excuse.

PSI requirement to sign a pool safety certificate

Due to technical issues, pool safety certificates for shared pools issued before March 2011 (which were valid for two years) were incorrectly displayed on the pool safety register as being valid for one year. The issue has been rectified and the PSC is aware that some pool owners are seeking to have the original PSI sign the updated certificate.

PSIs who are requested by a pool owner to sign an original or subsequent copy of a pool safety certificate must do so in order to comply with section 246AK of the BA. In this case, the PSI should record the date of the final inspection on the form to indicate that the pool complied at the time of the inspection rather than when the certificate was reprinted.

The PSC suggests that PSIs should consider updating pool safety certificates without further charge. If the issue cannot be resolved between the PSI and the pool owner, the PSI should refer the pool owner to the PSC for assistance. Similarly, a PSI who no longer holds a valid PSI licence and has been asked to re-sign a pool safety certificate should also refer the pool owner to the PSC for assistance.

Cardiopulmonary resuscitation signage

A cardiopulmonary resuscitation (CPR) sign must be clearly and conspicuously displayed near the pool. Section 13A of the Building Regulation 2006 (BR) outlines the requirements for a CPR sign. The sign must be at least 300 millimetres by 300 millimetres in size, be made of durable and weatherproof material, and clearly state what to do in an emergency (phone 000, ask for an ambulance, stay with injured person, call for help, and resuscitate).

For pools constructed before 1 December 2009, the CPR sign must also show enough information about the procedures for providing first aid to enable anyone reading the sign to perform expired air resuscitation or cardiopulmonary resuscitation on an infant or young child. This information can be conveyed through text or images. For pools constructed on or after December 2009, the CPR sign must show information complying with the *Australian Resuscitation Council (ARC) Guideline 7—cardiopulmonary resuscitation*.

The PSC is aware that there have been changes to the ARC guidelines with the release of Guideline 8 reversing the order of giving breaths and compressions during CPR. The PSC continues to support and prefer the current requirements of the BR because it believes that Guideline 7 provides guidance specific to water immersion incidents. For this reason, Guideline 8 has not been adopted and Guideline 7 will continue to apply.

Removal/demolition of a pool

Since the last edition of *Newsplash*, the PSC received enquiries from pool owners seeking details about the development approval process for the removal/demolition of a swimming pool.

If a pool owner is building, moving or demolishing a swimming pool, they may be required to lodge a building development application depending on the scope of the works involved. The application can be lodged with either the local government or a private certifier.

It is recommended that PSIs dealing with pool owners in this situation advise owners to contact their local council or private certifier to discuss the procedures and charges.

The PSC will remove a pool from the register if a pool safety inspector confirms there is no pool at the property or the pool owner notifies us in writing that the pool no longer exists.



When is a pool no longer a pool— de-commissioning a swimming pool

The PSC has also received numerous enquiries from pool owners who intend to de-commission their pool as an alternative to complying with the pool safety standard. Owners have asked for information on what needs to be done to a swimming pool structure so that it no longer meets the definition of a swimming pool in the BA. For this to occur, the swimming pool structure must be altered so the pool is unable to be filled to a depth of 300 millimetres. For example, the floor or one side of the structure must be removed.

PSC staff have been advised of a practice of installing a pump in the floor of a swimming pool structure in an endeavour to avoid the application of the pool safety standard under the BA. The contention is understood to be that by installing such a pump the structure ceases being a swimming pool under the BA as it is no longer 'capable of being filled with water to a depth of 300 millimetres or more'. This practice is not an acceptable method of changing a structure from being a swimming pool. This is because the pool remains capable of being filled in the event of the pump being removed or a pump malfunction.

Compliance and the three-month reinspection period

Enquiries by some pool owner recipients of \$1600 penalty infringement notices shows some confusion exists about the effect of the three-month reinspection period following issue of a nonconformity notice. Specifically, some pool owners have misunderstood the three-month reinspection period.

There is no scope to extend the 90-day period under section 246ATJ of the BA for obtaining a pool safety certificate after purchase of a non-shared pool except in the limited case where proceedings are on foot before the Queensland Civil and Administrative Tribunal concerning a dividing fence serving as a pool barrier.

PSIs should take care not to inadvertently mislead pool owners into thinking that the 90-day period under section 246ATJ for obtaining a pool safety certificate after purchasing a property with a non-shared pool is in some way extended by the nonconformity notice procedure.

This error has led to pool owners incurring fines of \$1600 for a breach of section 246ATJ.

Latest figures

As at 26 April 2012

Registered pools 312 542

(Note: register is currently undergoing data cleansing for duplications which may reduce the figure).

Licensed PSIs 987

Pool safety certificates 46 676



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