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# The *Swimming Pools Amendment Act 2012* (NSW)

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On average, six children drown each year in backyard swimming pools in New South Wales, with many more suffering permanent disability from near-drowning incidents. Research shows that an inadequate pool barrier is one of the dominant factors contributing to swimming pool-related deaths.

To heighten awareness on pool safety and reduce these statistics, the NSW Government finalised significant changes to the *Swimming Pools Act 1992* (NSW) in late 2012.

The changes introduced by the *Swimming Pools Amendment Act 2012* (NSW) include:

- the introduction of a mandatory state-wide pool registration scheme;
- mandatory council inspections every three years for all residential, tourist, visitor and multiple occupancy premises containing pools; and
- the introduction of certificate of compliance requirements for all contracts for sale of land involving swimming pools.

The changes to the regulations come into effect on 29 April 2016.

## What is a swimming pool?

The Act defines a swimming pool as an excavation, structure or vessel that:

1. is capable of being filled with water to a depth greater than 300 millimetres; and
2. is solely or principally used, or that is designed, manufactured or adapted to be used for the purposes of swimming, wading, paddling or any other human aquatic activity.

Portable or inflatable pools with a depth of greater than 300 millimetres are captured by this definition and therefore also need to comply with the regulations.

## Effect of the changes on property owners

Property owners with swimming pools are now required to:

- register their swimming pool on the Swimming Pools Register, which may be found online at [www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au);
- provide a valid compliance certificate before selling or leasing the property. These certificates are issued once the pool has been certified by council or an accredited certifier as compliant with the Act and are valid for three years; and
- maintain swimming pool safety barriers and arrange for regular re-inspection and certification as required under the Act.



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The compliance certificate has become a mandatory prescribed document under the *Conveyancing (Sale of Land) Regulation 2010* (NSW). A copy must be attached to all contracts for sale as of 29 April 2016.

Unfortunately, the majority of swimming pools fail to meet the requirements of the Act on first inspection. This, combined with a shortage of qualified inspectors and contractors, has led to long waiting periods for compliance certificates being issued.

For these reasons, once you decide to sell your property, you should take steps to initiate the certification process as soon as possible.

### **Swimming pools in strata and community schemes**

Whilst the amendments are fairly straightforward for single lot dwellings, there has been some confusion over its application to strata and community schemes.

The Act now provides that a swimming pool is deemed to be located on residential premises if it is situated on common property. Therefore, owners of a strata lot must comply with the new legislation, even if the swimming pool is physically located in a different area in their strata or community scheme. This includes producing evidence of registration and a compliance certificate with any contract for sale of their lot.

The responsibility for registration of the swimming pool and ensuring the compliance certificate is obtained is normally that of the owner's corporation or strata manager. If there is no owner's corporation or strata manager, then an individual lot owner can register and obtain the compliance certificate themselves.

Once issued, the compliance certificate will be made available to all lot owners within the strata or community scheme through the Swimming Pools Register.

It is important to bear in mind that swimming pools require ongoing maintenance to ensure compliance with the Act. Prospective vendors and purchasers of strata or community title properties are advised to check the validity of any compliance certificate provided.

### **Failure to comply**

Certain fines and penalties may be imposed on property owners for failing to comply with the requirements of the Act.

Specifically regarding the sale and purchase of properties with a swimming pool, if a compliance certificate is not attached to the contract for sale, the purchaser has the right to rescind the contract within 14 days of exchange. In these circumstances, the deposit must be refunded to the purchaser.

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