



*Across the country, thousands of homes have backyard swimming pools. With drowning being a leading cause of preventable death in young children, swimming pool safety is an important issue for the community.*

*Provisions which came into effect in NSW on 29 April 2016 require that any property with a swimming pool will need to have a certificate of compliance before it can be sold or leased.*

## **Laws for properties with swimming pools**

The *Swimming Pools Act 1992* provides that:

- swimming pool owners must register their swimming pool or spa pool on the NSW Swimming Pool Register; and
- from 29 April 2016, a copy of a certificate of compliance or relevant occupation certificate must be attached to the sale contract or new residential tenancy agreement to sell or rent any property with a swimming pool or spa pool.

For the purposes of these provisions, swimming pools or spa pools are defined as structures that are:

- capable of being filled with water to a depth of greater than 300mm; and
- solely, or principally used, designed, manufactured or adapted for the purposes of swimming, wading, paddling or other aquatic activity.

The laws apply to a number of properties including private houses, units, hotels, motels and other tourist and visitor accommodation. For units, the owner's corporation must obtain the compliance certificate. Individual lot owners can then inspect the certificate through the Swimming Pool Register website.

## **Swimming pool certificate of compliance**

A swimming pool certificate of compliance is a document which confirms that the pool and pool barrier meet safety requirements.

An occupation certificate that is less than 3 years old, and that authorises the use of the swimming pool can be used instead of a certificate of compliance. A certificate of compliance is valid for a period of 3 years from the date of issue.

Local councils, and E1 accredited certifiers who are registered with the Building Professionals Board, can carry out a swimming pool barrier inspection and issue a certificate of compliance.



## Contracts for sale of land

The provisions require that a valid swimming pool certificate of compliance, or an occupation certificate and evidence of the registration of the swimming pool, or a valid certificate of non-compliance, must be attached to the contract of sale of properties with a swimming pool or spa pool.

This requirement does not apply:

- to a lot in strata or community schemes with more than two lots, or
- for any off-the-plan contract.

Failure to attach a certificate or relevant occupation certificate will allow a purchaser to rescind the contract at any time within 14 days of exchange of contracts, unless settlement has already occurred.

Where a certificate of compliance cannot be obtained, the seller will be able to transfer the responsibility to obtain a certificate of compliance to the buyer. The transfer will be achieved by attaching a certificate of non-compliance 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.

## Leasing a Property

When leasing a property with a swimming pool, the landlord agrees to ensure that the requirements of the Swimming Pools Act 1982 have been complied with. The landlord agrees to ensure that, at the time that the residential tenancy agreement for the property is entered into, the swimming pool on the residential premises is registered under the Swimming Pools Act 1982 and has a valid certificate of compliance under that Act, or a relevant occupation certificate within the meaning of that Act, and a copy of that valid certificate of compliance or relevant occupation certificate is provided to the tenant.

## When building a new pool

When building a new pool, it is necessary to:

- install temporary fencing around the pool area while it is under construction;
- inform the local council about where your permanent pool fence is going to be located, to make sure its location meets council's guidelines;
- arrange a final inspection by the local council or private building certifier as soon as possible after the permanent compliant fence has been installed.

## Checking the Swimming Pool Register

If you are purchasing or renting a property that contains a swimming pool or spa, you can easily check if the swimming pool or spa is registered, and whether a certificate of compliance has been issued by clicking on the 'Lookup Pool' tab on the Swimming Pool Register at [www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au).



## Conclusion

Given that a large number of swimming pools fail the first inspection and the concerns as to the time it may take to obtain a compliance certificate, we suggest that anyone intending to sell, purchase or lease a property should not only be aware of these changes but be prepared for the delays which may result under the amendments.

If you are intending to sell a property that has a swimming pool, consideration should be given to arranging a swimming pool inspection now and obtaining a certificate of compliance even if the sale is not planned for some time.

## Resources to assist you

The following Guides are available to assist you to understand your responsibilities when selling or leasing your property that contains a swimming pool:

- NSW Swimming Pool Register – Frequently Asked Questions
- Process of selling a property with a pool

To obtain a copy of these guides, go to the Conveyancing & Property Law Section of FAQ's and Guides in the 'Publications' tab on the home page of our website [www.batemanbattersby.com.au](http://www.batemanbattersby.com.au).

*If you or someone you know wants more information or needs help or advice about selling, buying or leasing a property, please contact one of our Law Society [Accredited Property Law Specialists](#), [John Bateman](#) or [Michael Battersby](#) on 02 4731 5899 or email [property@batemanbattersby.com.au](mailto:property@batemanbattersby.com.au).*