

SWIMMING POOL REQUIREMENTS UNDER THE BUILDING REGULATIONS 2018

Council and Practitioner Guide

Version 1 – 1 Dec 2019

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Introduction

This guide is for municipal councils to clarify their responsibilities under the building legislation in relation to swimming pool safety.

Amendments to the *Building Act 1993* which commenced on 1 December 2019 have introduced requirements for councils to establish and maintain a register of swimming pools and spas in their municipality and be the gatekeeper for compliance of safety barriers. Following amendments introduced by the *Building Amendment (Swimming Pool and Spa) Regulations 2019*, the *Building Regulations 2018* now includes Part 9A which consolidates swimming pool and spa safety requirements (swimming pools built before 8 April 1991, maintenance and operation of barriers, registration, inspection and certification requirements).

This document is designed as a guide for councils and is not a substitute for the relevant legislation.

Definitions/abbreviations

The following definitions are provided for the purposes of this guide:

Abbreviation	Definition
The Act	<i>Building Act 1993</i>
The Regulations	<i>Building Regulations 2018</i>
BAB	Building Appeals Board
Barrier	The assembly of components such as fences, posts, panels, walls, gates, doors and windows on buildings, and other fittings which together restrict access to the pool or spa area and form part of the intended barrier.
CBC	Certificate of Pool and Spa Barrier Compliance
CBNC	Certificate of Pool and Spa Barrier Non-Compliance
MBS	Municipal Building Surveyor
RBS	Relevant Building Surveyor
Relocatable Swimming pool or Relocatable Spa	Any swimming pool or spa that is capable of being relocated.
Swimming pool and spa inspector	Any of the following persons who have been engaged by an owner of land to inspect a swimming pool or spa barrier located on that land for compliance with this Act and the building regulations— (a) a registered building surveyor; (b) a registered building inspector. Registered building inspector includes the new class of building inspector (pool safety). Any reference to swimming pool inspector in this guide is a reference to a swimming pool and spa inspector.
Swimming pool	Any excavation or structure (including a spa or a relocatable structure) – (a) that is capable of containing water to a depth of greater than 300mm; and (b) that is principally used for, or that is designed, manufactured or adapted to be principally used, for swimming, wading, paddling, bathing or wading pool. Any reference in this guide to a swimming pool includes a spa.

Registration of a swimming pool

Councils are required to establish and maintain a register for pools and spas located within their municipality. The registration requirements apply to all swimming pools that are appurtenant to a Class 1, 2, 3 or 10 building or a Class 4 part of a building (section 216D(1) of the Act). Swimming pools that are not capable of containing water to a depth of more than 300mm or a spa that is within a bathroom do not need to be registered.

All swimming pools and spas that fall within the requirements of the Act must have a compliant safety barrier in place. Broadly, these include all permanent pools and spas and most relocatable pools and relocatable spas that are capable of holding a depth of water greater than 300mm. Relocatable pools that do not consist of multiple components and do not require any assembly are not subject to the barrier requirements. An example of such a product is a small inflatable pool that requires no assembly other than inflation.

Application for registration of swimming pools (reg 147P)

The owner of land with a swimming pool, must apply to register their swimming pool using the prescribed application form (Form 22). The application must be accompanied by any relevant documents required by the form and the registration fee (2.15 fee units).

Owners of swimming pools must apply for initial registration by the dates listed in the table below:

Swimming pool	Registration date
<p>Pools constructed before 1 June 2020 (reg 147L)</p> <p>Swimming pools</p> <p>(a) constructed before 1 June 2020; or</p> <p>(b) in respect of which construction was commenced but not completed before 1 June 2020.</p> <p>Excludes a relocatable swimming pool</p>	<p>The later of:</p> <p>1 June 2020</p> <p>or</p> <p>30 days after the date the Occupancy Permit or Certificate of Final Inspection is issued.</p>
<p>Pools constructed on or after 1 June 2020 (reg 147M) for which a building permit for construction of the swimming pool was issued—</p> <p>(a) on or after 1 June 2020; or</p> <p>(b) before 1 June 2020 but construction of the swimming pool did not commence until on or after that date.</p> <p>(Excludes a relocatable swimming pool)</p>	<p>30 days after the date the owner receives the Occupancy Permit or Certificate of Final Inspection.</p>
<p>Relocatable swimming pool if erected for 3 or more consecutive days (reg 147N)</p>	<p>By 4 June 2020 if erected 3 or more days prior to 1 June and remains erected, or</p> <p>On the 4th day after the relocatable pool was erected.</p>

It is an offence not to apply for registration within the timeframes set out above.

In the case of an application to register a pre-existing swimming pool under reg 147L, the application must be accompanied by payment of any information search fee determined by the council. The information search fee is designed to allow councils to recover costs associated with determining dates of construction for existing swimming pools. The information search fee is not chargeable for any application to register:

- swimming pools constructed post 1 June 2020 (under reg 147M); or
- relocatable swimming pools (under reg 147N); or
- swimming pools where the council has issued a notice compelling the owner to register (under reg 147O).

The maximum information search fee that councils may set is 3.19 fee units. Councils may find that this maximum figure under-recovers search costs for some pools and over-recovers for others. For example, in the case of determining the date of construction of a swimming pool that was completed in 2018 and for which an electronic record of the relevant building permit is easily accessible, the full information search fee may not be warranted. In such cases, councils may wish to utilise their discretion under the *Local Government Act 1989* to waive or refund part or the whole of the fee.

Information to be included on the register (reg 147J)

The following information needs to be included on the register:

- Owner's name and address of the land on which the swimming pool is located;
- Whether the pool is relocatable;
- The date of construction – determined by council;
- The applicable barrier standard;
- Details of the most recent CBC (date it was issued, registration number of the inspector who issued it, and a record of whether the inspector stated that they carried out building work on the barrier before issuing the certificate);
- Details of any CBNC issued (date the certificate was issued, and the registration number of the inspector who issued it);
- Date when the next barrier CBC is due;
- Dates and building permit numbers of any work that altered, modified or replaced the barrier after the date of construction.

Note: The above details are those that a council is obligated to keep in their register. Councils may keep additional information in their register.

The register can be in an electronic format or in a document format.

Council can enter information about a swimming pool in the register if an application for registration has not been received (reg 147O)

Where council learns of an unregistered swimming pool it can:

- enter the address of the swimming pool into the register; and

- provide written notice to the owner to require the owner to apply for registration of the swimming pool within a period specified. The period cannot be less than 14 days. It is an offence if the owner does not comply with the council's request.

Information to be given to the applicant upon registration of the pool (reg 147R)

The council must inform the applicant via a notice in writing that the swimming pool has been registered, including details of the following:

- date of construction;
- the applicable barrier standard(s);
- the owner's appeal rights under reg 144(2); and
- the dates by which the CBC must be lodged with the council (refer to table below).

Swimming pool construction date	First certificate of swimming pool barrier compliance due date (Form 23)
30 June 1994 or earlier	1 June 2021
From 1 July 1994 until 30 April 2010	1 June 2022
From 1 May 2010 until 31 May 2020	1 June 2023
Constructed without a building permit before 1 June 2020	From 1 June 2021
On or after 1 June 2020	At the time of applying for registration
The date the relocatable swimming pool was last erected as specified in the application form (Form 22)	No later than 30 days after the date the pool was registered

Removing a swimming pool from the register (reg 147S)

Owners need to satisfy council that the pool no longer exists or is no longer capable of holding 300mm of water. The Council must then remove the information about the pool from the register and notify the owner that the information has been removed from the register and that there is no further obligation for the owner to lodge a CBC.

Decommissioning swimming pools

Councils need to be satisfied that swimming pools are not capable of holding 300mm of water before removing them from their register. Council should consider what method of decommissioning of the pool or spa they would expect an owner to demonstrate, such as:

- **Relocatable pools**
Complete dismantling of pool if above ground. Otherwise at least the removal of the pool liner, access ladder and filtration system and ensure the remaining components cannot hold water to a depth of more than 300mm.

- **Total removal of an inground swimming pool**

A building permit to demolish is required (if the exemptions in Schedule 3 of the Regulations do not apply). Consideration needs to be given to the setback from the boundary and whether the demolition will have an adverse effect on the adjoining property. The excavation will need to be filled with appropriate soil for the site and compacted in layers with a maximum depth of 300mm (or as determined by an engineer taking site conditions into account).

- **In- ground pools**

In- ground pools can either be left in situ and buried or made incapable of holding water to a depth of more than 300mm. The process can include:

- cut at least two holes at least 500mm x 500mm in the deep end of the pool (or as determined by an engineer taking site conditions into account);
- remove debris from cut outs;
- remove filtration system and access ladders;
- fill the pool excavation with appropriate fill material compacted in layers with a maximum depth of 300mm (or as determined by an engineer taking site conditions into account). Consideration can also be given to cutting down the side walls.

Decommissioning in-ground or permanent swimming pools that remains in situ can be problematic if any future construction and development work will occur on the site. Councils can consider if a record of decommissioned pools will be required.

Council should ensure that owners of permanent pools that have been decommissioned and remain on site, understand that although the pool is taken off the register and is considered decommissioned, an application for a building permit will be needed to recommission the pool and install the required safety barrier and filtration system.

Change in ownership of land (reg 147ZL)

When there is a change of ownership of land on which a registered swimming pool is located, the relevant council must update the register with the new owner's details as soon as practicable once the council has been notified of the change in ownership of the property (via a notice of acquisition under the *Local Government Act 1989*).

Following the update to the register, council must give a notice to the new owner confirming that their name has been added to the register, the applicable barrier standard and the date by which the next CBC is required.

Determining the date of construction (regs 147T and 147U)

Councils are in a good position to make an impartial determination of the date of construction as they have access to the required information, such as historic building approval data. However, the older the pool, the less likely it is that this particular information will be readily available. The Regulations provide councils with broad discretion to use all relevant information available to them to make this determination.

The date of construction can be determined using:

- Building permit dates;
- Council records or Rates information;
- Planning data;
- Records of any compliance action;
- Any other relevant information the council can obtain. This could include aerial photographs, inspection of the installed barrier itself to determine the standard which it is most likely to comply with, etc.

The date of construction of a relocatable swimming pool is the first day of latest installation of the pool.

Every effort to determine the date of construction of older pools needs to be made. Where the date of construction cannot be determined, it may be unreasonable to require barriers to comply with a more recent barrier standard. In such circumstances, the earliest requirements for pools built before 1991 (Part 9A Division 2 of the Regulations) may be the most appropriate barrier standard to apply.

Owners have a right of appeal to the Building Appeals Board against a council's determination of the date of construction of a swimming pool under section 144(2) of the Act.

Applicable barrier standard (reg 5(1))

The applicable barrier standard can be determined by:

- The requirements of the Act and the Regulations in force at the date of construction; or
- If work has been undertaken to the barrier (whole or part), the barrier requirements that were in force at the time of the building permit or the commencement of the work (if no building permit was issued for the work to the barrier).

The dates that each applicable barrier standard was in force are shown in the table below.

Date of swimming pool construction	Applicable barrier standard
Before 8 April 1991	Part 9A, Division 2 of the <i>Building Regulations 2018</i>
8 April 1991 to 31 October 1994	AS1926.1-1986 Amendment 1
1 November 1994 to 31 July 1997	AS1926.1-1993
1 August 1997 to 30 June 2000	<ol style="list-style-type: none"> 1. The Deemed-to-Satisfy requirement of the BCA Volume One or Two, including AS1926.1-1993; or 2. An Alternative Solution, applied at the time of approval or date of construction, BCA Volume One or Two as issued, published or remade from time to time; or 3. A combination of 1 and 2.
1 July 2000 to 30 April 2010	<ol style="list-style-type: none"> 1. The Deemed-to-Satisfy requirement of the BCA Volume One or Two including AS1926.1-1993 Amendment 1; or 2. An Alternative Solution, applied at the time of approval or date of construction, BCA Volume One or Two as issued, published or remade from time to time; or 3. A combination of 1 and 2.
1 May 2010 to 30 April 2013	<ol style="list-style-type: none"> 1. The Deemed-to-Satisfy requirement of the BCA Volume One or Two including AS1926.1-2007 Amendment 1; or 2. An Alternative Solution, applied at the time of approval or date of construction, BCA Volume One or Two as issued, published or remade from time to time; or 3. A combination of 1 and 2.
After 1 May 2013	<ol style="list-style-type: none"> 1. AS1926.1-2012; or 2. An Alternative or Performance Solution applied at the time of approval or date of construction, BCA Volume One or Two as issued, published or remade from time to time; or 3. A combination of 1 and 2.

If the applicable barrier standard includes an Alternative or Performance Solution, the MBS can request this information from the owner, the RBS or search records held by council.

The applicable barrier standard could also include a modification of the regulations determined by the BAB or the barrier standard that was applied as a result of enforcement action taken by the RBS.

The MBS can take enforcement action under Part 8 of the Act, in relation to that barrier, if the applicable barrier standard at the time of construction of the swimming pool has not been met. The BAB can make a determination about compliance with particular barrier requirements.

It is the responsibility of the council to determine the applicable barrier standard. The applicable barrier standard cannot be changed by an inspector.

Examples of determining the date of construction and selecting the applicable barrier standard

Scenario 1

A swimming pool was constructed in approximately 1985 without a building permit. In late 2010, the council made a building order requiring the barrier to comply with the standard at the time of the order (AS1926.1 2007).

Although the pool was constructed in 1985, council should refer to their records of enforcement action to determine the applicable barrier standard as specified in their building order.

Scenario 2

A swimming pool constructed in approximately 1990 without a building permit or other documents to determine the date of construction. Council has not taken any enforcement action.

Council could rely on any other information that is available to determine the date of construction. This could include aerial photography, sales records and representations provided by the owner. Based on this information, council could determine that the pool was constructed sometime in 1990 and can set the date of construction accordingly.

The applicable standard in this case would be the pre-8 April 1991 requirements of Division 2 of Part 9A of the Building Regulations 2018.

Scenario 3

Council cannot locate a building permit record. Other information indicates that the swimming pool was constructed between 2001 and 2006. Council cannot narrow down the date any further.

Council is required to determine a date of construction based on the information available. The date determined could be any date between 2001 and 2006 (e.g. 1 June 2004). In this scenario, the applicable barrier standard is the same throughout the period when the pool was constructed, so the date construction determined by council does not change the applicable barrier standard.

Scenario 4

A swimming pool is constructed in 2009. After completion of construction of the pool, multiple building permits are issued for building work that affects the swimming pool barrier. The subsequent building permits are issued pursuant to different swimming pool standards.

The date of construction of the swimming pool would be the relevant date in 2009. Council's register would also need to record relevant details of the subsequent building work as per regulation 147J(1)(j).

The applicable barrier standard that was in force in 2009 will apply to any part of the original barrier that was not affected by subsequent building works. Different applicable barrier standards may apply to the sections of barrier that were affected by the later building work. In these cases, each section of the barrier will need to be assessed against the technical requirements applicable at the time that section was constructed or altered.

Council's register will need to reflect the applicable barrier standard for each section of the pool barrier where a different standard applies.

Scenario 5

A relocatable pool that is in place more than 3 consecutive days.

The applicable barrier standard is the standard that was in place on the first day the relocatable swimming pool was most recently installed.

Properties with multiple pools

In cases where there are multiple swimming pools located on a property, the number of registration applications required to be submitted, and consequently the number of inspections of the barrier(s) required, depends on whether the pools spas are enclosed within a single barrier or multiple barriers.

The principal aim of the regulatory requirements is to ensure swimming pool safety barriers are compliant with the relevant technical standard and the registration, inspection and certification requirements are designed to support this aim.

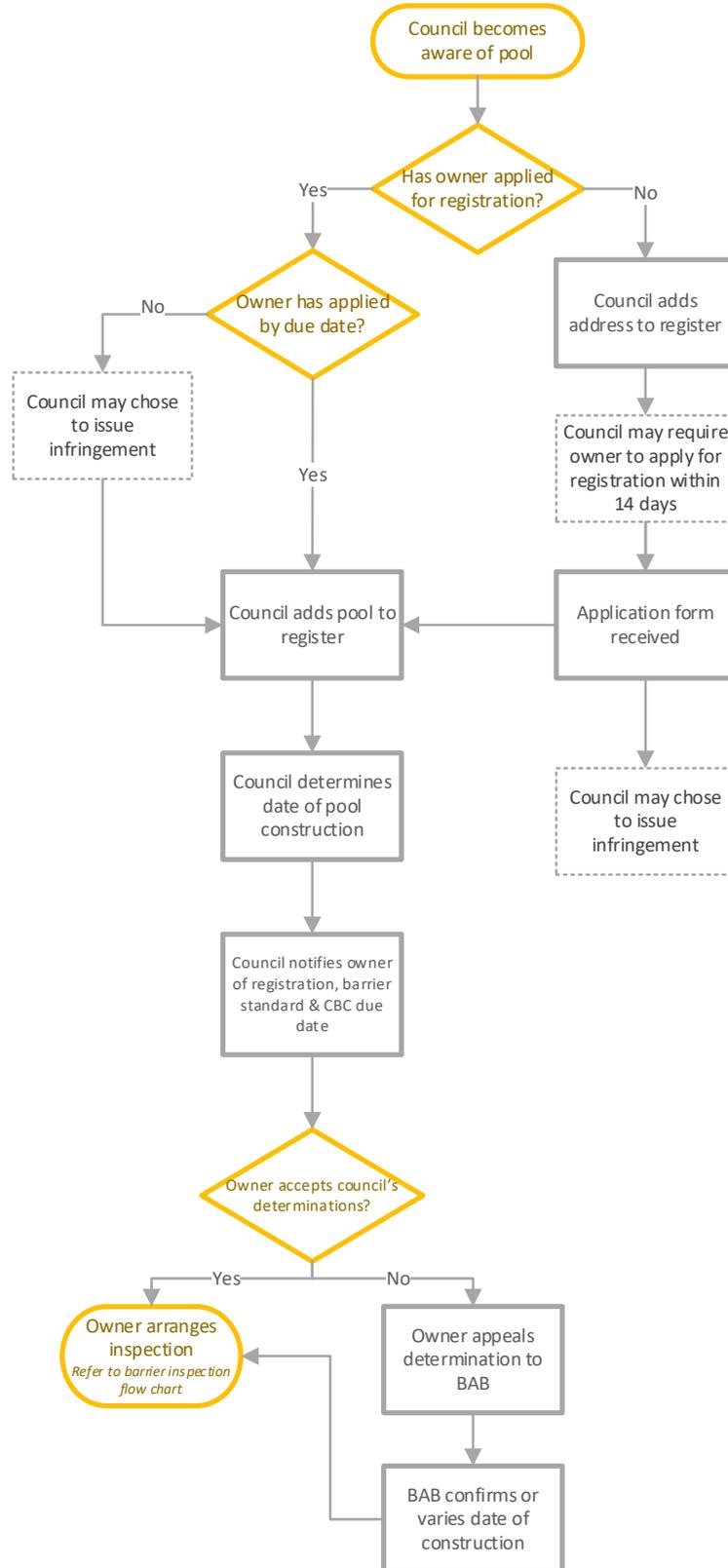
Provided that they are enclosed by the same barrier, the regulations allow for multiple swimming pools to be registered under a single application. In these cases, a single registration fee (and information search fee if relevant) would be payable. There would be a single entry on the register and only one certificate of barrier compliance would be required to be lodged regardless of how many swimming pools are located within that barrier.

If the swimming pools are enclosed separately by individual barriers, then each swimming pool must be registered under a separate application, two (or more) sets of fees would be payable. There would be multiple entries on the register and separate certificates of barrier compliance must be lodged for each barrier.

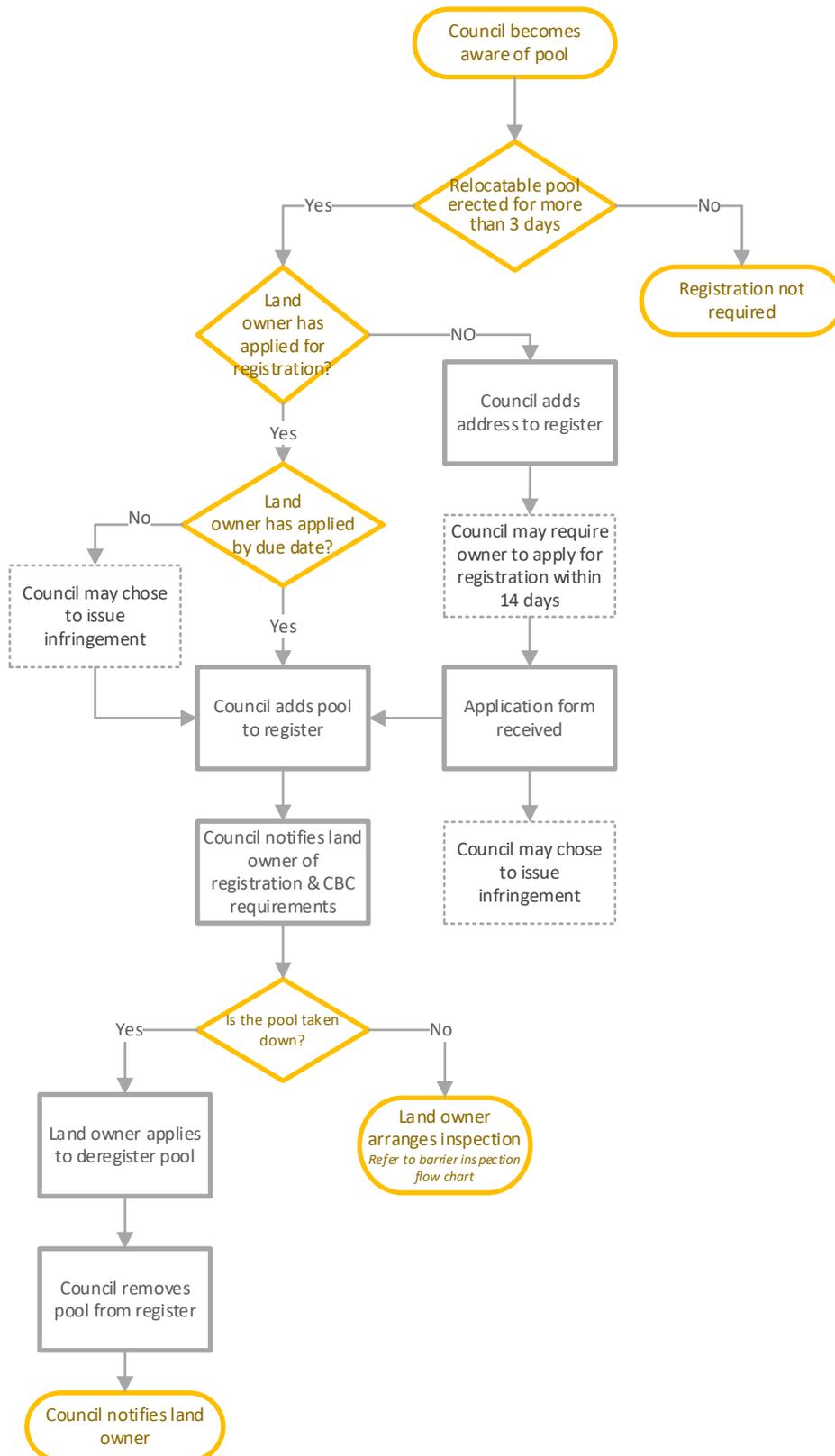
Processes

The following flow charts have been developed to assist councils with the registration processes for permanent and relocatable swimming pools.

Registration process for swimming pools



Registration process for relocatable pools



Inspecting pool barriers

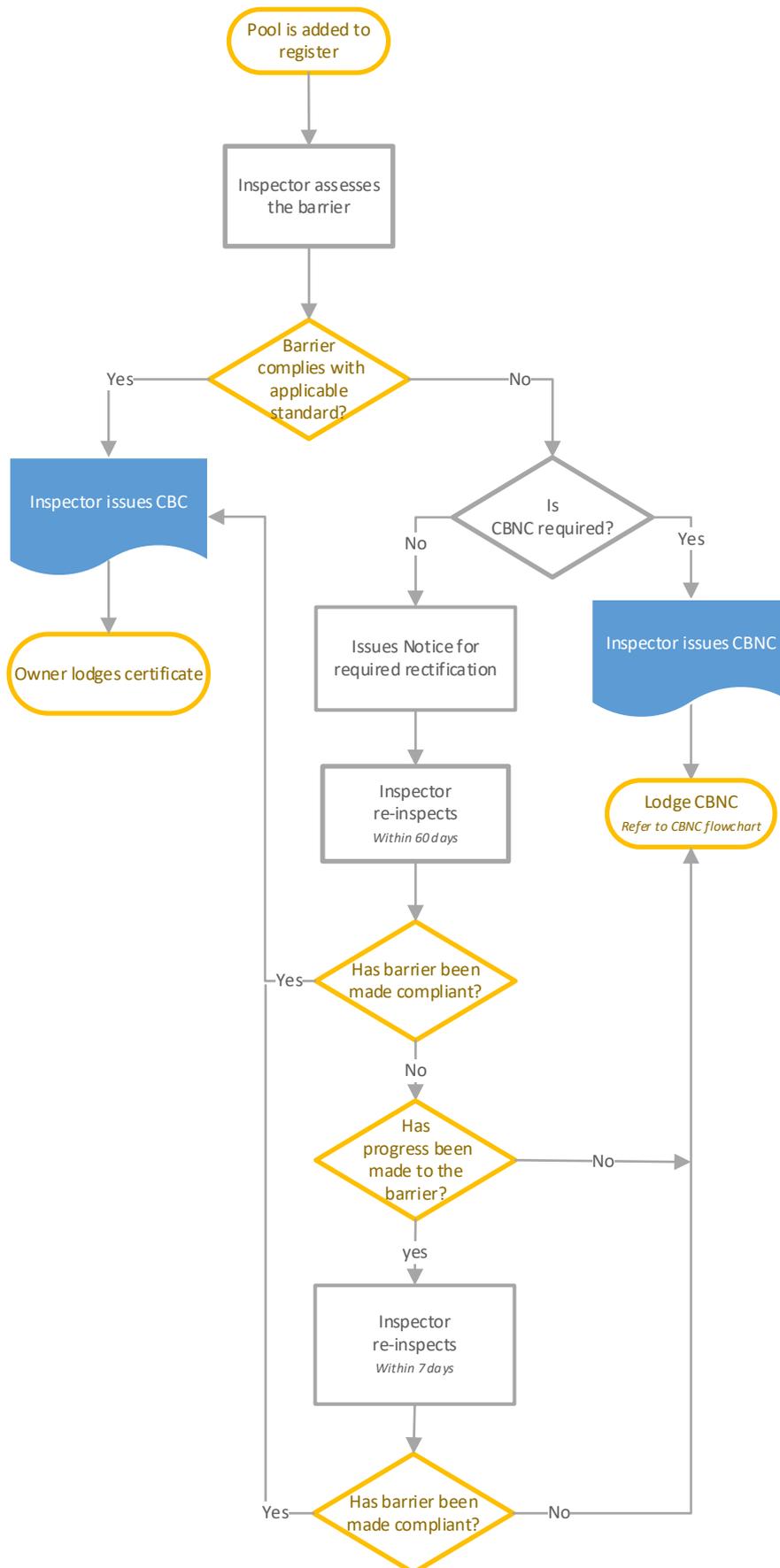
Swimming pool inspectors must conduct themselves in accordance with the requirements of reg 265 of the Regulations, which states:

A registered building practitioner must—

- (a) perform work as a building practitioner in a competent manner and to a professional standard; and*
- (b) immediately inform a client in writing if a conflict of interest arises or appears likely to arise between the building practitioner and that client; and*
- (c) receive remuneration for services as a building practitioner solely by the professional fee or other benefits specified in the contract of engagement or by the salary and other benefits payable by the building practitioner's employer.*

It is recommended that the swimming pool inspector keep all inspection records, including reports, photographs and test results relied upon, for at least 10 years.

The flow chart below provides an overview of the swimming pool safety barrier inspection process.



Certificates of pool barrier compliance (reg 147Y)

A CBC (Form 23) is required to be lodged with council as evidence that a swimming pool barrier has been inspected and was determined to comply with the applicable barrier standard.

The CBC may be issued by the following practitioners if they are satisfied with compliance of the pool barrier:

- the Swimming Pool Inspector after inspecting the swimming pool;
- From 1 June 2020, the RBS following a mandatory inspection upon completion of the barrier construction;
- An MBS carrying out functions under Part 8 of the Act or as an authorised person under s228 of the Act.

Once issued, the CBC must be given to the owner as soon as practicable (Reg 147Y).

Form 23 requires the person issuing the CBC to state whether or not they undertook any building work on the barrier to address identified non-compliance prior to certifying the compliance of the barrier. The inspectors' statement is prescribed information that must be recorded on the register in respect of each CBC lodged. This allows for oversight of how frequently each inspector is carrying out such building work and can be used to identify potential issues that need further consideration.

Lodging a Certificate of Pool Barrier Compliance (CBC) (reg 147X)

The owner must lodge the CBC by the date specified by council. A fee is payable at the time of lodgement (max 1.38 fee units). Failure to lodge the CBC by the due date is an offence.

Under the currency requirement in reg 147V(2), CBCs cannot be lodged more than 30 days after the date that the certificate is dated. If the certificate is more than 30 days old, the owner must obtain a new certificate for lodgement.

Upon receipt of the CBC, the council must give notice in writing to the owner confirming the date the certificate was lodged and the date by which the next CBC must be lodged with the council. This date must be 4 years after the last CBC was issued. However, owners may lodge certificates at any time prior to the date that their next certificate is due.

Owners applying under reg 147M to register a pool or spa constructed after 1 June 2020 must provide the CBC that was issued by the RBS following the inspection undertaken at the final mandatory notification stage. The CBC must accompany the Form 22 registration application.

Exemptions for providing the first Certificate of Pool Barrier Compliance (CBC) (reg 147W)

Regulation 147W provides discretion for council to exempt an owner from the requirement to lodge the first CBC for an existing swimming pool in accordance with the June 2021/2022/2023 timeframes specified in reg 147R(2). This regulation allows councils to provide owners with more time to lodge their first CBC, where their barrier has already been recently inspected prior to the commencement of the registration requirements.

In effect, the exemption provides an extension of time that results in the owner only needing to lodge their first CBC 4 years after the date of the inspection that occurred pre-commencement of the new requirements. This aligns with the requirement for 4-yearly certification of barriers under the Regulations.

The two circumstances under which this exemption can apply are detailed below.

1. The owner lodges an occupancy permit or certificate of final inspection which:
 - relates to a building permit issued in relation to the barrier before 1 June 2020; and
 - was issued following an inspection of the barrier that occurred after 1 June 2019.

These criteria essentially apply to owners who completed construction of a new pool or spa within the 12 months immediately before the registration deadline (1 June 2020). This recognises that the RBS will have assessed the compliance of the barrier as part of the building permit process.

2. The owner lodges a signed document from a RBS or registered Building Inspector which is dated no more than 4 years before the date of lodgement with the council, and which states:
 - they inspected the barrier on or after 1 June 2017; and
 - the barrier complied with the applicable barrier standard at the time of the inspection.

This is primarily intended to cover owners who proactively engaged a private inspector to check the compliance of their barrier before the registration requirements were introduced. The document could take the form of an inspection report or similar.

If an owner lodges documentation that meets either set of criteria above and council grants the exemption, the council must notify the owner in writing that they are exempt from the requirement to lodge the CBC by the date required under regulation 147V(1)(a). The written notice must also specify the date the next CBC is due which must be 4 years after the date the barrier was inspected prior to the issue of the occupancy permit, certificate of final inspection or the document under criteria 2.

Extension of time for lodging a Certificate of Pool Barrier Compliance (reg 147Z)

Following a request from an owner, or at any time on its own motion, council may extend the due date by which an owner must lodge a CBC if it is satisfied that:

- the owner has a reasonable excuse why it was not possible to lodge the CBC by the due date; or
- the owner has made arrangements for an inspection of the barrier; or
- the owner has made arrangements to rectify any non-compliances previously identified by the swimming pool inspector; or
- building work is occurring on the land and as a result an inspection would not be appropriate; or
- a building notice, building order or emergency order has been issued in relation to the swimming pool barrier.

This extension can only be granted for up to 6 months at any one time. Council may grant additional extensions in relation to the same registered pool (e.g. if building work is continuing on the site). If an extension of time is given to the owner, the council must inform the owner in writing of the new due date for lodging the CBC.

Although the intent of the requirements is that a CBC should be lodged every four years for as long as the pool is registered, a range of factors might prevent this from occurring on occasion. The extension power provides councils the flexibility to extend the due date for lodging a CBC where there are legitimate grounds to do so.

Councils are not obligated to grant an extension, even where an owner has made arrangements to have the barrier inspected, rectified or where building work is occurring, etc. There may be instances where, in the judgement of the relevant council, a request for an extension should be refused and the owner penalised for failing to provide a CBC by the due date.

The power to grant an extension is vested in the council, rather than the MBS. However, it is anticipated that the MBS would be involved in any extension decision. In addition, although the Regulations envisage that extensions should only be granted on a case by case basis, the Regulations do not prevent a council from granting a blanket extension to a specified group of pool owners should they believe it appropriate.

When, how and to what extent councils use their extension powers is a matter of judgement for individual councils.

Alterations to a registered swimming pool or relevant barrier (reg 147ZB)

If an alteration that requires a building permit is made to a swimming pool barrier associated with a registered swimming pool:

- the RBS must inspect the barrier and determine if it complies with the barrier standard (applicable at the time the building permit was issued). If the barrier complies, the RBS must issue a CBC to the owner of the land.
- the owner must lodge the certificate with the local council within 14 days of receiving the certificate.
- the council must update the register if the CBC states that the applicable barrier standard is different to that in the council register. Upon receipt of the certificate, the council must give the owner a notice in writing as soon as practicable (reg 147ZE) that states:
 - the certificate has been lodged;
 - the date by which the next CBC is required to be lodged (4 years from the date of lodgement); and
 - if the applicable barrier standard was updated:
 - that the applicable barrier standard has been updated; and
 - details of the new applicable barrier standard.

Barrier non-compliance (Division 6)

Procedure if a barrier does not comply with the applicable barrier standard (reg 147ZG)

If an inspection of a barrier by a swimming pool inspector determines that it does not comply with the applicable barrier standard and does not require the immediate issue of the CBNC, the inspector is required to give a notice in writing to the owner as soon as practicable.

This notice can be in the form of an inspection report (this is not a Barrier Improvement Notice, which can only be issued by an MBS). The notice must inform the owner that the barrier must be brought into compliance with the applicable barrier standard and specify:

- the matters that do not comply with the applicable barrier standard;
- the date by which the barrier is required to be brought into compliance (not more than 60 days after receipt of the notice by the owner); and
- the date and time the swimming pool inspector intends to reinspect the barrier.

Following a re-inspection, if the inspector is satisfied that the barrier complies with the applicable barrier standard, the inspector must issue a CBC and give the notice to the owner.

If the inspector is still not satisfied that the barrier complies with the applicable standard, the inspector may:

- if progress has been made in achieving compliance, give another notice in writing (as above). The date of the further re-inspection must be within 7 days, or
- issue a CBNC, lodge it with council and give a copy to the owner.

On further re-inspection of the barrier the inspector must:

- Issue a CBC if satisfied the barrier complies with the applicable barrier standard, or
- Issue a CBNC, lodge it with council and give a copy to the owner.

If the swimming pool inspector is prevented by the owner from re-inspecting the pool barrier and the 60-day or 7-day time period (as applicable) has lapsed, the inspector is required to issue a CBNC.

A CBNC must be in the form of the Form 24. The certificate must be lodged with the relevant council by the swimming pool inspector as soon as practicable and a copy must be provided to the owner (reg 147ZI).

Immediate issue of Certificate of Barrier Non-Compliance (CBNC) (reg 147ZF)

Following an inspection of the barrier against the applicable barrier standard, the swimming pool inspector must issue a CBNC, if:

- the barrier poses a significant or immediate risk to life and safety; or
- if the barrier cannot be made compliant within 60 days, or the owner is unlikely to bring the barrier into compliance; or
- the barrier does not comply with the applicable barrier standard in the following ways:
 - the door or gate when in the closed position, is able to be opened by a person who is unable to reach the opening mechanism for that door or gate; or
 - the door or gate cannot be completely closed; or
 - the barrier is less than 1000mm in height measured above the ground level on the approach side.

Circumstances where a barrier would be unlikely to be brought into compliance within 60 days could depend on the complexity of the work, availability of persons to do the work, the need for a building permit, absent or incapable owners, etc. This is a matter for the swimming pool inspector to assess.

Lodging the Certificate of Non-Compliance (CBNC) with council (reg 147ZI)

The certificate must be lodged with the relevant council by the swimming pool inspector as soon as practicable after being issued (reg 147ZI). When a CBNC is lodged with council, the council must give notice to the owner of the land that a fee is required to be paid and the due date for payment. (max 26 fee units)

The owner must pay the fee to the council within a period specified by the council (not less than 28 days). The maximum fee is 26 fee units. (reg 147ZJ)

Once the CBNC has been issued and received by council, it will be the council's responsibility to ensure the non-compliance is addressed.

The MBS may issue a Barrier Improvement Notice or use their enforcement powers under the Act to achieve compliance. The particular action that is taken will be a decision for the individual MBS based on the circumstances of each case.

The Regulations do not obligate the MBS to carry out a further inspection of the non-compliant barrier before serving a Barrier Improvement Notice or order/notice under Part 8 of the Act. The receipt of a CBNC from a swimming pool inspector is sufficient grounds for the issuing of a Barrier Improvement Notice. In addition, there is nothing in the Regulations that prohibits an MBS from relying on the inspection carried out by the registered practitioner who issued the CBNC when issuing a building notice or building order. Each MBS can make their own determination regarding whether or not they wish to inspect the non-compliant barrier before taking enforcement action.

Barrier Improvement Notice (reg 147ZK)

A Barrier Improvement Notice (Form 25) is a tool that an MBS can use to bring about compliance of the barrier once the council has received a CBNC. Whether to issue a Barrier Improvement Notice, or take alternative enforcement action, is entirely at the discretion of the MBS. Any Barrier Improvement Notice served on the owner must be in the prescribed Form 25 and be accompanied by a copy of the CBNC. The CBNC lists non-compliant items and rectification work required. The Barrier Improvement Notice will inform the owner that they are required to bring the non-complying items listed in the CBNC into compliance and lodge a CBC with council by the date specified in the Barrier Improvement Notice. This date must be no less than 14 days after the owner receives the notice.

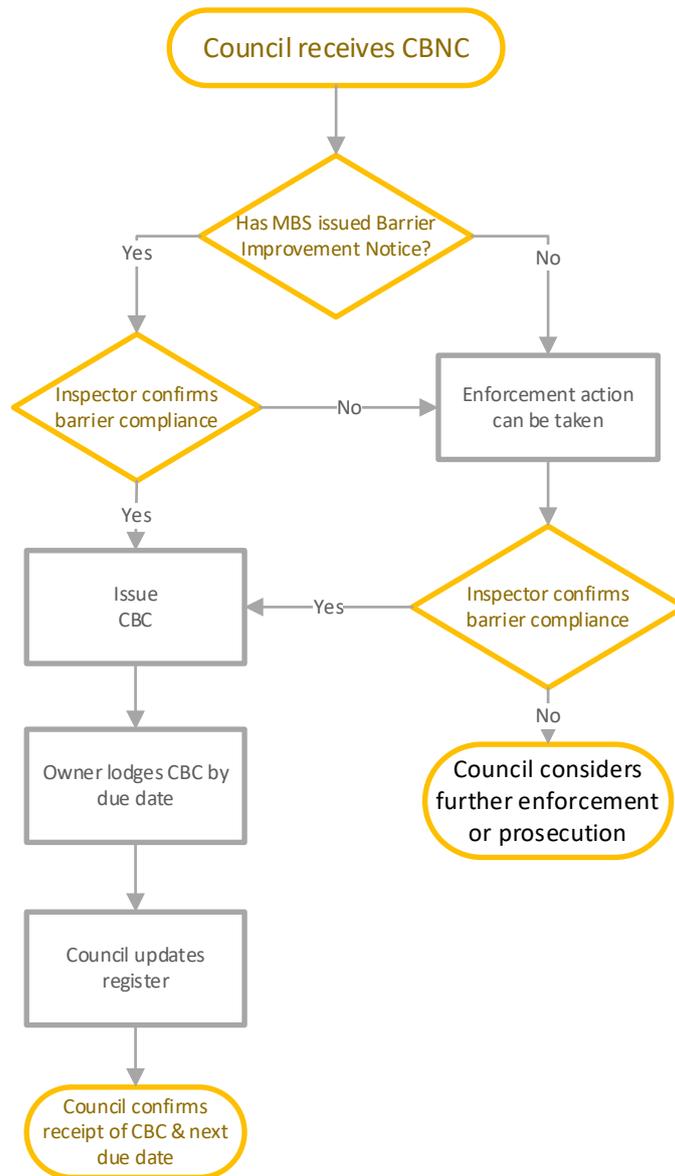
The owner may choose which swimming pool inspector they engage to inspect their barrier and issue the CBC once the rectification works have been completed. It may or may not be the same inspector who issued the original CBNC. If the council does not receive a CBC by the date specified on the Barrier Improvement Notice, the MBS may elect to use their enforcement powers under Part 8 to bring about compliance.

The MBS must not issue a Barrier Improvement Notice if (reg 147ZK(3)):

- a building notice or order under Part 8 of the Act has been issued by the MBS; or
- an injunction has been applied for under Part 13 of the Act in relation to the barrier; or
- a prosecution under Part 13 of the Act has begun, either by the VBA or the council, in relation to the barrier.

The introduction of the Barrier Improvement Notice provides councils with a less-resource intensive enforcement mechanism than a notice or order issued under Part 8 of the Act. The Barrier Improvement Notice can be used to address non-compliance that, in the opinion of the MBS, is of a less serious or critical nature based on the information provided by the inspector in the CBNC.

The following flow chart can assist in determining the process to be undertaken by council when a CBNC is received.



Fees

Application for registration fee (reg 147P)	2.15 fee units
Information search fee (reg 147P)	3.19 fee units
Lodgement of certificate of pool barrier compliance (reg 147X)	1.38 fee units
Lodgement of certificate of pool barrier non-compliance (reg 147ZJ)	26 fee units

The fees above are set in the Regulations as maximum amounts. Each council must determine the particular fee levels in accordance with the *Local Government Act 1989*.

The current value of a fee unit can be found on www.legislation.vic.gov.au under the legislative information link.

Prescribed Forms

Forms 22	Application to Register A Swimming Pool or Spa
Forms 23	Certificate of Pool and Spa Barrier Compliance
Forms 24	Certificate of Pool and Spa Barrier Non-Compliance
Forms 25	Barrier Improvement Notice

Refer to Schedule 3 of the Regulations for the prescribed forms. These forms are also available on the VBA website.

Who can undertake the required barrier inspections?

Swimming pool and spa inspector is defined in section 3 of the Act. Persons registered in the following categories and classes may perform this role:

- Building surveyor (unlimited)
- Building surveyor (limited)
- Building inspector (unlimited)
- Building inspector (limited)
- Building inspector (pool safety)

The building inspector (pool safety) is a new class of building inspector. The prescribed qualifications for the building inspector (pool safety) class are the successful completion of a course approved by the VBA in swimming pool barrier inspection and at least 6 months practical experience.

New exemptions listed in Schedule 3 of the Regulations

Schedule 3 now provides more exemptions that are relevant to building work on swimming pools and barriers. The exemptions apply to the erection of a relocatable swimming pool, erection of relocatable barriers around a relocatable swimming pools and to some building work that is to be undertaken to bring swimming pool barriers into compliance following an inspection under Part 9A of the Regulations.

Schedule 3 exemptions include relocatable barriers of relocatable swimming pools. This exemption takes into account the following considerations:

- reduction of the regulatory burden felt by persons who choose to install a relocatable barrier for their relocatable swimming pools;
- as no building permit is required for the installation of the relocatable barrier, the relocatable barrier must still comply with the applicable barrier standard;
- the requirement to register the relocatable swimming pool is still applicable if they are erected for more than 3 days (registration required on the 4th day). If this is the case, the applicable barrier standard will be determined upon registration of the pool;
- the inspection under Part 9A of the Regulations will still apply to these swimming pool barriers and compliance will be determined at the time of inspection.

Alterations to barriers

An exemption (item 22 of Schedule 3 of the Regulations) applies to barriers that require work involving the replacement or alteration of part of the barrier.

This exemption applies to registered swimming pools that have had the barrier inspected by a swimming pool and spa inspector and need work to be undertaken to bring the barrier into compliance. The exemption in item 22 cannot be applied to the construction of new barriers or existing barriers where the owner of the land wishes to renovate, upgrade or redesign their barrier to a newer standard. Alterations to barriers that take place outside the inspection and certification process established under Part 9A will still require a building permit unless the existing exemption in item 4 of Schedule 3 is applicable.

New offences under Part 9A of the Building Regulations 2018

The following are infringeable offences under Divisions 4- 6 of Part 9A of the Regulations:

- **Reg 147L(2)** – An owner fails to apply for registration of a swimming pool that was constructed before, or under construction as at 1 June 2020 by the later date of 1 June 2020 or 30 days after the date the occupancy permit or certificate of final inspection for the swimming pool was issued.
- **Reg 147M(2)** – An owner fails to apply for registration of a swimming pool constructed after 1 June 2020 within 30 days after the date the owner receives the occupancy permit or certificate of final inspection for the swimming pool and lodge the CBC at the same time as applying for registration of the pool.
- **Reg 147N(2)** – An owner of land on which a relocatable swimming pool has remained erected for at least 3 consecutive days fails to apply for registration on the fourth day after it was erected.
- **Reg 147O(2)** – An owner fails to apply for registration of a swimming pool within the period specified in a written notice given by the council.
- **Reg 147V(1)** – The owner does not lodge a CBC by the applicable date most recently specified by the relevant council in a notice to the owner.

- **Reg 147X(3)** – The owner fails to pay the relevant fee to council at the time of lodging a CBC.
- **Reg 147ZC** – Following alterations to the barrier of a registered swimming pool, the owner fails to lodge the CBC with the relevant council within 14 days after receiving the certificate.
- **Reg 147ZJ(4)** – Following lodgement of a CBNC, the owner fails to pay the fee specified in a council notice within the required period.

These offences are prescribed offence under reg 277 of the Regulations. This means that in the event of contravention, an MBS may serve a building infringement notice on the owner with the prescribed penalty of 2 penalty units.

Prescribing these as infringement offences is intended to simplify the process of enforcement by councils and MBSs. An infringement notice can be issued quickly and easily and may be enough to prompt many pool and spa owners to comply.

Appeal rights

A specific appeal right is available to owners against the determination by council of the date of construction of the swimming pool under section 144 (2) of the Act.

An owner can also appeal against the refusal of council to remove a swimming pool from the register under section 144(1) of the Act.