

Sale and Lease Provisions

Frequently Asked Questions

Q. What is the difference between a written notice of non-compliance and a certificate of non-compliance? Why do I need to complete both?

A. A written notice of non-compliance hasn't changed. This remains a detailed inspection report given to the owner of the property that outlines why the requirements for the issue of a certificate of compliance have not been met and the steps that need to be taken to meet those requirements.

A certificate of non-compliance is a new measure that takes effect from 29 April 2016 designed to increase the flexibility around the sales process. It summarises via checkboxes pool barrier non-compliance areas. Think of it as a one-page summary of the longer written notice of non-compliance. It is a prescribed document (like the certificate of compliance) that is attached to the contract for the sale of land so that the owner can still sell their property even if the pool is non-compliant. It must be issued within seven days of the inspection taking place to ensure there are no unnecessary delays to the sales' process.

Q. Does a certificate of non-compliance still have to be issued if a pool presents a significant risk to public safety and the local authority orders compliance?

A. Yes.

Q. Can a vendor still transfer responsibility for achieving pool barrier compliance to a purchaser where the pool is considered to pose a significant risk to public safety?

A. Yes, by attaching the certificate of non-compliance to the contract for the sale of land. However, in this circumstance, the 90 day grace period for remedying pool barrier defects does not apply. The purchaser must comply with the terms of any direction issued by the local authority, including the specified timeframe for remedying pool barrier defects.

Q. I keep on hearing about the date of 29 April 2016. What does this mean if I own a pool?

The Government announced in March 2016 that if you have a pool and want to sell or lease your property, from 29 April 2016, you will require a certificate of compliance (unless a relevant occupation certificate applies). This certificate states that your pool barrier is compliant with the applicable Australian Standard.

To add flexibility to the sales process only, if your pool barrier is found to be non-compliant by the council or an accredited certifier, you have the ability to pass on the requirement to fix the pool barrier to the applicable Australian Standard to the purchaser. Instead of receiving a certificate of compliance you will receive a certificate of non-compliance that you can attach to the contract for the sale of land.

Q. If a certificate of non-compliance is valid for 12 months, doesn't this increase the risk for councils if a pool can remain non-compliant for that long?

A. The certificate of non-compliance is only applicable to sales, and a house will generally sell well before 12 months. The 12-month validity period is to ensure that vendors cannot attach a certificate that may no longer be an accurate reflection of the level of non-compliance. Responsibility for pool compliance remains with the owner.

Q. I have a house with a pool that I want to rent out. What are my obligations?

A. From 29 April 2016, you will need to obtain a certificate of compliance (unless a relevant occupation certificate applies) before you can rent it out. A copy of the certificate of compliance or relevant occupation certificate and certificate of registration will need to be provided to the tenants upon entering into any new residential tenancy agreement. This is to ensure that the property is safe for your tenants, along the same lines as ensuring the house is fitted with working smoke alarms.

Q. I have bought a property with a non-compliant pool. Which standard do I have to make the pool barrier compliant with?

A. The standard that applied prior to the transfer of ownership is the standard to which rectifications need to be made in order to make the pool barrier compliant. But if the pool was built before 1 September 2008 and the pool barrier has undergone substantial alteration or has been rebuilt, the standard that applies is the standard current at the time the major works were undertaken.

Q. If a pool has an exemption to fencing requirements (for example, the pool is situated on a property larger than 2 hectares and was built before 1 July 2010), does that exemption carry over to the new owner?

A. Yes, exemptions for properties of 2 hectares or more, for waterfront properties, for properties of less than 230 square metres and for pools built before 1 August 1990 remain in place if the property is sold.

Q. I want to sell my house with a pool but my council tells me there is a long wait for an inspector. What are my options?

A. You can engage a category A1, A2, A3 or E1 accredited certifier, registered with the NSW Building Professionals Board. Details of accredited certifiers are available on the NSW Swimming Pool Register website at www.swimmingpoolregister.nsw.gov.au.

Q. Who is expected to follow up after the 90 days to ensure the pool has been made compliant?

A. Pool owners are responsible for ensuring that their pool barrier is compliant with the applicable standard. If new owners have not carried out the work required to make the barrier compliant within 90 days, then they may be issued with a fine by the local council. New owners are therefore encouraged to organise an inspection before the 90 day period has expired. If not, pools may be captured by the local council's regular pool inspection program.

Q. I'm about to enter into a residential tenancy agreement. How can I check whether the pool is compliant?

A. Search the NSW Swimming Pool Register (www.swimmingpoolregister.nsw.gov.au) by entering the address details of the property you are intending to rent. You will be able to see whether the pool is compliant or not.

Q. With properties with pools, if contracts are exchanged prior to 29 April 2016, can the purchaser rescind the contract if no certificate of compliance / certificate of non-compliance / relevant occupation certificate and certificate of registration is attached?

A. No. In this scenario, a purchaser can only rescind the contract if contracts are exchanged on or after 29 April 2016.

Q. I'm not planning to sell or lease my house. Do I still need to obtain a certificate of compliance?

A. Under the *NSW Swimming Pools Act 1992* pool owners have a responsibility to maintain their pool barrier in compliance with the applicable standard. If you are unsure whether your pool barrier is compliant, you should arrange for the local council or an accredited certifier to inspect your pool barrier. If your pool barrier is compliant, you will be issued with a certificate of compliance. If not, you will be given a written notice detailing pool barrier defects and required remediation works.