

Swimming Pool Requirements

Council and Practitioner Guide

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Introduction

This guide is for municipal councils and practitioners to clarify their responsibilities under the building legislation in relation to swimming pool safety. It is not a substitute for the relevant legislation.

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 in their municipality and be the gatekeeper for compliance of safety barriers. The Building Regulations 2018 now include Part 9A which consolidates swimming pool safety requirements.

Registration of Swimming Pools

Councils are required to establish and maintain a register for swimming pools 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 (refer to Section 216D(1) of the Act - Register of Swimming Pools).

All swimming pools 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 relocatable pools and relocatable spas that are capable of holding a depth of water greater than 300mm.

The Regulations intend that relocatable swimming pools and relocatable spas be assessed against the meaning of 'structure' in the context of the Act. Something is more likely to be a 'structure' for the purpose of the Act if it meets some or all of the following broad characteristics identified by Gillard J in *O'Brien v Shire of Rosedale* [1969] VR 112 at 116-7:

1. it is constructed from a number of component parts to produce something which is different from those parts and which is of practical value; and,
2. it is usually attached to the land on which it is erected, but this is not a necessary characteristic; and,
3. it has a degree of permanence.

It should be noted that these are general characteristics and a definitive judgement in relation to an individual relocatable swimming pool or relocatable spa would depend on the specific facts and circumstances in question.

For example, a small plastic inflatable pool that can hold more than 300mm of water that is not attached to the ground and is clearly temporary in nature are not considered a structure.

The VBA recommends owners who have a relocatable swimming pool or relocatable spa capable of containing more than 300mm in depth to provide a barrier.



Note: All regulation ID numbers referenced in this guide (147I through to 147Z) relate to the 'Application for Registration of Swimming Pool' requirements within the Building Regulations 2018.

Application for registration of swimming pools (Regulation 147P)

In accordance with Regulation 147P, the owner of land with a swimming pool must apply to register their swimming pool using the prescribed application form (Form 22 – Application for Registration of Swimming Pool). The application must be accompanied by any relevant documents required by the form and the registration fee. *(For details on relevant fees, refer to Table of Fees in the relevant section of this guide).*

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

Swimming Pool	Registration Date
<p>Under Regulation 147L Swimming pools</p> <ul style="list-style-type: none"> (a) constructed before 1 November 2020; or (b) in respect of which construction was commenced, but not completed before 1 November 2020. <p>Note: Excludes a relocatable swimming pool.</p>	<p>By 1 November 2020 or 30 days after the date the Occupancy Permit or Certificate of Final Inspection is issued.</p>
<p>Under Regulation 147M Swimming pools constructed on or after 1 November 2020 for which a building permit for construction was issued</p> <ul style="list-style-type: none"> (a) on or after 1 November 2020; or (b) before 1 November 2020, but construction of the swimming pool did not commence until on or after that date. <p>Note: 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>Under Regulation 147N Relocatable swimming pool if erected for three or more consecutive days</p>	<p>By 4 November 2020, if erected three or more days prior to 1 November, and remains erected or On the fourth day after the relocatable pool was erected.</p>

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

Pre-Existing Swimming Pool Registration Fees

In the case of an application to register a pre-existing swimming pool (under Regulation 147L), the application must be accompanied by payment of any information search fee determined by the council. This fee allows 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 November 2020 (under Regulation 147M),
- relocatable swimming pools (under Regulation 147N), or
- swimming pools where the council has issued a notice compelling the owner to register (under Regulation 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 swimming 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.

Registration Information

In accordance with Regulation 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 swimming pool is relocatable.
- The date of construction (determined by council).
- The applicable barrier standard.
- Details of the most recent Certificate of Swimming Pool Barrier Compliance (CBC). This includes the 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 Certificate of Swimming Pool Barrier Non-Compliance (CBNC) issued. This includes the 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 council is obligated to keep in their register. Councils may keep additional information in their register. The register can be in an electronic or hard copy format.

Council Register

Council may enter information about a swimming pool in the register where an application for registration has not been received. In accordance with Regulation 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 which cannot be less than 14 days.



Note: It is an offence if the owner does not comply with the council’s request.

Applicant Registration Information

In accordance with Regulation 147R, the council must inform the applicant via a notice in writing, that the swimming pool has been registered, including details of:

- Date of construction,
- Applicable barrier standard(s),
- Owner’s appeal rights under Regulation 144(2),
- 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
30 June 1994 or earlier	1 November 2021
From 1 July 1994 until 30 April 2010	1 November 2022
From 1 May 2010 until 31 October 2020	1 November 2023
Constructed <u>without a building permit</u> before 1 November 2020	From 1 November 2021
On or after 1 November 2020	At the time of applying for registration.
The date the relocatable swimming pool or relocatable spa was last erected, as specified in the application form (Form 22).	No later than 30 days after the date the swimming pool was registered.

Removing a Swimming Pool from the Register

In accordance with Regulation 147S, owners need to satisfy council that the swimming pool no longer exists or is no longer capable of holding 300mm of water. The council must then remove the information about the swimming pool from the register and notify the owner of this, 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 swimming pool they would expect an owner to demonstrate, such as the following:

- **Removal of above-ground swimming pool**

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

- **Total removal of an in-ground swimming pool**

A Demolition Permit 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 swimming 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 the following steps:

1. Cut at least two holes at least 500mm x 500mm in the deep end of the swimming pool (or as determined by an engineer taking site conditions into account).
2. Remove debris from cut outs.
3. Remove filtration system and access ladders.
4. Fill the swimming 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 remain in-situ can be problematic if any future construction and development work occurs on the site. Councils can consider if a record of decommissioned swimming pools will be required.

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

Change in Ownership of Land

In accordance with Regulation 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 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 details of the applicable barrier standard and the date by which the next CBC is required.

Determining the Date of Construction

In accordance with Regulations 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 swimming pool, the less likely it is that this

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 the following:
- Building permit dates
- Council records or rates information
- Planning data
- Records of any compliance action
- Any other relevant information the council can obtain such as aerial photographs, inspection of the installed barrier to determine compliance standard.



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

Every effort is required to determine the date of construction of older swimming pools. 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 swimming pools built before 1991 (Part 9A Division 2 – Requirements for Barriers for Swimming Pools) 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) - Appeals-Building Regulations of the Act.

Applicable Barrier Standard

In accordance with Regulation 5(1), the applicable barrier standard can be determined by either of the following:

- The requirements of the Act and the Regulations in force at the date of construction.
- 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 Building Regulations 2018.
8 April 1991 to 31 October 1994	AS 1926.1-1986 (Swimming Pool Checklist) Amendment 1.
1 November 1994 to 31 July 1997	AS 1926.1-1993 (Swimming Pool Safety – Fencing for Swimming Pools).
1 August 1997 to 30 June 2000	1. The Deemed-to-Satisfy requirement of the BCA Volume One or Two, including AS 1926.1-1993; or 2. An Alternative Solution, applied at the time of approval or

	<p>date of construction, BCA Volume One or Two as issued, published or remade from time to time; or</p> <p>3. A combination of 1 and 2.</p>
1 July 2000 to 30 April 2010	<p>1. The Deemed-to-Satisfy requirement of the BCA Volume One or Two including AS 1926.1-1993 Amendment 1; or</p> <p>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</p> <p>3. A combination of 1 and 2.</p>
1 May 2010 to 30 April 2013	<p>1. The Deemed-to-Satisfy requirement of the BCA Volume One or Two including AS 1926.1-2007 (Swimming Pool Safety – Safety Barriers for Swimming Pools) Amendment 1; or</p> <p>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</p> <p>3. A combination of 1 and 2.</p>

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

The applicable barrier standard could also include a modification of the regulations determined by the Building Appeals Board (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 (General) 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.



Note: It is the responsibility of the council to determine the applicable barrier standard.

Scenarios

The scenarios set out below are various scenarios in relation to determining the date of construction and selection of 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 (AS 1926.1 2007).

Action

Although the swimming 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.

Action

Council may 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 may determine that the swimming 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 is unable to 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.

Action

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 (for example, 1 June 2004). In this scenario, the applicable barrier standard is the same throughout the period when the swimming pool was constructed, so the date of 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 swimming 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.

Action

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 swimming pool barrier where a different standard applies.

Scenario 5

A relocatable swimming pool that is in place for more than three consecutive days.

Action

Council to note that 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 Swimming 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 swimming pools or 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.

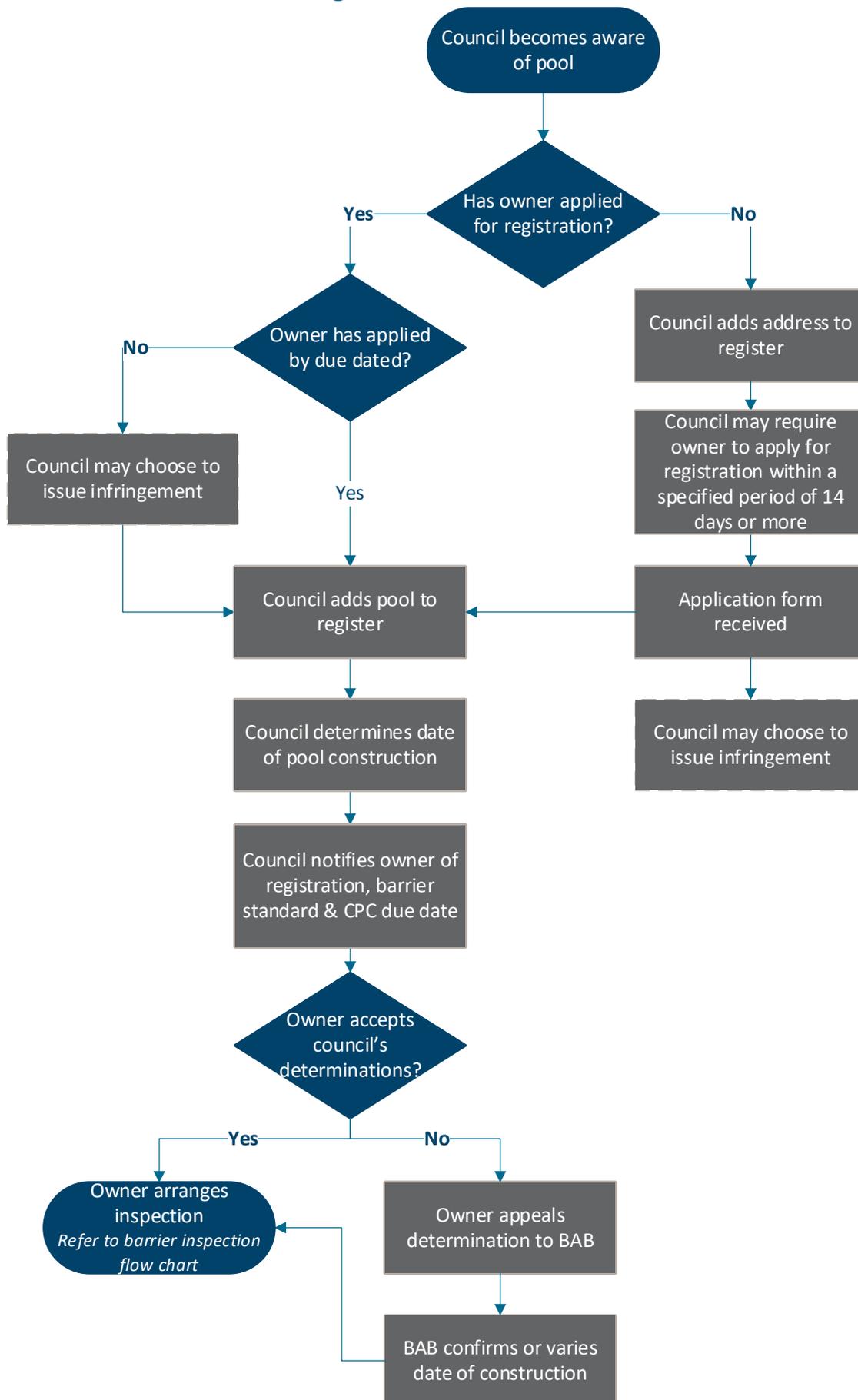
Provided that they are enclosed by the same barrier, the regulations allow for multiple swimming pools to be registered under a single application. In these cases, a single registration fee (and information search fee, if relevant) would be payable. There would be a single entry on the register and only one Certificate of Swimming Pool Barrier Compliance would be required to be lodged, irrespective 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 and two (or more) sets of fees would be payable. There would be multiple entries on the register and separate certificates of barrier compliance would need to be lodged for each barrier.

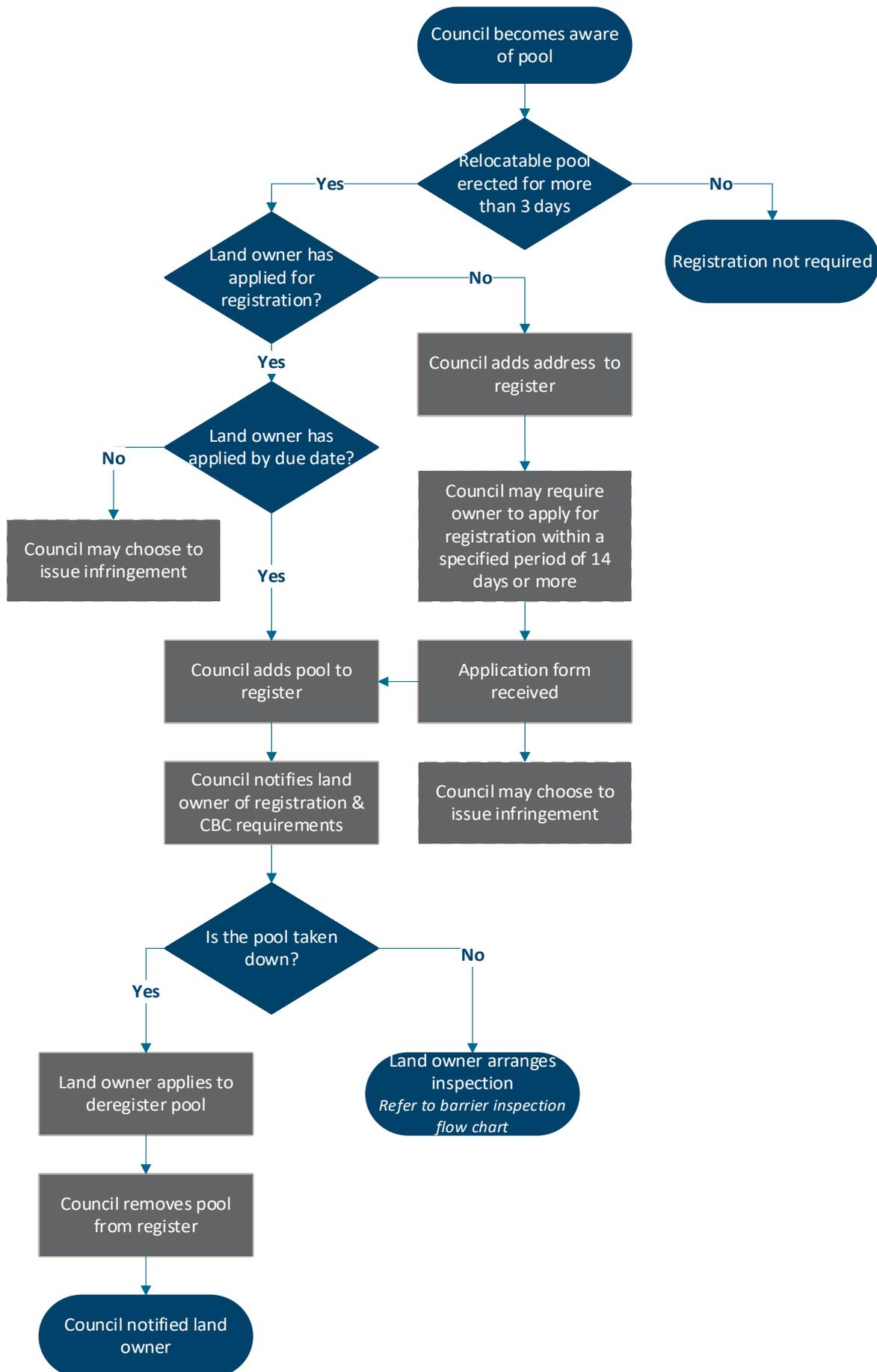
Registration Processes

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 Swimming Pool Barriers

The swimming pool inspector is defined in Section 3 (Definitions) of the Act as any of the following persons who have been engaged by an owner of land to inspect a swimming pool barrier located on that land for compliance with this Act and the Building Regulations—

- a) a registered building surveyor;
- b) a registered building inspector;
- c) any other registered building practitioner whose registration authorises the carrying out of inspections of swimming pools including the barriers associated with those swimming pools.

Swimming pool inspectors must conduct themselves in accordance with the requirements set out in Regulation 265 (Professional Standard), which states:

“A registered building practitioner must—

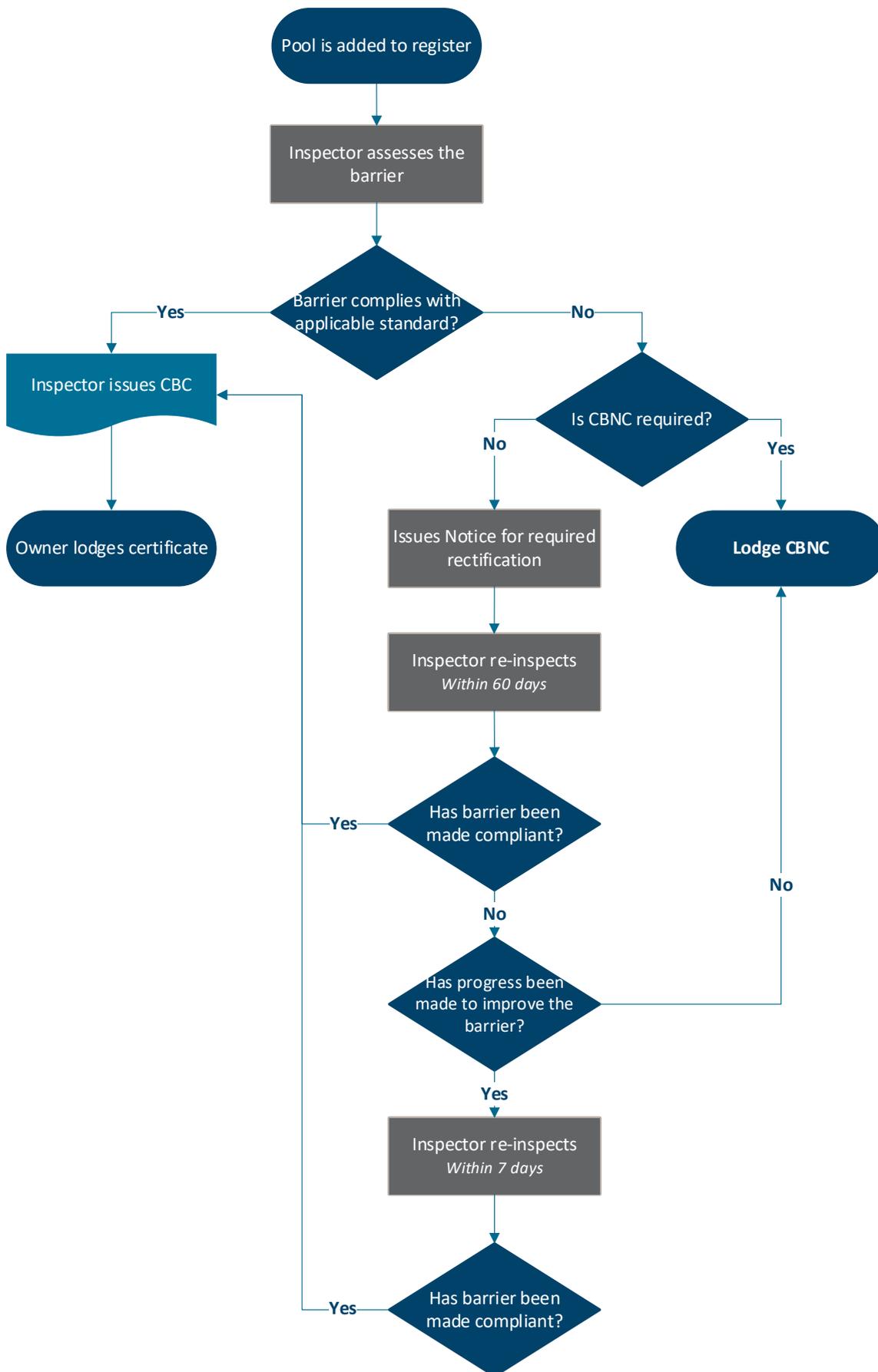
- (a) perform work as a building practitioner in a competent manner and to a professional standard; and*
- (b) immediately inform a client in writing if a conflict of interest arises or appears likely to arise between the building practitioner and that client; and*
- (c) receive remuneration for services 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.”*



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

Swimming Pool Safety Barrier Overview

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



Certificates of Swimming Pool Barrier Compliance

In accordance with Regulation 147Y, a CBC (Form 23) is required to be lodged with council as evidence that a swimming pool barrier has been inspected and determined to comply with the applicable barrier standard. The CBC may be issued by the following practitioners if they are satisfied with swimming pool barrier compliance:

- The Swimming Pool Inspector, after inspecting the swimming pool.
- From 1 November 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 Section 228 (Authorised Persons under this Subdivision) of the Act.

In accordance with Regulation 147Y, once issued, the CBC must be given to the owner as soon as practicable.

The person issuing the CBC is required to state whether 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 Swimming Pool Barrier Compliance

In accordance with Regulation 147X, the owner must lodge the CBC by the date specified by council. A fee is payable at the time of lodgement. (Refer to fee unit table in the Fee section of this guide.)



Note: Failure to lodge the CBC by the due date is an offence.

Under the current requirement in Regulation 47V(2), a CBC 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 four years after the last CBC was issued.

Owners applying under Regulation 147M to register a swimming pool constructed after 1 November 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.

CBC Exemptions

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 November 2021/2022/2023 timeframes specified in Regulation 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 four years after the date of the inspection that occurred prior to the commencement of the new requirements. This aligns with the requirement for four-yearly certification of barriers under the Regulations.

The two circumstances under which this exemption can apply, are detailed in Criteria 1 and 2 below.

Criteria 1

The owner lodges an Occupancy Permit or Certificate of Final Inspection which:

- relates to a building permit issued for the barrier before 1 November 2020, and
- was issued following an inspection of the barrier that occurred after 1 November 2019.

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

Criteria 2

The owner lodges a signed document from an RBS or registered Building Inspector which is dated no more than four years before the date of lodgement with the council, and which states that:

- they inspected the barrier on or after 1 November 2017, and
- the barrier complied with the applicable barrier standard at the time of the inspection.

This is 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 four years **after** the date the barrier was inspected, and **prior** to the issue of the Occupancy Permit, Certificate of Final Inspection), or the inspection report document as outlined under Criteria 2.

Extension for Lodging a Certificate of Swimming Pool Barrier Compliance

In accordance with Regulation 147Z, following a request from an owner, or at any time without prompting by the owner, 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 arranged an inspection of the barrier; or
- the owner has arranged 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 six months at any one time. Council may grant additional extensions in relation to the same registered swimming pool (for example, 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 swimming pool is registered, a range of factors might prevent this from occurring. 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 arranged to have the barrier inspected, rectified or where building work is occurring. There may be instances where, in the judgement of the relevant council, a request for an extension is 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 also 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 swimming 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 Barriers Associated with Registered Swimming Pools

In accordance with Regulation 147ZB, if an alteration that requires a building permit is made to a swimming pool barrier associated with a registered swimming pool, the following must be complied with:

- 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, and in accordance with Regulation 147ZE, the council must give the owner notice in writing as soon as practicable that states:
 - the certificate has been lodged;
 - the date by which the next CBC is required to be lodged (four 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 have been entered in the register.

Barrier Non-Compliance

Set out below are the procedures to be followed if a barrier does not comply with the applicable barrier standard as required by Regulation 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 notice in writing to the owner as soon as practicable. This notice can be in the form of an inspection report.

Note: 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 seven 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 seven-day time period (as applicable) has lapsed, the inspector is required to issue a CBNC.

A CBNC must be in the form of the Certificate of Swimming Pool Barrier Non-Compliance (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 as required by Regulation 147ZI.

Immediate Issue of the CBNC

In accordance with Regulation 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, can 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.

This is a matter for the swimming pool inspector to assess.

Lodging the CBNC with Council

In accordance with Regulation 147ZI, the certificate must be lodged with the relevant council by the swimming pool inspector as soon as practicable, after being issued. 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.

In accordance with Regulation 147ZJ, 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. Once the CBNC has been issued and received by council, it will be the council's responsibility to ensure the non-compliance is addressed.

Barrier Improvement Notice

In accordance with Regulation 147ZK, a Barrier Improvement Notice is a tool that an MBS can use to bring about compliance of the barrier once the council has received a CBNC. 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.

Any Barrier Improvement Notice served on the owner must be in the prescribed Form 25 and be accompanied by a copy of the CBNC which lists non-compliant items and rectification work required.

The 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 notice.



Note: This date must be no less than 14 days after the owner receives the notice.

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.

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 notice, the MBS may elect to use their enforcement powers under Part 8 of the Act to bring about compliance.

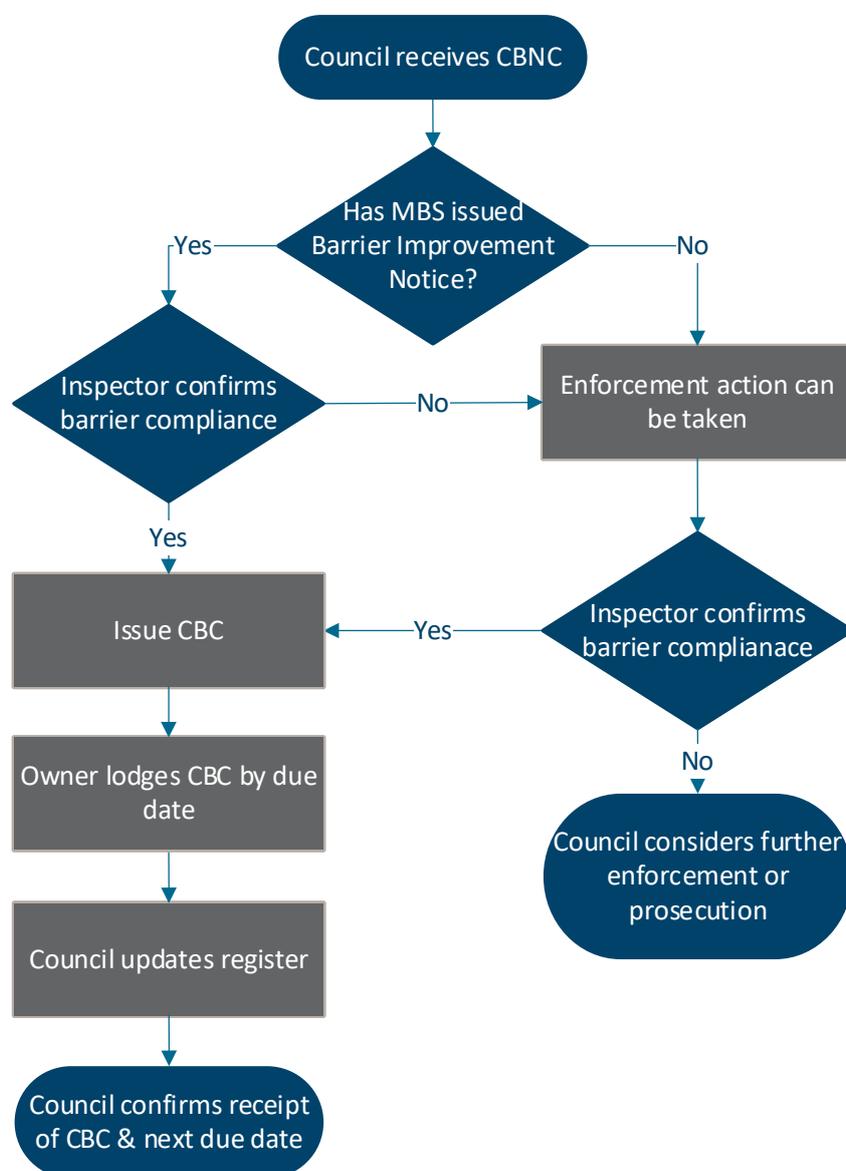
In accordance with Regulation 147ZK, the MBS must not issue a Barrier Improvement Notice if:

- 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 (General Enforcement Provisions) of the Act in relation to the barrier; or
- a prosecution under Part 13 of the Act, in relation to the barrier, has begun, either by the Victorian Building Authority (VBA) or the council.

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 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.

Council Process on Receipt of a CBNC

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



Fees

Chargeable Item	Fee Unit
Application for Registration of Swimming Pool or Spa (Reg 147P)	2.15
Information Search (Reg 147P)	3.19
Lodgement of Certificate of Swimming Pool Barrier Compliance (Reg 147X)	1.38
Lodgement of Certificate of Swimming Pool Barrier Non-Compliance (Reg 147ZJ)	26.00



- **Note:** The fees above are set in the Regulations as maximum amounts and are indexed each financial year. Each council must determine their fee levels in accordance with the Local Government Act 1989.
- The dollar value per unit for all councils is \$14.81 for the 2020/2021 financial year, valid until 30 June 2021. Current values of fee units can be confirmed on the legislative information link www.legislation.vic.gov.au under legislative information.

Prescribed Forms

Set out below is a list of the relevant forms outlined in this guide, together with the form name:

Form Number	Form Name
Form 22	Application to Register a Swimming Pool
Form 23	Certificate of Swimming Pool Barrier Compliance
Form 24	Certificate of Swimming Pool Barrier Non-Compliance
Form 25	Barrier Improvement Notice



Note: Refer to Schedule 4 (Forms) of the Regulations for the prescribed forms. These forms are also available on the VBA website.

New Regulation Exemptions

Schedule 3 of the Regulations 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 pool and also 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 considers the following:

- 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 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 three days (registration required on the fourth day). If this is the case, the applicable barrier standard will be determined upon registration of the swimming 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 which 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

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 November 2020 by the later date of 1 November 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 November 2020, within 30 days after the date the owner receives the Occupancy Permit or Certificate of Final Inspection for the swimming pool, and lodges the CBC at the same time as applying for registration of the swimming pool.
- **Reg 147N(2)** – An owner of land on which a relocatable swimming pool has remained erected for at least three 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 offences under Regulation 277 (Prescribed Offences). This means that in the event of contravention, an MBS may serve a building infringement notice on the owner with the prescribed penalty of two 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 swimming pool and spa owners to comply.

Appeal Rights

A specific appeal right is available under Section 144(2) of the Act. The Owner can appeal against the council determination of the date of construction of the swimming pool. 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.

Appendix A - Definitions/Abbreviations

Set out below are definitions of the abbreviations and terms used in this guide:

Abbreviation	Definition
The Act	Building Act 1993
The Regulations	Building Regulations 2018
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 swimming pool area and form part of the intended barrier.
CBC	Certificate of Swimming Pool Barrier Compliance
CBNC	Certificate of Swimming Pool 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 Inspector	Any of the following persons who have been engaged by an owner of land to inspect a swimming pool barrier located on that land for compliance with this Act and the Building Regulations: <ul style="list-style-type: none"> (a) a registered building surveyor (b) a registered building inspector (c) any other registered building practitioner whose registration authorises the carrying out of inspections of swimming pools including the barriers associated with those swimming pools.
Swimming Pool	Any excavation or structure (including a spa or a relocatable structure) that is: <ul style="list-style-type: none"> (a) capable of containing water to a depth of greater than 300mm; and (b) principally used for, or that is designed, manufactured or adapted to be principally used, for swimming, wading, paddling, bathing or wading pool.