

Swimming Pool Safety Inspection and Certificate Regime

commences on
1 December 2010

November 2010

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What does it include for conveyancing?

The new Pool Safety Certificate disclosure regime introduced by the *Building and Other Legislation Amendment (No 2) Act 2010* commences on 1 December 2010. The pre-settlement disclosure obligations will apply immediately for all contracts where the property includes a pool. The regime contains a number of elements, namely:

- the provisions apply to the owner of regulated premises (a building or part of a building in classes 1-4 of the Building Code) on land on which a regulated pool (including a pool on common property) is situated
- it establishes a register of all properties with a pool which is publicly searchable and where copies of current certificates can be downloaded
- an obligation for all pool owners to obtain a Pool Safety Certificate within five years of 1 December 2010, unless their property is sold or leased within that time in which case the time periods are considerably shorter
- an obligation for a lessor of a dwelling house to obtain a Pool Safety Certificate prior to entering into an accommodation agreement for a property with a pool
- an obligation on a vendor of regulated premises to provide a disclosure notice to a prospective purchaser before they enter into a contract for sale if there is a pool and there is no Pool Safety Certificate
- an obligation for a vendor of regulated premises to provide a Pool Safety Certificate or Notice of No Pool Safety Certificate to a purchaser before settlement (compliance with the pre-contract and pre-settlement notices can be the delivery of one form to the purchaser prior to contract)
- an obligation on a purchaser of regulated premises to obtain a Pool Safety Certificate within 90 days of settlement if they do not receive a Certificate from the vendor prior to settlement (except in the case of a unit where the obligation is on the body corporate)
- the regime draws a distinction between a non-shared pool (ie a pool on private land with a house, or a private pool forming part of a lot in a body corporate or private spa bath) and a shared pool (ie a pool on scheme land in a body corporate for use by residents)

Some relevant sections for conveyancing are new sections of the *Building Act 1975* commencing on 1 December 2010 (introduced by the *Building and Other Legislation Amendment (No 2) Act 2010*):

Pre-contract obligations

- s246ATM and new s16 of the *Building Regulation 2006* (introduced by the *Building Amendment Regulation (No 5) 2010*) – the Seller of regulated premises has an obligation prior to entering into a contract for sale for a property with a relevant regulated pool where no Pool Safety Certificate is in effect to give the purchaser the Notice of No Pool Safety Certificate (**form 36**).

Pre-settlement obligations

- s246ATF – the Seller of regulated premises has an obligation before settlement:
 - o if a Pool Safety Certificate is in effect for a relevant regulated pool – to give the Buyer a copy of the Pool Safety Certificate, or
 - o if a Pool Safety Certificate is not in effect for a relevant regulated **non-shared pool** – to give the Notice of No Pool Safety Certificate to:
 - the Buyer, and
 - the Chief Executive
 - o if a Pool Safety Certificate is not in effect for a relevant regulated **shared pool** – to give the Notice of No Pool Safety Certificate to:
 - the Buyer
 - the owner of the shared pool (ie a body corporate), and
 - the Chief Executive.

Effect of non-compliance with notice provisions

The failure by a seller to provide a Pool Safety Certificate or a Notice of No Pool Safety Certificate does not entitle the purchaser to terminate the contract or claim compensation under the Act. A purchaser will be obliged to comply with the obligation to obtain a Pool Safety Certificate within 90 days of settlement irrespective of whether the seller complies with the notice provisions. The seller is however, liable to a penalty of \$16,500 (max).

Reliance on the Register

- s246ATE – a Pool Safety Certificate is taken to be in effect for a property if the Pool Safety Register shows that it is in effect, but an owner may not rely on this presumption if they knew, or ought reasonably to have known, that a pool safety certificate was not in effect for the pool.

Post-settlement obligations

- s246ATJ – if there is no Pool Safety Certificate in effect at settlement, a purchaser of premises with a non-shared pool must obtain a pool safety certificate within 90 days of settlement
- s246ATK – where the owner of a shared pool receives a Notice of No Pool Certificate in relation to a sale of a property (ie the sale of a lot in a body corporate) the owner must obtain a Pool Safety Certificate for a relevant regulated pool within 90 days of settlement. However, transitional arrangements in s300 set altered initial compliance dates:
 - o for a shared pool situated on land or in a building at which only short-term accommodation is provided (ie motel, hotel and backpackers' hostel) the pool owner has until 1 June 2011 to ensure that they have obtained their first Pool Safety Certificate, and
 - o for any other shared pool (ie residential body corporate) the pool owner has until 1 December 2012 to ensure that they have obtained their first Pool Safety Certificate.

The Society has been assured by the Department that the Notice of No Pool Safety Certificate need only be delivered once to a prospective buyer prior to contract to meet the disclosure obligations contained in ss246ATM and 246ATF(b)(i) or (c)(i). The Notice of No Pool Safety Certificate, however, must still be delivered prior to settlement to the Department and the owner of a shared pool (if relevant) to ensure compliance with the remainder of s246ATF.

When does it start to apply?

The provisions in the *Building and Other Legislation Amendment (No 2) Act 2010* and *Building Amendment Regulation (No 5) 2010* commence on 1 December 2010.

The pre-settlement obligations in ss246ATF and 246ATM have no transitional arrangements and therefore:

- any conveyance of regulated premises with a relevant regulated pool **settling** on or after 1 December 2010 will require the delivery of a Pool Safety Certificate or Notice of No Pool Safety Certificate to the relevant parties according to s246ATF, and
- any contract for sale of regulated premises with a relevant regulated pool to be formed on or after 1 December will require the seller to give prior to formation of contract the Notice of No Pool Safety Certificate as required by s246ATM if a pool safety certificate is not already in effect for a relevant regulated pool.

For contracts entered into prior to 1 December 2010 which settle on or after 1 December 2010

Contracts which are formed prior to 1 December 2010, which settle on or after 1 December 2010, are in a unique position due to the absence of transitional provisions. It is relevant that:

- a seller will have an obligation to either provide a Pool Safety Certificate or Notice of No Pool Safety Certificate prior to settlement under s246ATF; and
- sellers may have trouble obtaining a Pool Safety Certificate in the early stages of December and may tend to provide the Notice of No Pool Safety Certificate to purchasers in which case purchasers of properties with non shared pools will be obliged to conduct any necessary work and obtain a Pool Safety Certificate following settlement under s246ATJ (s246ATK for shared pools has a delayed operation).

It is important that both sellers and purchasers with contracts for sale of regulated premises with a relevant regulated pool formed before 1 December 2010 which settle on or after that date are advised of their rights and obligations.

Where can I get the forms?

All relevant forms are available on the Department of Infrastructure and Planning website at www.dip.qld.gov.au/forms-templates/pool-safety-forms.html, including the:

- **Form 36** Notice of no pool safety certificate
- **Form 23** Pool safety certificate