

Pre Engagement Agreement - Pool Safety Barrier Inspection

THE AGREEMENT

1. Definitions

The relevant definitions listed in this Agreement are listed at the end of this Agreement.

Client Acknowledgment

The Inspector reserves the right to cancel the inspection and only the deposit, if any, will be reimbursed to the Client. b) The Inspector will inspect The Pool Safety Barrier Only. The inspection will report on Swimming Pool Safety in accordance with the requirements of Australian Standard AS1926.1-2012 (Part 1: Safety barriers for swimming pools)

Inspection And Report

The report will be prepared on the basis of a visual inspection only and without reference to any construction plans or any engineering test or other tests relating to the structural integrity of your pool. A copy of the appropriate Standard with Appendices may be obtained from Standards Australia at your cost. The Client warrants that they have been given reasonable opportunity to peruse the relevant Australian Standards.

- a) The Inspection Report is also limited by the Restrictions on an Inspection, as well as any rights held by an Inspector to ensure their own safety and/or any other limitations set out in the terms of this Agreement.
- b) It is implicit that the Inspection Report is a subjective visual inspection.
- c) The Client will not rely on the report for valuation purposes or in their final decision to purchase the Property.
- d) The Inspection Report is for the Client's exclusive use and not to be given to a third party without the Inspector's written consent.
- e) The Scope of Inspection set out in this Agreement is only indicative as the Inspector is restricted by their ability to access any Area, which is subject to all safety considerations. The Client further acknowledges that the Inspector cannot breach the same to carry out an inspection.
- f) Some Restrictions on an Inspection are foreseeable while others are only known at the time of inspection.
- g) That the Inspector is the only person who can determine, at the time of the inspection, what they are restricted by during an inspection. h) The Inspector will carry out a visual and non-invasive inspection limited by access and restrictions.
- i) The Inspector is not liable for any Area not inspected due to Restrictions on an Inspection.
- j) That any claim for loss is limited to the cost of the inspection.
- k) That the Client has read all the terms and has not relied on any representations made by the

Inspector or anyone else before entering this Agreement.

l) That just because a defect is not visible at the time of the inspection does not guarantee that there is no defect affecting the Property.

m) That the Client acknowledges acceptance of this Agreement and its terms through performance of this Agreement by way of payment of the agreed Inspector's fee.

n) The Client will not hold the Inspector liable for any losses suffered on relying on the Inspection Report considering the acknowledgments above and the terms of this Agreement.

o) That the Client acknowledges acceptance through performance of this Agreement by way of payment of the agreed Inspector's fee, and confirming that the agreement and terms and conditions have read and understood by the client and / or as such ticking the appropriate check box when ordering online via our website.

p) The Client will not hold the Inspector liable for any losses suffered on relying on the Inspection Report considering the acknowledgments above and all the terms of this Agreement.

q) No liability shall be accepted on account of failure of the report to identify or notify any problems of a structural nature relating to the pool or to any part of the pool physically inaccessible for inspection.

r) The report does not replace a Pool Safety Barrie Inspection and/or Compliance Certificate as per State Legislation requirements. A Compliance Certificate may be requested and will be issued at an additional cost, where no defects have been identified.

s) Where defects are identified, a Re-Inspection must be conducted to ensure defects are rectified prior to a Compliance Certificate being issued. A Re-Inspection fee will be incurred.

t) The report is provided solely for the use and benefit of the customer named on the front of the report.

u) No liability or responsibility whatsoever lies to any Third Party who may rely on the report.

v) The report may not be sold or provided to any other person without our express written permission, unless the customer is authorised to do so by legislation. If we give our permission it may be subject to conditions such as payment of a further fee by the other person and agreement from the other person to comply with this clause.

Inspectors Obligations

The inspector shall upon request by the Property Owner provide Inspection Services in accordance with these Terms & Conditions, as follows:

a. An Accredited Inspector shall conduct an Initial Compliance Inspection of the Property Owner's Safety Barrier during a Site Visit against the Relevant Legal Requirements. Should the Safety Barrier meet the Relevant Legal Requirements, a Certificate of Barrier Compliance will be issued by the Accredited Inspector.

- b. In some circumstances the Safety Barrier will not initially meet the Relevant Legal Requirements, and will require repair works to be conducted under a 60 Day Barrier Improvement Notice which will be provided to the Property Owner following the Initial Compliance Inspection instead of a Certificate of Barrier Compliance. The Property Owner must ensure the items identified in the 60 Days Barrier Improvement Notice are remedied within 60 days from issuance, and the Safety Barrier has a Subsequent Compliance Inspection within this timeframe. Failure to do so may result in a Certificate of Non-Compliance being issued to the Local Council which governs the Site in accordance with the Relevant Legal Requirements. A Certificate of Barrier Compliance will be issued by the Accredited Inspector once the Safety Barrier has had a Subsequent Compliance Inspection, and the repairs adhere to the Relevant Legal Requirements.
- c. Following the re-inspection of a Safety Barrier, a further maximum of 7 days are permitted beyond the initial 60 days to repair and have a further Subsequent Compliance Inspection. Failure to do so may result in a Certificate of Non-Compliance being issued to the Local Council which governs the Site in accordance with the Relevant Legal Requirements. A Certificate of Barrier Compliance will be issued by the Accredited Inspector once the Safety Barrier adheres to the Relevant Legal Requirements.
- d. In rarer circumstances, where the Safety Barrier poses a significant and immediate risk to life and safety, an Accredited Inspector may determine that a Certificate of Non-Compliance must be immediately issued to the Local Council which governs the Site in accordance with the Relevant Legal Requirements without the provision of additional time for the Property Owner to make repairs to the Safety Barrier (Examples of such situations are where the Safety Barrier height is less than 1000 mm in any location, or where a door or gate forming part of the Safety Barrier is unable to be closed, or to remain closed in a locked position).
- e. A Certificate of Compliance and a 60 Day Barrier Improvement Notice (and any other document) shall be deemed to have been given and received:
- f. If addressed or delivered to the email address provided to The Company from the Property Owner at the time of booking a Inspection Services; and
- g. On the earliest date of:
- (i) actual receipt; or
 - (ii) two (2) days after emailing.
- h. A Certificate of Non-Compliance (and any other document) shall be deemed to have been given and received:
- i. If addressed or delivered to the email or postal address published by the relevant Local Council on their website; and
- j. On the earliest date of:
- (i) actual receipt; or
 - (ii) two (2) days after emailing.
- k. The company accepts no responsibility or liability for any Compliance Inspections provided by an Accredited Inspector.

Pool Owners Obligations

- a. Property Owners are responsible for ensuring that their Account Details are kept up to date, and to notify The Company immediately of any incorrect Account details.
- b. Property Owners are responsible for ensuring their swimming pool or spa is registered with their Local Council, and paying any applicable fees or charges to their Local Council.
- c. Property Owners are responsible for providing the company or the Accredited Inspector with a complete copy of their swimming pool or spa registration correspondence from their Local Council together with any applicable building permits, confirming the build date of their swimming pool or spa, and the applicable Barrier Standard as nominated by their Local Council in order to provide the Services.
- d. The Property Owner warrants the accuracy and completeness of all information given to The Company and the Accredited Inspector. The Property Owner shall answer any reasonable inquiries made by the company or the Accredited Inspector in connection with the Inspection Services and the Compliance Inspection, direct others to liaise, co-operate and confer with the company and the Accredited Inspector where necessary, and provide The Company and the Accredited Inspector with all relevant information.
- e. The Property Owner will provide the Accredited Inspector with unfettered access to the Site during the Site Visit, and will not obstruct the Accredited Inspector in carrying out their functions. The Property Owner must ensure that all areas of the Site relating to the Site Visit are safe and readily accessible for the allotted time frame for the Site Visit to occur. In some circumstances, this may also include a visual inspection (which may include photographic evidence) of adjoining properties for climbable objects in the immediate vicinity of boundary fences, where boundary fences are relied upon as a component of the pool or spa safety barrier, and it is the Property Owner's responsibility to notify and obtain consent from their respective neighboring property owners prior to a Site Visit. All pets must be tethered and/or isolated from the Accredited Inspector.
- f. Property Owners warrants that the Accredited Inspector when carrying out the Compliance Inspection acts with the Property Owner's authority.
- g. Property Owners are responsible for complying with their own local, state and national laws concerning ensuring their Safety Barrier is properly maintained and adheres to the Relevant Legal Requirements.
- h. Property Owners are responsible for submitting their Certificate of Barrier Compliance to their Local Council within 30 days of the date of issuance by the Accredited Inspector, and paying any applicable fees or charges to their Local Council. Should the Certificate of Barrier Compliance expire prior to being submitted to the appropriate Local Council, a Subsequent Compliance Inspection will be required in order to obtain a new Certificate of Barrier Compliance.
- i. The Property Owner shall pay The Company the applicable Fee for the Inspection Services in accordance with these Terms & Conditions.
- j. Property Owners shall indemnify both The Company and the Accredited Inspector against any claims in respect of The Company or the Accredited Inspector acting within authority as

the Client's agent in facilitating the Inspection Services or providing the Compliance Inspections respectively.

k. Customers of The Company agree and warrant that no charge-backs will be made relating to payment of Fees for the Inspection Services without our consent. In the event of any of the foregoing occurring, you agree to indemnify The Company for any costs, claims, damages and expenses relating to or arising in connection with this, including any expense incurred by us in recovering such amounts.

l. Property Owners are responsible for paying any fees, fines or charges levied by their Local Council in relation to their Safety Barrier.

m. A Compliance Inspection may be immediately terminated if a perceived risk to an Accredited Inspector becomes present. Belligerent and aggressive behavior will result in a Site Visit being immediately terminated with the full service Fee remaining due and payable without refund.

Inspection Fee

The Client will pay to the Inspector the sum as advised by the Inspector for an Inspection Report of the Property (detailed above in this Agreement) and the final report is subject to this acknowledgments, terms and recitals within this Agreement.

Limitations And Exclusions

The Inspector will conduct a non-invasive visual inspection which will be limited to those accessible Areas and sections of the property to which Safe and Reasonable Access is both available and permitted on the date and time of the inspection. Areas where reasonable entry is denied to the inspector, or where safe and reasonable access is not available, are excluded from and do not form part of the inspection. Those areas may be the subject of an additional inspection upon request subject to another pre-inspection agreement on the same terms herein.

The Inspection **WILL NOT** involve any invasive inspection including cutting, breaking apart, dismantling, removing or moving objects including, but not limited to, roofing, wall and ceiling sheeting, ducting, foliage, moldings, debris, roof insulation, sarking, sisalation, floor or wall coverings, sidings, fixtures, floors, pavers, furnishings, appliances ,or personal possessions.

Any stored or scattered goods, stored items including boxes, parked cars and bikes, boats, trailers, foliage, plants, vines, stored firewood and timbers, trees and vines clinging to external surfaces of the swimming pool including the fence and gates, will hinder the inspection process.

Warranties and quality

The Inspector warrants that they will do everything reasonable to inspect the above Areas thoroughly and responsibly subject to the requirements of the AS Standard and any foreseeable or unforeseeable restrictions.

The Client warrants that they will not hold the Inspector liable for any Area that the Inspector could not reasonably inspect due access and restrictions on an inspection.

The Client warrants that they will not rely on this report after a period of 7 days as this is a visual inspection condition may change between the day of inspection and the day of any defect being apparent such as, but not limited to, different weather conditions, removal of furniture, damage done by occupants, settling of the land, extreme weather damages or anything that could cause the visual effect of a defect to become known.

Indemnity

The Client indemnifies the Inspector:

- a) Against any third party losses or claims for use of the Inspection Report.
- b) Indemnity: You indemnify Us in respect of any and all liability, including all claims, actions, proceedings, judgments, damages, losses, interest, costs and expenses of any nature, which may be incurred by, brought, made or recovered against Us arising directly or indirectly from the unauthorised provision or sale of the Report by You to a Person without Our express written permission.
- c) Against any Safety issue that was not evident by visual assessment at the time of the inspection.
- d) Post issuance of certificate of compliance. Any amendments, additions, deductions, works, repairs or damage to a pool safety barrier carried out by the pool owner, or any third party that would breach the relevant safety standard and deem the barrier non compliant.
- e) Post issuance of certificate of compliance. Any placement of items, trees or other such objects in proximity to a pool safety barrier that breach the relevant safety standard and deem the barrier non compliant.

Dispute resolution

COMPLAINTS PROCEDURE

In the event of any dispute or claim arising out of, or relating to the Inspection or the Report, You must notify Us as soon as possible of the dispute or claim by email, fax or mail. You must allow Us (which includes persons nominated by Us) to visit the property (which visit must occur within twenty eight (28) days of your notification to Us) and give Us full access in order that We may fully investigate the complaint. You will be provided with a written response to your dispute or claim within twenty eight (28) days of the date of the inspection.

If You are not satisfied with our response You must within twenty one (21) days of Your receipt of Our written response refer the matter to a Mediator nominated by Us from the Institute of Arbitrators and Mediators of Australia. The cost of the Mediator will be borne equally by both parties or as agreed as part of the mediated settlement.

In the event You do not comply with the above Complaints Procedure and commence litigation against Us then You agree to fully indemnify Us against any awards, costs, legal fees and expenses incurred by Us in having your litigation set aside or adjourned to permit the foregoing Complaints Procedure to complete.

Third party disclaimer

The Report will be made solely for the use and benefit of the Client. No liability or responsibility whatsoever, in contract or tort, is accepted to any third party who may rely on the report wholly or in part. Any third parties acting or relying on the report, in whole or in part will do so at their own risk.

Default and Termination

The Inspector reserves the exclusive right to terminate this Pre-Inspection Agreement on 1 days' notice due to weather constraints, non-payment of the Inspector's Fee or any other safety concern. Only the Inspector may terminate the Agreement.

If the Inspector's fee is refunded for any reason whatsoever then the Inspection Report provided (if any) will be deemed invalid and annulled.

Severability

Any term within this Agreement that is deemed invalid in any jurisdiction is only invalid to the extent specified by the jurisdiction in that specific jurisdiction. It does not invalidate any other term of this Agreement. Furthermore if a term or terms are found to be invalid and thereby severed from this Agreement the Agreement and its surviving terms are not invalidated.

Bar on claims

The Client is barred from making a claim against the Inspector by virtue of the Client's Acknowledgements. The Client acknowledges that the Inspector may use this clause as a bar to any claim or action taken or commenced by the Client in breach of this clause or another term of this Agreement. The Client indemnifies the Inspector from costs (including legal fees) incurred by the Inspector caused by or associated with the Client's breach of this clause. Acknowledgement

You agree to contact the Inspector once You have read the report. 

By agreeing to this pre inspection agreement you confirm that You will read this Inspection Report in its entirety prior to purchasing the inspected property and agree to call, Text, SMS or email the Inspector if you have any further questions about this report.

DEFINITIONS

You should read and understand the following definitions of words used in this agreement and the Report. This will help You understand what is involved in a

1. Pool Inspection and the contents of the Report with which We will provide You following the inspection.
2. Barrier means the assembly of components, natural or otherwise, that restricts access to the pool.
3. Pool area means the area that contains the pool and is enclosed by a barrier.
4. Report means the report issued to You by Us following Our inspection of the pool.
5. Swimming Pool (referred to as 'Pool') means any structure containing water to a depth greater than 300mm and used primarily for swimming, wading, paddling or the like, including a bathing or wading pool or spa pool.
6. The company/Our/Us/We means The Inspector and or Inspection firm conducting the inspection as ordered by You.
7. You/Your means the party identified on the order as the Client, and where more than one party, all such parties jointly and severally, together with any agent of that party.