

Wang v Building Professionals Board

Mr Wang was disciplined by the Building Professionals Board (BPB) for failing to comply with the requirements for written notices issued under s 22E *Swimming Pools Act 1992*. He appealed the BPB's decision to the New South Wales Civil and Administrative Tribunal (NCAT).

Lessons Identified from this Case

- If relying on software to issue written notices as required under the legislation, certifiers need to ensure the software is adequate and appropriate for the notices. Failure to do so can result in non-compliance e.g. not including all required information on the notice.
- When issuing written notices, ensure that all required information is included. For non-complying swimming pools, s 22E(3) *Swimming Pools Act 2008* lists all required information.

Setting the Scene: Relevant Legislative Provisions

Swimming Pools Act 1992

- Section 22E sets out the procedures and requirements of certifiers for non-complying swimming pools. This includes issuing notices, sending copies of notices to local authorities, and the timeframes within which certifiers must carry out these procedures.

Building Professionals Board Code of Conduct for Accredited Certifiers

in accordance with the *Building Professionals Act 2005* (Repealed)

Current equivalent: Schedule 5 of the *Building and Development Certifiers Regulation 2020* (citations in brackets).

- Requirement 1 (now cl 2) imposes a duty on certifiers to exercise their powers in the interest of the public.
- Requirement 5 (now cl 3) imposes a duty of care on certifiers in relation to any advice given or action taken in their role.
- Requirement 6 and 7 (now cl 8) requires a certifier to demonstrate that they have obtained all relevant facts reasonable available when making a decision. Certifiers must also ensure that their decisions are reasonable, fair, and appropriate to the circumstances. This is assessed against all of the relevant facts obtained and must be supported by adequate documentation.

***Building Professionals Regulation 2007* (Repealed)**

- Cl 20G(3) required certifiers to provide certain information about certification work to the BPB. This never applied to pool certifiers.

Case Details

Mr Wang, a swimming pool certifier, inspected pools at four properties and found that none complied with the barrier requirements of s 7 *Swimming Pools Act 1992*.

Whilst he issued written notices of non-compliance, they were insufficient and inadequate. They failed to inform the owners of the proper modifications required including requiring a barrier to be installed. Instead, Mr Wang simply noted that modifications to house doors and windows were required to prevent easy access to the pool.

As a result, the BPB fined Mr Wang \$20,000 and ordered him to complete an educational course.

To issue written notices, Mr Wang claimed to have relied on a third-party software product, Building Certification Systems, which he argued was endorsed by the BPB. He stated the software had preloaded text and did not allow him to include all required information, but he met with pool owners to explain further the modifications needed to make the pool barrier compliant.

However, meeting with the owner does not excuse an inadequate notice – the local council may rely on the notice to inform follow-up enforcement action. Additionally, BPB’s website stated the software was endorsed only for the purpose of reporting data as required under the Building Professionals Regulation for certifiers in the ‘building surveyor’ categories of accreditation. It was not endorsed for issuing written notices under the *Swimming Pools Act*.

The Tribunal found that Mr Wang had failed to comply with his statutory duties as required under s 22E *Swimming Pools Act* and Requirements 1, 5, 6 and 7 of the then *BPB Code of Conduct for Accredited Certifiers*. It also noted that Mr Wang failed to demonstrate understanding of the legislative scheme within which he operated.

Conclusion

The Tribunal noted that Mr Wang’s conduct did not appear to have been wilfully inappropriate but careless and lacking understanding of legislative obligations. However, given the significant risk posed to public safety due to Mr Wang’s failure to comply, as well as the additional costs that current or future pool owners could have been exposed to, the NCAT ordered Mr Wang to pay a reduced fine of \$15,000 and complete the E1 Accredited Swimming Pool Certification Course within 60 days of its decision.

More Information

[Wang v Building Professionals Board](#)

[Information on the Swimming Pool Register and relevant legislation](#)

[Swimming Pools Act 1992](#)

[Building and Development Certifiers Regulation 2020](#)