

Good afternoon

I would like to present the following comments.

**Point 1**

No Comment

**Point 2**

No comment

**Point 3**

No comment

**Point 4**

It would make more sense to run an education campaign as oppose to modifying a sign that is typically not read by occupiers..

**Point 5**

It would make more sense to have any pool that is under construction or repair to be required to have a suitably compliant temporary barrier. Children will be unlikely to read signs. Although any construction site needs to be indicated that there is a risk, this seems superfluous.

**Point 6**

No comment

**Point 7**

Fee increase is acceptable, however, many customers are upset with the prescriptive nature of the standard and have indicated that an accredited person should be allowed to provide a performance (alternative) solution without the need to pay additional fees to Council or to seek Council's consent. This is particularly true within new multi tenanted buildings where pools are not able to meet strict compliance with the Standards.

**Point 8**

Recouping additional fees for additional inspections would be beneficial, however, the fees allowed for by the Regs do not even come close to covering true cost of the inspection.

**Point 9**

Non compliance certificates are a useless mechanism and only serves to keep property transfers going. It makes no sense for Council to issue a Certificate of Non-compliance as it should be seeking to rectify the issue (NOI/Direction).

Accepting that a pool is unprotected while allowing a property transfer to proceed is a tremendous liability. The issue of the NOI/Direction should have similar function (for Council's) as the Certificate of non-compliance has for private certifiers.

**Point 10**

This information should be provided on line via the Dept. of Fair Trading, and not individual Councils. Again, this is a burden that is placed upon each Council where the Department of Fair Trading could

simply have as a resource for all users. Although it is agreed that it may be a copy right issue, it is an added liability to each Council.

The Department of Fairtrading having access to the Standards by the community is a better result for all concerned.

Officers who deal with inspections are not typically available for customer discussions (at service centres) and as such, any enquiries at Council would be dealt with by Customer service staff who may not be fluent with the needs of the customer. This could result in the dissemination of incorrect information and standards.

**Point 11**

No comment

Regards

29 June 2018

Swimming Pools Regulation 2018  
Better Regulation Division, Department of Finance, Services and Innovation  
McKell Building  
2-24 Rawson Place  
SYDNEY NSW 2000  
Email: [SPregulation2018@finance.nsw.gov.au](mailto:SPregulation2018@finance.nsw.gov.au)

Dear Sir/Madam

**Re: Remake of the Swimming Pools Regulation 2018**

Thank you for the opportunity to be part of the review of the *Swimming Pools Regulation 2018* and to provide feedback on the proposed Regulation and accompanying *Regulatory Impact Statement*.

On behalf of the Association of Accredited Certifiers (AAC) we make the following comments, responding to the discussion items listed in the *Regulatory Impact Statement*.

The AAC believes that the proposed changes generally clarify elements of the legislation, but we do think the changed warning notices can only go so far in pool safety, particularly when Standards do not address temporary barriers. Consideration must be given to strengthening barrier requirements during construction.

## Discussion points

### Preliminary matters

*1. Are there any comments on the preliminary matters or do any other updates need to be made to the preliminary matters in the proposed Regulation?*

The AAC agrees that the proposed changes clarify the prescribed definitions.

Refer to Question 2 for recommendations on definitions.

### Spa Pools

*2. Should pool owners have flexibility to design innovative solutions to fasten lockable child-resistant structures for spa pools, without compromising pool safety?*

The legislation in general should not look to restrict innovative design, but rather facilitate it. Innovative designs in some instances allows for safer options.

From the perspective of the Accredited Certifier (Certifier), the following matters need to be considered further to ensure consistency and confidence:

- a. **‘Substantial Construction’** – What constitutes ‘substantial construction’ in particular with CI 9(b) where an adjacent structure can be utilised as a barrier. There may be little or no information available regarding the structural integrity of the existing structure. A one-off connection to an adjacent structure may deteriorate more rapidly over the course of 3 years than a tested connection to the spa pool which can be assessed against a manufacturers specification.

If a Certifier is not willing for the owner to provide Engineers Certification for the adjacent structure and method of connection (at the expense of the pool owner), he/she needs to be able to justify that they made a conscious decision that the structure was of ‘substantial construction’ at the time of that inspection. This is workable for Category A Accredited Certifiers due to their training in building and structural matters, however, E1 Accredited Certifiers accredited under Pathway 2 (Experience in Local Government) may not be able to make that expert judgement.

- b. **“Lockable”** – Consideration should be given to defining lockable, i.e. Lock and Key construction.

## Warning Notices

3. *Do you consider that the proposed changes to the content of warning notices (key statements) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?*
4. *Do you consider that the proposed changes to the content of warning notices (CPR information) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?*

In relation to discussion questions 3 & 4 – No. The new wording is inconsequential. The notice should not be utilised for educational purposes. To best describe why not, it is best put it into a real-life scenario.

The notice located in a prominent location within the immediate vicinity of the pool where CPR is likely to take place and visible from a distance of three (3) metres (Clause 10) should only be used in the event of an emergency. If an adult is in the pool enclosure reading the notice “*Young children should be actively and responsibly supervised when using this swimming pool*”, they’re ultimately neglecting their duties by virtue of not supervising the children.

Separately, consideration needs to be given to the provision of different languages on the notices to cater for the major ethnic groups within our society. Overall the updated CPR information is required and beneficial in any emergency situation.

5. *Do you agree that a warning notice should be required to be displayed from construction until an occupation certificate or certificate of compliance has been issued?*

Inconsequential. With due respect to the Coroner’s recommendations, the pool use in this circumstance was a breach in the development consent under the Environmental Planning & Assessment Act (EP&A). The EP&A outlines signage requirements for construction, including risk management. Further signage in relation to the risks involved with pools under construction is unnecessary.



More importantly, AS1926.2012 does not provide any construction standards for temporary pool fencing. During construction, a Certifier can only satisfy themselves under s25(3) of the Act that if a drowning incident was to occur that the property owner may rely on the following clause as a defence:

*(3) In any proceedings for an offence under this Part, it is a sufficient defence if the owner of the premises concerned establishes that, when the alleged offence occurred:*

*(a) the swimming pool was unassembled, or*

*(b) the swimming pool was in the course of construction, installation, alteration or renovation and:*

*(i) the swimming pool was empty of water or was filled with water to a depth of less than 300 millimetres, or*

*(ii) appropriate measures had, in the circumstances, been taken for restricting access to the swimming pool.*

Consideration needs to be given to strengthening barrier requirements during construction first and foremost, prior to adding further signage requirements.

## Fees

*7. Do you agree that the cap on fees for exemption applications should be increased to match the maximum fees charged for pool inspections?*

Yes. It's imperative that s22 Application for Exemptions are seen to be the equivalent of a Performance Solution under the National Construction Code (NCC). Whilst the time in which it takes to complete a s22 application is the equivalent of an inspection, further consideration should be given to the liability involved in granting an exemption especially in the circumstance where a catastrophic event occurs that may be linked to the exemption.

*8. Are there any reasons why a local authority should not be allowed to charge for third and subsequent pool inspections?*

No. AAC agrees that a Local Authority should be paid appropriately for their services, otherwise it places them at a distinct disadvantage with regards to market competitiveness.

## Swimming Pools Register

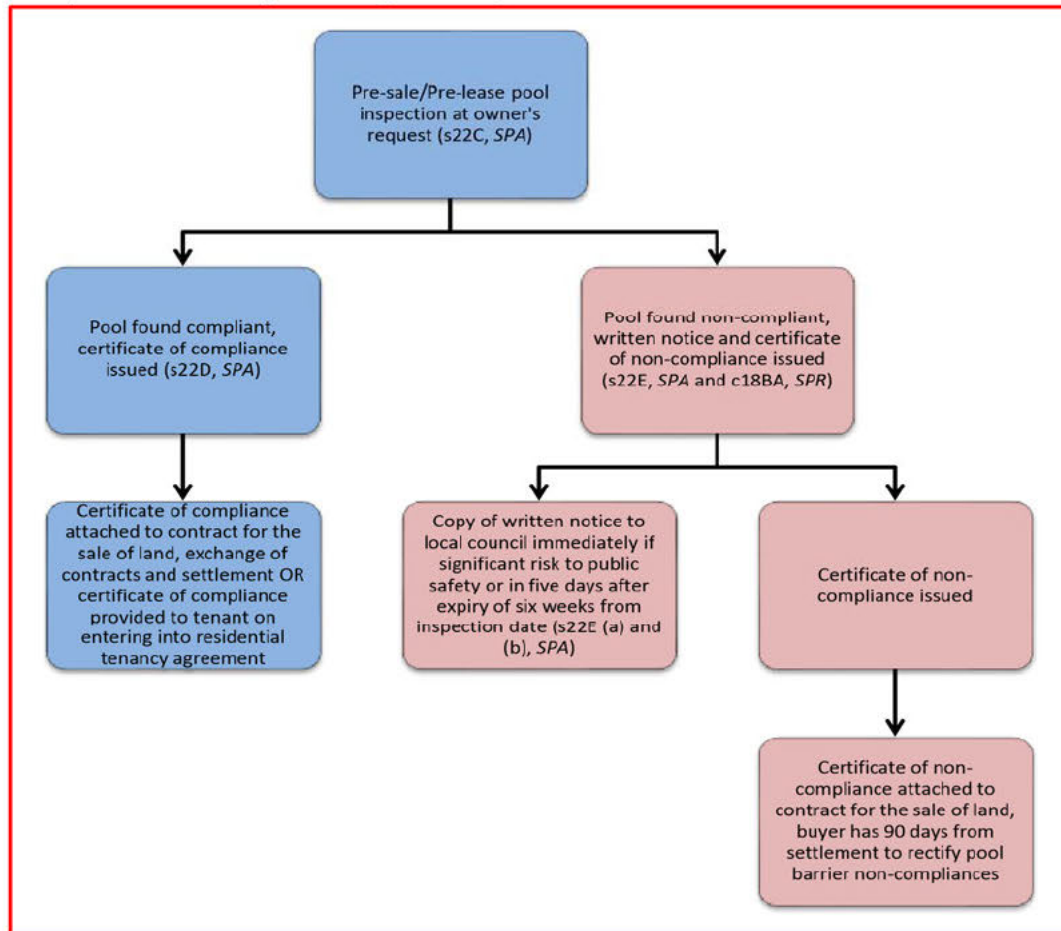
*9. Do you believe that registering certificates of non-compliance in the Register will lead to improved pool safety compliance and rectification of issues?*

Partially Agree.

The issue with the non-compliance process is when a significant risk pool is identified at the initial inspection, there is a lack of cohesion between public and private authorities ensuring the pool being made compliant, regardless of the owner's intent to sell or lease the property in the near future.

See diagram on next page outlining the inspection/certificate of the compliance registration process.

## Inspection and compliance registration process



The regulations should allow for a significant risk pool to be treated in the same way in which a dangerous pool is addressed in s29 of the Act by the Public Authority when a complaint is made. The Certifier working in the private sector, in this instance, is treated in the same way as a 'complainant' see below:

### 29A Investigation of complaint

- (1) This section applies to a complaint made to a local authority in writing that alleges a contravention of this Act.
- (2) The local authority must, as far as is practicable, commence investigation of the complaint within 72 hours (or such other period as may be prescribed by the regulations) after it is received.
- (3) The local authority **may investigate** the complaint as it thinks fit.
- (4) An authorised officer may, in accordance with this Part, enter and examine premises for the purposes of investigating the complaint.
- (5) Before premises are entered under subsection (4), the local authority is to take such steps as are reasonable:
  - (a) to notify the owner or occupier of the premises about the complaint, and
  - (b) to arrange to carry out the examination at a time that is convenient to the owner or occupier.
- (6) The local authority may decline to investigate a complaint that it considers to be vexatious, misconceived, frivolous or lacking in substance.
- (7) The local authority is to notify the complainant in writing if it declines to investigate the complaint.

Currently AAC members are not being notified of any action by some local authorities in response to Significant Risk notices being forwarded. While the Certifier is aware there is a potentially dangerous pool, they do not know if any action has been taken to rectify the situation.

**Recommendation:** It is recommended pools that are identified as 'Significant Risk' should be treated in the same fashion as a complaint referenced in Section 29 (7). This way the Certifier, upon advising the local authority of a potential significant risk, is notified that action is being taken.

## Public Access Requirements

*10. Will providing access to an expanded range of Australian Standards improve compliance with safety obligations? If so, does the proposed Regulation identify all possibly relevant Australian Standards?*

The public should have greater access to Australian Standards as this will enable property owners to access diagrams and clauses directly from the applicable Standard.

*11. Are local authorities best placed to continue to provide access to documents, including an expanded range of Australian Standards? If so, how long (if any) would local authorities require in order to provide access to the expanded range of Standards?*

Each Local Authority is in control and responsible for their respective inspection programs and therefore should have the documents and standards readily available.

## Additional Comments

### Knock Down Rebuild Projects that have an existing pool

The residential property market involves a great number of projects whereby existing building stock is replaced by more modern homes. Many of these properties have existing swimming pools, with pool barriers with varying degrees of compliance.

Section 23 (below) would apply to pools in this circumstance where in many sites the demolition of the existing dwelling would affect the existing pool barrier by being substantially altered or re-built.

#### **23 Existing complying swimming pools may continue to comply with earlier standards**

*(1) This clause applies to a swimming pool the construction or installation of which was completed before 1 September 2008.*

*(2) It is sufficient compliance with Part 2 of the Act for a swimming pool to comply with that Part on the basis of the requirements of Part 2 of the Swimming Pools Regulation 1998 (as an alternative to compliance on the basis of the requirements of Part 2 of this Regulation).*

**(3) However, this clause does not apply:**

**(a) in relation to an outdoor swimming pool—if the child-resistant barrier by which access to the swimming pool is restricted is substantially altered or rebuilt, and**

**(b) in relation to an indoor swimming pool—if the premises in which the swimming pool is situated are substantially altered or rebuilt in a way that affects the means of access to the swimming pool.**

It is unclear to industry if the removal of the existing dwelling triggers notification to Council when Section 4 (below) of the Act could well mean that the Act itself no longer applies, as the site no longer has a residential dwelling in existence.

#### **4 Swimming pools to which Act applies**

*This Act applies to swimming pools (both outdoor and indoor) that are situated, or proposed to be constructed or installed, on premises **on which a residential building, a moveable dwelling or tourist and visitor accommodation is located**, but does not apply to swimming pools that are situated, or proposed to be constructed or installed, on any premises occupied by the Crown or by a public authority*

**Recommendation:** To provide clarity in this situation it is recommended that clause 23 be amended to include an automatic upgrade of the pool barrier to current standards, where an existing dwelling on the site is demolished.

Notification to the local authority could occur at the site inspection stage (CDC) or be automatically triggered in the event of a Development Application. At present, local government applies a range of upgrade conditions to development consents, but these are not consistent, nor in many cases practical or achievable, often rendering the dwelling project incapable of an Occupation Certificate due to non-compliances with pool fence consent conditions.

Any amendment to Section 23 could also nominate a suitable time-period in which owners could complete the upgrade works, from the time of the issue of an Occupation Certificate for the dwelling. Certifiers could notify local government of the existence of a pool at the time of final inspection, allowing local authorities to update the database and co-ordinate re-inspections at the expiry of a period after occupation has occurred.

Thank you for the opportunity to provide comment on these proposed reforms. Please contact me if you have any questions about any of the content of this submission.

Yours sincerely



## **Association of Accredited Swimming Pool Certifiers**

TO:

Swimming Pools Regulation 2018

Better Regulation Division, Department of Finance, Services and Innovation

McKell Building

2-24 Rawson Place

SYDNEY NSW 2000

Email: [SPregulation2018@finance.nsw.gov.au](mailto:SPregulation2018@finance.nsw.gov.au)

Date: 27/6/18

Dear Sir / Madam:

Our members have reviewed the remake of the Swimming Pool Regulation 2018 and wish to provide some feedback.

Addressing the main changes made by the Regulation we believe that they are all sensible additions apart from item "d" (as set out on Page 2 of the public consultation draft); specifically, "increasing the fees for exemption applications". We also make comment and suggestions around, access to Australian Standards (item g) and possible future thoughts re: Signage.

Item d: Increasing fees for exemption applications and inspections.

### **Inspection Fees:**

We understand that councils are unable to breakeven on their cost vs workload, in relation to swimming pool inspections. The regulation of council inspection fees has crippled the market in NSW, with many private individuals who entered the industry as E1 Certifiers leaving because they have been unable to charge an economic rate for their services.

It would be our suggestion that the council be able to charge an economic fee for their service, which would in turn create a viable marketplace for private certifiers.

### **Supplementary Comment relating to viability and cognisance**

It has become startlingly clear that other category certifiers (understandably) do not have the in depth knowledge that E1 Certifiers have regarding swimming pool certification. Other category certifiers have many compliance issues to address whilst E1 category certifiers address solely child safety around swimming pools. It is our suggestion that child safety around pools should be left purely to the specialists that have completed and passed the E1 training modules.

E1's (of course) should be confirmed to be competent to implement all 3 relevant standards, which in theory is relatively simple, however ability to qualify could be significantly tightened up to ensure this is the case.

### **Re: Signage**

Our members suggested that the sign itself is serving 2 purposes and should possibly be split. The safety warning element of the sign was felt to be more appropriately located outside the pool area (prior to entry) near or on any access doors. The resuscitation section of the sign should be inside the pool positioned as per the current legislation.

### **Re: Exemptions**

Our members felt that exemptions that utilize the existing legislation should be considered safe in multiple locations. Eg: Boundary barriers with an 1800mm drop and a 900mm No Climb Zone on the inside, are considered safe because a child will be unlikely to want to proceed down that distance – HOWEVER if that same wall is an internal wall it is not considered compliant (unless it is a retaining wall) or an exemption is applied for ... which is sometimes granted and sometimes is not by the local council.

The inability to use a pool wall as a barrier (which is only the case in NSW) has not been sufficiently explained to Certifiers or Owners. Currently Certifiers are left trying to justify the need to install new fences adjacent to existing walls. In our opinion this section of the legislation should be reviewed.

Yours Sincerely





29 June 2018

Regulatory Policy | Better Regulation Division  
Department of Finance, Services and Innovation  
Level 5, McKell Building  
2-24 Rawson Place  
SYDNEY NSW 2000  
Via email: [SPregulation2018@finance.nsw.gov.au](mailto:SPregulation2018@finance.nsw.gov.au)

Dear Sir/Madam

**Re: Proposed Swimming Pools Regulation 2018**

The Australian Institute of Building Surveyors (AIBS) is recognised nationally and internationally as the peak professional body representing building surveying practitioners in Australia.

We refer to the NSW Government release of a proposed *Swimming Pools Regulation 2018* and Regulatory Impact Statement for public consultation and attach herewith feedback on same.

AIBS appreciates the opportunity to comment and would like to thank the drafting team for a number of excellent changes, in particular the proposed Clause 31 (1).

If further information or clarification is required, please contact our office.

Yours faithfully  
AUSTRALIAN INSTITUTE OF BUILDING SURVEYORS

**Damian O'Shannassy, FAIBS**  
Chapter President – NSW/ACT

*Encl. AIBS NSW Swimming Pool Regulation Comments Summary*

**Australian Institute of Building Surveyors**  
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Proposed regulation number	Comment / issue description	Proposed action
3 and 4	While clause 3 excludes the use of clause 2.10 (above ground pool) of AS1926.1-2007 the same exclusion has not been included in clause 4 which allows for compliance with the whole standard.	AIBS seeks clarification regarding the intent of these clauses – are above ground pools still to be excluded from these provisions? Above ground pools have always been excluded in NSW. Unless a contrary intention exists, AIBS suggests revision confirming exclusion of Clause 2.10 of the Standard in relation to all references. Alternatively, consultation specifically addressing the increased scope would be required.
3, 4, 6, 7 and 30	References to AS 1926.1-2007: This standard permitted the barrier height to be compromised by not restricting objects, raised levels, decks and the like adjacent to the barrier effectively reducing the barrier height from 1200mm to 900mm. This seriously compromised the safety of young children in NSW. This was rectified on 1 May 2013 under AS1926.1-2012	AIBS believes that the proposed regulation should require existing pools approved pursuant to 2007 version of the standard to be upgraded to the 2012 version, perhaps within a transition period or triggered by sale or signing of a lease.
5 and 8	Reference to BCA	Reference should be the full title – NCC BCA
9	Includes text “a structure that is of substantial construction and adjacent to the spa pool”. There is no definition of the phrase “substantial construction” so that this is confusing. There is also no definition of a “spa”.	AIBS seeks revision of the clause perhaps together with provision of suitable definitions to aid clarity of requirements
10	Some unfortunate owners have been requested to change their sign when it wasn't in upper case as per the 2008 Regulation	AIBS recommends that the proposed clause 10 of the Regulation include a notation about the wording being acceptable in upper or lower case
19	\$150 fee is inadequate and provides an artificial manipulation of the market so that the service provided is likely to become undervalued. It is also noted that more than one inspection might be needed in relation to an application for an exemption where it is not clear that a fee should be available for each inspection performed	AIBS proposes no regulation of fees for services that are open to competition. For more information on this please see the AIBS Policy: Building Regulatory Reform in Australia. The regulation should make it clear that fee can be charged each time an inspection is required

Proposed regulation number	Comment / issue description	Proposed action
20	Where a notice has already been issued by an accredited certifier, there is no provision for councils to take action; owners are using the two-certifier system as an opportunity to buy more time before they start fixing the issues. A second Notice extends the timeframe. A Notice does not provide an opportunity for representations, so why not just issue the Direction when a Notice has already been issued	AIBS recommends that this regulation be amended to include provision after an inspection requiring councils to issue a Direction to the owner in the event that a Notice has already been issued by an accredited certifier
21 and 28	In the absence of compliance with any order, enforcement action should occur. There appears not to be an appropriate mechanism for this via these regulations	AIBS recommends review of the regulations to ensure appropriate enforcement actions can be undertaken within appropriate timeframes for compliance
22	The proposed Clause 22 makes reference to 24 March 2016	Should that be 29 April 2016? (i.e. the date in which the sale and lease provisions commenced)
24, 25 and 26	Where there are large numbers of pools not currently listed on the register, the implementation and effectiveness of these regulations is limited.	AIBS recommends a full audit of all properties be undertaken to ensure that the register is complete and accurate to facilitate proper implementation of these proposed regulations
26	The proposed clause 26 does not allow for administrative staff of Accredited Certifiers to have authorised access to the Register. A number of Certifiers rely on their wife/husband/admin employee to enter details of the inspections on their behalf	AIBS recommends review of the provisions to ensure appropriate provision for administrative matters
27	Appears to provide for persons without training or qualifications to undertake inspections	AIBS recommends revision of this regulation to ensure all persons involved in pool inspections are appropriately qualified and experienced
31	It is noted that technical requirements that are not consistent with NCC BCA 2016 requirements are effectively introduced via this regulation	AIBS supports national uniformity of technical requirements which are developed and implemented via the process set out in the Intergovernmental Agreement by the Building Ministers Forum

Proposed regulation number	Comment / issue description	Proposed action
General comments	When an Occupation Certificate is issued, for a swimming pool, a Certificate of Compliance should also be issued on the SP Register. Otherwise, there is no easy way for an Estate Agent, member of the public or Certifier to know if the barrier has been recently inspected. It would be an excellent practise to introduce with long term benefits. It keeps details about all pools up to date in one place	AIBS recommends addition of a requirement to the NSW Swimming Pool Register to add Occupation Certificates and dates
	In reference to the term residential building as defined in the Act; The Act definition provides an opportunity for the Regulation to expand but the current regulation remains silent. Whilst we have had a helpful LEC judgment in Medway v Pittwater Council [2014] NSWLEC 1006 (paragraph 106) we cannot rely on the judgment	Suggest that the Regulation include a clearer definition that is helpful to Certifiers

enquiries refer

**Compliance Section**

in reply please quote

**Swimming Pool Regulation Review**



27 June 2018

Swimming Pool Regulation 2018  
Better Regulation Division, Department of Finance  
Services and Innovation  
McKell Building  
2-24 Rawson Place  
SYDNEY NSW 2000

Dear Sir/Madam

**Re: Submission – Swimming Pool Regulation 2018 – Ballina Shire Council**

I refer to your recent Regulatory Impact Statement for the review of the *Swimming Pools Regulation 2008 (NSW)* and the proposed making of the *Swimming Pools Regulation 2018 (NSW)*.

Please find attached Ballina Shire Council's submission as requested.

Ballina Shire Council supports Option 2 of the Regulatory Impact Statement (hereinafter referred to as "the RIS") and the proposed making of the *Swimming Pools Regulation 2018 (NSW)* (hereinafter referred to as "the proposed Regulation"). With respect to the preliminary matters identified on page 16 of the RIS, Ballina Shire Council's comments are listed below:

*Date of Commencement (Clause 2)*

This date is a suitable and achievable date, which Ballina Shire Council can accommodate.

*Definitions (Clause 3)*

The change in the Cardiopulmonary Resuscitation Guideline to the most recent available Standard is supported.

*Reference to the Australian Standard 1926.1-2007 and the Building Code of Australia (Clause 4)*

It is the opinion of Ballina Shire Council that the current wording within Clause 4 the *Swimming Pools Regulation 2008 (NSW)* is sufficiently clear to avoid confusion.

However, given the contents and reasons for this minor change as outlined in the RIS, the change in wording for the reference to compliance with AS 1926.1-2007 is supported to remove any ambiguity that has been identified.

**1. Are there any comments on the preliminary matters or to any other updated need to be made to the preliminary matters in the proposed Regulation?**

If AS 1926.1-2007 is specifically mentioned within the proposed Regulation, should consideration be given to the listing of the other relevant Australian Standards for swimming pools within the definitions.

***Additional Comment on Preliminary Matters***

Whilst it is not listed as a matter for comment in relation to the remaking of the Regulation, Ballina Shire Council would like to also make a submission in relation to Clause 31(3) of the proposed Regulation and a need for a definition within Clause 3 of the proposed Regulation. Currently the proposed Sub-Clause 31 states:

**31 Existing complying swimming pools may continue to comply with earlier standards**

- (1) *This clause applies to a swimming pool the construction or installation of which was completed before 1 September 2008 and that complied with Part 2 of the Swimming Pools Regulation 1998 as in force immediately before the repeal of the regulation.*
- (2) *It is sufficient compliance with Part 2 of the Act for a swimming pool to comply with that Part on the basis of the requirements of Part 2 of the Swimming Pools Regulation 1998 (as an alternative to compliance on the basis of the requirements of Part 2 of this Regulation).*
- (3) *However, this clause does not apply in relation to:*
  - (a) *an outdoor swimming pool—if **the child-resistant barrier by which access to the swimming pool is restricted is substantially altered or rebuilt**, and (Emphasis Added)*
  - (b) *an indoor swimming pool—if the premises in or on which **the swimming pool is situated are substantially altered or rebuilt** in a way that affects the means of access to the swimming pool. (Emphasis Added)*

There does not appear to be any definition of what “substantially altered or rebuilt” effectively means.

**Recommendation:**

- (i) Consideration is given to including a definition or guidance on what the term “substantially altered or rebuilt” means.

***Lockable child-resistant structures (Clause 9)***

The change in the wording of Clause 9 to permit lockable child resistant as opposed to the current lockable child safe is supported as this is consistent with the wording of the Act and the relevant Australian Standards.

**2. Should pool owners have flexibility to design innovative solutions to fasten lockable child resistant structures for spa pools, without compromising pool safety?**

This proposed flexibility is consistent with the provisions of the *Building Code of Australia* with performance-based solutions as opposed to deemed to satisfy provisions. The intent of both the relevant Australian Standard and the *Building Code of Australia* is to provide for a child resistant barrier.

Caution is raised with this proposal as a barrier requiring “substantial construction” could trigger the requirement for a separate approval of this structure under the provisions of the *Environmental Planning and Assessment Act 1979* or *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the “Codes SEPP”).

**Recommendation:**

- (i) This “substantial construction” would need to be clarified with both the *Environmental Planning and Assessment Act 1979* (NSW) and the Codes SEPP, and potential amendments to the Codes SEPP being required to address any inconsistency.

Further, the structure of “substantial construction and adjacent to the spa pool” will be within the Non-Climbable Zones on the outside of the pool barrier, which could be viewed by a strict interpretation as a non-compliance with the applicable Australian Standard.

**Recommendation:**

- (ii) Clarification with the impact of the “substantial construction and adjacent to the spa pool” is provided with respect to the impact on the on-Climbable Zones on the outside of the swimming pool barrier.

*Key Statement Changes to warning notices (Clause 10(1))*

The inclusion of the words:

“actively and responsibly” to Clause 10 (1)(a)(i); and

“self-closing and self-latching” to Clause 10 (1)(a)(ii)

are supported by Ballina Shire Council.

*Removal of Capitalisation (Clause 10(1))*

The removal of capitalisation from the warning notice is not objected to as long as the font size still meets the legibility requirements within Clause 11.

**3. Do you consider that the proposed changes to the content of warning notices (key statements) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?**

Yes.



*Updated Cardiopulmonary Resuscitation (CPR) Information (Clause 10(1))*

The change in the Cardiopulmonary Resuscitation Information to the most recent available Standard is supported.

**4. Do you consider that the proposed changes to the content of warning notices (CPR Information) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?**

Yes.

*Requirement for warning notices during construction (Clause 10(3))*

Ballina Shire Council strongly supports this change. The cited Coronial Inquest arose from an unfortunate death within the Ballina Shire Council local government area and there has been a profound impact on not only those members involved, but on the broader community as well.

Ballina Shire council has sought to implement the Coroner's findings since they have been made available.

**5. Do you agree that a warning notice should be required to be displayed from construction until an occupation certificate or certificate of compliance has been issued?**

Yes.

**6. Given the changes to warning notices, how long would be required to allow manufacturers and pool occupiers to produce and install the new notices? Consider**

**(a) To upgrade existing signs, already required by under the Act;**

**(b) To create new signs for pools under construction**

With respect to manufacturers, it is expected that upgraded and new signage should be able to be made available within a period not more than ninety (90) days from the making of the Regulation. It is expected that 1 January 2019 would be an appropriate date for signage to be available, on the basis that the proposed Regulation is made as expected.

With respect to the erection of signage for pool owners, it is difficult to arrive at a mandatory date for the upgraded signage as required in 6(a) above to be implemented.

It is noted that not all local Councils have mandatory swimming pool barrier fencing inspection that inspect all swimming pools, so a large number of pools will not necessarily be on an inspection program.

On this basis, it would be Ballina Shire Council's submission that upgraded signage should be provided at the time of an inspection of that swimming pool barrier following the making of the proposed Regulation. Councils generally, in consultation and conjunction with the relevant NSW Government Department, could opt to run community engagement programs and media advertising outlining the new requirements for upgraded signage.

With respect to new signage for swimming pools under construction, such signage should be erected as a requirement at the issuing of a Notice of Commencement of Construction Certificate Works by the Accredited Certifier (either the local Council or Private Certifier) under the provisions of the *Environmental Planning and Assessment Act 1979* (NSW). This is legislated as a requirement a minimum of 48 hours prior to construction works commencing.

*Fees for Exemption Applications (Clause 13)*

Ballina Shire Council supports this proposed change.

**7. Do you agree that the cap on fees for exemption applications should be increased to match the maximum fees charged for pool inspections?**

Yes.

**Recommendation:**

- (i) Consideration is given to amending or clarifying Clause 19 to include the local authority being able to charge for additional inspections with respect to an application for and Exemption should there be a need for follow up action or inspections by Council to determine any exemption application, as provided for in Clause 19.

*Fees for pool inspections (Clause 19)*

Ballina Shire Council supports the legislated ability to charge additional fees for third and subsequent inspections, which is in line with those charges that may be applied by the private sector of swimming pool certifiers.

Local Councils generally have the ability to issue penalty infringement notices for ongoing non-compliances arising from swimming pool barrier inspections.

Further, local Councils have the ability to levy charges under the provisions of Section 608(2), *Local Government Act 1993* (NSW) for the carrying out of an inspection and issuing a certificate and under of Section 608(3), *Local Government Act 1993* (NSW) to carry out an inspection whilst carrying out a regulatory function.

Ballina Shire Council has had these charges listed within its adopted Fees and Charges for a number of years.

**8. Are there any reasons why a local authority should not be allowed to charge for third and subsequent pool inspections?**

No.

*Entering Non-Compliance Certificates onto the Register (Clause 18)*

Ballina Shire Council supports this proposed change.



Ballina Shire Council has experienced instances where a private certifier has issued a breach report for identified non-compliances for a private swimming pool but these details were not entered into the Register. Council subsequently received an application from that same pool owner for a Certificate of Compliance.

This could have resulted in multiple inspectors inspecting the same pool barrier, however Council staff were aware of the private certifier's involvement, due to the officer processing the application having recently spoken with the private certifier and made enquiries prior to conducting any inspection.

It is expected that this proposed change will address this issue.

**9. *Do you believe that registering certificates of non-compliance in the Register will lead to improved pool safety compliance and rectification of issues?***

Yes.

*Local authorities will be responsible for supplying the relevant Australian Standards, Building Code of Australia and Cardiopulmonary Guidelines (Clause 29)*

Ballina Shire Council does not support this proposed change.

As outlined in the summary for this proposed change in the RIS, the provision of these copyright documents must be purchased from SAI Global.

This proposed change places an additional cost onto local Councils for the regulation and enforcement of this program. This additional cost to Council must be borne by the local authority as the Clause states that such information is to be provided at *no cost* at *each public office* of the local authority.

Given the recent amalgamations within New South Wales, some Councils now have multiple offices and out stations, which will only further increase the cost to the local community.

**Recommendation:**

- (i) Consideration is given to making these documents available within the Information Tab on the NSW Swimming Pools Register website. This website provides information on a State wide basis with respect to swimming pools and is the most appropriate location for such documentation to be made available to the general public.

**10. *Will providing access to an expanded range of Australia Standards improve compliance with safety obligations. If so, does the proposed Regulation identify all possibly (sic) relevant Australian Standards?***

No.

Within the past three years, Council has not been requested to provide access to any Australian Standard, the *Building Code of Australia* or the Cardiopulmonary Guidelines with respect to swimming pool matters.

**11. *Are local authorities best placed to continue to provide access to documents, including an expanded range of Australian Standards? If so, how long (if any) would local authorities require in order to provide access to the expanded range of Standards?***

No.

Currently there is a NSW Swimming Pools Register website, with log on details for all owners of private swimming pools within NSW.

The most appropriate avenue to make these required documents available to the general public is for these documents to be accessible from this website.

**Recommendation:**

- (i) Consideration is given to making these documents available within the Information Tab on the NSW Swimming Pools Register website. This website provides information on a State wide basis with respect to swimming pools and is the most appropriate location for such documentation to be made available to the general public.

If you have any enquiries in regard to this matter please contact Council's Compliance Section on 1300 864 444 during office hours, Monday to Friday.

Yours faithfully

[Redacted signature block]

28 June 2018

Swimming Pools Regulation 2018  
Better Regulation Division, Department of Finance, Services and Innovation  
McKell Building  
2-24 Rawson Place  
SYDNEY NSW 2000  
[SPregulation2018@finance.nsw.gov.au](mailto:SPregulation2018@finance.nsw.gov.au)

Dear Sir/Madam,

**Submission Draft Swimming Pools Regulation 2008 Blue Mountains City Council**

I refer NSW Fair Trading's remake of the Swimming Pools Regulation 2008 and opportunity to review and provide comments regarding the proposed Regulation and accompanying Regulatory Impact Statement (RIS).

Blue Mountains City Council has for a number of years conducted a pro-active pool inspection program. This Swimming Pool Inspection Program maintains the pro-active service element and incorporates the now mandatory inspection requirements. It specifies an affordable level of service that is responsive to the feedback from the community about the high priority of pool safety.

The following comments are requested to be considered and implemented to ensure the safety of young children within the Blue Mountains Local Government Area.

**The views expressed in this submission are of staff experienced in inspection of swimming pool fencing and do not necessarily reflect the opinion of elected council.**

Discussion of Proposed Regulation	Comments
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<p>It is noted 3 options have been provided in the reviewing the Swimming Pools Regulation 2008 RIS:</p> <p><b>Option 1: Maintain the status quo</b> Do not make the proposed Regulation in the form set out in this RIS, and instead remake the Regulation to be identical to the 2008 Regulation.</p> <p><b>Option 2: Make the proposed Regulation</b> Make the proposed Regulation, with several changes compared to the 2008 Regulation in order to provide updated legislative support and administrative detail for the Act.</p> <p><b>Option 3: Take no action</b> Allow the 2008 Regulation to lapse under the sunseting provisions of the Subordinate Legislation Act 1989 and do not make any replacement Regulation.</p>	<p>BMCC recommends Option 2 be considered. The Swimming Pools Regulation provides an important function in administering the Swimming Pools Act. Additional changes and additions to the Regulation will ensure the Swimming Pools Act can continue to be applied consistently across NSW.</p>
<p><b>1. Are there any comments on the preliminary matters or do any other updates need to be made to the preliminary matters in the proposed Regulation?</b></p>	<p>a) BMCC agrees to the proposed changes</p> <p>b) BMCC requests additional definitions including the following:</p> <p>a. Provide further definitions to clarify the difference between a swimming pool, spa pool and swim spa. BMCC has noted a wide variety of interpretation relating to spas and particularly swim spas. This matter was raised by BMCC to OLG in 2017. OLG responded on 26/10/17 stating:</p> <p><i>The Office of Local Government supports the view that local authorities and other accredited certifiers have the necessary training, skills and experience to consider the specific circumstances of each swim</i></p>

*spa to determine whether it is a pool (and should be fenced) or a spa (and may use a lockable lid or similar structure).*

BMCC considers further guidance should be provided in the SP Regulation to ensure a consistent approach in this interpretation. For example, the definition of 'Spa' could include the words seating, heating, jets, not capable of swimming in, etc. A new definition of 'swim spa' could require all swim spas to be defined as a swimming pool (and require a separate barrier).

b. Provide additional clarification for "residential building". The SP Act 1992 defines 'residential building' as:

residential building means a building (such as a dwelling-house, residential flat building or boarding-house) that is solely or principally used for residential purposes, and includes any structure (such as a garage or shed) that is ancillary to any such building, but does not include:

(a) a building that merely forms part of a complex of buildings (such as a school or recreational centre) that is principally used for non-residential purposes, or

(b) a moveable dwelling, or

(b1) tourist and visitor accommodation, or

(c) a shed that is ancillary to a swimming pool and the primary purpose of which is to store equipment that is used in connection with the swimming pool (but not a shed of a kind prescribed by the regulations), or

**(d) a building or structure of a kind prescribed by the regulations.**

BMCC recommends the SP Regulation be amended to include details of buildings or structures that may be permitted within a swimming pool area. Land and Environment Court decision *Medway v Pittwater Council* [2014] NSWLEC 1006 provided some helpful guidance as to what structures may be permitted within a swimming pool area.

	<p>Consideration should be given to addressing structures such as shade structure; gazebo; cabana; pergola; pavilion; chairs; sheds; a diving board; a flag pole; outdoor shower; enclosed sauna, enclosed toilet etc.</p>
<p><b>2. Should pool owners have flexibility to design innovative solutions to fasten lockable child-resistant structures for spa pools, without compromising pool safety?</b></p>	<p>BMCC supports this proposed change, however, additional clarification should be considered as to the term 'lockable'. Eg. Is 'key' lockable required? Is latched considered lockable?</p> <p>The review of SP Regulation should also clarify the difference between a swimming pool, spa pool and swim spa as noted in Point 1 above.</p>
<p><b>3. Do you consider that the proposed changes to the content of warning notices (key statements) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?</b></p>	<p>BMCC supports this proposed change, however, it is recommended changes to warning signs be reviewed by organisations such as Royal Life Saving Society and NSW Ambulance to ensure the most appropriate wording is used.</p> <p>It is also recommended the appropriate signs be made easily available to the public and Department of Fair Trading ensure non-compliant signs are not being sold.</p>
<p><b>4. Do you consider that the proposed changes to the content of warning notices (CPR information) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?</b></p>	<p>BMCC supports this proposed change, however, it is recommended changes to warning signs be reviewed by organisations such as Royal Life Saving Society and NSW Ambulance to ensure the most appropriate wording is used.</p> <p>It is also recommended the appropriate signs be made easily available to the public and Department of Fair Trading ensure non-compliant signs are not being sold.</p>

<p><b>5. Do you agree that a warning notice should be required to be displayed from construction until an occupation certificate or certificate of compliance has been issued?</b></p>	<p>BMCC supports this proposed change, however this should be clarified to require a sign to be installed "on commencement of excavation or installation".</p>
<p><b>6. Given the changes to warning notices, how long would be required to allow manufacturers and pool occupiers to produce and install the new notices? Consider:</b>  <b>(a) to upgrade existing signs, already required under the Act</b>  <b>(b) to create new signs for pools under construction</b></p>	<p>Installation of new notices is considered to be inexpensive, minor work required by a pool owner. Signs should be provided immediately for existing pools under construction. Updating existing compliant pool signs should be given a period of 2-3 years.</p>
<p><b>7. Do you agree that the cap on fees for exemption applications should be increased to match the maximum fees charged for pool inspections?</b></p>	<p>BMCC supports this proposed change. It is also recommended consideration be given to increasing Section 22 exemption fees beyond \$150.00 based on the amount of time, inspections and correspondence required to assess these generally difficult applications.</p>
<p><b>8. Are there any reasons why a local authority should not be allowed to charge for third and subsequent pool inspections?</b></p>	<p>BMCC supports charging for all third and subsequent pool inspections. It is also recommended consideration be given to increasing the initial and subsequent inspection fees beyond \$150 and \$100. The current fees do not reflect a consistent fee structure with private E1 certifiers and does not create cost recovery mechanisms for Councils.</p>

<p><b>9. Do you believe that registering certificates of non-compliance in the Register will lead to improved pool safety compliance and rectification of issues?</b></p>	<p>BMCC supports this requirement. It is also recommended all Council's and E1 Certifiers are provided with this advice to ensure a consistent approach throughout the industry. Additional clarification in including Section 22 details should also be included.</p>
<p><b>10. Will providing access to an expanded range of Australian Standards improve compliance with safety obligations? If so, does the proposed Regulation identify all possibly relevant Australian Standards?</b></p>	<p>BMCC supports all applicable Australian Standards to be made available to the public.</p>
<p><b>11. Are local authorities best placed to continue to provide access to documents, including an expanded range of Australian Standards? If so, how long (if any) would local authorities require in order to provide access to the expanded range of Standards?</b></p>	<p>BMCC agrees local authorities are best placed to provide access to these documents. Local authorities should immediately provide access to the expanded range of Standards.</p>
<p><b>Additional comments</b></p>	<ol style="list-style-type: none"> <li>1. It recommended Clause 4 of the SP Regulation 2008 "References to compliance with AS 1926.1—2007 or Building Code of Australia", be clarified to ensure the correct requirements of the NCC are applied, noting the NSW variations and references to AS1926.1 – 2012.</li> <li>2. It is recommended consideration be given to removing exemptions for existing pools (Clause 23).</li> </ol>



	<p>Arguments for removing the exemptions include:</p> <ul style="list-style-type: none"> <li>• There is inconsistency in standards for barrier requirements.</li> <li>• The child safe exemption for older pools poses greater emphasis on supervision.</li> </ul> <p>Compliance could be achieved as follows: Newly constructed pools – immediate compliance.</p> <p>Pools that were covered by exemptions should comply at the following times:</p> <ul style="list-style-type: none"> <li>• Upon sale or change in ownership of the property or</li> <li>• Before significant building works are undertaken on the property or</li> <li>• A fair and reasonable time after change in the legislation (eg. 3 years).</li> </ul> <p>As per Michael Lamberts review dated November 2015 (Page 128) BMCC supports "All legislative exemptions should be removed and owners required to adopt the current standard within a suitable transition period of three to five years, or at the time of sale or lease, whichever occurs first; owners should otherwise obtain an exemption under section 22 of the Swimming Pools Act 1992"</p>
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Thankyou for the opportunity to provide these comments.

Please contact me if you have any questions.

Yours faithfully,


Hello.

I would like to see specific definition of and requirements legislated to protect "Swim Spas". What are they, are they ever a spa or ever a swimming pool or just a third type of "swimming pool". Whilst I'm not aware of the extra ways to comply for spas this will not help if there is not definition to what a swim spa is and what method is permitted to be used, if this is not cleared up it leads to confusion for home owners and the industry. It is worth noting some swim spas are so long it takes two people to put the heat retention lids back on and thus cannot readily be relied upon if manual installation is required. Please address this matter, thank you.

Regards [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

**Central Coast Council**  
P.O. Box 21 Gosford, NSW 2250



# ***Swimming Pools Regulation 2018***

## **Submission**

**28 June 2018**

## Introduction

CPD Training Pty Ltd welcomes the repeal of the current Swimming Pools Regulation 2008 and the introduction of the Swimming Pools Regulation 2018 NSW. The changes to the Regulation is considered a step in a positive direction. It is our opinion that the changes will improve swimming pool safety for children aged 0-5 and provide some benefit to the E 1 Certifier and Council by:

- a) Enabling Council to charge for follow up inspections
- b) Increased awareness during the construction stage of a swimming pool
- c) Increased access to the relevant codes and standards
- d) Increased recording of certificates of non-compliance
- e) Improving clarity

While such changes are welcomed, it is considered that there are still many significant elements as highlighted in the Lambert Report that if introduced or amended in the Regulation would further improve child safety, and the functions of both the E1 Certifier and Council Swimming Pool Compliance Officer.

This submission will provide comment on the changes in the proposed Regulation

## Changes in the Proposed Regulation

Clause in Proposed Regulation	Proposed change to clause	Comment
3(1) - Definitions	Definition of 'Cardiopulmonary Resuscitation Guideline' changed from Guideline 7 to Guideline 8.	This change is welcomed
4 – References to compliance with AS 1926.1 – 2007 or Building Code of Australia	Structure is taken to comply with AS 1926.1 – 2007 or the Building Code of Australia where applicable so long as it complies with the minimum requirement of the standard or the code.	This change is welcomed

Clause in Proposed Regulation	Proposed change to clause	Comment
8(1) – General requirements for indoor swimming pools	Structures must be designed, constructed, installed and maintained in accordance with the requirements as set out in the <i>Building Code of Australia</i> .	This change is welcomed.
9(b) – Standards required to be exempt from requirement to surround spa pool	Enable lockable spa lids to be fastened to the spa pool or as an alternative, to a structure adjacent to the spa pool.	While this change is welcomed, it is recommended that there be more clarity about what a spa is, so as eliminate the current confusion caused by large “swim spas”. While it is appreciated that there is a definition on the Act, perhaps further clarity/restrictions could be provided in the regulations
10(1)(a) – Contents of warning notices	Text appearing on warning notices is no longer capitalised.	This change is welcomed. Education of industry required, in particular to those producing and supplying the signs
10(1)(a)(i)-(ii) – Contents of warning notices	Notice must additionally state ‘actively and responsibly supervised’ and that pool gates must be ‘self-closing and self-latching’	This change is welcomed
10(1)(b) – Contents of warning notices	Removed requirement about the form in which resuscitation information is presented and deleted ‘infants, children and adults’ when referring to resuscitation techniques	This change is welcomed.
10(2) – Contents of warning notices	Warning notices erected within the new dates specified continue to comply with the regulations unless the pool is substantially altered or rebuilt.	This change is welcomed
10(3) – Contents of warning notices	New requirement to erect and maintain a warning notice during the construction of a swimming pool, to warn against using the pool.	This change is welcomed. A category Certifiers will need to be trained in this respect. Consideration may also be given to requiring a certificate of compliance ( or the like) for temporary fence at this stage

Clause in Proposed Regulation	Proposed change to clause	Comment
11 – Legibility of warning notices	Applies the relevant legibility requirements to the new warning notice introduced in subclause 10(3).	This change is welcomed
13(1) – Fee for application for exemption	Maximum fee for an application for exemption from barrier requirements increased to \$150 (previously \$70).	While an increase in this fee is welcomed, the \$150.00 amount is not considered sufficient to cover the costs associated with the assessment and administration of a Section 22E exemption..
16(1) – Community engagement	Inserts 'For the purposes of section 22B (5) of the Act,' in clause 16.	This change is welcomed
18(2) – Time for entering information on the Register	Local authorities and accredited certifiers must enter details of certificates of non-compliance onto the Swimming pools Register within 3 days of issuing	This change is welcomed. This could be extended to capture swimming pools recently constructed where a final inspection has been carried out and an Occupation Certificate has not been issued.
19(1)(b) – Fee for inspection	Modifies the fee schedule for pool inspections to enable local authorities to charge up to \$100 for third and subsequent pool inspections.	This change is welcomed however the amounts are not considered sufficient to cover the costs associated with the assessment and administration
21(3) – Certificates of non-compliance if pool does not comply	Certificates of non-compliance must be in a form approved by the Secretary of the Department. Legislative notes also added.	This change is welcomed
22(1) – Special provision relating to acquired premises	Swimming pools situated on premises acquired after 24 March 2016 are subject to this clause.	This change is welcomed

Clause in Proposed Regulation	Proposed change to clause	Comment
22(2)(b) – Special provision relating to acquired premises	Child-resistant barriers or means of access must comply with the relevant standards.	This clause is ambiguous and requires further clarity. Are we allowing the new owner to bring a swimming pool barrier up to the requirements of an old version of the Standard if work is completed before 90 days or completion (where applicable)? Or do we now not apply the saving clause (that is current Clause 22A and 23) after 90 days?
23(a)-(b) – Council reporting requirements for inspections	Councils must include in their annual inspections tourist and visitor accommodation as well as premises on which there are more than two dwellings.	This change is welcomed.
N/A	20 – ‘Certificates of identification’ removed.	This change is welcomed
29 - Public access to Australian Standards, Building Code of Australia and Cardiopulmonary Resuscitation Guidelines	Expands list of applicable Australian Standards to which local authorities are required to give access, and removes reference to Government.	This change is welcomed
31(1) – existing complying swimming pools may continue to comply with earlier standards	Swimming pools constructed or installed before 1 September 2008 that complied with Part 2 of the Swimming Pools Regulation 1998 may continue to comply	The ability to apply old version of the standard causes confusion throughout industry. It is recommended that the ability to apply older version of the Standard be removed.
N/A	Certificates of compliance section removed.	This change is welcomed
32(2) - Savings	Certificates of non-compliance issued under the 2008 Regulation will continue to be in force and will cease to be in force as they would under the 2008 Regulation.	This change is welcomed
Schedule 1 – Penalty notice offences	Removed ‘Certificate of Identification’	This change is welcomed
Schedule 1 – Penalty Notice Offences	Prescribes the amount payable under a penalty notice (\$110) issued for non-compliance with	This change is welcomed

Please feel free to contact me on [REDACTED] if you have any questions, or if you would like to discuss any comment made

Yours Sincerely

[REDACTED]  
[REDACTED]



[REDACTED]  
[www.cpdtraining.com.au](http://www.cpdtraining.com.au)  
1848 Tower Street Panania 2213



Hi Fair Trading,

I was hoping the new Swimming Pool regulations might have some sort of reference towards the electrical safety requirements, particularly the earthing requirements of equipment & fencing within the designated pool zones, as per AS/NZS 3000. Or does this belong in some other document?

As an electrical contractor, I'm stunned at the lack of awareness that pool inspectors (that I've spoken to) have surrounding earthing requirements. It's not their fault, as it appears none of their standards they check against even refer to the electrical requirements.

This issue possibly isn't part of your review, however I think it's worthy of a conversation amongst the regulators.

I'd be happy to provide further info if anything is required.

- Craig.

Craig Henshall Electrical

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

Good Morning,

I see this as another unnecessary over the top money grab that will penalise the majority of builders and owners doing the right thing. I'm seriously trying to understand why Fair trading continues to adapt these new age school kid left wing rubbish approaches.

More consultation with associations like Master Builders and HIA is the key to get back on track and to maintain compliance and improve safety. I honestly think that adopting these "facebook" style name and shaming registers is not the answer to improve this aspect of the industry.

Strongly against any new changes to online shaming registers. I suggest you enforce the laws already in place and simplify and adopt a contribute approach instead. I suggest more engagement with contractors onsite to improve the situation, without the money grab.

**Kind Regards**

**Francisco Camps**  
Site Supervisor

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The normal household are all ready hit with fees fees fees. The regulation in place know is adequate without letting Council have an excuse to balance there budgets on residence. The best option is to have a regulation requirement sent out by Government and offer a discount on rates if a third party deems the pool is in accordance with regulation reward not penalise.



Swimming Pool Regulation 2008  
Better Regulation Division  
Department of Finance, Services and Innovation  
McKell Building  
2-24 Rawson Place  
SYDNEY NSW 2000

[SPregulation2018@finance.nsw.gov.au](mailto:SPregulation2018@finance.nsw.gov.au)

26 June 2018

Dear Sir/Madam

**Re: Gunnedah Shire Council Response to Proposed Remake of  
Swimming Pools Regulation 2008**

I refer to NSW Fair Trading's remake of the Swimming Pools Regulation 2008 and opportunity to review and provide comments regarding the proposed Regulation and accompanying Regulatory Impact Statement (RIS).

Gunnedah Shire Council (GSC) has for a number of years conducted a pool inspection program as required under the Swimming Pools Act 1992.

As some background, there are over 280 pools within the LGA. The level of pool barrier compliance on first inspection is generally moderate. Key issues arising in ensuring swimming pool barrier compliance includes the difficulties of having multiple Standards and requirements for different types of swimming pools built in different years.

It is noted the key changes proposed to the Swimming Pools Regulation 2008 include:

- enabling local authorities to charge fees for third and subsequent pool inspections, and increasing the maximum fees that local authorities may charge for exemption applications;
- imposing a new obligation on occupiers to display a warning notice while a swimming pool is being constructed, and making it an offence to fail to comply with that obligation;
- changes to warning notices that are already required to be displayed under the Act;
- improving public access to applicable Australian Standards, not just AS 1926.1 – 2007;
- requiring certificates of non-compliance to be entered into the Swimming Pools Register;
- introducing greater flexibility for the way in which spa pools can be secured;
- clarifying compliance with the Building Code of Australia Performance Requirements; and
- minor changes to improve clarity and intent of the Regulation.

The following comments are requested to be considered and implemented to ensure the safety of young children within the Gunnedah Shire Council Local Government Area. In addition, please find attached a detailed response to each of the proposed changes to the Swimming Pools Regulation.

**Options to Achieve Objectives of Proposed Regulation**

It is noted 3 options have been provided in the Swimming Pools Regulation 2008 RIS:

*Option 1: Maintain the status quo*

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Gunnedah Shire Council  
63 Elgin Street, PO Box 63 GUNNEDAH NSW 2380  
Tel: (02) 6740 2100 Fax: (02) 6740 2119  
Email: [council@infogunnedah.com.au](mailto:council@infogunnedah.com.au)  
Web: [www.gunnedah.nsw.gov.au](http://www.gunnedah.nsw.gov.au)

Do not make the proposed Regulation in the form set out in this RIS, and instead remake the Regulation to be identical to the 2008 Regulation.

*Option 2: Make the proposed Regulation*

Make the proposed Regulation, with several changes compared to the 2008 Regulation in order to provide updated legislative support and administrative detail for the Act.

*Option 3: Take no action*

Allow the 2008 Regulation to lapse under the sunset provisions of the Subordinate Legislation Act 1989 and do not make any replacement Regulation.

GSC recommends Option 2 be considered. The Swimming Pools Regulation provides an important function in administering the Swimming Pools Act. Additional changes and additions to the Regulation will ensure the Swimming Pools Act can continue to be applied consistently across NSW.

**Discussion of the proposed regulation**

**1. Are there any comments on the preliminary matters or do any other updates need to be made to the preliminary matters in the proposed Regulation?**

Comment:

- a) GSC agrees to the proposed changes
- b) GSC requests additional definitions to be included into the Regulation as follows:
  - a. Provide further definitions to clarify the difference between a swimming pool, spa pool and swim spa. Further guidance should be provided in the SP Regulation to ensure a consistent approach in this interpretation. For example, the definition of 'Spa' could include the words seating, heating, jets, not capable of swimming in, etc. A new definition of 'swim spa' could require all swim spas to be defined as a swimming pool (and require a separate barrier).
  - b. Provide additional clarification for the definition of "residential building". The SP Act 1992 defines 'residential building as:
    - c) *residential building means a building (such as a dwelling-house, residential flat building or boarding-house) that is solely or principally used for residential purposes, and includes any structure (such as a garage or shed) that is ancillary to any such building, but does not include:*
    - d) *a building or structure of a kind prescribed by the regulations.*

GSC recommends the SP Regulation be amended to include details of buildings or structures that may be permitted within a swimming pool area. **Consideration should be given to addressing structures such as** shade structure; gazebo; cabana; pergola; pavilion; chairs; sheds; a diving board; a flag pole; outdoor shower; enclosed sauna, enclosed toilet etc.

**2. Should pool owners have flexibility to design innovative solutions to fasten lockable child-resistant structures for spa pools, without compromising pool safety?**

GSC supports this proposed change, however, additional clarification should be considered as to the term 'lockable'. Eg. Is 'key' lockable required? Is latched considered lockable?

The review of SP Regulation should also clarify the difference between a swimming pool, spa pool and swim spa as noted in Point 1 above.

**3. Do you consider that the proposed changes to the content of warning notices (key statements) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?**

GSC supports this proposed change. It is also recommended the appropriate signs be made easily available to the public and Department of Fair Trading ensure non-compliant signs are not being sold.

**4. Do you consider that the proposed changes to the content of warning notices (CPR information) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?**

GSC supports this proposed change. It is also recommended the appropriate signs be made easily available to the public and Department of Fair Trading ensure non-compliant signs are not being sold.

**5. Do you agree that a warning notice should be required to be displayed from construction until an occupation certificate or certificate of compliance has been issued?**

GSCC supports this proposed change, however this should be clarified to require a sign to be installed "on commencement of excavation or installation".

**6. Given the changes to warning notices, how long would be required to allow manufacturers and pool occupiers to produce and install the new notices? Consider:**

**(a) to upgrade existing signs, already required under the Act**

**(b) to create new signs for pools under construction**

Installation of new notices is minor work required by a pool owner. It is recommended signs be installed immediately for existing pools under construction. Updating existing compliant pool signs should be given a period of 2-3 years.

**7. Do you agree that the cap on fees for exemption applications should be increased to match the maximum fees charged for pool inspections?**

GSC supports this proposed change. It is also recommended consideration be given to increasing Section 22 exemption fees beyond \$150.00 based on the amount of time, inspections and correspondence required to assess these generally difficult applications.

**8. Are there any reasons why a local authority should not be allowed to charge for third and subsequent pool inspections?**

GSC supports charging for all third and subsequent pool inspections. It is also recommended consideration be given to increasing the initial and subsequent inspection fees beyond \$150 and \$100. The current fees do not reflect a consistent fee charged by private industry.

**9. Do you believe that registering certificates of non-compliance in the Register will lead to improved pool safety compliance and rectification of issues?**

GSC supports this requirement. It is also recommended all Council's and E1 Certifiers are provided with this advice to ensure a consistent approach throughout the industry.

**10. Will providing access to an expanded range of Australian Standards improve compliance with safety obligations? If so, does the proposed Regulation identify all possibly relevant Australian Standards?**

GSC supports all applicable Australian Standards to be made available to the public. The following Australian Standards should be included:

- AS 1926 – 1986 published on 4 August 1986;
- AS 1926.1 – 2007 published on 12 July 2007 (already required by the 2008 Regulation);
- AS 1926.2—2007 published on 12 July 2007, including any subsequent editions; and
- AS 1926.1—2012 published on 6 November 2012, including any subsequent editions.

**11. Are local authorities best placed to continue to provide access to documents, including an expanded range of Australian Standards? If so, how long (if any) would local authorities require in order to provide access to the expanded range of Standards?**

GSC agrees local authorities are best placed to provide access to these documents. Local authorities should immediately provide access to the expanded range of Standards.

Thank you for the opportunity to provide these comments. Please contact me if you have any questions or require further clarification.

Yours faithfully



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Macquarie Park NSW 2113  
PO Box 884  
North Ryde BC NSW 1670  
t (02) 9978 3333  
f (02) 9978 3375  
hia.com.au

25 June 2018

Department of Finance, Services and Innovation  
Better Regulation Division

Mckell Building  
2-24 Rawson Place  
Sydney NSW 2000

Email: [SPregulation2018@finance.nsw.gov.au](mailto:SPregulation2018@finance.nsw.gov.au)

### **Proposed Swimming Pools Regulation 2018**

Thank you for the opportunity to submit comments on the proposed Swimming Pools Regulation 2018, and its Regulatory Impact Statement (RIS).

HIA is supportive of the making of the proposed Regulation, in relation to clarifying the intended and correct application of National Construction Code (NCC) as it applies to swimming pool barriers.

The 2008 Regulation left industry with much uncertainty as to how compliance with the NCC was to be achieved. Many local Authorities interpreted the 2008 regulation to exclude performance solutions as a legitimate pathway for achieving compliance with the NCC. The inconsistency of interpretation has led to unwarranted delays and unnecessary additional expenses.

Broadly, speaking HIA would not be supportive of provisions of regulations that would restrict the use of legitimate pathways for compliance with the NCC Performance Provisions.

HIA welcomes that the proposed Regulation given that it will ensure that Performance Solutions and not just Deemed-to-Satisfy Solutions are recognised as a legitimate pathway for achieving compliance with the NCC and in turn the Swimming Pool Regulations.

In terms of the introduction of the requirement for a warning notice to be displayed from construction until an occupation certificate or certificate of compliance has been issued, HIA understands the background to this issue and not oppose the introduction of a warning sign requirements.

However, HIA does have some concerns about the practical application of the proposed Regulation and the ability for industry to transition to the changes given the short timeframe for when the changes are intended to take effect.

Of particular concern are the warning notice provisions. New signage will need to be designed and made available for pool builders and swimming pool owners to purchase. HIA is not aware of signage that would meet the new requirements being currently available in the market. Additionally,



industries awareness of the changes and application issues for projects already underway. Therefore, HIA recommends that new Regulations be subject to transitional arrangements whereby the current provisions remain in force until at least 6 months after the making of the Regulation.

HIA is also concerned about several terminologies used within the proposed Regulation. More information is needed to interpret the terms; '*occupier*' and '*substantial construction*'. Both appear to be open to interpretation and will undoubtedly lead to inconsistent judgments across Local Authorities and Certifiers, leading to non-compliances.

Improving compliance is outlined as one of the goals of the proposed Regulation. To achieve this HIA recommends that the entire suite of the AS 1926 series be made available, along with relevant guidance notes and information from the department to improve all user's understanding of the standards, and how to apply them properly.

More detailed responses to the questions posed in the RIS are attached below.

If you require further information or wish to discuss these matters please contact [REDACTED]  
[REDACTED]

Yours sincerely  
HOUSING INDUSTRY ASSOCIATION LIMITED

[REDACTED]

[REDACTED]  
[REDACTED]

### Discussion of the proposed regulation

1. *Are there any comments on the preliminary matters or do any other updates need to be made to the preliminary matters in the proposed regulation?*

HIA supports the change in wording in clause 3 to clarify that under the Swimming Pools Act 1992 compliance with the BCA can be met using a DtS solution and/or a Performance solution pathway.

Clause 2 provides a commencement date of 1 September 2018 for the proposed regulation. Considering the significant changes to warning notices, HIA requests that the signage requirements of the 2008 regulation be continued until 6 months after the making of the Regulation.

1 September 2018 is only 8 weeks away from the date of this letter, it will be less than this once the regulation is published by gazette. Less than 6 months is insufficient time for industry to adjust to these changes, and education material will be needed to support the regulation.

2. *Should pool owners have flexibility to design innovative solutions to fasten lockable child-resistant structures for spa pools, without compromising pool safety?*

HIA supports regulation which permits innovation. However it is important that the regulation not be vague to the point that it fosters inconsistency across local authorities.

The term '*substantial construction*' is of concern as it does not reflect any current industry terminology for what the purpose of the lockable lid is meant to achieve. HIA recommends that the department consult further with industry to draft a more appropriate term and/or a supporting provision that will enable compliance to be assessed.

3. *Do you consider that the proposed changes to the content of warning notices (key statements) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?*

The proposed changes to the content of warning signs appears to be appropriate. However, it must be noted that unless an extensive education campaign is undertaken promoting active supervision, then the changes will have little impact on the safety of children in swimming pools.

4. *Do you consider that the changes to the content of warning notices (CPR information) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?*

As per comments to question 3.

5. *Do you agree that a warning notice should be required to be displayed from construction until an occupation certificate or certificate of compliance has been issued?*

HIA does not oppose the introduction of a warning sign during construction. It must be noted though that the current drafting of part 3 of clause 10 is confusing.

For example the regulation leaves the following questions unanswered:

- While a sign must be installed for construction of a swimming pool, is a sign required when renovating a swimming pool and/or its associated barrier?
- For new dwellings; must a sign be installed if there is no occupier of the premises? The proposed regulation makes the 'occupier' of the dwelling responsible for the warning notice. Who is considered to be the occupier? Does this include the builder even though no person may be living in the dwelling?
- If a certificate of non-compliance is issued for an existing pool must a sign be installed until a subsequent certificate of compliance is issued?

HIA must also reiterate the concern raised in regard to question 3 and 4, that unless there is an extensive education campaign, promoting active supervision, then the warning sign will have little impact on the safety of children in swimming pools.

6. *Given changes to warning notices, how long would be required to allow manufactures and pool occupiers to produce and install the new notices?*

It will take significant time for industry to adjust to the proposed changes to signage requirements. Businesses need time to design and produce compliant signage. Time will also be required to educate suppliers, pool builders and pool owners as to what the changes are.

The department will also need to consider what impact the proposed changes will have on pools which are mid-way through construction when the new legislation takes effect. For example will warning notices need to be installed?

HIA recommends that this part of the regulation not commence until 6 months after the regulation is made.

7. *Do you agree that the cap on fees for exemption applications should be increased to match the maximum fees charged for pool inspection?*

Most local authorities currently require a section 22 exemption application to permit the use of a performance solution. Since the proposed regulation clears up this misapprehension, HIA does not oppose the increase of the fee for the exemption application.

8. *Are there any reasons why a local authority should not be allowed to charge for third and subsequent pool inspections?*

HIA does not oppose this change.

9. *Do you believe that registering certificates of non-compliance in the register will lead to improved pool safety compliance and rectification of issues?*

While an accurate database of information will assist local authorities to fulfil their obligations unless the authority follows up on the non-compliances entered into the register, then rectification will not occur.

10. *Will providing access to an expanded range of Australian Standards improve compliance with safety obligations? If so, does the proposed regulation identify all possibly relevant Australian Standards?*

It is important to note that Australian Standards are technical documents which are not drafted for the purpose of educating consumers. If the Department wishes to educate consumers, then easy to understand fact sheets interpreting compliance with the standards must be made freely available.

For professional using the Standards it should be noted that full compliance with AS 1926 cannot be achieved without access to other Australian Standards referenced within AS 1926. For example, to build a compliant glass pool barrier a user would also need to consult AS 1288 Glass in buildings.

HIA recommends that the entire suite of the AS 1926 series be made available, along with relevant guidance notes and information from the department to assist with improving users understanding of the standards, and how to apply them properly. Industry bodies could be used to help produce this information, which should be made freely available from the Department.

After Twenty years of frustration trying to have a progression neighbours make their pool surrounds safe, last year our mutual fence finally fell over and the latest neighbours were finally forced to come to the party and safely secure their pool fence /property boundary fence, at considerable expense to us.

This is an appalling example of residents who built their pools in the 1970's and continue to hide behind the old act and refusing to make their property safe, because any change would force them to comply with the new standards.

I am concerned that the rework of the Act will support that same act that allowed our neighbours to ignore public and neighbourhood safety for over two decades!

The full history of our struggle to have the neighbours' pool secured can be sought from the Queanbeyan Council.

Regards

Ian Barndt

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

To Whom it May Concern,

My name is John Carlton and I am an E1 Certifier, No. BPB2423. I would like to suggest a few amendments to the proposed new Regulation 2018 as follows:

Part 3 - Warning Notices, Clause 10 (3)

I believe this should read - "An occupier of any premises in or on which a pool is being constructed OR AN EXISTING POOL IS INCLUDED IN BUILDING RENOVATIONS, must ensure that a sign is erected and maintained:

My reason for this suggestion is that I am also a builder and I recently constructed a concrete slab around an existing pool and although I had the works fenced off, and had told my clients not to use the pool, they still used the pool on weekends.

Part 5 - Notices by local authority if pool does not comply - Clause 20 (3), (b),

I believe this notice should also include the Swimming Pool Register NUMBER of the non compliant pool.

My reason is that some properties have more than one pool/spar and each one has a different number if they are in separate areas of the property and the other pool/spar may be compliant.

Thank you for allowing me to comment on the proposed new Swimming Pool Regulation 2018

Best Regards,

John Carlton,

[REDACTED]

[REDACTED]



28 June 2018

Swimming Pools Regulation 2018  
Better Regulation Division  
Department of Finance, Services and Innovation  
McKell Building  
2-24 Rawson Place, Sydney NSW 2000

E: [SPregulation2018@finance.nsw.gov.au](mailto:SPregulation2018@finance.nsw.gov.au)

Dear Sir/Madam,

Thank you for the opportunity to comment on the Regulatory Impact Statement (RIS)  
*Swimming Pools Regulation – June 2018*.

In relation to the options presented Kidsafe NSW supports the following:

Option 2 – Make the proposed Regulation

With Kidsafe NSW's understanding of the market, knowledge of the field and commitment to child injury prevention first and foremost, Option 2 is the *preferred option*. Option 2 seems to have the strongest position on child injury prevention.

Kidsafe NSW has provided additional feedback to discussion points detailed in the RIS.

**1. Are there any comments on the preliminary matters or do any other updates need to be made to the preliminary matters in the proposed Regulation.**

No comments on preliminary matters.

**2. Should pool owners have flexibility to design innovative solutions to fasten lockable child-resistant structures for spa pools, without compromising pool safety.**

No. From previous issues papers and reviews of swimming pool barriers regulations, it is clear that there is room for a wide range of interpretations of laws and regulations.<sup>1</sup> It is in this variance that confusion in compliance lies, resulting in the potential for unsafe pool barriers and access to backyard swimming pools by young, unsupervised children.

Kidsafe NSW is concerned that such a change in regulation as proposed in discussion question 2, could create confusion and misinterpretation leading to unsafe spa covers. According to a report over a 13 year period only 2% of drowning deaths in children under 5 were in a backyard outdoor spa location.<sup>2</sup> There is the possibility that changing the regulations could create unsafe backyard spas and increase drowning and near drowning rates.

**Kidsafe New South Wales Inc (ABN 29 532 079 872)**

Kidsafe House, c/- The Children's Hospital at Westmead

Locked Bag 4001, Westmead NSW 2145

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E: [schn-kidsafe@health.nsw.gov.au](mailto:schn-kidsafe@health.nsw.gov.au) W: [www.kidsafensw.org](http://www.kidsafensw.org)

Patron: His Excellency General The Honourable David Hurley AC DSC (Ret'd)  
Governor of New South Wales





**3. Do you consider that the proposed changes to the content of warning notices (key statements) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?**

No. While the proposed changes are directed to address the issue of inadequate adult supervision of children in the aquatic environment, Kidsafe NSW advocates for stronger, more direct language. The proposed addition to the notice of “actively and responsibly supervised” message could be difficult to understand, especially from those with low literacy skills and from culturally and linguistically diverse areas. This proposed addition to the notice does not mention adult supervision, which is a key component to water safety messaging.

Kidsafe advocates for the use of the following messaging to address supervision. This also aligns with the mandatory portable pool safety messaging.<sup>3</sup>

*Ensure active adult supervision at all times.  
Do not leave children unsupervised in or around the pool—  
keep them within arm's reach.*

While the inclusion of this safety message is of paramount importance, the capitalisation of the letters in the message does not need to be prescribed.

**4. Do you consider the proposed changes to the content of warning notices (CPR information) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?**

No. From a child injury prevention perspective, Kidsafe NSW advocates for an easy to read and understand flow chart that includes both adults and paediatric CPR information. The Australian Resuscitation Council (ARC) offers various charts, including specific charts for adults and paediatrics.

If it is the intention of the Regulation to align with ARC, then it needs to acknowledge that there are age dependent techniques. Furthermore, it needs to include appropriate techniques for all ages of potential swimmers.

**5. Do you agree that a warning notice should be required to be displayed from construction until an occupation certificate or certificate of compliance has been issued?**

Yes.

**6. Given the changes to warning notices, how long would be required to allow manufacturers and pool occupiers to produce and install the new notices?**

This is out of our scope of practice.

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Governor of New South Wales







7. **Do you agree that the cap on fees for exemption applications should be increased to match the fees charged for pool inspections?**  
This is out of our scope of practice.
8. **Are there any reasons why a local authority should not be allowed to charge for third and subsequent pool inspections?**  
This is out of our scope of practice.

9. **Do you believe that registering certificates of non-compliance in the Register will lead to improved pool safety compliance and rectification of issues.**  
Yes. The proposed regulation, requiring local authorities or accredited certifiers who issue a certificate of non-compliance to update the register within three days, has benefits. While this will allow for much needed transparency and ability to share information, it should also include additional details about the issues causing non-compliance and the time frame in which the pool owner has to rectify the issue.

The act of putting the non-compliance in the register will not improve pool safety but the *process* of achieving compliance is likely to result in safer environments, especially for children. It is through education and working directly with the pool owner that creates awareness and achieves safe aquatic environments, which is what the process allows each pool owner.

Additionally, Kidsafe NSW advocates for the use of the Swimming Pools Register, through local authorities to better understand non-compliance issues; to target pool owners with changes in laws and pool/water safety messages; and to have access to data sets that could be analysed by researchers and government to reduce drowning events.

10. **Will providing access to an expanded range of Australian Standards (AS) improve compliance with safety obligations?**  
Possibly, providing access to an expanded range of AS could potentially improve compliance with obligations of safety by pool owners. Pool owners are required to determine the locations of pool barriers as per the AS and ensure that pool barrier requirements are met. To be able to carry this out, free access to the relevant documents is necessary. It seems the interpretation of the AS is more of an impediment to safety and compliance than accessing the standard. Therefore, having the documents available but no guidance material on how to interpret laws and regulations seems counterintuitive. The creation of one central, dedicated 'hotline' to provide guidance or a comprehensive book could alleviate this issue.



**If so, does the proposed Regulation identify all possibly relevant Australian Standards?**

Yes.

**11. Are local authorities best placed to continue to provide access to documents, including an expanded range of AS?**

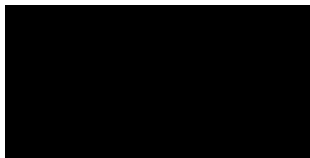
Yes.

**If so, how long (if any) would local authorities require in order to provide access to the expanded range of Standards?**

This can be made available immediately.

Thank you for the opportunity to provide feedback for this important issue. For further information or clarification contact [REDACTED]

Yours sincerely



Kidsafe NSW

References:

1. Lambert, M. (2015). Independent Review of NSW Swimming Pool Barrier Requirements – Discussion Paper. NSW Office of the Local Government. Retrieved from <http://www.olg.nsw.gov.au/sites/default/files/Independent-Review-of-NSW-Swimming-Pool-Barrier-Requirements-Discussion-Paper-2015.pdf>
2. Peden, A, Mahony A (2016) Drowning Deaths of Children Under Five in Private Swimming Pools in NSW: A 13 Year Review, Royal Life Saving Society – Australia. Sydney. Retrieved from [https://www.royallifesaving.com.au/\\_data/assets/pdf\\_file/0005/16448/RLSNSW\\_ChildDrowningReportLR.pdf](https://www.royallifesaving.com.au/_data/assets/pdf_file/0005/16448/RLSNSW_ChildDrowningReportLR.pdf)
3. Australian Government. (2013) Consumer Goods (Portable Swimming Pools) Safety Standard 2013 - F2013L00049. Australian Government. Retrieved from <https://www.legislation.gov.au/Details/F2013L00049>

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Patron: His Excellency General The Honourable David Hurley AC DSC (Ret'd)  
Governor of New South Wales





THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: Property:DHgl1552866

28 June 2018

Swimming Pools Regulation 2018  
Better Regulation Division  
Department of Finance, Services and Innovation  
McKell Building  
2-24 Rawson Place  
SYDNEY NSW 2000

By email: [SPregulation2018@finance.nsw.gov.au](mailto:SPregulation2018@finance.nsw.gov.au)

Dear Sir/Madam,

**Draft Swimming Pools Regulation 2018 ("Draft Regulation")**

The Law Society of NSW appreciates the opportunity to comment on the Draft Regulation. The Law Society's Property Law and Environmental Planning and Development Committees have contributed to this submission.

We note that the Regulatory Impact Statement ("RIS") raises a number of matters for consideration. A number of these matters are better addressed by other stakeholders. We set out below our response to several of the matters raised in the RIS.

**7. Do you agree that the cap on fees for exemption applications should be increased to match the maximum fees charged for pool inspections?**

Yes, in our view this is appropriate as the fees should be consistent.

**8. Are there any reasons why a local authority should not be allowed to charge for third and subsequent pool inspections?**

The local authority should not be able to charge a fee for a third inspection if the matter was not identified in the original inspection and specified in the notice issued under clause 20 of the Draft Regulation. We note that no cap on fees applies to private certifiers.

**9. Do you believe that registering certificates of non-compliance in the Register will lead to improved pool safety compliance and rectification of issues?**

While in principle this seems a positive step, and will be beneficial to the conveyancing process, we are concerned that the Register may not have the capacity to deal with this change. Additionally, the certificate of non-compliance is only valid for a year from the date it issues. With the short life of the certificate we query whether it is appropriate for it to be entered into the Register.

The Draft Regulation should also clearly impose an obligation to remove a certificate of non-compliance once the rectification work has been done. It is also not clear what process will apply to have the certificate of non-compliance removed if the rectification work is done by the new owner.

Our members continue to note wide discrepancies in the practice of different councils following the issue of a certificate of non-compliance. Some councils will issue a direction notice, generally within 14 days, where the certificate of non-compliance indicates that the non-compliance does not pose a 'significant risk' to public safety. The time frame to comply with the direction also varies.

This particular issue was previously raised in the *Swimming Pools Regulation 2008* RIS – Discussion Guide prepared ACIL Allen Consulting on behalf of the Office of Local Government ("Discussion Guide"). The Discussion Guide states that Part 5, clauses 18B, 18BA and 18BB of the *Swimming Pools Regulation 2008* ("Regulation") was:

intended to support vendors being issued with a certificate of non-compliance to give the new owners 90 days to fix any non-compliance that do not pose a significant risk to public safety and facilitate the sale of houses with pools.

Clause 18BA(6) of the Regulation (now clause 21(6) of the Draft Regulation) provides that a certificate of non-compliance remains valid for one year, consistent with an appropriate time frame for a vendor to market and complete a sale. Clause 18BB of the Regulation (now clause 22 of the Draft Regulation) provides that the deferred 90 day compliance time frame operates only for the benefit of the purchaser upon completion of the sale.

A direction notice issued to a vendor in response to a certificate of non-compliance in circumstances where the non-compliance does not pose a significant risk to public safety appears to undermine the intent of the Regulation. It compromises the time frame that a vendor is able to rely on a certificate of non-compliance (which is meant to remain valid for one year) and the ability to require a purchaser to rectify the non-compliance following completion by attaching a copy of the certificate to the contract. It also places the vendor at risk of facing penalties for failure to comply with a direction within the time frame set out in the direction.

The proposal to record certificates of non-compliance in the Register within three business days of the inspection is likely to increase the occurrence of this issue if councils are expected to monitor the Register for non-compliance, particularly where a private certifier has carried out the inspection.

Currently, section 22E of the *Swimming Pools Act 1992* ("Act") requires certifiers to provide councils with a copy of the notice specifying the non-compliance issues six weeks after the inspection, where the non-compliance does not pose a significant risk to public safety.

If the proposal in the Draft Regulation is adopted, councils may respond to the recording of certificates of non-compliance in the Register by issuing direction notices three business days after the inspection.

This issue could be addressed by limiting the circumstances in which councils may issue a direction notice where the non-compliance does not pose a significant risk to public safety; for example, the direction could be deferred until after the certificate of non-compliance lapses.

Alternatively, the Draft Regulation could require councils issuing direction notices in these circumstances to give the vendor the same time frame to comply with the direction as the period for which the certificate of non-compliance remains valid (ie. one year from the date of the certificate). This would allow the vendor to rely on the certificate of non-compliance for the whole period of its validity, enabling the vendor to market and complete the sale, consistent with intent of the Regulation.

**10. Will providing access to an expanded range of Australian Standards improve compliance with safety obligations? If so, does the proposed Regulation identify all possibly relevant Australian Standards?**

In our view, providing access to an expanded range of Australian Standards will improve compliance with safety obligations.

Whether the Draft Regulation identifies all possibly relevant Australian Standards is a matter outside our knowledge.

**11. Are local authorities best placed to continue to provide access to documents, including an expanded range of Australian Standards? If so, how long (if any) would local authorities require in order to provide access to the expanded range of Standards?**

We would prefer if the Department continued to provide access, given the restricted access to the relevant Australian Standards. If legislation is to include reference to material that is not publicly available and not free of charge, we consider that the Department administering that legislation should be in a position to provide access to that material.

**Other matters**

We are also concerned about whether the current inspection provisions are sufficiently robust. The certificate regime captures those properties to be sold or leased. The three-yearly inspection program imposed by section 22B(2) of the Act captures any swimming pool situated on premises on which there is tourist and visitor accommodation or more than two dwellings. We consider that many properties with swimming pools will not satisfy either category. It is possible that each of the local authority pool inspection compliance programs required under section 22B(1) of the Act have adequate provisions requiring random inspections of pools for single dwellings which are not sold or leased. However we believe that it would be appropriate for the requirements of such programs regarding frequency of random inspections to be detailed in the Draft Regulation.

Additionally, we are advised that in a number of cases councils attempting to inspect pools under the inspection program have been confronted with significant difficulties in obtaining access (particularly where the inspection is initiated by the local authority). We note that section 27B(2) of the Act imports the powers contained in Part 2 of Chapter 8 of the *Local Government Act 1993*. We suggest that consideration should also be given to enhancing the powers of local authorities to impose substantial penalties for failing to comply with a request for access within a reasonable period of time.

Should you have queries about this letter, please contact [REDACTED]

Yours sincerely,

[REDACTED]

Dear Sir / Madam,

Thank you for the opportunity to comment on the draft Regulations.

Comments for your consideration are as follows:-

- **Clause 5** - General requirements, Building Code of Australia and out of ground pool walls -  
The requirement that in NSW the BCA does not permit out of ground walls as being effective barriers and the process for considering these elements as a pool barrier is still somewhat confusing.  
Previous advice has also been issued regarding this from OLG and the BPB  
- <http://bpb.nsw.gov.au/news/olg-issues-advice-all-certifiers-about-swimming-pools>  
See also attached previous correspondence to the office of Local Government several years ago that questions this matter, along with an industry submission regarding the issues relating to out of ground pool walls.  
All other states permit out of ground pool walls that comply with the standard.  
In NSW the only current pathway for gaining approval for an out of ground pool wall is via a Section 22 exemption.  
The only way to duly assess the S22 exemption is by way of a performance based solution approach, however information from the OLG and BPB suggests that there may be concerns with an arrangement that that does include pool as the barrier, even if the barrier is of substantial construction and height and in all other states would satisfy the relevant BCA performance requirements and Australian Standards.  
The Act allows a house wall and windows to be used as part of a child resistant barrier, but not an out of ground solid pool wall?
- **Clause 13** - The fee proposed under the new Regulations is \$150. Whilst this is a slight improvement compared to the current \$70 fee, it still does not cover the time taken to properly assess and determine the request and accept ownership of the decision.  
For comparison purposes, our current fees and charges includes the following fee for our accredited certifiers to assess a simple performance based solution to the BCA for a CC or CDC is \$856, on top of normal assessment fees for deemed to satisfy solutions.
- **Clause 19** - Fees for inspections - Agree with increasing the number of inspections that can be charged, however also suggest the fee to be at least \$150 to cover costs of delivery and encourage more prompt completion of works.  
For comparison purposes, our current fees and charges includes the following fee for our accredited certifiers to carry out additional inspections - \$326.  
Also recommend clarifying if inspection fees can be charged by Councils responding to private certifier notices under Section 22E.
- **Clause 20 - Notices of non-compliance** - Request clarification if these notices are required to be generated for every inspection. Experience suggests that most SP applications require at least 3 inspections before the SP compliance certificate is issued. Does a certificate of non-compliance have to be issued after each inspection, or just the initial one? Current and proposed clause wording states that it applies "*to an inspection*".
- **Clause 21 - Certificates of non-compliance** - Request clarification if these certificates are required to be generated for every inspection. Experience suggests that most SP applications require at least 3 inspections before the SP compliance certificate is issued. Does a



certificate of non-compliance have to be issued after each inspection, or just the initial one?  
Current and proposed clause wording states that it applies "*to an inspection*".

- **Clause 29 - Public access** - Suggest state government also provide website links to BCA and all relevant standards rather than passing on this responsibility to local government.

Regards,

[Redacted signature block]

Newcastle City Council

**Web:** [www.newcastle.nsw.gov.au](http://www.newcastle.nsw.gov.au)

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# Submission to the proposed Swimming Pools Regulation 2018

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**June 2018**

# **1. Background: The NSW Child Death Review Team**

The NSW Child Death Review Team (CDRT) was established in 1996 under Part 5A of the Community Services (Complaints, Reviews and Monitoring) Act 1993 Act. The CDRT reviews the deaths of all children aged from birth to 17 years. The NSW Ombudsman is Convenor of the CDRT and Ombudsman staff provide administration and support, including research and reviews. The purpose of the CDRT is to help prevent the deaths of children in NSW. To this end, we:

- Maintain a register of child deaths in NSW. The register holds a range of information about each child who has died, including demographic and health data, and information about the cause and circumstances of death. From the information held in the register, we identify trends and patterns and report biennially to the NSW Parliament.
- Undertake research – either alone or with others – that aims to help prevent or reduce the likelihood of child deaths.
- Make recommendations as to legislation, policies, practices and services that can be implemented by government and non-government agencies and the community to prevent or reduce the likelihood of child deaths.

In addition to this work, the NSW Ombudsman is also responsible for monitoring and investigating the conduct of NSW local councils, which are designated as the relevant 'local authorities' under the *Swimming Pools Act 1992*.

In the 15 years from 2003 to 2017, the CDRT registered the drowning deaths of 100 children in backyard swimming pools in NSW. The majority of the children were aged less than 5 years, with almost three-quarters (71 children) aged under three years.

Our reviews have highlighted the inextricable link between adequate supervision and effective child-resistant pool barriers. While the inherent dangers of water to young children is such that the level of supervision required in or around swimming pools must be constant and active, despite every effort and given the combination of factors that contribute to human error, there may be times at which this level of supervision is not provided. The integrity of child resistant pool barriers is critical to the safety of children in these circumstances.

## **2. CDRT recommendations relating to the Swimming Pools Regulation**

The following recommendations were made in the *NSW Child Death Review Report 2015* and are currently being monitored. We consider these to be the key strategies that will improve the safety of children around swimming pools.

## Recommendation 11

In the context of proposals contained in the independent review of swimming pool barrier requirements for backyard swimming pools in NSW, the NSW Government should amend the Swimming Pools Act 1992 to:

- Include a single standard for NSW for child resistant swimming pool safety barriers, aligned to national standards, in order to enable the relevant state agency or agencies to interpret and provide guidance on required standards to pool owners and the general public.
- Remove automatic exemptions from swimming pool safety barrier requirements.
- Require persons purchasing a portable swimming pool that is subject to the requirements of the Act to register the pool at the point of sale.

The Government did not support this recommendation. However, as we noted in the *CDRT Annual Report 2016/17*, the better regulation statement prepared for the Office of Local Government in 2016 identified that, despite the significant regulatory framework already in place in relation to swimming pools, the cost to the community resulting from near-drowning and drowning deaths of young children is substantial, and therefore supports an ‘in-principle case for additional regulation’.<sup>1</sup>

## Recommendation 10

The Office of Local Government should publish annual data from its analysis of the swimming pool register, including but not limited to:

- a. the number of pools registered
- b. the number of pools that have been inspected
- c. the proportion of inspected swimming pools that were non-compliant with the Act at the time of inspection
- d. the main defects identified at the time of inspection, and whether or not owners have rectified defects within a reasonable period of time.

The Office of Local Government responded at the time that options for enhancing the Swimming Pool Register were being examined, to enable reporting on a wider range of statistics.

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<sup>1</sup> The Centre for International Economics (2016), *Regulation of Private Swimming Pool Barriers – Better Regulation Statement*, prepared for the Office of Local Government, August 2016, pg 15.

### 3. Response to relevant discussion points

***Should pool owners have flexibility to design innovative solutions to fasten lockable child-resistant structures for spa pools, without compromising pool safety?***

The proposed change to this clause allows pool owners to fasten pool lids to their spa pool, or to a 'structure of substantial construction adjacent to the spa pool'. The change has been made to provide for greater flexibility for how spa lids and other lockable structures can be fastened to spas.

While we have no in principle objection to this change, it is unclear how the provision for 'innovative solutions' can or will be regulated to ensure that spa safety is not compromised. That being the case the change is **not supported** without further detail.

***Do you consider that the proposed changes to the content of warning notices (key statements) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?***

We have no objection to proposals to amend the content of a warning notice to 'Young children should be *actively and responsibly* supervised when using this swimming pool', and that pool gates must be '*self-closing and self-latching*'. However, we note that without the design and implementation of effective educational strategies, this change is unlikely to improve the level of knowledge among consumers about pool safety, and pool safety obligations.

***Do you agree that a warning notice should be required to be displayed from construction until an occupation certificate or certificate of compliance has been issued?***

**Supported**, noting that this change gives effect to a coronial recommendation that warning notices be displayed during the construction of a swimming pool.

***Are there any reasons why a local authority should not be allowed to charge for third and subsequent pool inspections?***

Provision for charging for third and subsequent pool inspections is supported. We note that the proposed regulation modifies the fee schedule for pool inspections to enable local authorities to charge up to \$100 for third and subsequent pool inspections. The reason for this change is that a recurring inspection cost will encourage pool owners to rectify compliance issues promptly.

In the course of our work, we have become aware that local councils have, from time to time, found the need to inspect a swimming pool even when it has a current certificate of compliance issued by a private accredited certifier. This may be due to a council's policy to always require an inspection after they have issued a direction to comply under section 23 of the Act or the council may have concern that a pool has not been properly certified (e.g. due to reports or complaints about a particular certifier). We commend councils' effort in this

regard to 'double-check' the pool's compliance. However, we are also aware that this has caused tension with pool owners who are aggrieved by the need to pay for a further council inspection when they have already paid for and obtained a certificate of compliance from a private certifier. In the interest of pool safety, we believe councils should be supported in their initiative to act on a reasonable suspicion that a pool may not be properly certified.

Finally, and to the extent necessary, we believe the Regulation should expressly authorise a local authority to inspect a pool, notwithstanding a current certificate of compliance, if the authority has a reasonable suspicion that the certificate had been issued incorrectly or improperly. This may assist in clarifying the prohibition under section 22B(3) of the Act which, in referring to a local authority's pool inspection program, provides that "the program is not to require the inspection of a swimming pool in respect of which there is a valid certificate of compliance or a relevant occupation certificate."

***Do you believe that registering certificates of non-compliance in the Register will lead to improved pool safety compliance and rectification of issues?***

**Supported.** We note the intention of registering certificates of non-compliance in the Register is to provide greater transparency and awareness for pool non-compliance to assist councils and pool owners respond more effectively. As noted above, we have recommended that annual data from the register should be published annually, including main defects identified at the time of inspection, and whether or not owners have rectified defects within a reasonable period of time.

Our Ref: D03251411

25 June 2018

Swimming Pools Regulation 2018  
Better Regulation Division  
Department of Finance, Services and Innovation

**By email:** [SPregulation2018@finance.nsw.gov.au](mailto:SPregulation2018@finance.nsw.gov.au)

Dear Sir/Madam

**SUBJECT: SWIMMING POOLS REGULATION 2018**

Randwick City Council is pleased to provide the following comments in respect to the proposed *Swimming Pools Regulation 2018*.

### Overview

The regulation of swimming pool safety in NSW is predominately the domain of Local Government exercising the functions conferred by the *Swimming Pools Act 1992* ("the Act"). In recent times, particularly since the introduction of mandatory swimming pool inspection programs and the certificate of compliance requirements at the time of the lease or sale of properties with swimming pools, councils have and continue to face significant challenges meeting these important statutory obligations.

These challenges are, essentially, two-fold. The first is having sufficient resources to meet the demands of delivering mandatory pool safety inspection programmes at the same time as fulfilling the responsibilities under the recently introduced sale and lease provisions in addition to a council's general responsibilities under the Act. The second is the increased challenge for Local Government with being able to attract and retain staff sufficiently skilled to navigate what is seen by many as overly complex and burdensome swimming pool legislation.

Despite a number of reviews that have examined and highlighted, amongst other things, a need to simplify the operation of the Act, adopt a single swimming pool barrier standard, provide funding and cost recovery mechanisms for Local Government and provide certainty for swimming pool owners, the regulatory framework in which swimming pool safety is delivered in NSW remains convoluted, confusing and administratively oppressive for swimming pool regulators and pool owners alike.

It is considered that the government should review its decision not to proceed with a stand-alone Code or Standard for swimming pool barriers in NSW, along the lines of the Queensland Development Code. The current regulatory provisions, savings provisions and application of three different Australian Standards is complex, unworkable and makes little sense from a child-safety perspective and the delivery of uniform swimming pool barrier requirements throughout the State.

Overall, the provisions, whilst well intended, are having a significant impact on councils, certifiers and pool owners. The provisions (in particular the savings provisions in clauses 22A and 23 – proposed clauses 30 and 31 of the 2018 Reg) need to be simplified, written in plain-English, be practical, achievable, fair and consistently applied throughout the State.

Notwithstanding that the process for remaking the Swimming Pools Regulation does not encompass amendments to the Act, it remains Randwick City Council officers' view that unless there is further meaningful reform to NSW swimming pool laws that reduces complexity, introduces a single pool barrier standard and provides for periodic certification that is the sole responsibility of the pool owner, the paradox that exists with the current regime of 'so-called' compliance and keeping young children safe around privately owned swimming pools without imposing an unreasonable burden on pool owners will continue.

Whilst the making of the proposed *Swimming Pools Regulation 2018* introduces some incremental improvements, again it is our opinion that this is, to a large degree, another lost opportunity to provide meaningful reform to an unbalanced and inefficient regulatory regime.

### **Swimming Pools Regulation 2018**

The proposed *Swimming Pools Regulation 2018*, largely replicates the current provisions contained in the *Swimming Pools Regulation 2008*, with the following changes:

- Up-dated warning sign content
- Increase to inspection and exemption fees
- Warning sign requirements during the construct of swimming pools
- lockable child-safe structures for spas
- requirements for councils and certifiers to provide information of certificates of non-compliance on the Swimming Pools Register
- clarification of standards for swimming pools on acquired premises
- local authorities only to provide copies of applicable Australian Standards, BCA and CPR Guidelines

Council supports the above changes to the contained within the proposed *Swimming Pools Regulation 2018*. However, we reiterate our position that in the absence of reform that addresses the existing fundamental flaws in both the Act and the Regulation, the costs to both local government and the consumer that are currently unsustainable will continue to escalate.

Enclosed with this submission is a copy of the paper *Swimming Pools Act & Regulation Key Issues/Challengers* that was submitted as a result of the consultation conducted by Acil Allen Consultation in August 2017 on behalf of the Office of Local Government in respect to the review of the *Swimming Pools Regulation 2008*.

Should you require further information or wish to discuss this matter, please do not hesitate to contact [REDACTED]

Yours faithfully  
[REDACTED]



# **Swimming Pools Act & Regulation**

## **Key Issues/Challenges**

### *Background*

Up until 31 August 2008 – the *Swimming Pool Regulation 1998* applied, which required compliance with AS 1926-1986.

As of 1 September 2008, the *Swimming Pool Regulation 2008* was introduced, which required compliance with AS 1926.1 (2007). Except for clause 10 – Regarding above ground walls to a swimming pool. This standard included a number of additional requirements for swimming pool barriers.

This standard also introduced the 900mm NCZ's. Although, it was not clear at the time where these NCZ's applied (i.e. inside/outside).

Also more importantly, 'clause 23' of the 2008 Regulation was introduced.

### *Clause 23 of the Regulation*

Clause 23 appears to be a well intended savings provision, but when considered in detail it has far reaching implications for pool owners.

Clause 23 basically states that compliance with the previous Regulation (1998) and Standard (AS 1926-1986) is acceptable and is deemed to comply with the current requirements.

However, this does not apply if the pool barrier is 'substantially altered or rebuilt'.

When considering the age of typical pool barriers (i.e. 20, 30 years old) and the limited lifespan of a typical timber/metal fence – it is inevitable that pool barriers/fences will require regular maintenance, upkeep and replacement [even if the location, design etc is unaltered].

This raises the question – What constitutes "substantially altered or rebuilt"?

There are currently no guidelines or provisions to assist or guide Councils, Certifiers or pool owners in this interpretation.

Currently Council officers and Certifiers have a 'different level of interpretation of these provisions, ranging from the 'ridiculous' at both ends of the spectrum.

The key issue that this raises, is, if the authorised officer (or Certifier) considers the pool barrier to have been 'substantially altered or rebuilt', then the pool barrier/s must comply with the 2008 Regulation and current standard (i.e. AS 1926.1 -2012).

The application of the current standard to a pool barrier built under a previous standard imposes unreasonable, unrealistic and extremely onerous requirements on pool owners.

For example, under the 1986 Standard, only a 1.2m high boundary barrier was required (i.e. 1.2m high fence) and the outside of the barrier (on the neighbours side) the barrier could be climbable.



Whilst, such a barrier would not be considered to be adequate today, the imposition of the requirements under the current standard are significantly more onerous and extremely complex.

If it is deemed that the pool barrier has been substantially altered or rebuilt, new 1.8m high boundary barriers would be required. This in itself may not be too onerous, but the application of the current Standard also introduces a number of additional requirements relating to Non-Climable Zones (NCZ'S), location of nearby structures and access to the pool area, retaining walls, trees and landscaping.

In many cases, on an established property (with 20 or more years of landscaping and general improvements), compliance with these ancillary requirements is extremely onerous, impractical and probably unnecessary.

I am not aware of any fatalities in pools which are attributable to a well maintained 1.8m high boundary barrier, with or without any NCZ's.

Further research should be carried out regarding this matter and if the risk is so low, the provisions should simply allow for a 1.8m high boundary barrier with or without NCZ's.

When the Australian Standard is updated in the near future, the substantially altered or rebuilt barrier would then need to meet the updated version of the Standard. Thereby, forever changing and having to meet more onerous requirements, which are impracticable or unachievable.

#### *Clause 22A of the Regulation*

The introduction of clause 22A in around 2011, creates an additional major problem for Councils, Certifiers and pool owners.

Clause 22A(2) basically states that a pre-existing compliant pool barrier (i.e. installed under the 1998 Regulation and AS 1926-1986) is deemed to comply with the current requirements, but only if:

- The pool barrier [fully] complied with the previous standard and continues to do so, or
- If the barrier has been substantially altered or rebuilt, it complied with the Standard at that time and continues to comply with that Standard (i.e. if a barrier was altered from the 1986 Standard to the 2007 Standard).

When inspecting a pool these provisions basically require the person to make a determination on the status and condition of the pool barrier as at 1 September 2008 [although this date is not clear].

To determine if a barrier complied with a pre-existing standard 9 years ago is almost impossible and quite ridiculous. In most cases, an officer is only able to ask the pool owner questions and/or form an opinion on the possible condition in 2008, without any proof or evidence to support the decision.

This also raises questions and a determination of what may be relatively minor deficiencies or technical non-compliances with a previous Standard (i.e. a missing door/window lock, a non-self-closing gate, replacement of a door/gate/window (which may be identical to the former element) installation of paving resulting in a current non-compliant barrier height, missing palings in a fence etc).

Strictly speaking, any deficiency whatsoever could, in effect, remove the saving provisions to retain their pre-existing barrier. And, require a full new 4 sided barrier which fully complies with 1926.1 2012.

Needless to say, this has far reaching implications for a pool owner and potentially their neighbours (i.e. if a new/higher boundary barriers are required to achieve full compliance).

Clause 22A(3) relates to any changes to the 'means of access' to the pool and has the same effect as clause 22A(2).

To benefit from these savings provisions, the means of access to the pool must have complied with the complied with the relevant requirements immediately prior to 1 September 2008 and must have continued to comply.

If there has been any substantial changes to the means of access to the pool, the savings provision is lost and the means of access must comply with the current requirements. This can have substantial implications on all of the pool barriers and the property, which may even be the result of a relatively minor change carried out before or after 1 September 2008.

It is also unclear as to whether or not clause 22A is retrospective or not. Whilst contained in the 2008 Regulation, it does not appear to have been introduced until 2011.

In my view, clauses 22A and 23 should be amended to provide a more reasonable, practical, consistent and clear savings provision.

The provisions should enable a pool owner to renew and replace an approved pool barrier, subject to specified requirements.

For example, the renewed barrier should be:

- a) At least compliant with the Standard at the time of installation of the pool (i.e. original standard of installation) and;
- b) Comply with the relevant provisions of the current Standard , or
- c) In the case of a pool barrier installed under AS 1926-1986 as a boundary barrier, be at least 1.8m high in the case of a boundary barrier.

This would basically allow a pool owner to replace and upgrade a 1.2m high boundary barrier with a 1.8m high boundary barrier. But, without the application the current NCZ requirements.

In simple terms, a pool owner should be allowed to replace a barrier due to normal wear and tear, with a barrier which is at least and/or better than that which originally applied.

The practical and reasonable relaxation of these provisions could be offset by removing the current exemption for pools installed prior to the Act (i.e. under section 8) from requiring an internal-isolation barrier for pools installed before August 1990. This exemption is a major issue and is totally contrary to the intent of the Act and reasonable levels of pool safety.

It is also quite absurd to be able to obtain a Certificate of Compliance for a pool with no internal barrier. But, a Certificate cannot be issued if there is a minor non-compliance with a NCZ to a barrier which has replaced a previous barrier under the 86 Standard even though it is much more effective and higher.

As the provisions, Standards and requirements depend on various factors and status of the pool barriers and access to the pool area at particular times. It is extremely challenging for



Councils and Certifiers to make a clear, legitimate and consistent determination of the provisions and compliance with the Act, to issue a Certificate of Compliance.

And the more research the Council officer or Certifier undertakes, the greater the likelihood that he/she will find something that didn't comply (i.e. at the time of installation or estimated to be the case around 1 September 2008), and/or doesn't fully comply today.

The strict interpretation of these provisions is causing a great deal of dissatisfaction and conflict between Council officers and pool owners. And, as such, most pool owners are now avoiding assessment by Council wherever possible and using the services of a potentially less informed and/or competent Certifier, which undermines the intent of the Act and may result in future incidents or worse.

#### *Certificates of Compliance & AS1288*

A further matter which requires attention relates to the determination of a Compliance Certificate and the necessity to comply with current building and structural requirements, instead of the relevant building and structural requirements at the time of installation (i.e. AS 1288). This is contrary to the application of building standards for all building under the EPA Act and National Construction Code/Building Code of Australia).

In summary, a Certificate of Compliance is required to certify compliance with Part 2 of the Act, the Regulation and relevant Standards.

In this regard, the Regulation requires a glass barrier to comply with AS 1926.1(2012) which requires compliance with AS 1288 (clause 2.3.3). The reference and application of any current Standard on a previously built structure is onerous, impractical and contrary to the general principles of building approvals and compliance requirements.

To address this, the reference to AS 1288 in clause 2.3.3 could be removed, as pool barriers are subject to the provisions of the NCC/BCA at the time of installation and would need to continue to comply with those requirements.

#### *Exemptions*

It is apparent that the government is endeavouring to encourage Councils to have more of an open mind when considering applications for an Exemption under section 22 of the Act.

Some of the reasons as to why Council's may be hesitant about issuing such exemptions is because the current provisions in the Regulation and Australian Standard are extremely onerous and that the criteria to be addressed in section 22 is very restrictive. Section 22 (1)(b) is almost impossible to 'sign-off' on, as even a 5mm variation to a particular matter, cannot really be considered to be no less effective than the prescriptive criteria in the Standard. The approval of an exemption also places a significant liability on Councils when making such a determination, which should be addressed if Councils are encouraged to be more flexible in determining exemptions.

It is considered that Section 22 (1)(b) could be replaced with a 'performance -based' provision or alternative wording, as the current provision is very difficult to fully satisfy and limits the ability to issue an exemption.

The Exemption guidelines should also be improved and include a number of examples or scenarios which may warrant approval of the exemption by Council.

### *Certificates of Non Compliance*

These provisions are causing a great deal of confusion and difficulties for the community, managing agents and Council. Whilst the provisions have introduced some flexibility into the process which allows for the sale of a property to proceed, from a regulatory perspective, the provisions are flawed.

Their needs to be a mechanism to place the onus of responsibility on the (new) owner to undertake the necessary work specified in the clause 18BA notice and to obtain a Certificate of Compliance within the specified period.

The Regulations should specify that the new owner of the property must 'obtain' a Certificate of Compliance within the specified period of 90 days (or provide a greater period of say 120 days if this is more appropriate), from settlement date.

The Act / Regulation should make it a specific offence and provide Council with the ability to issue a penalty notice if a Certificate of Compliance has not been obtained within the specified period.

Clause 18BB also needs to be amended to enable Council to issue a Direction at any time, if the Council deems a swimming pool to pose a significant risk to public safety – irrespective as to whether or not the Certifier has identified the pool to be a significant risk. Otherwise, Council's hands are tied and cannot seek to issue a Direction to address a significant risk for up to 1 year or more.

Currently clause 18BB(2) allows a defective pool barrier to be deemed acceptable and to remain in place for the life of the certificate of Non-Compliance plus up to 90 days, which may be a major risk to public safety. Councils should be able to step-in and issue a Direction at any time if there is a significant risk to public safety. The owner would still have the right of appeal if the Direction is considered to be unreasonable.

In addition, the current provisions relating to the Certificates of Non-Compliance and notices under clause 18BA are complex and duplicative or in some cases triplicative (if a Section 23 Direction is required to be issued in respect of a defective pool barrier posing a significant risk). The requirements in clause 18B and 18BA relating to the giving of a notice (including reasons/requirements) could be combined with the certificate of non-compliance to avoid this duplication and the notice/certificate could be re-worded to something more appropriate.

Similar provisions could also be introduced for the notices/certificates of non-compliance issued by Accredited Certifiers, under the Act and regulation.

### *The Regulation and Australia Standards*

It is considered that the government should review its decision not to proceed with a stand-alone Code or Standard for swimming pool barriers in NSW, along the lines of the Queensland Development Code. The current regulatory provisions, savings provisions and application of three different Australian Standards is extremely complex, unworkable and makes little sense from a child-safety perspective and consistency of requirements throughout the State (even on adjoining properties).

### *Conclusion*

Overall, the provisions, whilst well intended, are having a significant impact on Councils, Certifiers and pool owners. The provisions (in particular the savings provisions in clauses 22A and 23) need to be simplified, written in plain-English, be practical, achievable, fair and consistently applied throughout the State.



18 August 2017



## ***Swimming Pools Regulation 2018***

**The Real Estate Institute of New South Wales  
Limited**

**Submission on the Draft Regulation**

**27 June 2018**

Swimming Pools Regulation 2018  
Better Regulation Division, Department of Finance, Services and Innovation  
By email: [SPregulation2018@finance.nsw.gov.au](mailto:SPregulation2018@finance.nsw.gov.au)

## Introduction

This Submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) and is in response to the draft Swimming Pools Regulation 2018 (NSW) (**Draft Regulation**) and Regulatory Impact Statement, issued on 4 June 2018.

REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. REINSW seeks to promote the interests of its members and the property sector on property-related issues. In doing so, REINSW plays a substantial role in the formation of regulatory policy in New South Wales.

REINSW supports, in principle, the Government's initiatives to improve pool safety outcomes and establish standards concerning the prevention of drownings, particularly in young children. Despite this, issues surrounding the enforceability of the Draft Regulation and existing legislation continue to hinder its implementation. Without the proper enforcement mechanisms in place, the primary objectives of the Draft Regulation cannot be achieved and the failure to rectify this will create significant safety risks for consumers and users of swimming pools.

This Submission responds to the questions relevant to real estate agents that are posed in the Regulatory Impact Statement as well as providing comments on topics that REINSW believes require additional consideration by Government in relation to swimming pool safety.

### ***1. Are there any comments on the preliminary matters or do any other updates need to be made to the preliminary matters in the proposed Regulation?***

#### **• Date of Commencement – Clause 2**

REINSW acknowledges that the existing *Swimming Pools Regulation 2008* is scheduled for automatic repeal on 1 September 2018. However, REINSW is conscious that, given the current date, the date of commencement of the Draft Regulation leaves little scope for the effective consideration of submissions made by key industry stakeholders in response to the Draft Regulation. REINSW always encourages Government to allow sufficient time for an effective public consultation process to ensure the right outcome is achieved.

#### **• Definitions**

REINSW encourages the use of concise, straightforward definitions within the Draft Regulation to ensure that potential confusion amongst pool owners and users is limited. Accordingly, there are some key terms which remain undefined but which should have definitions in order to avoid potential ambiguity in interpretation, confusion and disputes.

With an emphasis on protecting children, and the recognised need to communicate this message across a range of mediums, 'young children' is a term that requires defining.

'Young children' are the subject of concern in the warning notice under clause 10(1)(a)(i) of the Draft Regulation. Although Part 1 the AS 1926-2012 (Swimming Pool Safety Standards Set) defines a 'young child' as under the age of 5, the lack of definition in the Draft Regulation raises questions over who is to be 'actively and responsibly supervised'. If the intention is to follow the same definition as found in the AS 1926-2016, this intention needs to be clear and a reference to such definition should be included in the Draft Regulation to avoid any potential confusion.

Although the *Swimming Pools Act 1992* (NSW) (**Act**) is not up for debate or review at this time, REINSW thinks it worthwhile raising the fact that the term "spa pool" is poorly defined in the Act. REINSW recommends the Government consider the definition of "spa pool" in section 34 of the *Public Health Act 2010* (NSW), which provides a far better definition. A clear definition will eliminate the inconsistencies and ambiguities in interpretation amongst pool inspectors and consumers as well as increase awareness in the market.

***3. Do you consider that the proposed changes to the content of warning notices (CPR information) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?***

REINSW is of the view that issues arise because a 'simple flow chart' (as referred to in clause 10(1)(b)) is undefined. Although the Draft Regulation no longer mandates that the flow chart is to be illustrated by drawings with key words in bold, until the concept of a 'simple flow chart' is properly defined, the term remains subjective. What may be a 'simple' flow chart to some, may not be for others.

Nonetheless, as CPR guidelines and notices are often not read until needed, it is unlikely that changes to the content of notices alone will assist in the understanding of pool safety obligations. Access to education, or a lack thereof, still remains a contributing factor as to why people do not comply with pool safety obligations. Regardless of whether sufficient and adequate notices are present, if pool owners, occupiers and users are not properly educated, such notices are rendered ineffective. REINSW, therefore, strongly encourages increased educational awareness to consumers and pool users to ensure that they are sufficiently aware of their obligations.

***4. Do you agree that a warning notice should be required to be displayed from construction until an occupation certificate or certificate of compliance has been issued?***

Any property on which a swimming pool is being constructed under clause 10(3) of the Draft Regulation requires properly maintained signage containing a notice that the swimming pool is not to be used or occupied. The onus is placed on the occupier of the premises and REINSW is of the opinion that this burden is unsatisfactory. The requirement of adequate signage should be the responsibility of the builder, being the individual or entity who is in direct control of the construction site at all times.



Section 25 of the Act provides a defence to offences under the Act if owners of the subject property can establish:

- (a) that the owner was not the occupier of the premises when the alleged offence occurred, and
- (b) that the owner had taken all reasonable steps to ensure that the alleged offence would not occur, and
- (c) that the owner was not aware of, and could not reasonably be expected to have been aware of, the facts giving rise to the alleged offence.

The defence itself contemplates the fact that sometimes it is not appropriate for owners to be responsible for activities on their property. The defence makes it clear that owners are not always able to be aware of, or prevent, the facts giving rise to an offence under the Act. Accordingly, a similar defence of this nature should be extended to owners and occupiers who may not be present during the construction of the pool or unable to control what occurs on the construction site. When owners and occupiers are left with the burden of ensuring warning notices are properly displayed, this often becomes an issue for property managers to deal with, which is unjust considering they are not present at all times during construction.

REINSW does not consider it unreasonable to place the onus on an entity, its employees, agents or representatives who are likely to be present at all times during construction. REINSW proposes that these entities/individuals (for instance, builders and not occupiers) are responsible for manifesting and exercising control over the construction and so should be responsible for ensuring adequate signage.

***9. Do you believe that registering certificates of non-compliance in the Register will lead to improved pool safety compliance and rectification of issues?***

The Draft Regulation relevantly requires local authorities or accredited certifiers responsible for issuing certificates of non-compliance to enter details of the certificates on the Register within 3 business days of issue. Although REINSW appreciates the intention behind this obligation, the issue of concern lies with the enforcement mechanisms that are currently in place or, with respect, a lack thereof.

Once a swimming pool is certified as “non-compliant”, Councils must be responsible for ensuring that any issues of non-compliance are rectified within the requisite timeframe. However, REINSW does not believe that there are sufficient enforcement mechanisms in place to ensure both owners and occupiers maintain compliant pools.

REINSW’s concern is demonstrated where a property with a non-compliant swimming pool is sold to a person who subsequently lives in that property. The new owner has 90 days to rectify the non-compliance, however, without more stringent enforcement mechanisms in place by Council, there is no real pressure for the owner to comply within the 90 days. The situation is slightly different when it comes to a property with a non-compliant swimming pool being sold to an investor who cannot lease the property until

the circumstances or inadequacies are rectified. Whilst Council needs to be more active in enforcing rectification within 90 days, the main driving force for compliance is the inability for the investor to obtain rental income through leasing the property until the pool is compliant. In both these examples, REINSW would like to see Councils made more responsible for ensuring compliance is achieved within the 90 days. REINSW's view is that as long as there are inadequate enforcement mechanisms in place by Council, owners and occupiers of properties with non-compliant pools (as well as their guests and neighbours) remain at risk to such an extent that the purposes of the Draft Regulation are unable to be fulfilled.

Owners and occupiers of properties with pools must remain vigilant about pool maintenance and safety at all times, however, the current requirements mean that people's minds are only thinking about compliance at one point in time – when either buying, selling or leasing their home. To maximise avenues for improved pool safety compliance, REINSW recommends the introduction of frequent mandatory inspections as an appropriate mechanism for policing compliance. This pool inspection system was discussed in REINSW's submission to the Office of Local Government dated 19 October 2015.

Whilst the sale or lease of a property with a pool acts as a trigger for compliance, those triggers potentially allow many pools to remain non-compliant indefinitely if a property with a pool is not sold or leased, posing a significant threat to child safety and consumer protection. Further, the trigger for compliance may never be activated, for instance, if people inherit properties. Therefore, the requirement for a mandatory inspection of pools every 3 years is likely to improve pool safety compliance and promote child safety in pools. REINSW additionally proposes that the 3-year cycle be annual where high risk factors are involved. This is not dissimilar to the Queensland model where tourist accommodation inspection cycles are annual because they are considered to be of high risk.

Improved pool safety is also hindered when inspections are carried out by individuals who do not possess the relevant industry qualifications or expertise. The criteria for compliance may not be adequately assessed in situations where Council employees do not have (nor are they required by law to have) the requisite skills and knowledge to make an accurate determination with regards to non-compliance. Rather than taking a "tick-box" or one-size-fits-all approach to assessing swimming pool safety, REINSW believes that Council inspections should only be carried out by those with the knowledge and expertise as is required by independent certifiers, and that is guaranteed to improve swimming pool safety. In REINSW's view, if the inspectors are unable to understand and apply the legislation accurately then there is little to no hope of getting consumers educated about compliance and swimming pool safety. Whilst REINSW appreciates the potential strain on Council resources that may result from this approach, safety is jeopardised when inexperienced and underqualified employees are assigned to assess the extent of compliance in swimming pools.

REINSW's position is that the quality of reporting from inspectors is substandard and needs improvement. One way to do this is to introduce a requirement for inspections to be carried out only by competent, experienced and qualified certifiers at all times (as discussed above). This would assist with eliminating the inconsistencies in interpretation of the legislation that exists amongst the inspectors. Further, more often than not, consumers are unable to attend to issues of non-compliance as they lack the required information from the inspection reports. To resolve this issue, REINSW proposes that Council inspection reports be more detailed and follow a similar standard (including with regards to content) as those reports issued by private inspectors and accredited certifiers. Clause 21 of the Draft Regulation fails to provide any assistance on the extent or comprehensiveness of information to be included in a certificate of non-compliance and simply states that it *"must include ... whether the local authority or accredited certifier is of the opinion that the swimming pool poses a significant risk to public safety"* (clause 21(3)(c)). REINSW strongly encourages the inclusion of further guidelines and requirements in the Draft Regulation to ensure that consumers are provided with a sufficient amount of information to assist in ensuring their pools are compliant.

***10. Will providing access to an expanded range of Australian Standards improve compliance with safety obligations? If so, does the proposed Regulation identify all possibly relevant Australian Standards?***

Access to Australian Standards will undoubtedly increase the awareness of pool owners to safety obligations and provide a means for obtaining knowledge on swimming pool requirements. Nonetheless, this access will prove to be ineffective unless pool owners are provided with more information and education regarding their statutory obligations. The purpose of the Draft Regulation is to deliver better safety outcomes for pool owners, users and the broader community. However, REINSW does not believe this can be achieved when a significant number of consumers remain in the dark when it comes to understanding their obligations as pool owners.

On another but related note, REINSW recommends that Councils display all versions of the Australian Standards, not just those from 2007, because different standards apply to different pools.

## **Conclusion**

REINSW supports the Government's initiatives regarding the Draft Regulation and its steps to establish standards and improve safety outcomes across the board. Nonetheless, to allow for the successful facilitation and implementation of the Draft Regulation, regard should be had to the current lack of enforcement mechanisms and the growing need to provide adequate levels of information and education to pool owners and users.

As outlined in detail above, the Draft Regulation requires clear and concise definitions to ensure that pool owners and users are sufficiently aware of their statutory obligations and

measures need to be in place to ensure that only those who are qualified and skilled are capable of making decisions regarding pool safety and compliance.

REINSW appreciates the opportunity to provide this Submission and would be pleased to discuss it further, if required.

Yours faithfully

To whom it may concern,

NSW must be one of the most over-regulated states in Australia, if not the world. The controlling nature of the government and politicians on both sides of politics seems to have no bounds. The Swimming Pools Act is a prime example of excessive state government interference in our lives and nanny state overreach. Indeed, the entire Act is ludicrous. Firstly, it has not defined purpose; and secondly if it is the intention too the Act to improve public safety, why are private swimming pools singled out? Oceans, rivers, lakes, dams and roads are not fenced, yet collectively present a far greater hazard than all swimming pools put together. Truly our state is ruled by half-witted politicians and unelected bureaucrats. I would not put it beyond them to recommend fencing off everything. The cost and waste of resources on unnecessary fencing is outrageous, not to mention that the addition of fencing in itself creates a hazard - for example, restricting speedy access to rescuing someone in distress. It is time to revoke the Swimming Pools Act and its regulations.

Robert Warneford

Hi

I would like to say that when a pool is put in, the fees the council receive at that time are expensive enough and a pool owner should not be charged for extra inspections that you feel may be required.

I'm all for random inspections, to make sure people are doing the right thing, but pool owners should not be charged for it.

That's just ridiculous

Regards

Stacey Jones

## Pool Regulation review

### Clause 9

#### Standards required to be exempt from requirement to surround spa pool

Lack of guidance in this area is resulting in pool structures of 6 metres in length and longer being certified with a lockable lid and no fence/ gate barrier simply because they have the word spa in their description.

No other state or territory has this exemption. The time of the definition (1992) and description clearly relates to small structure used for a single purpose. Pools have evolved significantly since then but the legislation remains back in 1992.

Proposed amended wording for clause 9 of the regulation.

For the purposes of section 20 of the Act, the prescribed standards in accordance with which access to the water contained in a spa pool is to be restricted are that the spa pool must be:

- (a) not greater than 6.5m<sup>2</sup> in water surface area and
- (b) covered and secured by a lockable child-resistant structure (such as a door, lid, grille or mesh) that:
  - (i) is of substantial construction the top of which does not flex below the water level,
  - (ii) has no opening through which it is possible to pass a 105mm sphere,
  - (ii) is fastened to the spa pool or surrounding structure by a device that is itself of substantial construction, and
  - (iv) when locked does not permit a 105mm sphere to pass between the child-resistant structure and the spa pool.

Below copy of Sutherland Shire Council current position

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## Sutherland Shire Council position concerning Spa Exemption

### Application of Spa Pool section 20 lockable lid exemption within the area of Sutherland Shire Council

Note: This may differ in other Council areas

#### Legislation

*Swimming Pools Act 1992*

#### **Section 3 Definitions**

**spa pool** includes any excavation, structure or vessel in the nature of a spa pool, flotation tank, tub or the like.

**swimming pool** means an excavation, structure or vessel:

- (a) that is capable of being filled with water to a depth greater than 300 millimetres, and
- (b) that is solely or principally used, or that is designed, manufactured or adapted to be solely or principally used, for the purpose of swimming, wading, paddling or any other human aquatic activity,

and includes a spa pool, but does not include a spa bath, anything that is situated within a bathroom or anything declared by the regulations not to be a swimming pool for the purposes of this Act.

#### **Section 20 Exemption for spa pools**

A spa pool is not required to be surrounded by a child-resistant barrier so long as access to the water contained in the spa pool is restricted, in accordance with the standards prescribed by the regulations, at all times when the spa pool is not in actual use.

## *Swimming Pools Regulation 2008*

### **Division 3 Restriction of access to spa pools**

#### **Clause 9 Standards required to be exempt from requirement to surround spa pool**

For the purposes of section 20 of the Act, the prescribed standards in accordance with which access to the water contained in a spa pool is to be restricted are that the spa pool must be covered and secured by a lockable child-safe structure (such as a door, lid, grille or mesh) that is:

- (a) of substantial construction and having no opening through which it is possible to pass a testing apparatus, and
- (b) fastened to the spa pool by a device that is itself of substantial construction and having no opening through which it is possible to pass a testing apparatus.

#### Considerations taken in applying the lockable lid Spa Pool exemption

Without any further information available under the legislation or information from the NSW Regulator for the Swimming Pools Act the following sets out the application of section 20 of the *Swimming Pools Act 1992* within the area of Sutherland Shire Council

A pool is for swimming, wading, paddling or any other human aquatic activity with unlimited size for an unlimited number of persons.

A spa includes any excavation, structure or vessel in the nature of a spa pool, flotation tank, tub or the like. From this the spa is a small structure for a limited number of persons.

Spa Pools: Typically, spa pools refer to small, heated and jetted pools that are built into the ground or deck. They can be standalone features or adjoining a full swimming pool, and they can be indoor or outdoor.

Hot Tubs: These are your above-ground option of a spa pool and they are typically used outside on decking or patios, but can also be installed indoors.

The section 20 exemption is in keeping with the terms of section 22 exemptions under the *Swimming Pools Act 1992*. In that it is considered to be unreasonable to require a 4-sided barrier to such a small structure provided access to the spa pool was restricted by a lockable lid being in place whenever the spa is not occupied.

#### **Sutherland Shire Council application of spa pool lockable-lid option**

For assistance in determining situations where a spa pool lockable-lid can be applied, the following are all required to be satisfied;

- The spa is not for swimming, wading, paddling or any other human aquatic activity.
- The spa does not have any swim jet facilities
- The spa is limited to a water surface of 6.5 square metres with no dimension (at water line) greater than 3 metres.

Such items as swim spas and plunge pools do not qualify for a lockable lid under section 20 of the *Swimming Pools Act 1992* and require to be provided with a 4-sided barrier.

Environmental, Health & Building Unit  
Sutherland Shire Council



April 2018

## REGULATION REVIEW COMMENTS

### Swimming Pools Regulation 2008

#### Definition

**NEW CLAUSE** Not sure if this is OK but trying to get something that deals with having children's play equipment being within the pool enclosure

Pool Area means the area that contains the pool, is free of cloths drying structure and non-pool related play equipment of structures (except for section 9 and 10 pools) and is enclosed by a barrier in accordance with the Act

#### **11 Legibility and location of warning notices**

For the purposes of section 17 (1) of the Act, the sign referred to in that subsection:

- (a) must be visible from the shallow or access end of the swimming pool
- (b) must be legible from a distance of at least 3 metres, and
- (c) must be maintained in a clearly legible condition.

### **Part 4 Exemptions from barrier requirements granted by local authorities**

#### **12 Application for exemption**

(1) An application made to a local authority under section 22 of the Act is to be in the form approved by that authority.

(2) That form must contain statements to the effect that:

- (a) if the local authority fails to finally determine the application within 6 weeks after it is made, then the local authority is taken, for the purposes of any appeal proceedings, to have refused the application, and
- (b) if the local authority refuses the application for an exemption, or is taken to have refused the application, or imposes a condition on an exemption, the owner of the premises on which the relevant swimming pool is situated is entitled to appeal to the Land and Environment Court against the local authority's refusal or against the condition.

(3) Application for an exemption is to contain:

- Details of the exemption being requested
- Reasons meeting the criteria set out under section 22 (1) of the Act for seeking the exemption

#### **13 Fee for application for exemption**

(1) A local authority may impose a fee of up to ~~\$70~~ 150 on an application and initial inspection for an exemption under section 22 of the Act.

(1A) Where a subsequent inspection is required to assess and finalise the application a local authority may impose a fee of \$100 per inspection.

(2) An application made to a local authority that has imposed a fee must be accompanied by that fee.

#### New clause under Part 4

##### **Determination of an Exemption**

The determination being in two parts

(1) Exemption approval in principal

Where works are required to be carried out to meet the terms or conditions of the exemption

Approval in Principal is valid for a period of 12 months.

## (2) Exemption Certificate

Issued upon the Local Authority being satisfied that the terms and conditions of the exemption being in place and have been satisfied.

Exemption is valid for seven (7) years unless otherwise specified by the Local Authority.

Note: Renewal of the exemption is subject to a new application and may be altered upon any changes in legislation, standards or court determinations.

## Register information

The NSW Pool Safety Register shall be undated within five (5) days indicating the issue of an Exemption approval in principal and an Exemption Certificate together with any timeframe applicable for the exemption.

Council already has requirements to issue a notice under section 23 of the Act. The current clause 18B could be taken to require the local authority to issue 2 notices. A duplication and very confusing to all. This need to be changed so it is not a notice but simply content for local authority to include within its section 213 Notice or Direction.

## 18B Notices by local authority if pool does not comply

(1) This clause applies to an inspection carried out by the local authority under section 22C of the Act.

(2) The local authority must provide a written notice or direction under section 23 of the Act to the owner of premises on which a swimming pool is situated if the local authority has inspected the swimming pool and is not satisfied that the requirements for the issue of a certificate of compliance have been met.

~~(3) A notice under this clause is to set out the following:~~

(3) A notice of direction, (whichever is issued first), under section 23 of the Act is to include the following:

- (a) the date of the notice,
- (b) the address of the swimming pool to which the notice relates,
- (c) the date on which the inspection took place,
- (d) the reasons why the local authority is not satisfied that the requirements for the issue of a certificate of compliance have been met and the steps that need to be taken in order to meet those requirements,
- (e) whether the local authority is of the opinion that the swimming pool poses a significant risk to public safety.

or combine the provisions of clause 18B and 19 as to information required in a Notice/ Direction under section 23

## 18BA Certificates of non-compliance if pool does not comply

(1) This clause applies to an inspection carried out by the local authority, or an accredited certifier, under section 22C of the Act excluding inspection carried out in relation to swimming pools situated on premises for

- (i) tourist and visitor accommodation or
- (ii) more than 2 dwellings or
- (ii) rental

~~(2) The local authority or accredited certifier must issue a certificate of non-compliance to the owner in respect of a swimming pool if the local authority or accredited certifier (as the case requires):~~

~~(a) has inspected the pool under section 22C of the Act, and under clause (1) above~~

~~(b) is satisfied that the requirements for the issue of a certificate of compliance have not been met.~~

~~(3) A certificate of non-compliance must be in the form approved by the Chief Executive of the Office of Local Government and must include the following:~~

~~(a) the address of the swimming pool to which the certificate relates,~~

~~(b) the date of the inspection,~~

~~(c) whether the local authority or accredited certifier is of the opinion that the swimming pool poses a significant risk to public safety,~~

~~(d) if the certificate of non-compliance is issued by the local authority—a statement that the owner of the premises on which the swimming pool is situated is entitled, under section 26 of the Act, to appeal the decision of the local authority to refuse to issue a certificate of compliance under section 22D of the Act.~~

(2) A certificate of non-compliance is issued from the NSW Swimming Pools Register in the form approved by the Chief Executive of the DFSI

(3) The local authority or accredited certifier must issue a certificate of non-compliance to the owner in respect of a swimming pool if the local authority or accredited certifier (as the case requires) is satisfied that the requirements for the issue of a certificate of compliance have not been met.

(4) A certificate of non-compliance must be issued within 7 days from the date of the inspection of the pool. However, failure to issue a certificate of non-compliance within that period does not affect the validity of the certificate.

(5) The requirement under subclause (4) to issue a certificate of non-compliance within the 7-day period applies whether or not a notice under clause 18B has been provided.

(6) A certificate of non-compliance in respect of a swimming pool remains valid for a period of 1 year from the date on which it is issued for the purpose of providing a certificate for the sale of a property.

(7) The certificate of non-compliance but ceases to be valid if a certificate of compliance has been issued under section 22D of the Act for that swimming pool.

## Further to document

### Regulation Review\_ Improve and simplify pool safety standards

Current regulation clauses 22A and 23 accepting past standards for complying pools could be contained within the NSW Swimming Pool Barriers Prescribed Document. Providing a simplified document replacing regulation references to 1998 Regulation, AS1926-1986 and 1926.1-2007

### Barriers and means of access prior to 1 September 2008

More than 80% of pools could come under this timeframe

AS1926-1986 is not readily available. It is not accessible under standards Australia for online viewing as only available as a hard copy.

AS1926-1986 only deals with fences used as a barrier and requires using 1998 regulation for doors, windows and walls. Details for retaining walls, balconies do not exist being in more recent standards.

Below is a draft that could be applied to pre Sept 2008 pool for the proposed NSW Swimming Pool Barriers Prescribed Document. Providing a single document for use by all stake holders.

Includes details to;

- Change from (more onerous) 1200mm NCZ to 900mm NCZ in line with standards applicable since 2008
- Retention of dividing fence requirements until requiring to be replacement
- Removal of (more onerous) 1100mm requirement from internal barriers in line with standards applicable since 2008.

### **New Savings Clause**

- (1) Swimming pools, barriers and means of access the **construction, installation or replacement of which was COMPLETED prior to 1 September 2008** is deemed to comply with the provisions of part 2 of the Act as long as
  - (a) the barrier and means of access **components from the previous regulation and prescribed standard are in place at the time of inspection**, and
  - (b) the barrier and means of access is maintained to comply with the requirements set out in NSW Swimming Pool Barriers Prescribed Document –Pre 1 September 2008 barrier and means of access requirements.
- (2) The above clause does not apply where the required barrier or means of access components are not in place at the time of inspection with the barrier and means of access required to comply with the requirements of the current standard prescribed in the Building Code of Australia.
- (3) Where the barrier and means of access is required to comply with the requirements of the current standard prescribed in the Building Code of Australia the dividing fence in place prior to 1 September 2008 that applies to requirements of NSW Swimming Pool Barriers Prescribed Document –Pre 1 September 2008 barrier and means of access requirements may retain these requirements until such time as the dividing fence is replaced.

## **NSW SWIMMING POOL BARRIERS PRESCRIBED DOCUMENT**

### **Barriers and means of access**

#### **Pre 1 September 2008 barrier and means of access requirements**

For matters not covered refer to current AS1926.1

#### **Fence (other than a dividing fence) restricting access to a swimming pool**

1. Fence to have an effective height of at least 1200mm measured on the outside of the fence with a continuous non-climbable zone (NCZ) projected by a 900mm radius from the face of the fence.
2. Steps, retaining walls, objects or level changes that would otherwise reduce the effective height of a fence shall not be located within 500 mm of the fence.
3. A NCZ is a zone on a fence or in a designated space adjacent to a fence, running the full length of the fence including a gate, free of footholds or handholds or objects to restrict climbing of the fence by young children
4. The NCZ may be located anywhere on the vertical face of the fence with a 900mm distance between horizontal components with no handholds or footholds within the NCZ.
5. A Fence with vertical openings 10-100 mm in width, the NCZ extends inside the fence for a distance of 300mm.
6. Opening shall not exceed 100mm that would not be possible to pass the testing apparatus through the fence
7. On a fence where the space between vertical components is not greater than 10 mm, a component (fence rail) or object that would otherwise provide a handhold or foothold is not a handhold or foothold if its top surface is sloped at more than 60° to the horizontal plane

### **Dividing fence restricting access to a swimming pool**

Dividing fences used to restrict access to a swimming pool is required to comply with the following components measured on the outside of the fence

- be a minimum height of 1200mm above finished ground level
- have a minimum distance of 900mm between horizontal ledges with no footholds or handholds within the 900mm distance
- Have a minimum height of 1100mm from the highest lower horizontal to the top of the fence

Where the dividing fence continues past an internal fence the requirements are to continue 900mm beyond the intersection of an internal fence

### **Perforated or Mesh fence restricting access to a swimming pool**

Fence to have an effective height of at least 1800 mm on the inside of the fence from finished ground level with an added 450 mm long extension inclined to the outside of the fence at an angle of 135° from the vertical

### **Gates restricting access to a swimming pool**

1. The gate shall
  - a) comply with the requirements for a fence,
  - b) open outwards from the pool area,
  - c) be self-closing from any positions within the arc of operation of the gate without the application of manual force,
  - d) be self-latching with the latch release and prevent the gate from being re-opened without being manually released. The latch shall not be capable of —
    - inadvertent adjustment during operation;
    - locking in the 'open' position;

- adjustment without the use of tools
  - e) be installed so that when a gate is closed and latched, then lifted upwards or pulled downwards with a force of 250 N, movement of the gate will not—
    - release the latch;
    - unhinge the gate; or
    - increase the opening between the bottom of the gate and the FGL to more than 100 mm
  - 2. The gate release point shall be located;
    - a) a) A minimum 1500mm above finished ground level and
    - b) b) A minimum 1400mm above the highest lower horizontal
- The heights required under a) and b) above shall be maintained for a distance of 450mm on both sides of the latch release point
- 3. Where the latch release does not comply with 2 above the latch release shall be located;
    - a) on the inside of the fence and shielded in accordance with
    - b) be in such a position that to release the latch it will be necessary to reach over or through the fence at a height of not less than 1200 mm above FGL and not less than 1000 mm above the highest lower horizontal member; and
    - c) be at least 150 mm below the top of the fence if a hand-hole is not provided, or at least 150 mm below the lower edge of any hand-hole provided
    - d) the latch and latch release shall be shielded so that no opening greater than 10 mm occurs within the area bounded by
      - an effective radius of 450 mm from the latch release; and
      - the top of the fence, if this intersects the area described in Item (a).
  - 4. Gate hinges that protrude outward from the fence with a horizontal top surface depth greater than 10 mm, and those that create an opening between the gate post and the gate stile of more than 10 mm, shall not be permitted in NCZs 1 and 2 unless the top surface is sloped at 60° or more to the horizontal.

#### **Window restricting access to a swimming pool**

- (1) For a window restricting access to a swimming pool;
  - (a) the bottom of the lowest opening panel of the window must (when measured in the closed position) be at least 1200mm above finished floor level, and
  - (b) in relation to each opening portion of a window giving access to the swimming pool—there must not be any footholds wider than 10 mm between the bottom of the lowest opening panel of the window and any point within 1100mm below the bottom of that panel.
- (2) Sub-clause (1) above does not apply to a window that is:
  - (a) of substantial construction and is so fixed (by means of a keyed locking device or other child-resistant device) that it has no opening through which it is possible to pass a testing apparatus, or
  - (b) totally enclosed by a grille or metal mesh that is of substantial construction and is so fixed (by means of a keyed locking device or other child-resistant device) that it has no opening through which it is possible to pass a testing apparatus.

#### **Door restricting access to a swimming pool**

For the purpose of section 8, 9, 10 and 14 of the Act

- (a) each door providing access to the swimming pool must be kept securely closed by means of a lock, latch, bolt, chain or other child-resistant device located at least 1.5 metres above finished floor level.
- (b) each door being of substantial construction and (when the door is securely closed) having no opening below 1.5 metres above finished floor level (either in the door or between the door and the doorway) through which it is possible to pass a standard test bar,
- (c) each door must be kept securely closed at all times when they are not in actual use
- (d) there must not, on the door or on the door frame, be any footholds wider than 10 millimetres between the release mechanism of the door and any point 100 millimetres above finished floor level

#### **Wall restricting access to a swimming pool**

The wall being of substantial construction and having no opening within 1200mm of finished ground or floor level through which it is possible to pass a standard test bar

A wall having openings of 100 mm or more above the 1200mm height is to have no footholds wider than 10 mm within 1100mm of the base of finished ground or floor level.

**COULD INCLUDE SOME DRAWINGS OR PHOTOS OF BARRIERS TO ILLUSTRATE REQUIREMENTS**

#### **Regulation Review - Improve and simplify pool safety standards**

##### **The Way Forward** (from the government response to Lambert review)

The NSW Government recognises the challenges for pool owners to comply with a complex swimming pool barrier standards framework and for councils to enforce it. The Government is committed to providing easy-to-understand guidance for swimming pool owners that will assist them in meeting their obligation to make their pool compliant. The Government will also provide guidance material for private and council certifiers on their legislative and regulatory responsibilities.

A number of government responses on the Lambert Review were about providing guidance and information to improve the understanding, access to and simplifying the pool barrier requirements and processes for certification.

Below are a number of extracts;

NSW Government 2016 response to Lambert review

The NSW Government will explore options **to improve and simplify pool safety standards within the regulatory framework** for swimming pool barriers and make them more accessible.

**Supported in Part – the NSW Government will work on options to ensure home owners have better access information and guidance about how to meet their obligations without needing to buy the Standard.**

**Supported –1(f),** the NSW Government will work on options to ensure home owners have better access to information and guidance about how to meet their obligations.

**Supported –** as per recommendation 1(f), the NSW Government will work on options to ensure home owners have better access information and guidance about how to meet their obligations

**Supported – The NSW Government will consider guidance in the context of examining options for simplifying the standard framework**

**Support in Principle** – further support and guidance will be developed in the context of examining options for simplifying the standard framework.

**Supported in part** – DFSI will finalise and issue a Practice Guide for certifiers consistent with the outcomes of the review of the *Building Professionals Act 2005*. The Practice Guide will be issued as administrative guidance.

Sections 7, 8, 9, 10, 12 and 14 of the Act all make reference to  
a child-resistant barrier that is designed, constructed, installed and maintained in  
accordance with the standards prescribed by the Regulation.

It is submitted that these requirements would be easier to administer, easier to access and understand if they were placed in a reference document from the Regulation and in addition would include requirements for pools constructed/ modified under previous regulations. The document would reference the BCA – Swimming Pool Access, as is currently the situation together with the details regarding pre current AS (BCA reference).

Regulations are with respect to any matter that by the Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act

The Swimming Pools Act makes 19 references to the Regulation

- 16 prescribed by the regulation
- 2 declared by the regulation
- 1 recognised by the regulation

Many of these could be covered under a Prescribed Standard document managed by the DFSI Secretary for changes as may be required without the need of amending legislation.

### Meanings

Existing pools means pools constructed prior to current regulation

PD means the NSW Swimming Pools Barrier Prescribed Document

### **Benefits of having a Prescribed Document (PD) under the Regulation**

- Currently state/ territory pool regulators have no input into the current prescribed standards that are referenced to the BCA and referenced Australian Standards. This has resulted in requirements being placed within regulations and the BCA setting certain AS requirements/ structures as not being an effective barrier within NSW. This could be covered easily within the PD thus not requiring the current BCA variation.
- This PD would be under the control of the DFSI (state regulator) Secretary resulting in easier administration and management of the requirements within NSW especially in relation to existing pools (pools constructed prior to current regulation) and superseded Australian Standards.
- Current regulation clauses 5, 6, 7 and 8 references to Sections 7, 8, 9, 10, 12 and 14 of the Act would be replaced by 1 clause referencing BCA and PD
- Regulation clause 9 reference to for section 20 (spa exemption) would be detailed within the PD.



- The current differences within NSW to other states/ territories concerning using the wall of a pool and spa having a lockable lid (not fenced) would be contained within the PD.
- Current regulation clauses 22A and 23 accepting past standards for complying pools could be contained within the PD. Providing a simplified document replacing regulation references to 1998 Regulation, AS1926-1986 and 1926.1-2007
- Requirements more onerous than the current AS can be addressed to provide a more uniform and equivalent requirements governing all pools. The requirements need to move past these more onerous requirements and provide an equal arena for pool barriers.
- Changes to the Regulation due to revised versions of AS1926 would be handled within DFSI with no changes required to the Regulation. Such as current reference to AS1926.1-2007 in clauses 3, 4, 6, 7 and 21.
- Clause 21 of the Regulation would change to BCA (current referenced AS) and PD. No future change would be required as the PD is managed by DFSI Secretary.
- The PD would reference the BCA as is currently the case applying the current Australian Standards parts 1 and 2. This covers current pools and any requiring upgrade as is currently the case.
- The PD would be freely and readily available to pool owners outside any copyright restrictions. An improvement over current situation of having 3 AS copyrighted documents.
- The PD provides the ability for state regulator to determine and regulate the requirements that apply to existing pools based on the time of barrier construction.
- Regulators would only be required to have available the current BCA referenced standard and the PD for the public to view.
- The PD would be available for circulation to the public.
- The PD would be available for authorities to utilise under section 5 of the Act to promote awareness of the requirements in relation to swimming pools.
- The PD could be used in shortened guideline versions to increase and targeted education campaign for pool owners and fencing and landscape contractors. In addition to maintenance and key safety issue of Supervision.
- The PD would allow for the use of an alternate solution under the National Construction Code.
- The PD could record accepted alternate solutions for future reference.
- The PD could be expanded to include other matters referenced to the Regulation such as;
  - section 22 (1) (a) exemption being of a kind recognized by the regulation.
- The PD would include information on barrier situations not covered under the NSW legislation or Australian Standards.

#### Proposed Regulation change

##### **New Clause Prescribed Standards**

- (1) For the purpose of sections 7, 8, 9, 10, 12 and 14 of the Act the prescribed standards in accordance with which a child-resistant barrier surrounding a swimming pool is to be designed, constructed, installed and maintained are the standards set out in the Building Code of Australia and Regulation Prescribed Document.
- (2) The DFSI Secretary may make guidelines for matters within the scope of the Act to assist in compliance with this Act.

**The NSW Government recognises that the number of pools with automatic exemptions will decrease over time as pools deteriorate and are removed, or undergo major renovations, triggering an upgrade to the latest standard. Guidance to pool owners on specific**

**exemptions will be considered in the context of examining options for simplifying the standards framework.**

- (3) Without limiting subsection (2), the DFSI Secretary may make the following guidelines—
- (a) a guideline about ways of complying with the pool safety standard and performing pool safety inspection functions;
  - (b) a guideline about the content of the Prescribed Standards

## **NSW SWIMMING POOL BARRIERS PRESCRIBED DOCUMENT**

### **Application**

Swimming Pools Act 1992 sections 7, 8, 9, 10, 12, 14 and 20 reference to child-resistant barriers restricted in accordance with the standards prescribed by the regulation

### **Commencement**

### **Compliance**

Compliance with this document can be achieved by:

- (a) complying with the National Construction Code swimming pool access *acceptable solution* for the performance requirement; or
- (b) complying with the provisions of this document, or
- (c) formulating an alternative solution that complies with the National Construction Code performance requirement and no less effective to this document, or
- (d) a combination of the above.

### **Relationship to National Construction Code**

This document prevails over the National Construction Code swimming pool access acceptable solution for Swimming Pool Access to the extent of any inconsistency.

### **Associated Requirements**

- (a) *Swimming Pools Act 1992 and*
- (b) *Associated Swimming Pools Regulations*
- (c) National Construction Code – Swimming pool access

### **Barriers and means of access prior to 1 September 2008**

See document - Regulation Review\_Barriers and means of access prior to 1 September 2008

### **Barriers and means of access for period**

**1 September 2008 to 30 April 2013**

To Be Expanded if Concept Supported

### **Situations not covered within the Pool Legislation and Australian Standards**

Previously the BPB/ OLG had a joint advisory committee to discuss issues presented to the BPB/ OLG. The committee was also available to discuss issues which resulted in clarifications being circulated via BPB eNews.

There are a number of issues that require discussion to achieve a uniform position in application of the requirements under the Swimming Pools Act. This is not a request for site specific advice or legal advice. Some of these issues are not specifically itemised in the legislation or Australian Standards but could be addressed under the Regulation being reference by the Act.

The discussion could involve a panel of Officers/ certifiers technical knowledge to share current practice, variances and expectations for the itemised issues. The result would be to;

- confirm the issues as being not significant for no action or significant to warrant information to assist Certifiers in the application of pool requirements.
- provide advice to the regulator to require either
  - changes to the legislation or
  - simply practice notes/ information as has been provided in the past

The following are pool barrier headings on matters that are not covered within the requirements. Due to lack of guidance these issues often result in an inconsistent approach to restricting access to a swimming pool by a young child.

Should it be the intent to reestablish a technical committee for pools under Fair Trading additional information will be provided expanding on the issues.

1. Protection of gate latching release mechanism
  - Latch release adjacent an 1800mm high barrier
  - Horizontal component within 900mm of latch release
2. Guidance in relation to terms – these impact on matters in item 3
  - principally used
  - residential purpose
  - primary purpose
3. Pool Area
  - a) Location of Barriers – expansion to Schedule 1 of the Act
    - Pool area incorporating outdoor entertainment area
    - Access through pool area to enter/ egress residential building
    - Access through pool area to enter/ egress the site
  - b) Uses within a pool area
  - c) Structures permitted within a pool area  
Guidance in relation to terms -principally used, primary purpose
4. Use of a window as a barrier – window surface outside of a pool area
  - Outdoor Pool
  - Indoor Pool
5. Intersection of different types of child-resistant barriers
6. Guidance is required to assist Local Authorities and Certifiers in their application of
  - Section 8 subclause (4) and sections 9 and 10 subsection (5) of the Act

- Acceptable section 22 situations
  - pool wall not less than 1800mm in height with NCZ components
  - Use of NCZ 1, 2, 3, 4 combo in lieu of Pre Sept 2008 (more onerous) 1200mm NCZ radius

### **Guideline - Significant Risk to Public Safety**

The government has acknowledged providing guidance material to assist in achieving a uniform application of the legislative requirements.

**The Way Forward** (from the government response to Lambert review)

The NSW Government recognises the challenges for pool owners to comply with a complex swimming pool barrier standards framework and for councils to enforce it. The Government is committed to providing easy-to-understand guidance for swimming pool owners that will assist them in meeting their obligation to make their pool compliant. **The Government will also provide guidance material for private and council certifiers on their legislative and regulatory responsibilities.**

One such issue within the Swimming Pools Act is the term - **Significant Risk to Public Safety**

The term Significant risk to Public Safety was first introduced to the legislation under section 23A (1) (b) with the *Swimming Pools Amendment Act 2009 No 107* along with the term Safety of a person would be at risk under section 23 (6)

The difference in the application of the terms

Significant risk to Public Safety is in relation to the local authority may enter the property and carry out some or all of the requirements of a direction

IF *the local authority considers that the requirements of the direction need to be carried out urgently as there is a significant risk to public safety*

Safety of a person would be at risk is in relation to the local authority being able to issue a direction without first serving a notice under subsection (5).

The term Significant risk to Public Safety was repeated in the *Swimming Pools Amendment Act 2012 No 77* with the introduction of E1 Certifiers and their issuing of a notice under section 22E of the Act.

Under section 22E the E1 Certifier had to determine if in their opinion the swimming pool poses a significant risk to public safety or not. If the E1 Certifier decided Yes – then the section 22E notice was required to be sent to the local authority immediately. No – then the E1 Certifier had the job for 6-weeks after such time the notice was required to be sent to the local authority.

Without guidance being provided many E1 Certifiers determine that all non-compliant barrier situations pose a significant risk to public safety. I believe disrupting the purpose of the decision.

**Question to be answered.** This will provide some guidance required.

What is the purpose of sending the section 22E notice to the local authority immediately compared to after 6-weeks?

### Comments

Based on the content of the legislation prior the section 22E being inserted

Under section 23A (1) (b) of the Act the opinion that the swimming pools posed a Significant risk to Public Safety was one of the determining factors for the local authority to carry out some or all of the works.

Because of section 23A any non-compliance assessed by an E1 certifier that may come under the determining factors of this section requires to be sent to the local authority for them to consider if action is warranted under section 23A of the Act. ie Immediately.

This is not occurring

As some E1 Certifiers are sending all non-compliances to the local authority.

Due to the number of such section 22E notices being received the local authorities are not

1. differentiating between those 22E notices that are marked as posing a significant risk to public safety and those that are not.
2. investigating without delay those 22E notices that are marked as posing a significant risk to public safety for possible action under section 23A of the Act

Of course in many cases where a pool is considered by the local authority to be significant risk to public safety the local authority process is to

- I. issue a section 23 notice requiring temporary child-resistant barrier to be provided within 48 hours. In achieving this, the pool is no longer a significant risk to public safety.
- II. should the direction not be complied with, enforcement action and penalty notice is an incentive, then the use section 23A. Such works carried out could be as simple as providing temporary fencing thus removing the significant risk to the public.

## Question

What is the purpose of sending the section 22E notice to the local authority immediately compared to after 6-weeks?

To highlight significant non-compliance to the local authority for the local authority to consider if action is required in reference to section 23A of the Act where a local authority may carry out some or all of the requirements of a section 23 direction.

### *23A Compliance with direction of local authority*

*(1) An authorised officer, or a person acting under the direction of a local authority, may carry out some or all of the requirements of a direction given by the local authority under section 23 if:*

*(a) the person to whom the direction is given fails to comply with the direction within the time specified in the direction, or*

*(b) the local authority considers that the requirements of the direction need to be carried out urgently as there is a significant risk to public safety.*

Further to previous comments submitted on the regulation review, attached is a submission in relation to the proposed Swimming Pools Regulation 2018 document that is currently out for public comment. The five attachments are the submission, an attachment for the AS1926.31-2007 item and 3 supporting documents for the pool structure item.

I am available to discuss or expand on the issues raised, if required.

Regards

**SUTHERLANDSHIRE**



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## Comment on the Public Consultation draft of the Swimming pools Regulation 2018

### Comments provided on

Clause 3 and 4	Review of prescribed standard AS1926.1-2007 within the Regulation
Part 2 Note	Additional items for Note
Clause 5 and 8	Add new subclause providing prescribed standard application to pool structure
Clause 6	To include prescribed standard for a child-resistant barrier or gate that would be included under section 8 of the Act
Clause 7	to include prescribed standard for a child-resistant barrier or gate that may exist under section 9 and 10 of the Act
Clause 8	to include prescribed standard for a child-resistant barrier or gate that may exist under section 14 of the Act
Clause 9	Electronic operation of spa lid
Clause 13	Exemption Certificate application subsequent inspection fee
Clause 21 (3)	Certificate of Non-Compliance for Sale properties only
Clause 21 (6)	Certificate of Non-Compliance - Clarify meaning of being valid for 1-year
Clause 30	Note restricted to subclause (3) means of access. Requires to apply to barrier and means of access
Clause 31 (3)	Barriers can exist to restrict access for indoor pools. Subclause (3) (a) requires to be amended to apply to both indoor and outdoor pools

Attachment: re; Clause 3 and 4 Regulation 2018 Review and AS1926\_1\_\_2007  
Clause 5 and 8 Three supporting document

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## Review of prescribed standard AS1926.1-2007 within the Regulation

AS1926.1-2007 applied to pools between 1 September 2008 to 30 April 2013

### 3 Definitions

(1) In this Regulation:

**AS 1926.1—2007** means the provisions of AS 1926.1—2007, *Swimming pool safety, Part 1: Safety barriers for swimming pools* as published by Standards Australia on 12 July 2007, **other than clause 2.10.**

### 4 References to compliance with AS 1926.1—2007 or Building Code of Australia

For the purposes of this Regulation, a child-resistant barrier, window or doorway is taken to **comply with AS 1926.1—2007** or the *Building Code of Australia* where applicable so long as **it complies with the minimum requirements of the standard** or the code.

Comment re clause 3 and 4

While clause 3 excludes the use of clause 2.10 (above ground pool) of AS1926.102007 the same exclusion has not been included in clause 4 which allows for compliance with the whole standard.

#### AS1926.1-2007 IMPACT

Referenced under clauses 3, 4, 6 and 7.

In addition, Clause 30 permits the use of AS1926.1-2007 for existing complying indoor and outdoor pools.

#### ISSUE

This standard permitted the barrier height to be compromised by not restricting objects, raised levels, decks and the like adjacent to the barrier effectively reducing the barrier height from 1200mm to 900mm.

This seriously compromised the safety of young children in NSW.

This was finally rectified on 1 May 2018 under AS1926.1-2012

**BUT today objects, raised levels, decks and the like (not being part of the barrier) can still today be placed adjacent the barrier compromising the barrier height and safety of young children.**

This can now be rectified with the 2018 Regulation

**SEE ATTACHMENT for full details and Proposed Amendments -** Regulation 2018 Review and AS1926\_1\_\_2007

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## Part 2 Restriction of access to swimming pools

**Note.** Clause 31 deals with swimming pools completed before 1 September 2008.

### COMMENT

Additional restrictions exist in relation to access restrictions that apply to a swimming pool. To complete the provisions, they all require to be provided within Part 2

### PROPOSED amended Note

**Note.** This part is subject to any exemptions under section 22 of the Act.

Clause 30 deals with existing complying swimming pools.

Clause 31 deals with complying swimming pools completed before 1 September 2008.

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## Part 2 Restriction of access to swimming pools

**Note.** Clause 31 deals with swimming pools completed before 1 September 2008.

### Division 1 Restriction of access to outdoor swimming pools

#### 5 General requirements for outdoor swimming pools

(1) For the purposes of sections 7 (1) (b) and 12 (d) of the Act, the prescribed standards in accordance with which a child-resistant barrier surrounding a swimming pool is to be designed, constructed, installed and maintained are the requirements as set out in the *Building Code of Australia*.

**Note.** The Act and this Regulation prevail to the extent of any inconsistency with the *Building Code of Australia*.

(2) This clause is subject to clause 22.

### COMMENT

It is an ongoing issue about using the pool structure as a barrier. It is sought that clause 5 (outdoor pool) and clause 8 (indoor pool) make it clear that a pool structure is not an acceptable barrier within the legislated prescribed standards.

The current provision of the BCA part 3.9.3 is not clear and too far removed from the legislation to be clear on the issue.

#### Part 3.9.3 NSW variation

**Part 3.9.3.0(a) applies in New South Wales** to the technical construction requirements for barriers to restrict access to swimming pools, subject to out-of-ground pool walls and the walls of above ground pools, including inflatable pools, **not being considered to be effective barriers**.

The statement -not being considered to be an effective barrier – does not present a definite position.

It is requested that in keeping with the provisions of section 7 of the Act clause 5 and 8 specifically state that the use of out-of-ground pool walls and the walls of above ground pools, including inflatable pools are excluded as a barrier except where an exemption is issued under section 22 of the Act.

#### Swimming Pools Act 1992

Section 7 of the Act states that a pool is to be surrounded by a child-resistant barrier that separates the swimming pool from any residential building and from any adjoining premises.

#### Building Code of Australia

F2.5.2 provides a function statement that a swimming pool is to be provided with the means to restrict access to the swimming pool by young children.

P2.5.3 provides the performance requirements that a barrier must be provided to the swimming pool and must restrict the access of young children to the pool and the immediate pool surrounds

The provisions of the Act and the BCA require a barrier be provided restricting access of a young child to the pool. The definition of a barrier does not include a pool structure. The Act and BCA does not say restricting access to the pool water but restrict access to the pool, so it is not possible to use a pool to restrict access to itself.

**PROPOSED** to add new subclause (b), includes amended Part 2 Note from above

## Part 2 Restriction of access to swimming pools

**Note.** This part is subject to any exemptions under section 22 of the Act.

Clause 30 deals with completed existing complying swimming pools.

Clause 31 deals with complying swimming pools completed before 1 September 2008.

### Division 1 Restriction of access to outdoor swimming pools

#### 5 General requirements for outdoor swimming pools

**(1) (a)** For the purposes of sections 7 (1) (b) and 12 (d) of the Act, the prescribed standards in accordance with which a child-resistant barrier surrounding a swimming pool is to be designed, constructed, installed and maintained are the requirements as set out in the *Building Code of Australia*.

**Note.** The Act and this Regulation prevail to the extent of any inconsistency with the *Building Code of Australia*.

**(b) Out-of-ground pool walls and the walls of above ground pools, including inflatable pools are excluded as a child-resistant barrier except where an exemption is issued under section 22 of the Act.**

(2) This clause is subject to clause 22.

#### COMMENT

Subclause (1) (b) above also applies to indoor pools that may be over a split-level floor or may be a wet edge design therefore needs to be repeated for clause 8 indoor pool

**PROPOSED** to add new subclause (b),

### Division 2 Restriction of access to indoor swimming pools

#### 8 General requirements for indoor swimming pools

(1) a) For the purposes of section 14 of the Act, the prescribed standards in accordance with which the means of access to an indoor swimming pool are to be restricted are that each doorway, and each opening portion of a window, giving access to the swimming pool must be designed, constructed, installed and maintained in accordance with the requirements as set out in the *Building Code of Australia*.

**b) Out-of-ground pool walls and the walls of above ground pools, including inflatable pools are excluded as a child-resistant barrier except where an exemption is issued under section 22 of the Act.**

(2) This clause is subject to clause 22.

**ATTACHED** 3 supporting documents

1995 04 19 Circular DLG Wall Above Ground Pool

BPB eNews walls of pool not accepted barrier 2015 09 30

BPB eNews walls of pool not accepted barrier 2016 07 11

## **6 Standards required for certain swimming pools to be exempt from requirement to separate swimming pool from residential building**

(1) For the purposes of **section 8** (2) of the Act, the prescribed standards in accordance with which the means of access to a swimming pool from a residential building are to be restricted are that:

- (a) each doorway, and each opening portion of a window, that gives access to the swimming pool is to be designed, constructed, installed and maintained in accordance with the standards set out in AS 1926.1—2007, and
- (b) in relation to each opening portion of a window giving access to the swimming pool—there must not be any footholds wider than 10 millimetres between the bottom of the lowest opening panel of the window and any point within 1.1 metres below the bottom of that panel.

### **COMMENT**

Section 8 – the pool is required to comply with section 7 for a barrier surrounding a pool (including adjoining properties) with an exemption that MAY have been used separated from the residential building. In all cases some part would require a child resistant barrier that may include a gate.

Clause 6 provides the prescribed standard for the doors or windows that give access but clause 6 does not include the standard that would apply to any child-resistant barriers or gates that exist under section 8.

### **PROPOSED**

## **6 Standards required for certain swimming pools to be exempt from requirement to separate swimming pool from residential building**

(1) For the purposes of section 8 (2) of the Act, the prescribed standards in accordance with which the means of access to a swimming pool from a residential building are to be restricted are that:

- (a) each doorway, and each opening portion of a window, that gives access to the swimming pool is to be designed, constructed, installed and maintained in accordance with the standards set out in AS 1926.1—2007, and

**(b) each child-resistant barrier or gate surrounding a swimming pool is to be designed, constructed, installed and maintained in accordance with the standards set out in AS 1926.1—2007, and**

- (c) in relation to each opening portion of a window giving access to the swimming pool—there must not be any footholds wider than 10 millimetres between the bottom of the lowest opening panel of the window and any point within 1.1 metres below the bottom of that panel.

---

## **7 Standards required for swimming pools on large or waterfront properties to be exempt from requirement to surround swimming pool**

For the purposes of sections 9 (2) and 10 (2) of the Act, the prescribed standards in accordance with which the means of access to a swimming pool from a residential building are to be restricted are the standards set out in AS 1926.1—2007.

### **COMMENT**

Under section 9 and 10 a pool is not required to be surrounded by a barrier provided the means of access from any residential building are at all times restricted. These pools could have a combination of restricting the building means of access and a section being a barrier or gate. The most common case being a barrier/ gate from side of building to property boundary.

Clause 7 provides the prescribed standard for the means of access but clause 7 does not include the standard that would apply to any child-resistant barriers or gates that could exist under section 9 and 10

### **PROPOSED**

## **7 Standards required for swimming pools on large or waterfront properties to be exempt from requirement to surround swimming pool**

- (a) For the purposes of sections 9 (2) and 10 (2) of the Act, the prescribed standards in accordance with which the means of access to a swimming pool from a residential building are to be restricted are the standards set out in AS 1926.1—2007, and

**(b) each child-resistant barrier or gate restricting access to the swimming pool is to be designed, constructed, installed and maintained in accordance with the standards set out in AS 1926.1—2007.**

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## Division 2 Restriction of access to indoor swimming pools

### 8 General requirements for indoor swimming pools

- (1) For the purposes of section 14 of the Act, the prescribed standards in accordance with which the means of access to an indoor swimming pool are to be restricted are that **each doorway, and each opening portion of a window**, giving access to the swimming pool must be designed, constructed, installed and maintained in accordance with the requirements as set out in the *Building Code of Australia*.
- (2) This clause is subject to clause 22.

#### COMMENT

The means of access to an indoor swimming pool is not limited to doors and windows. Many indoor pools are within a large multiple use area with a child-resistant barrier and gate being used to restrict access to the indoor pool and separating the indoor pool from other uses within the building enclosure.

Example a community building may contain a pool, exercise area and gymnasium. Often such area is accompanied by a community use open area and Bar-B-Que.

#### PROPOSED – includes 1 (b) from previous clause 5 and 8 amendment

## Division 2 Restriction of access to indoor swimming pools

### 8 General requirements for indoor swimming pools

- (1) **(a)** For the purposes of section 14 of the Act, the prescribed standards in accordance with which the means of access to an indoor swimming pool are to be restricted are that **any child-resistant barrier together with each gate**, each doorway, and each opening portion of a window, giving access to the swimming pool must be designed, constructed, installed and maintained in accordance with the requirements as set out in the *Building Code of Australia*.  
**(b)** Out-of-ground pool walls and the walls of above ground pools, including inflatable pools are excluded as a child-resistant barrier except where an exemption is issued under section 22 of the Act.
- (2) This clause is subject to clause 22.

---

## Division 3 Restriction of access to spa pools

### 9 Standards required to be exempt from requirement to surround spa pool

For the purposes of section 20 of the Act, the prescribed standards in accordance with which access to the water contained in a spa pool is to be restricted are that the spa pool must be covered and secured by a lockable child-resistant structure (such as a door, lid, grille or mesh) that is:

- (a) of substantial construction and having no opening through which it is possible to pass a testing apparatus, and
- (b) fastened to the spa pool, or fastened to a structure that is of substantial construction and adjacent to the spa pool, by a device that is itself of substantial construction and having no opening through which it is possible to pass a testing apparatus.

#### COMMENT

The provisions do not cover the increasing use of electronically operated covers activated by a fixed or mobile device. The Act requires the child-resistant barrier (cover) to be in place at all times when the spa pool is not in actual use.

Concern is expressed in relation to

- at times of power failure where the cover may not be capable of being put in place or the cover could release any electrical lock.
- Location of the operating switch being within reach or accessible to young children

#### PROPOSED amendment to clause 9

## 9 Standards required to be exempt from requirement to surround spa pool

For the purposes of section 20 of the Act, the prescribed standards in accordance with which access to the water contained in a spa pool is to be restricted are that the spa pool must be **capable of being manually** covered and **manually** secured by a lockable child-resistant structure (such as a door, lid, grille or mesh) that is:

**Note: Locking mechanism is required to be a manual operation and not rely on electronic operation.**

**Child-resistant structure to be callable of manual operation and not solely on electronic operation.**

---

## 13 Fee for application for exemption

- (1) A local authority may impose a fee of up to \$150 on an application for an exemption under section 22 of the Act.
- (2) An application made to a local authority that has imposed a fee must be accompanied by that fee.

### COMMENT

An application for an exemption under section 22 requires more than 1 inspection.

The application is often for a proposed variation or a variation to an existing situation that has difficulty to achieve the required standard.

The first inspection deals with assessing the proposal and site inspection to validate the issues presented to justify the need for an exemption. Upon a decision being provided works are required to be carried out to meet the exemption requirements with a subsequent inspection carried out to sign off and issue the Exemption Certificate.

**PROPOSED** new subclause (3) to apply for subsequent inspections

## 13 Fees for application for exemption

- (1) A local authority may impose a fee of up to \$150 on an application for an exemption under section 22 of the Act.
  - (2) An application made to a local authority that has imposed a fee must be accompanied by that fee.
  - (3) **The local authority may charge the applicant an inspection fee of up to \$100, after the initial inspection, for any such subsequent inspection carried out in relation to finalising the exemption application.**
-

## 21 Certificates of non-compliance if pool does not comply

**Note.** A local authority may, under section 23 of the Act, order compliance with Part 2 of the Act.

- (1) This clause applies to an inspection carried out by the local authority, or an accredited certifier, under **section 22C of the Act**.
- (2) The local authority or accredited certifier **must issue a certificate of non-compliance** to the owner in respect of a swimming pool if the local authority or accredited certifier (as the case requires):
  - (a) has inspected the pool under section 22C of the Act, and
  - (b) is satisfied that the requirements for the issue of a certificate of compliance have not been met.

### COMMENT

Under the provisions of the Residential Tenancies Regulation 2010 a certificate of compliance or recent occupation certificate are the only certificates acceptable for the purpose of completing a residential tenancy agreement.

The certificate of compliance is applied for under the provisions of section 22C of the Act. A certificate of non-compliance is NOT required, so why is it mandatory under subclause 2 for rental properties

Any non-compliance results in the issue of a notice detailing the non-compliance issues, so why is a certificate of non-compliance required. The issue of a certificate of non-compliance for rental properties only adds to the confusion in relation how it relates to the residential tenancy agreement.

The certificate of non-compliance is only necessary in relation to properties for sale where the certificate of non-compliance is able to be used with the property contract for sale.

### PROPOSED

## 21 Certificates of non-compliance if pool does not comply

**Note.** A local authority may, under section 23 of the Act, order compliance with Part 2 of the Act.

- (1) This clause applies to an inspection carried out by the local authority, or an accredited certifier, under section 22C of the Act **where the request states that the inspection is required to enable the sale of the premises.**

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## 21 Certificates of non-compliance if pool does not comply

**Note.** A local authority may, under section 23 of the Act, order compliance with Part 2 of the Act.

- (6) A certificate of non-compliance in respect of a swimming pool **remains valid for a period of 1 year** from the date on which it is issued but ceases to be valid if a certificate of compliance is subsequently issued under section 22D of the Act for that swimming pool.

**Note.** **A non-compliance certificate must be entered** on the Register. See clause 18 (2).

### COMMENT Two issues

1 Pool Owners are continually using the fact that they have a certificate of non-compliance that is valid for 12 months, so they are not required to carry out works.

2 Certificate of non-compliance can only be produced in the Register, so it is not relevant for the Note current wording. It requires to be amended.

### PROPOSED

- (6) **The purpose of the certificate of non-compliance in respect of a swimming pool is for the use under the provisions of the Conveyancing (Sale of Land) Regulation 2010.** A certificate of non-compliance in respect of a swimming pool remains valid for a period of 1 year from the date on which it is issued but ceases to be valid if a certificate of compliance is subsequently issued under section 22D of the Act for that swimming pool.

**Note.** **The details of a** non-compliance certificate must be entered on the Register. See clause 18 (2).

### Pool Register

The actual certificate of non-compliance could also be amended to include the above information

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## 30 Effect of changes to prescribed standards for existing complying swimming pool barriers and means of access

**Note.** **Subclause (3)** applies to standards prescribed under provisions of Part 2 of the Act that relate to indoor swimming pools, outdoor swimming pools or both.

## COMMENT

Why does the Note not apply to subclause (2)?

The Note at the end of the subclause (3) in relation to the means of access references to indoor and outdoor pools. In relation to the means of access this would apply to doors and gates.

With no such note under subclause (2) in relation to barrier does this restrict where subclause (2) applies?

The means of access to an indoor swimming pool is not limited to doors and windows. Many indoor pools are within a large multiple use area with a child-resistant barrier and gate being used to restrict access to the indoor pool and separating the indoor pool from other uses within the building enclosure.

Example a community building may contain a pool, exercise area and gymnasium. Often such area is accompanied by a community use open area and Bar-B-Que.

## PROPOSED

The Note either be amended to apply to both subclause (2) and (3) or the following Note to the clause 30 be provided as follows:

**Note: This clause applies to indoor swimming pools, outdoor swimming pools or both barriers and means of access can be used to restrict access to either indoor swimming pools or outdoor swimming pools.**

---

### 31 Existing complying swimming pools may continue to comply with earlier standards

(3) However, this clause does not apply in relation to:

(a) an outdoor swimming pool—if the child-resistant barrier by which access to the swimming pool is restricted is substantially altered or rebuilt, and

(b) an indoor swimming pool—if the premises in or on which the swimming pool is situated are substantially altered or rebuilt in a way that affects the means of access to the swimming pool.

## COMMENT

Barriers can apply to both outdoor and indoor pools. Subclause (a) requires changing to cater for barriers used to restrict access to both indoor and outdoor pools.

The means of access to an indoor swimming pool is not limited to doors and windows. Many indoor pools are within a large multiple use area with a child-resistant barrier and gate being used to restrict access to the indoor pool and separating the indoor pool from other uses within the building enclosure.

Example a community building may contain a pool, exercise area and gymnasium. Often such area is accompanied by a community use open area and Bar-B-Que.

## PROPOSED

Clause 3 (a) is amended to apply to all pools in relation to barrier (including means of access) are altered/rebuilt.

(3) However, this clause does not apply in relation to:

(a) an indoor swimming pool or outdoor swimming pool —if the child-resistant barrier (including the means of access) by which access to the swimming pool is restricted is substantially altered or rebuilt, and

(b) an indoor swimming pool—if the premises in or on which the swimming pool is situated are substantially altered or rebuilt in a way that affects the means of access to the swimming pool.

---

## Regulation Review and AS1926.1-2007

AS1926.1-2007 applied to pools between 1 September 2008 to 30 April 2013

### 3 Definitions

(1) In this Regulation:

**AS 1926.1—2007** means the provisions of AS 1926.1—2007, *Swimming pool safety, Part 1: Safety barriers for swimming pools* as published by Standards Australia on 12 July 2007, other than clause 2.10.

#### 4 References to compliance with AS 1926.1—2007 or Building Code of Australia

For the purposes of this Regulation, a child-resistant barrier, window or doorway is taken to comply with AS 1926.1—2007 or the *Building Code of Australia* where applicable so long as it complies with the minimum requirements of the standard or the code.

Comment re clause 3 and 4

While clause 3 excludes the use of clause 2.10 (above ground pool) of AS1926.102007 the same exclusion has not been included in clause 4 which allows for compliance with the whole standard.

#### AS1926.1-2007 IMPACT

Referenced under clauses 3, 4, 6 and 7.

In addition, Clause 22A permits the use of AS1926.1-2007 for existing complying pools.

#### ISSUE

This standard permitted the barrier height to be compromised by not restricting objects, raised levels, decks and the like adjacent to the barrier effectively reducing the barrier height from 1200mm to 900mm.

This seriously compromised the safety of young children in NSW.

This was finally rectified on 1 May 2018 under AS1926.1-2012

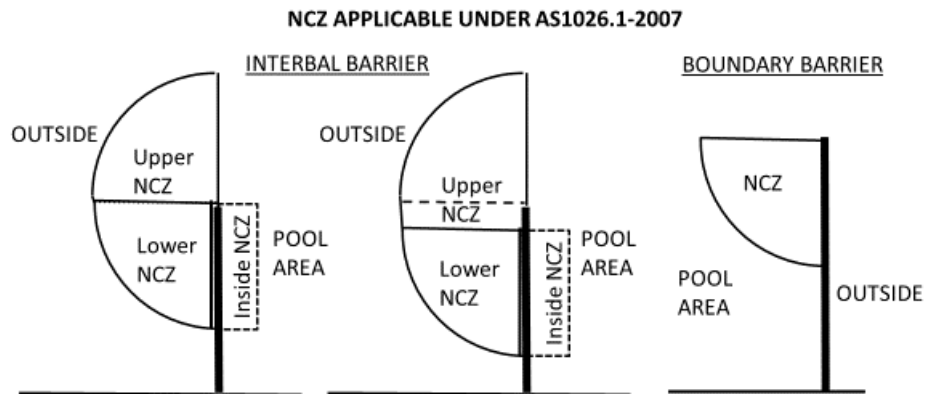
**BUT today objects, raised levels, decks and the like (not being part of the barrier) can still today be placed adjacent the barrier compromising the barrier height and safety of young children.**

This can now be rectified with the 2018 Regulation



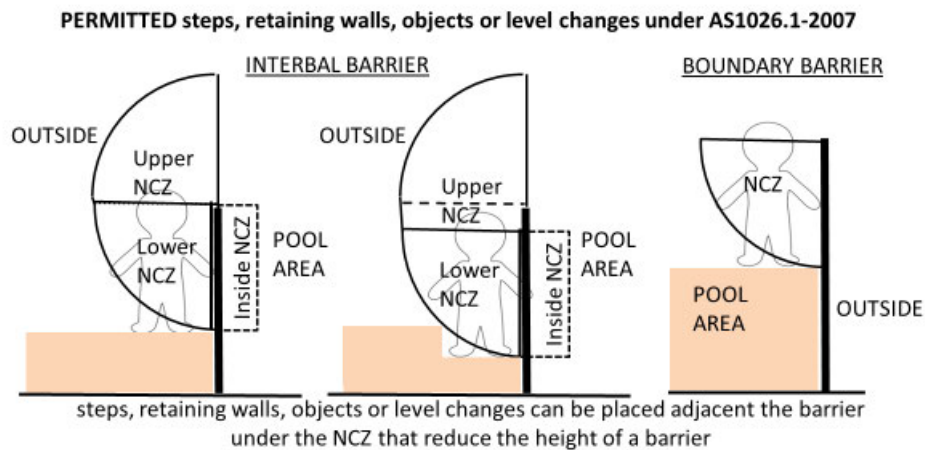
## AS1926.1-2007

### AS1926.1-2007 Requirement



With no restriction existing under the lower NCZ steps, retaining walls, objects or level changes can be placed adjacent the barrier under the NCZ that reduce the height of a barrier.

Permitted to be done today – compromising the required barrier height



Clause 30 allows the ongoing application of AS1926.1-2007 for an existing complying barrier installed between 1 September 2008 to 30 April 2013. This does not apply if the barrier has been substantially altered or rebuilt after 30 April 2013.

TODAY in 2018 steps, retaining walls, objects or level changes can be placed adjacent the barrier under the NCZ that reduce the height of a barrier and still complies with clause 30 because THE BARRIER HAS NOT BEEN SUBSTANTIALLY ALTERED OR REBUILT.

Clause 30 is to allow the retention of the barrier situation that applied during the 2007AS period between September 2008 and April 2013. In keeping with the standard requirement since 1 May 2013 and in the interest of child safety restricting access this hole to allow changes adjacent to the barrier compromising the barrier height outside that period required to be rectified.

The permitted objects extend to pot plants, stools, bench, Bar-B-Que and the like with no legislation currently available to require these objects to be moved away from the barrier.

This is in contradiction to Clause 10 (1) (a) (iii) where articles, objects and structures are stated to be 900mm clear of the barrier. This does not apply under AS1926.1-2007 even today after the standard has been superseded for work/ actions after the 1 May 2013.

## Part 3 Warning notices

## 10 Contents of warning notices

- (1) For the purposes of section 17 (1) of the Act, the sign referred to in that subsection must bear a notice that contains all of the following:
  - (a) the words:
    - (i) “Young children should be actively and responsibly supervised when using this swimming pool”, and
    - (ii) “Pool gates must be self-closing and self-latching and kept closed at all times”, and
    - (iii) **“Keep articles, objects and structures at least 900 millimetres clear of the pool fence at all times”,**

Item (III) Needs to read – NOT APPLICABLE FOR AS1926.1-2007 BEFORE AND NOW

## PROPOSED AMENDMENTS to CLAUSE 3 and 4 of the 2018 REGULATION

### 3 Definitions

- (1) In this Regulation:

**AS 1926.1—2007** means the provisions of AS 1926.1—2007, *Swimming pool safety, Part 1: Safety barriers for swimming pools* as published by Standards Australia on 12 July 2007, other than clause 2.10.

**No steps, retaining walls, objects or level changes are permitted to be provided after the 30 April 2013 within 500 mm of the barrier that would reduce the required height of a barrier**

### 4 References to compliance with AS 1926.1—2007 or Building Code of Australia

For the purposes of this Regulation, a child-resistant barrier, window or doorway is taken to comply with AS 1926.1—2007 **(in accordance with clause 3)** or the *Building Code of Australia* where applicable so long as it complies with the minimum requirements of the standard or the code.



## Swimming pools require a separate child-resistant barrier: advice about AS 1926.1

BPB e-News 30 Sep 2015

The NSW Swimming Pools Act 1992 (Act) has always required swimming pools to be surrounded by a child-resistant barrier at all times.

Section 7 of the Act requires that the barrier must separate the pool from any residential building on the premises and any buildings (public or private) on adjoining premises.

Swimming pool owners must ensure the barrier is designed, constructed, installed and maintained in accordance with the *Swimming Pools Regulation 2008*.

The wall of an out-of-ground pool is *not* an acceptable child-resistant barrier. Having a separate barrier means children don't immediately end up in the pool simply by climbing over the barrier, giving adults more time to intervene and avert potential immersion.

**2012 changes to the Australian Standard do not apply in NSW**

In 2012, Australian Standard 1926.1 *Safety Barriers for Swimming Pools* was amended to provide that the wall of an out-of-ground pool could function as an effective child-resistant barrier.

**This amendment does not apply in NSW** – refer to NSW Variation to part 3.9.3 of the NCC. The Act continues to override the Australian Standard and requires a separate barrier.

## From NSW Building Professionals Board Website

<http://www.bpb.nsw.gov.au/news/olg-issues-advice-all-certifiers-about-swimming-pools>

# OLG issues advice to all certifiers about swimming pools

11 Jul 2016

The following advice from the Office of Local Government is issued in response to recent enquiries about out-of-ground pool walls and the application in NSW of clause 2.5.3 of AS1926.1 2012.

When the 2012 version of Australian Standard 1926.1 was released it included a new clause relating to out-of-ground walls being acceptable as child-resistant barriers. This clause does not have application in NSW.

The NSW [Swimming Pools Act 1992](#) requires owners of premises with a swimming pool to ensure that the pool is at all times surrounded by a child-resistant barrier that separates the pool from any residential building on the premises and from any place adjoining the premises, whether public or private.

The diagrams in Part 1 of Schedule 1 to this Act illustrate the provisions of section 7.

It is the NSW Government's long-held position that out-of-ground pool walls cannot form part of the pool barrier. This position is based on specific wording in the Act which requires the pool and the pool barrier to be separate and distinct structures.

The [Swimming Pools Regulation 2008](#) calls up the Building Code of Australia (BCA) as the prescribed standard for the design, construction, installation and maintenance of pool barriers in NSW.

Part 3.9.3 of the BCA applies. It expressly states that in NSW the walls of out-of-ground pools and above-ground pools are not considered to be effective barriers. This ensures that the BCA is consistent with the wording of the NSW Swimming Pools Act.

Council may grant exemptions from barrier requirements

The Swimming Pools Act enables a pool owner to apply for, and the local council to grant, an exemption from pool barrier requirements. The council may exempt the pool from all or any of the barrier requirements if satisfied:

- that it is impracticable or unreasonable for the pool to comply with those requirements (considering the physical nature of the premises, the pool design or construction, or special circumstances recognised by the regulations) or

- that alternative provision, no less effective than the requirements, exists to restrict access to the pool.

Certifiers should examine the circumstances of the pool being inspected and apply the appropriate provisions of the swimming pool legislation. Proper application of the legislation will determine the Australian Standard applicable to the pool.

The Office of Local Government reminds certifiers to be mindful of the overall scheme of the legislation.

Further to my email I attach another item that was raised today concerning clause 22 of the Reg

Regards

SUTHERLANDSHIRE



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## Comment on the Public Consultation draft of the Swimming pools Regulation 2018

FURTHER COMMENT

### 22 Special provision relating to acquired premises

(1) This clause applies to a swimming pool situated in or on premises acquired after 24 March 2016 if the contract of sale for the premises contained a certificate of non-compliance under clause 21, unless the certificate states that the swimming pool poses a significant risk to public safety.

(2) For the purposes of sections 7 (1) (b), 12 (d) and 14 of the Act, the prescribed standard in the case of a swimming pool to which this clause applies is the condition of the child-resistant barrier or means of access as at the acquisition of the premises, but only until:

(a) 90 days after the acquisition of the premises, or

(b) the completion of work after the acquisition of the premises to ensure the child-resistant barrier or means of access complies with the standards that would apply but for this clause,

whichever is earlier.

**Note.** See clauses 5 (1) and 8 (1) for the standards prescribed for sections 7 (1) (b), 12 (d) and 14 of the Act that would apply but for this clause. Non-compliance with sections 7, 12 and 14 of the Act may be an offence that carries a maximum penalty of 50 penalty units.

(3) In this clause:

**acquisition** of the premises means the date on which the sale of the premises is completed.

### COMMENT

Clause 22 does not apply where the pool is reported as a significant risk to public safety. The clause should also not apply where the required works have been completed prior to the new owner taking over the property.

Suggested change to subclause (1)

Under 22 (2) This clause is restricted to sections 7 (1) (b), 12 (d) and 14 of the Act.

What about prescribed standards under sections 8, 9, 10 of the Act and where past standards are accepted under clause 30 and 31 of the Regulation. There is no need for the restricted and should apply to all pools that fit within subclause (1).

Suggested changed to subclause (2)

## **22 Special provision relating to acquired premises**

(1) This clause applies to a swimming pool situated in or on premises acquired after 24 March 2016 if the contract of sale for the premises contained a certificate of non-compliance under clause 21, unless **the pool barrier works required have been completed or** the certificate **of non-compliance** states that the swimming pool poses a significant risk to public safety.

(2) The condition of the child-resistant barrier or means of access as at the time of acquisition of the premises is taken to satisfy the prescribed standards applicable to the swimming pool for a period:

(a) of 90 days after the acquisition of the premises, or

(b) until the completion of work to ensure the child-resistant barrier or means of access complies with the standards that would apply but for this clause,

whichever is earlier.

29 June 2018



Submission on the

# **NSW Swimming Pools Regulation 2018**

**Regulatory Impact Statement**

*June 2018*



**Swimming Pools Regulation 2018**  
**Better Regulation Division, Department of Finance, Services and Innovation**  
McKell Building  
2-24 Rawson Place  
SYDNEY NSW 2000

Email: [SPregulation2018@finance.nsw.gov.au](mailto:SPregulation2018@finance.nsw.gov.au)

## **ABOUT SPASA**

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The Swimming Pool & Spa Association of Australia (SPASA) represents hundreds of Australian businesses within the swimming pool and spa industry.

Members of SPASA include pool builders, manufacturers, suppliers, retailers, technical servicemen, subcontractors, installers, consultants and other allied trades, all of whom set themselves apart from the rest of the industry by setting standards of skill, workmanship and ethical business behaviour in the best interest of pool and spa owners.

SPASA is also a Registered Training Organisation (RTO) that provides training and assessment to the swimming pool and spa industry. Our courses are designed in consultation with key industry stakeholders and our qualifications and accreditations are highly valued by government, employers and the wider community.

The Swimming Pool and Spa Industry is diverse and includes but is not limited to the following sectors:

Manufacturers & Suppliers of Equipment	Chemicals
Pool Builders / Renovators / Installers	Consultants & Certifiers
Retail Pool Shops	Pool and Spa Service Technicians
Online Retailers	Portable Spa Retailers
Prefabricated Pool Manufacturers & Retailers	Tiling/Paving Suppliers & Retailers
Pool and Spa Heating	Pool Cover Manufacturers & Retailers
Ancillary Retailers	Other Sub Trades

In response to your invitation to comment, SPASA as the peak industry body for the swimming pool and spa industry has consulted with members and provides the following feedback:



## SWIMMING POOL LEGISLATION

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The Swimming Pools Act 1992 has been amended approximately eight times over the period from 1992 to the current period. There were also three versions of the Regulations (1992, 1998 and 2008). This one will be the fourth. Despite these changes, there remain many areas that continue to be unnecessarily complex, confusing, broad in nature and open to interpretation.

Each state has different legislation, inspections, adoption of standards and licensing requirements in relation to pool safety barriers and yet children under 5 years old present the same supervision and pool safety risk whether you live in NSW or any other part of Australia.

There is a justifiable belief that pool owners need to be better informed about the pool barrier legislation and Australian Standards, however, this is problematic when you consider that Council Inspectors are *not required to undertake competency-based training on pool barrier inspections*.

Having a stable regulatory environment, consistent regulations, a robust local council engagement model and a pool owner education program would help to improve the standard of pool barriers and overall compliance. If the pool barrier requirements are not simple then pool owners are far less likely to comply, even if there is a genuine attempt to do so.

Fragmentation means lack of access to information, lack of consistent advice and confusion about how to comply. It can, and does increase the cost of compliance, and the cost of regulation.

In this regard, SPASA would like to see each government across Australia, including NSW, commit to implementing a practical and harmonised pool safety regime.

## AUSTRALIAN STANDARDS

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NSW has only adopted three versions of “*Australian Standard AS1926.1 Swimming pool safety - Safety barriers for swimming pools*”:

- **AS1926.1: 1986**
- AS1926.1: 1993 (never adopted in NSW)
- **AS1926.1: 2007**
- **AS1926.1: 2012** (Applies in all jurisdictions except Queensland & NT)
- AS1926.1: 20XX (NEW version currently being Revised.....Public Consultation Pending)

Upon adoption, the new edition of AS1926 will be the fourth Australian Standard to be applied in NSW; adding a further level of assessment. With such scale comes complexity and confusion and the need for better educated individuals undertaking inspections becomes even more important.

## IMPACT ASSESSMENT OF OPTIONS

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**Assessment of option 1 - Maintain the status quo**

**Assessment of Option 2 - Make the proposed Regulation**

**Assessment of Option 3 - No action**

SPASA **SUPPORTS “Option 2”** but not without the various concerns and objections outlined within this submission being considered.

## PRELIMINARY MATTERS

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1. Are there any comments on the preliminary matters or do any other updates need to be made to the preliminary matters in the proposed Regulation?

### Date of Commencement (Clause 2)

Timing allocated for stakeholders to consider the proposed amendments has been inadequate, especially since it was always known that the legislation was due to be automatically repealed under the Subordinate Legislation Act 1989 on 1 September 2018.

The perception by industry is that the regulatory oversight of the swimming pool barrier regime continues to be an afterthought and an environment for regulators to create policy on the run.

### Definitions (clause 3) Cardiopulmonary Resuscitation Guideline

The Australian Resuscitation Council has previously amended the *Cardiopulmonary Resuscitation Guideline* in the past and may do again in future. Any reference to a specific Guideline, as is currently in the *Swimming Pools Regulation 2008*, creates an update anomaly whenever the Guideline is amended.

Case in point, the *Swimming Pools Regulation 2008* currently references Guideline 7, when the current edition of the Cardiopulmonary Resuscitation Guideline is Guideline 8.

SPASA **SUBMITS** that the definition should only reference what is required, ie *Cardiopulmonary Resuscitation Guideline*; **BUT** not prescribe published dates and actual Guideline versions, as these may change from time to time.

#### Proposed Draft Change:

*"the Cardiopulmonary Resuscitation Guideline means the document entitled ANZCOR Guideline 8: Cardiopulmonary Resuscitation published in January 2016 by the Australian Resuscitation Council"*

#### Suggested SPASA change:

*"the Cardiopulmonary Resuscitation Guideline means the latest Cardiopulmonary Resuscitation ANZCOR Guideline published by the Australian Resuscitation Council from time to time".*

### References to compliance with AS 1926.1-2007 or Building Code of Australia (clause 4)

SPASA **SUPPORTS** the clarification to reiterate that compliance with the Building Code of Australia (BCA) performance requirements can be met using a Deemed to Satisfy Solution and/or a Performance Solution pathway.

SPASA **encourages** any attempt to improve the understanding of the performance assessment process available within the BCA.

The pool and spa industry is often frustrated by the lack of understanding of the evidence of suitability requirements and performance assessment processes among council inspectors, certifiers, design consultants and believe a widespread mandatory education program on these aspects of performance design is required to address the issue.



### 2. Should pool owners have flexibility to design innovative solutions to fasten lockable child-resistant structures for spa pools, without compromising pool safety?

#### Lockable child-resistant structures (clause 9)

SPASA **SUPPORTS** changes proposed that allow users the opportunity to use innovative solutions to safely fasten their spa lids or other lockable child-resistant structure.

The term "lockable" must be reviewed if innovative solutions are genuinely being considered.

Lockable is defined in dictionaries as *a device operated by a key and used, as on a door, for holding, closing, or securing.*

There are other innovative solutions that allow a child-resistant structure to remain securely shut without the use of a key to lock it in the closed position. Some examples include:

- Electric Automated Covers
- Mechanical Covers
- Landscape Integrated Covers
- Disappearing/Moveable Floors

SPASA **SUBMITS** that the concept of "lockable" be replaced with that of a "child-resistant structure" that "restricts access" when in the closed position.

## WARNING NOTICES

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### 3. Do you consider that the proposed changes to the content of warning notices (key statements) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?

#### Minor changes to key statements that appear on warning notices (clause 10(1)(a)(i))

##### Current Statement

"YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL"

##### Proposed Draft Change

"YOUNG CHILDREN SHOULD BE ACTIVELY AND RESPONSIBLY SUPERVISED WHEN USING THIS SWIMMING POOL"

Whilst many jurisdictions have different CPR requirements, NSW CPR requirements as prescribed in the Regulation are the most comprehensive of any other region in Australia.

The number one issue facing rescuers when confronted with an emergency is staying calm and following instructions. The more complex and more detailed the instructions the more anxious rescuers are likely to become.

Further, there is anecdotal evidence to suggest that many people simply do not read the CPR Chart until they are faced with an emergency.

SPASA finds it **DIFFICULT TO SUPPORT** the proposed change to the current CPR sign which is already considered busy and intricate.

**NOTE:** the inclusion of the term "*responsible*" is one of subjectiveness and raises a compliance obligation on the occupier that is difficult to measure and hard to attain. Further, the terms "*Active Supervision*" and "*Responsible Supervision*" are undefined and can only be measured after the fact.

#### Minor changes to key statements that appear on warning notices (clause 10(1)(a)(ii))

##### Current Statement

"POOL GATES MUST BE KEPT CLOSED AT ALL TIMES"

##### Proposed Statement

"POOL GATES MUST BE 'SELF-LATCHING' AND 'SELF-LOCKING' (AND KEPT CLOSED AT ALL TIMES)."

SPASA **DOES NOT SUPPORT** changing the *Current Statement* as it specific to what is required whereas the *Proposed Statement* is only the function of what is required.

#### Removal of capitalisation (clause 10(1))

SPASA **SUPPORTS** the change allowing warning notice messaging on the CPR Sign to be written in whichever case anywhere on the CPR Sign.

4. Do you consider that the proposed changes to the content of warning notices (CPR information) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?

#### Updated Cardiopulmonary Resuscitation (CPR) information (clause 10(1))

The CPR Sign is a valuable lifesaving tool that should be relied upon by rescuers in case of an emergency.

Messages on the CPR Sign should dominantly relate to CPR only and should not be used as a poster to reproduce wording from within the Standard.

Whilst the proposed changes may seem, reasonable on face value, SPASA does not believe that there will be any identifiable behavioural change by further additions or complicating the message onto an already cluttered CPR sign.

SPASA **SUPPORTS** the Regulation no longer mandating a flow chart that must be illustrated by drawings with key words only in bold print and allowing sign manufacturers to determine the best way in which to present the resuscitation information.

##### CPR Options

SPASA also **SUPPORTS** the use of other innovative products that have the capacity to deliver CPR instructions that cater to individual learning preferences, such as:

- Audible CPR Directions (Eg: Pre-recorded Directions, Device Apps)
- Automated External Defibrillator (AED)
- Visual Presentations Aides (Eg: Device Apps etc)



5. Do you agree that a warning notice should be required to be displayed from construction, until an occupation certificate or certificate of compliance has been issued?

**New obligation to display warning notices during construction (clause 10(3))**

SPASA **AGREES** that a warning notice should be required to be displayed from construction until an occupation certificate or certificate of compliance has been issued but **DOES NOT SUPPORT** the proposal where the owner or occupier is the responsible person.

The responsibility of warning notices during construction should remain with the person undertaking the work and who has control of the construction site.

The proposal to introduce a new obligation for occupiers to erect and maintain a warning notice during construction advising that the swimming pool is not to be used (and makes it an offence for failure to comply with that obligation) *is problematic* for the following reasons:

- PCBU – *See comments below*
- Section 25 of the Swimming Pools Act 1992 – *See comments below*
- Legislation for contractors already exists outlining signage requirements during construction
- Construction sites are under the direct control of the builder and not always the occupier
- Greenfield sites do not have occupiers until construction is complete
- Many people go on holidays or simply move out whilst construction is in progress
- Who would be considered the “occupier” in buildings with more than one lot
- Revised AS4687 Temporary Fencing and Hoardings – *See comments below*

**Person Conducting a Business or Undertaking (PCBU)**

Amongst other things, a PCBU has a health and safety duty if they:

- *put other people at risk from the conduct of their business or undertaking*
- *manage or control of a workplace*
- *manage or control fixtures, fittings or plant at the workplace*

**Defences and Appeals within the Act**

It should be noted that Section 25 of the Swimming Pools Act 1992, states that it is a sufficient defence if the owner of the premises concerned establishes:

- a) the owner was not the occupier of the premises when the alleged offence occurred, and
- b) the owner had taken all reasonable steps to ensure that the alleged offence would not occur, and
- c) the owner was not aware of, and could not reasonably be expected to have been aware of, the facts giving rise to the alleged offence

**Australian Standard AS4687 Temporary Fencing and Hoardings**

The Standards Australia CE-008 Committee is currently completing a revision of AS4687 Temporary Fencing and Hoardings. *The revision will have a dedicated section for swimming pool and spa temporary fencing.*

SPASA's understanding is that the standard (*when finalised and published*) will highlight requirements of a pool or spa under construction / installation / renovation needing a temporary pool fence erected to maintain a safe environment until a permanent barrier can be installed.

Revisions to the standard specific to swimming pools and spa may include (*but not be limited to*):

- Material, Products and Components
- Minimum Heights
- Gates, Posts and Latches
- Signage
- Testing

It is expected that the revised Standard will be available for public comment towards the end of 2018, with publication slated for February 2019.

6. Given the changes to warning notices, how long would be required to allow manufacturers and pool occupiers to produce and install the new notices? Consider:
- a) to upgrade existing signs, already required under the Act
  - b) to create new signs for pools under construction

As answered in question 5.

## FEES

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7. Do you agree that the cap on fees for exemption applications should be increased to match the maximum fees charged for pool inspections?

### Fees for exemption applications (clause 13)

SPASA **SUPPORTS** fees for exemption applications should be increased to match the maximum fees charged for pool inspections **but not without** the various concerns and objections outlined in the General Comments section below being considered.

8. Are there any reasons why a local authority should not be allowed to charge for third and subsequent pool inspections?

### Fees for pool inspections (clause 19)

SPASA **SUPPORTS** the local authority being allowed to charge for third and subsequent pool inspections **but not without** the various concerns and objections outlined in the General Comments section below being considered.

## GENERAL COMMENTS

### Training, Accreditation & Fees

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Whilst E1 Certifiers, outside the mutual recognition pathway, are required to hold an endorsed contractor's licence and undertake specific training to become accredited pool barrier certifiers, Council Officers who inspect pool barriers are not required to undertake any training at all.

Council Officers are often designated as Pool Barrier Safety Inspectors without any regard to their skillset, training or experience and yet their decisions are binding (even when incorrect) with the only recourse from an incorrect determination available to the pool owner being the Land Environmental Court.

Whilst SPASA **SUPPORTS** the concept of Councils increasing fees, it is not unreasonable to expect that Council Officers who inspect and issue certificates of compliance (or notices) or consider section 22 exemptions for swimming pool barriers on behalf of a Council **MUST** be required to undertake the same training and education as everyone else.

There can be no valid or sensible justification for a Council Officer acting in the capacity of a Pool Barrier Safety Inspector being excluded from participating in initial and ongoing pool safety barrier education and training.



## Council Pool Barrier Inspection Reporting

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The Swimming Pools Act 1992 Act provides for Councils to conduct an inspection of a swimming pool barrier under a voluntary request from the pool owner (section 22C of the Act) or as part of the Council's mandated swimming pool barrier inspection program (section 22B of the Act).

Of these inspection pathways, a non-compliance report is only required to be provided to the pool owner where the inspection was under a voluntary request from the pool owner, clause 18B of the 2008 regulation.

Councils have the authority to issue a Direction to comply; and there have been instances where Council have issued a Direction to Comply with insufficient information being provided to the pool owner to understand the obligation, why the barrier is non-compliant but also the available remediation options.

As evidenced in "[Andrew Charles MacDonald v Blue Mountains City Council](#)", Mr MacDonald (*the pool owner*) complained that he was not issued with an inspection report on the various occasions that the inspections occurred.

Council advised the court there was **no legal requirement or obligation to provide an inspection Report**.

Councils own expert conceded that the **system would operate more fairly if a report were in fact provided**.

References: Case Item Numbers: 80 & 87

**SPASA Strongly recommends that:**

- (a) the Council must issue a non-compliance report detailing information no less than that currently required under clause 18B of the 2008 regulation for any and all Council inspections of a swimming pool barrier. For clarity, remediation options of "to be constructed / installed as per AS1926.1(2012)" (or any other standard) or other general words to the same effect are not considered sufficient information; and
- (b) Clause 20(1) of the Draft Regulation is expanded to include a requirement on Council to issue a written notice of non-compliance. For example, Clause 20(1) to read as "This clause applies to an inspection carried out by the local authority under section 22B or section 22C of the Act."

## SWIMMING POOLS REGISTER

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### 9. Do you believe that registering certificates of non-compliance in the Register will lead to improved pool safety compliance and rectification of issues?

SPASA **AGREES** that Certifiers and Council Inspectors must input detailed information into the Register for any and all inspections, whether the pool and/or spa is compliant or not.

**SPASA strongly recommends** that the capturing of any and all exemptions granted or Directions (or intention to issue a Direction) should be recorded on the Pools Register.

Registering **ALL** inspections is likely to provide the following benefits:

- assist other certifiers or inspectors undertaking inspections at a later date
- Inform pool owners on the status and reason for non-compliance
- improve compliance and rectification
- inspections have regard to exemption conditions or Directions (if any)
- disclosure of any swimming pool barrier Directions



## PUBLIC ACCESS REQUIREMENTS

### 10. Will providing access to an expanded range of Australian Standards improve compliance with safety obligations? If so, does the proposed Regulation identify all possibly relevant Australian Standards?

In the interests of safety, the below Australian Standards should not be protected under copyright, particularly when Standards Australia is charged by the Commonwealth Government to meet Australia's needs for contemporary, internationally aligned Standards and related services.

Accordingly, **SPASA SUBMITS** that the regulation should allow for a mechanism that provides access to the below Standards at no cost.

- AS 1926 - 1986 Fences and gates for private swimming pools
- AS 1926.1 - 2007 Swimming pool safety - Safety barriers for swimming pools
- AS 1926.2 - 2007 Swimming pool safety - Location of safety barriers for swimming pools
- AS 1926.1 - 2012 Swimming pool safety - Safety barriers for swimming pools
- AS 1926.3 - 2010 Water Recirculation Systems (*Outlets*)
- AS/NZS 3000 - Electrical Installations (*Equipotential Bonding of pool equipment*)
- AS 1288 Glass in buildings - Selection and installation (*for Glass Barriers*)
- NCC - Already available at no cost

Whilst access to Australian Standards will provide a means of obtaining knowledge on swimming pool barrier requirements, it will be diluted by the absence of pool owners not receiving or not being able to access relevant training and periodical regulatory / industry information.

For example, it is difficult for pool and spa owners or future owners to proactively comply to changes when some changes or clarifications are only communicated directly to Council Inspectors and Certifiers via specific industry newsletters and circulars etc.

### 11. Are local authorities best placed to continue to provide access to documents, including an expanded range of Australian Standards? If so, how long (if any) would local authorities require in order to provide access to the expanded range of Standards?

In a modern world, **SPASA SUBMITS** that documents listed in Question 10 are made available online via the Pools Register.

Availability could be provided with appropriate online security encryption to prevent downloading and printing along with access expiry parameters embedded into the document.

Making these documents centrally available would provide the following benefits:

- Online centralised location and access of documentation
- Council resources are freed up
- Tracking of documents accessed
- Proactive planning / understanding / compliance
- Faster compliance by making all material available immediately
- Creates educational library portal for current and new pool/spa owners
- Allows pool owners with non-compliant pools the immediate opportunity to research and understand what is required by them to comply

The Pools Register should act as a depository for compliance documentation (listed in Q10), safety newsletters, industry circulars and guidance notes.



## OTHER COMMENTS

### Certifier and Consumer Guidelines

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SPASA has been lobbying since inception of the current compliance regime for the development of a “Guide” to assist Council Officers, Certifiers and other Professionals on how to consider and assess both simple and complex swimming pool and spa barrier configurations.

In fact, SPASA assisted the Office of Local Government in 2015 develop a document titled: “**DRAFT NSW Swimming Pools Act 1992 and Regulation Guidelines.**”

Disappointingly, nothing has come of this Draft Guide to date, despite the swimming pool and spa industry, certification community and other related industries screaming out for guidance.

Ultimately, the NSW Swimming Pools Act, Regulation and Standards(s) are about ensuring that pool and spa safety is not compromised through the many and varied interpretations that have been prevalent over many years.

In **Lambert’s Final Report** (*Independent Review of NSW Swimming Pool Regulations – Final Report*) the key issues outlined with the current NSW regulatory approach were identified as follows:

- 1) Complex pool barrier standard requirements vary according to the date of construction of the pools as well as having associated issues such as:
  - *Unresolved issues with the interpretation of the current standard, AS 1926-2012*
  - *Lack of documentation about safety requirements for pool owners and the community*
  - *Absence of requirements for pool barrier installers to know the pool barrier standard*
- 2) A state swimming pool register that:
  - *is difficult to operate*
  - *does not capture all the necessary information*
  - *has very limited reporting capability*
  - *cannot be used for communicating with pool owners.*
- 3) Need for greater clarity in role, responsibility, accountability and support for pool certifiers and revised training arrangements, including:
  - *Lack of documentation about the role and responsibilities of pool certifiers & inspectors*
  - *No requirement for council pool inspectors to be accredited in pool safety requirements*
  - *Absence of audit program to assess the performance of certifiers and improve accountability*
  - *Limited requirements for private certifiers to follow up and seek to resolve non-compliance*
  - *Lack of support arrangements for pool certifiers including practice guide and help line*
- 4) Lack of adequate documentation provided by both pool certifiers and council pool inspectors

Further, in 2016 **SPASA held a Pool Barrier Meeting with over 125 Certifiers attending**. Certifiers were required to complete a comprehensive Survey in advance of the meeting.

Key outcomes from this meeting revealed:

**66%** of respondents have been provided with different interpretations of standards, regulations and the Act when speaking to the BPB and OLG

**68%** of respondents had inspected pools and found that a previous council inspector or certifier had referred to the wrong Standard, Regulation and Act or incorrectly interpreted or applied clauses

**94%** of respondents want access to a Pool Certifier Help Line (Pool Safety Council) as well as a Guide covering Standards, Regulations and the Act.

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**How can government, regulators, safety advocates and other industry stakeholders expect pool owners to comply with pool barrier requirements when the framework is clunky, inadequate and overseen by many Council Inspectors and Certifiers who themselves frequently and consistently get compliance wrong?**

**Whilst there is a lot of work to do, a “Guide” would provide some level of certainty to the swimming pool and spa industry as well as engineers, architects and designers, landscapers, builders, manufacturers, wholesalers and pool owners.**

## Testing Apparatus

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The Regulation defines Testing Apparatus as “a cylindrical test object having a diameter of 105 millimetres, plus or minus 1 millimetre, and having at least one solid flat-faced end”.

This definition within the Regulation only remotely reflects the comprehensive definition and associated test rig depicted within the Australian Standard.

Whilst the definition in the Regulation broadly describes the apparatus it does not specify:

- What material the cylindrical test object should be made from?
- Testing procedure (How much force, angle etc)
- Reporting format (how and who)
- Repeatability of results

The apparatus for testing and other components in the Australian Standard was never intended for infield testing. Accordingly, the Australian Standard advises that such tests are to be performed by the manufacturer using a purpose-built testing rig with compliance results then recorded on the product. Any infield testing would be questionable and disputable due to the margin of error caused by not using the prescribed testing rig prescribed in the Australian Standard.

An added and very real risk for Council Officers and Certifiers is the possibility of the pool owner seeking damages for any structural or cosmetic damage caused to a barrier during an infield test as well as any future failure caused by testing.

### Notes:

- a. Manufacturers test pool barrier units under the prescribed requirements of the Standard, they then discard the units, irrespective of whether they pass or fail. This is because testing has pushed the unit beyond its normal stress parameters and the structural integrity of the unit is compromised.
- b. It should also be noted that if a manufacturer has found that a Council Inspector or Certifier has conducted infield testing for any purposes (ie Cone testing) on a barrier panel then this is likely to void all warranties on the pool barrier with any associated risk transferring to the person who undertook testing.
- c. Inspection/Certification of any building works is to ensure that the works undertaken complies with regulations, standards and codes and not for them to conduct testing validation of products on site.

## DEREGULATION OF FENCING

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The updated 2014 Home Building Regulation saw the removal of fencing as a regulated activity and increased the minimum value of residential building work to which the Home Building Act applies from \$1,000 to \$5,000, so that a licence would only be required for work valued over \$5,000.

The increase in the value threshold means that a substantial number of persons installing pool barriers are not licensed and there is no regulatory mechanism to ensure that they install pool barriers in line with the standard or have the requisite training and skills.

From discussions with Council Inspectors and Certifiers, it would appear that a considerable number of persons installing pool barriers are not aware of the regulatory requirements and standards. This reflects in pool barriers being installed for new pools which are non-compliant and need to be corrected before they can be certified.

SPASA **SUBMITS** that the minimum value of residential building work to which the Home Building Act applies should be rolled back to \$1,000 from \$5,000 for the installation and/or repair of a swimming pool fence / barrier.

## **STRONGER ENGAGEMENT BY GOVERNMENT**

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Government needs to better understand the swimming pool and spa industry rather than rely on a clustered approach to consultation and outcome - *where every industry is treated the same*.

A common landscape is the duplication of consultation between regulators and agencies with outcomes not being shared or acknowledged. In this regard, there is a real need for regulators and agencies to better coordinate consultations.

Consultation with pool and spa small businesses is essential when developing regulations, both in relation to the options being considered and at the design and implementation stage. Once regulations are in place, it is vital that *two-way communication* is maintained and embraced with the view of identifying ongoing refinements.

At the review stage, such communication is essential to the performance of regulators, particularly with respect to minimising compliance costs and enhancing the adoption rate of any proposed or actual regulatory change.

### **For further information:**

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**Swimming Pool & Spa Association of Australia (SPASA)**



Web: [www.spasa.com.au](http://www.spasa.com.au)

# NSW Swimming Pools Regulation 2018

## Consultation Process Submission

### Sydney Children's Hospitals Network

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This submission to the Regulatory Impact Statement, Swimming Pools Regulation 2018 consultation has been prepared by Kids Health Child Health Promotion Unit on behalf of the Sydney Children's Hospitals Network (SCHN).

The SCHN supports Option 2: Make the proposed Regulation.

Comments on specific questions asked within the RIS are included below.

#### *Preliminary matters*

**1) Are there any comments on the preliminary matters or do any other updates need to be made to the preliminary matters in the proposed Regulation?**

We believe that inflatable and portable pools need to be more specifically mentioned in the Regulation. There is a lack of understanding in the community that these types of pools, when they have the capacity to be filled with more than 300 millimeters of water, fit within the definition of a swimming pool and must comply with the Swimming Pool Regulations.

Our NSW Study of Drowning and Near Drowning among children 0-16 years old (2013-15) found that 58% of drowning incidents in children 0-4 years occurred in swimming pools. Portable pools featured in the swimming pool data for this study.

With portable and inflatable pools becoming more popular and cheaper to buy, they have a bigger market penetration than ever before, leaving children exposed to the risk of drowning.

#### *Spa Pools*

**2) Should pool owners have flexibility to design innovative solutions to fasten lockable child-resistant structures for spa pools, without compromising pool safety?**

We support pool owners having flexibility to design innovative solutions as outlined in the Regulation Impact Statement, so long as safety is not compromised. Pool owners are likely to need some clear guidance on what this means in practice.

#### *Warning Notices*

**3) Do you consider that the proposed changes to the content of warning notices (key statements) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?**

While we support the proposed changes to the content of warning notices we suggest that the word 'adult' is also added. The warning would then read:  
"Young children should be actively and responsibly supervised by an **adult** when using this pool."

- A common factor in many drowning deaths and non-fatal drowning admissions to our tertiary level children's hospitals is that supervision has been by an older sibling or a teenager.
- Warning labels on their own will not necessarily educate pool owners, occupiers and users about pool safety. What the proposed changes to the content of warning signs will do is make the warning more specific and highlight the risk. There will still be a need for comprehensive and evaluated education programs and campaigns to improve community awareness and knowledge on reducing non-fatal and fatal drowning.

**4) Do you consider that the proposed changes to the content of warning notices (CPR information) will help educate pool owners, occupiers, and users about pool safety and pool safety obligations?**

Warning labels alone will not necessarily educate pool owners, occupiers and users about pool safety, as noted in the previous comment. Our concerns with proposed changes to warning notices (CPR information) include:

- Consistency of the design and content
- Appropriateness for people from Culturally and Linguistically Diverse backgrounds and different literacy levels
- The omission of images may make the flow chart difficult for people with low English literacy levels to follow.

We believe that the step regarding '30 compressions followed by 2 breaths, and continuing this until an ambulance arrives' is the most critical and therefore should be in larger font and in bold.

We have developed a free online CPR Training for Parents program which may be of interest and used to support community education. It can be accessed from <https://kidshealth.schn.health.nsw.gov.au/cpr>

**5) Do you agree that a warning notice should be required to be displayed from construction until an occupation certificate of compliance has been issued?**

Yes however a warning notice will not necessarily stop a child from entering a swimming pool area under construction. Barriers and temporary fencing surrounding a pool during the construction period need to be robust and secure to prevent access by young children. The onus should be on construction workers to properly secure the site when they leave, even for short periods of time.

The Regulation should make clear that temporary fencing or barriers are required during construction and that it is the responsibility of the builder to ensure that the pool area is safely secured until such time as an occupation certificate of compliance is issued.

**6) Given the changes to warning notices, how long would be required to allow manufacturers and pool occupiers to produce and install the new notices? Consider:**

- a) to upgrade existing signs, already required under the Act**
- b) to create new signs for pools under construction**

A maximum of 12 months should allow for new signs to be created and put into use and for existing signs to be upgraded.

## *Fees*

- 7) **Do you agree that the cap on fees for exemption applications should be increased to match the maximum fees charged for pool inspections?**

Yes.

- 8) **Are there any reasons why a local authority should not be allowed to charge for third and subsequent pool inspections?**

No.

## *Swimming Pools Register*

- 9) **Do you believe that registering certificates of non-compliance in the Register will lead to improved pool safety compliance and rectification of issues?**

We believe it could improve visibility of non-compliant pools which may in turn improve rectification of issues and help with monitoring data.

## *Public access requirements*

- 10) **Will providing access to an expanded range of Australian Standard improve compliance with safety obligations? If so, does the proposed Regulation identify all possibly relevant Australian Standards?**

While we agree with the concept of making a broader range of Australian Standards related to swimming pools more accessible to the public, we note that these are technical documents and may be difficult for members of the public to understand without assistance from sources who do understand the content.

We would like some clarification on whether the Regulation will need amendment should any of the referenced Australian Standards be updated.

- 11) **Are local authorities best placed to continue to provide access to documents, including an expanded range of Australian Standard? If so, how long (if any) would local authorities require in order to provide access to the expanded range of Standards?**

Yes we believe that local authorities are best placed to provide access to copies of relevant Australian Standards and other relevant documents.

In early 2018 Standards Australia announced an arrangement with the National Library of Australia and State Libraries to provide electronic access to copies of Australian Standards through those libraries. This should assist local authorities to provide access to an expanded range of Standards.

## *Additional Comments:*

- We would like to see the definition of 'swimming pool' in the Swimming Pools Act expanded to more specifically mention inflatable and portable pools. Our suggested definition is:

Swimming pool means an excavation, structure or vessel:

- a) That is capable of being filled with water to a depth of more than 300 millimetres, and

- b) That is solely or principally used, or designed, manufactured or adapted to be solely or principally used for the purpose of swimming, wading, paddling or any other human water activity and *includes inflatable and portable pools.*
- Personal correspondence with the Office of the Local Government (OLG) noted in *The NSW Study of Drowning and Near Drowning among children 0-16 years old* identified that there were over 321,000 private swimming pools on the Swimming Pool Registry of NSW at July 2015. This figure did not include portable pools.

Given that portable and inflatable pools come under the definition of a swimming pool under the Swimming Pools Act, we believe that there is a gap in the system if portable and inflatable pools are still not being registered on the Swimming Pool Register. A report on the number of portable and inflatable pools currently on the Swimming Pool Register compared to the number of sales would be a useful study to identify the magnitude of the gap.

- Part 5, Clause 22 Special provision relating to acquired premises:
  - We find this clause unclear and difficult to understand and suggest that it might need to be rephrased
  - Under what circumstances does a Certificate of Non-Compliance not identify a risk to public safety? A non-complaint barrier or means of access will always pose a drowning risk to children.
- What measures will be in place to evaluate the effectiveness of the Regulation over time? The Independent Review of Swimming Pool Regulation (2015) recommended:
  - The establishment of a Pool Safety Council to advise the relevant Minister on pool safety matters with membership of the Council to be drawn from government and non-government organisations with relevant expertise in health and safety, the swimming pool industry, pool certifiers and property owners and with an independent chair
  - The establishment of a central unit (in the NSW Health Ministry) to receive reports from all public and private hospitals and the NSW Ambulance Service on fatal and non-fatal drowning incidents to facilitate rapid notification to local government to enable timely follow-up and inspection for pool safety compliance and safety.
  - The extension of the Kids Health/ Centre for Trauma Care, Prevention, Education and Research (CTCPR) review of fatal and non-fatal drowning of children to include data drawn from all public and private hospitals and the ambulance service. This study is currently being finalised due to budget and staffing constraints.

If implemented, these would all assist with evaluation of the effectiveness of the Regulation in reducing drowning deaths and non-fatal drowning of children in swimming pools.

- Publicly available data on the results of inspections to date would be useful to inform health promotion and prevention campaigns and messages
- We believe that a mandatory regular program of inspection for all private swimming pools would also help to improve swimming pool safety and compliance, as has been seen in other Australian states.

Currently a Certificate of Compliance is valid for 3 years but there is inconsistency between local authorities as to whether there are inspections and Certificates of Compliance issued for private swimming pools over and above mandatory requirements for tourist and visitor parks, at point of sale and lease of a property or upon receiving a complaint.

The Office of Local Government Annual Report 2016-2017 reported that at 30 June 2017, there were 349,961 registered swimming pools in NSW and 58,598 total certificates of compliance issued. This is

concerning as it indicates that only a small proportion of registered swimming pools are compliant. If, as indicated in the RIS, it can take up to three inspections to rectify faults for non-compliant swimming pools, that's a lot of swimming pools that are a risk to young children.

Mandating regular inspections of swimming pools every three years (on the expiry of a Certificate of Compliance) would significantly contribute to improving their ongoing compliance and safety. Enabling local government to charge for the inspection will help to offset the costs of such a program.





# SWIMMING POOL REGULATION 2018

## SUBMISSION ON THE DRAFT REGULATION



**Date:** 29<sup>th</sup> June 2018

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## SUMMARY OF FINDINGS

In general terms, compliance is comprised of a framework and behavioural components. The Framework component refers to the legislation whilst Behavioural refers to the infrastructure that educates, in this instance a pool owner to have a compliant swimming pool barrier, a pool barrier inspector to be competent in their field or a fencer to know and be able to install a compliant swimming pool barrier, and amongst other things sets expectations and provides access to the benchmarks to which the assessment will be conducted.

TritonPSI agrees that the “effective operation” of the Act is important in the reduction of drownings of children under 5 years of age. However, the overall effectiveness of the swimming pool barrier compliance regime is as only as strong as the weakest element within the Framework or Behavioural components.

In response to the *Independent Review of Swimming Pool Regulation Final Report* (November 2015), the NSW Government seeks<sup>1</sup> “..to minimise drowning risks for children around backyard pools on two fronts:

1. Vigilant and responsible adult supervision of young children in and around backyard pools at all times is the first line of defence. **This will be supported by increased targeted education.**
2. A stronger regulatory framework for swimming pool barriers that minimises the risk of child drownings while not imposing a significant net cost on the community.”

Further, “The Government will continue to explore options for a simplified framework consistent with the Better Regulation Principles” and “A stronger regulatory framework for swimming pool barriers that minimises the risk of child drownings while not imposing a significant net cost on the community.”

**TritonPSI does not support** all of the proposed changes delineated in the *Swimming Pools Regulation 2018 (Draft 2018 Regulation)* and is of the opinion that more could be achieved

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1

NSW Government Response to the Independent Review of Swimming Pool Regulation (November 2016), Office of Local Government, Page 2 at <http://www.olg.nsw.gov.au/sites/default/files/OLG%20-%20Lambert%20Swimming%20Pool%20Review%202015%20-%20Government%20Response%200.pdf> on 25<sup>th</sup> June 2018.

in the education, access to information, disclosure spheres to enhance the behavioural components of the swimming pool barrier compliance regime.

## 1. TRITONPSI

This submission is made by Triton Pool & Spa Inspections Pty Limited (**TritonPSI**).

TritonPSI is a consultancy specialising in compliance inspection of child resistant swimming pool barriers and is a swimming pool barrier inspection company with an inspector to receive the coveted 2014 & 2015 Award of Excellence and the 2016 Pool Inspector of the year. from the Swimming Pool & Spa Alliance (SPASA).

TritonPSI blends the disciplines of compliance, risk management and construction industries to provide professional inspections.

The Managing Director, is a NSW accredited E1 certifier and a registered Pool Safety Inspector with over 20 years experience in compliance and risk management and is qualified to interpret and assist swimming pool owners in achieving and maintaining swimming pool barrier compliance.

TritonPSI welcomes the opportunity to comment on the public consultation draft of the *Swimming Pools Regulation 2018*

Please do not hesitate to contact to discuss any aspect of this submission.

## 2 OPTIONS FOR ACHIEVING OBJECTIVES

The Regulatory Impact Statement (**RIS**) states that “*..The primary objective of the proposed Regulation is necessary as it provides the legislative support and administrative detail necessary for the effective operation of the Act....*” and that there are three options to support the operation of the Act. They are:

1. Maintain the status quo; or
2. Make the proposed regulation; or
3. Take no action.

**TritonPSI SUPPORTS option 2.**

## 3. PRELIMINARY MATTERS

**RIS Question: 1 Are there any comments on the preliminary matters or do any other updates need to be made to the preliminary matters in the proposed Regulation?**

### 3.1 Date of Commencement

TritonPSI acknowledges that the Swimming Pools Regulation 2008 automatically repeals on 1 September 2018.

Whilst TritonPSI is cautiously optimistic that industry’s feedback on the Draft Regulation will be adequately and appropriately considered, TritonPSI is concerned that the NSW Government is time poor for it to modify the Draft Regulation and align with the NSW Government’s intention of its November 2016 response to the Lambert Report, ie to minimise drowning risks for children around backyard pools on two fronts:

1. Vigilant and responsible adult supervision of young children in and around backyard pools at all times is the first line of defence. **This will be supported by increased targeted education.**
2. A stronger regulatory framework for swimming pool barriers that minimises the risk of child drownings while not imposing a significant net cost on the community.”

The NSW Government should consider enhancing its engagement model with the industry to provide open and timely consultation and should not exclude those that hold a differing opinion to that of the decision makers.

## 3.2 Definitions

### 3.2.1 *Cardiopulmonary Resuscitation*

**TritonPSI DOES NOT support** the proposed draft referencing in clause 3(1) of the Draft Regulation, as it designed to continually fail as it defers the update anomaly risk and does not address the risk.

**TritonPSI SUPPORTS** the referencing to the guideline on *Cardiopulmonary Resuscitation* in a manner that it accommodates amendments from time to time.

As owners of the *Guideline 7: Cardiopulmonary Resuscitation*, the Australian Resuscitation Council can at their discretion update the Guideline at any time. As is the case for the proposed change to reference Guideline 8 in clause 3(1) of the Draft Regulation.

Should the Australian Resuscitation Council release an updated version of Guideline 8 at any time before the 2018 Regulation is repealed, the update anomaly issue will resurface.

Utilisation of an “incorporated through reference”, as amended from time to time, approach would not only align with contemporary guidelines, but would also eliminate the risk of update anomalies (and subsequent confusion or conflict) should the Guideline be amended.

### 3.2.2 *Building Code of Australia*

The Draft Regulation proposes the following at clause 4:

*“For the purposes of this Regulation, a child-resistant barrier, window or doorway is taken to comply with AS 1926.1—2007 or the Building Code of Australia where applicable so long as it complies with the minimum requirements of the standard or the code”*

The use of “Code” in the proposed Clause 4 as a means to reference the Building Code of Australia is understandable, but “Code” is not defined. To mitigate the risk of confusing “Code” with the swimming pool code, ie AS 1926, or any other Code is to either define “Code” or replace “Code” with the Building Code of Australia.

### 3.2.3 Young Children

The Swimming Pools Act 1992 (**Act**) defines a young child, yet clause 10(1)(a)(i) of the Draft Regulation uses the term “Young Children”. A term that is not defined within the Act or in the Draft Regulation.

To mitigate the risk of confusion of terms, define “Young Children”. This could be as simple as referencing back to “*As defined under “Young Child” within the Swimming Pools Act 1992*” or words to that effect.

### 3.3 References to compliance with AS 1926.1—2007 or Building Code of Australia (clause 4)

**TritonPSI SUPPORTS** the proposed change to enhance clarification, but further work on the infrastructure on education, scope of application and authority to approve to support this is essential.

The RIS states that “*The change in wording is for clarification only, to avoid any confusion whereby some may have misapprehended that compliance with the Building Code of Australia performance requirements could only be achieved by using a Deemed to Satisfy Solution.*”

*Compliance with the Building Code of Australia performance requirements can be met using a Deemed to Satisfy Solution and/or a Performance Solution pathway.”*

Whilst the issue above requires clarification, the need for clarification is **reflective of the calibre of the education provided to certifiers** and any others that are involved in the decision making process on a swimming pool barrier.

In fact, a council may appoint any of its employee as authorised officer for the purposes of an inspection of a swimming pool barrier, section 27 of the Act. The council employee need not be competent in the knowledge of the compliance requirements or testing methodology but yet their decisions have greater credence over an accredited certifier; a weakness within the swimming pool barrier compliance regime.

From an education perspective, the E1 course focusses on the Deemed to Satisfy approach with a significant part of training on the editions of Australian Standard AS 1926. On implementation of the proposed change under the Draft Regulation, **TritonPSI SUGGESTS**

that an educational program be undertaken for those interested to be recognised as competent in assessing a Performance Solution.

Until the NSW Government requires all those involved in the certification or assessment of applications in relation to swimming pool barrier certification or approvals, to be trained, the interpretation and application of the Building Code of Australia (for relevant parts), the swimming pool laws and the various editions of AS 1926 will continue to be inconsistently interpreted and applied.

## 4. SPA POOLS

**RIS Question: 2**      **Should pool owners have flexibility to design innovative solutions to fasten lockable child-resistant structures for spa pools, without compromising pool safety?**

**TritonPSI SUPPORTS** the ability for pool owners to have flexibility to design innovative solutions to fasten child-resistant structures for spa pools, without compromising pool safety when in the close position.

The Draft Regulation, Clause 9, requires that the spa “*..must be covered and secured by a lockable child-resistant structure...*” As we are all acutely aware, advancements in technology has a direct correlation on traditional devices/measures becoming more obsolete.

Whilst the change in the Draft Regulation is designed to allow the use of innovative solutions to fasten the spa lid or other lockable child resistant structures, the use of the term “lockable” restricts the scope of devices permitted and therefore out of alignment with the objective of the change.

The Oxford dictionary defines<sup>2</sup> “secured” as “*fixed or fastened so as not to give way, become loose, or be lost*”. The use of “secured” is aligned with the objective of this change and is not restrictive to the scope of innovation.

With the focus on the restriction of access to within the spa pool, **TritonPSI SUGGESTS** removing “lockable” from the clause.

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<sup>2</sup> At <https://en.oxforddictionaries.com/definition/secure>



## 5 WARNING NOTICES

### 5.1 Minor changes to key statements that appear on warning notices (clause 10(1))

TritonPSI SUPPORTS any measure that enhances the mitigation of drowning of a young child or any person.

#### 5.1.1 *Actively and Responsibly Supervised*

The Draft Regulation proposes that “actively and responsibly” be inserted into the warning sign, clause 10(1)(a)(i) of the Draft Regulation, so as to read as:

*“(i) “Young children should be actively and responsibly supervised when using this swimming pool” ”*

The issue is that the terms “actively” and “responsibly” are not defined, are subjective, would not be part of a certifier’s assessment, and would always be assessed post an immersion. The absence of definitions of terms was a matter that the Lambert Report, Table 17 – 9.7 *Possible Changes to the Swimming Pools Act and Regulation*, identified and made recommendations on.

Further, it is unclear as to whether the Government is suggesting that certifiers now assess this level of pool owner behaviour, if so has the Government considered as to when and how such inspections would occur.

#### 5.1.2 *‘Self-latching’ and ‘Self-locking’*

**TritonPSI SUPPORTS** the change.

The Draft Regulation proposes that the existing prescription that “*pool gates must be kept closed at all times*” will be amended so that the warning notice also specifies that the pool gates must be ‘self-latching’ and ‘self-locking’ (and kept closed at all times).

### 5.2 Removal of Capitalisation (clause 10(1))

According to the RIS, capitalisation was not intended to be a specific requirement for warning notices and in order to avoid misapprehension and reduce red tape the Draft Regulation proposes to remove capitalisation.

Whilst wording in clause 10(1)(a) the Draft Regulation issued for public consultation is in lower case for the warning notice, it does not permit the wording to be either in upper or lower case. Consequently, clause 10(1) does not mitigate the issue of misapprehension and non-compliance as per the RIS.

Clause 10(2) provides a savings clause where the warning notice with capitals can continue to be used until the notice loses either legibility over 3 meters or the swimming pool to which the warning notice relates is substantially altered or rebuilt.

It is recommended that a clause stating that the words in clause 10(1) may be in either upper or lower case.

In addition, the issue of misapprehension is reflective of the E1 certification educational program and its coverage of certifiers.

**TritonPSI RECOMMENDS** that the E1 certification course be reviewed to ensure that the information provided to candidates addresses this matter and that all certifiers that issue certificates undertake such a course.

### 5.3 Pool Owner Education

**RIS Question: 3**     **Do you consider that the proposed changes to the content of warning notices (key statements) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?**

**TritonPSI DISAGREES** that the proposed changes to the content of warning notices (key statements) will help educate pool owners, occupiers and users about pool safety and pool safety obligations.

The RIS states “*given a lack of active adult supervision remains a key drowning risk factor, this minor change to insert the words ‘actively and responsibly’ seeks to help educate adults about the level of supervision required*”<sup>3</sup> and that the Self-Latching and Self Locking changes

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<sup>3</sup> Regulatory Impact Statement, Swimming Pools Regulation – 2018, NSW Government, Better Regulation Division, Department of Finance, Services and Innovation, Page 17

to the warning sign “*has been proposed so that pool users are provided with more relevant information about the requirements that apply to pool gates*”<sup>4</sup>.

The inclusion of “responsible” is one of subjectiveness and raises a compliance obligation on the property occupant that is problematic to measure and due to the subjectiveness, hard to attain. Further, “Active Supervision” and “Responsible Supervision” are undefined and will only be measured after the fact.

Given the low level of information available to pool owners and occupiers on their obligations under the Act, any information, such as the proposed amendments of 6.1.1 and 6.1.2 may enhance the knowledge of pool owners, occupiers or users. This knowledge will only be obtained post reading.

As a CPR / Warning sign is not usually read until needed, it is highly unlikely that changing the words will educate pool safety obligations for pool owners, occupiers or users to a level that will effectively mitigate the immersion risk. **Education of CPR techniques and of the pool barrier obligations would achieve this.**

#### 5.4 Updated Cardiopulmonary Resuscitation (CPR) information (clause 10(1))

**RIS Question: 4**    **Do you consider that the proposed changes to the content of warning notices (CPR information) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?**

**TritonPSI SUPPORTS** that the Regulation no longer mandates a flow chart that must be illustrated by drawings with key words only in bold print and allowing sign manufacturers to determine the best way in which to present the resuscitation information.

**TritonPSI DISAGREES** that the proposed changes will help educate pool owners, occupiers and users about pool safety and pool safety obligations.

As a CPR / Warning sign is not usually read until needed, it is highly unlikely that proposed changes will educate pool safety obligations for pool owners, occupiers or users to a level that

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<sup>4</sup> Regulatory Impact Statement, Swimming Pools Regulation – 2018, NSW Government, Better Regulation Division, Department of Finance, Services and Innovation, Page 18

will effectively mitigate the immersion risk. **Education of CPR techniques and of the pool barrier obligations would achieve this.**

### 5.5 New obligation to display warning notices during construction (clause 10(3))

**RIS Question: 5 Do you agree that a warning notice should be required to be displayed from construction until an occupation certificate or certificate of compliance has been issued?**

**TritonPSI SUPPORTS** any signage that warns of specific dangers at a construction site. However, **TritonPSI DISAGREES** with the onus being on the occupier; the onus should be aligned with the requirements under Safe Work (NSW).

The Draft Regulation places the new obligation on occupiers to erect and maintain a warning notice during construction advising that the swimming pool is not to be used, and makes it an offence for failure to comply with that obligation.

The construction industry is one of NSW's highest risk industries. Every year, thousands of workers are injured on NSW construction sites – or killed. Over the past four years around 30,000 workers were injured on NSW construction sites because of unsafe work practices. Thirty-three were killed and more than 2000 have been left permanently disabled<sup>5</sup>.

TritonPSI understands that it is the principal builder/contractor that would have the responsibility under Safe Work (NSW) to provide adequate and appropriate signage and to restrict access to the construction site. TritonPSI is perplexed that Draft Regulation would look to override Safe Work (NSW) and transfer this responsibility onto the occupier, who may not have the requisite knowledge to manage this risk.

Where the occupier is under a lease arrangement, the lease usually does not grant authority to undertake any building works. TritonPSI is perplexed as to why an occupier under a lease is responsible when they have no authority over the works.

For a greenfield site, how will this work when Section 25 of the Act, states that it is a sufficient defence if the owner of the premises concerned establishes:

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<sup>5</sup> Safe Work (NSW) website at <http://www.safework.nsw.gov.au/health-and-safety/industry-safety/construction> on 29 June 2018

- (a) that the owner was not the occupier of the premises when the alleged offence occurred, and
- (b) that the owner had taken all reasonable steps to ensure that the alleged offence would not occur, and
- (c) that the owner was not aware of, and could not reasonably be expected to have been aware of, the facts giving rise to the alleged offence

#### 5.5.1 *Lambert Report*

The Lambert Report identified an issue in relation to the application of section 4 of the Act. Under ‘Possible Change and Rationale’ of Table 17: 9.7: *Possible changes to the Swimming Pools Act and Regulation*, the comments were “What is not addressed is whether the Act includes partially constructed pools or properties where the residential building has been demolished but a pool remains. In principle it should.”

It is unclear as to how the proposed change addresses the issues raised in the Lambert Report or the scenarios under a lease, existing or greenfield environment or without overriding the Safe Work requirements in NSW.

**RIS Question: 6**      **Given the changes to warning notices, how long would be required to allow manufacturers and pool occupiers to produce and install the new notices? Consider:**

- (a) to upgrade existing signs, already required under the Act**
- (b) to create new signs for pools under construction**

**TritonPSI CONSIDERS** that given that the implementation date is 64 days away, from the date of this submission, a transition period of at least 3 months is required.

## 6 FEES

### 6.1 Fees for exemption applications (clause 13)

**RIS Question: 7 Do you agree that the cap on fees for exemption applications should be increased to match the maximum fees charged for pool inspections?**

**TritonPSI SUPPORTS** competitive neutrality between public agencies and private enterprises.

However, such changes should be accompanied by an improved engagement model from Council in the areas of:

- reduce service times (currently 10 days to inspect),
- quality of inspection reports,
- need to provide inspection reports.

detail remediation solutions rather than *“All works to be carried out in accordance with the Australian Standard AS 1926.1-2012”*

Of late what is coming to the forefront is that some Local Authorities are additional charging fees in relation to swimming pool barrier compliance, which on prima facie appear inconsistent with the requirements under the Act and Swimming Pools Regulation 2008. For example, Northern Beaches Council’s schedule of Fees and Charges 2017-2018 for swimming pool barrier is delineated in Table 1 Northern Beaches Council Fees & Charges 2017/2018.

**Table 1 – Northern Beaches Council Fees & Charges 2017/2018 <sup>6</sup>**

Fee	Units	Rate (GST Incl.)	GST Applicable
Swimming Pool Registration Fee	per application	\$10.00	No
Application for extension of time: Swimming Pools Direction	each	\$50.00	No
General - Additional Urgency Fee (non Statutory) 4 working day turnaround for Swimming Pool Compliance Certificate, first inspection	per application	\$350	No

<sup>6</sup> Northern Beaches Council Fees & Charges 2017/2018 at <https://yoursay.northernbeaches.nsw.gov.au/28234/documents/58747> on 29 June 2018.

Initial Inspection of private swimming pool	per inspection	\$150.00	Yes
Proactive initial inspection fee (private swimming pools) as part of Council's adopted statutory program	per inspection	\$150.00	Yes
Proactive reinspection fee (private swimming pools) as part of Council's adopted statutory program	per inspection	\$100.00	Yes
Reinspection of private swimming pool (per reinspections)	per inspection	\$100.00	Yes
Reinspection of private swimming pool (per reinspections) - Exemption application	per inspection	\$100.00	Yes
Section 22 Exemption - Swimming Pools Act (Statutory fee)	per application	\$70.00	No
Swimming Pool Exemption Inspection Fee	per inspection	\$100.00	Yes

The RIS' premise for the increased fee cap under the proposed Regulation is that the exemption applications generally require at least the same amount of work as discharging a pool inspection function, and consequently it is appropriate to have equivalent charges.

However, it appears that RIS' premise is not aligned with reality as under Table 1. The cost for an exemption is not limited to \$70, but dependent on the number of inspections required by Council. Consequently, this provides a pricing model with no maximum price.

#### *6.1.1 Section Exemption Applications – Proactive Approach*

The RIS considers that the proposed Regulation **may** encourage local councils to adopt a more proactive approach to assessing exemption applications and generate a more efficient allocation of council staff time.

TritonPSI is perplexed as to why pricing is used as a means to encourage local councils to adopt a more proactive approach to assessing exemptions when it is a statutory obligation on the local council; and to do so within a 6-week period. **Is the RIS indirectly raising questions as to the performance of local council's in the assessment of exemption applications?**

Surely there are alternate means of enforcement by either the Building Professionals Board or the Office of Local Government that would encourage the proactive behaviour and is not borne by the pool owner. For example, expand the disclosure requirements under 18BC of the *Swimming Pool Regulation 2008* to disclose:

1. number of section 22 applications received
2. number of section 22 applications approved



3. number of section 22 applications rejected.
4. number of section 22 applications determined within 6 week period.

The mere suggestion that the price increase may encourage a proactive approach to assessing exemption applications is inherently flawed as there is no regulatory oversight ensuring that such behaviour occurs.

This disclosure will provide an insight to pool owners as to whether it is viable to submit a section 22 application as well as provide the regulatory oversight as to a local council's performance.

**TritonPSI SUGGESTS** that there is a need for greater regulatory oversight of the section 22 process, in particular the methodology of determination and the basis for rejection.

## 6.2 Fees for pool inspections (clause 19)

**RIS Question: 8**      **Are there any reasons why a local authority should not be allowed to charge for third and subsequent pool inspections?**

**TritonPSI DOES NOT SUPPORT** local council's charging for third and subsequent pool inspections.

The reasons are:

1. Councils officers that inspect a swimming pool barrier need not be trained, as they can be appointed as an Authorised Officer under Section 27 of the Act. So competency is an issue.
2. The RIS' suggestion that there is a need for 3 inspections to achieve compliance indicates that the issue lies within the communication of the issue, which would not be changed with additional inspections. The focus should be on the quality of the reporting issue to pool owners.
3. Whilst a council inspection under 22C requires the issuance of a written non-compliance report, regulation 18B, such a requirement does not exist for Council inspection conducted under their mandatory inspection program under section 22B of the Act.

In *Andrew Charles MacDonald V Blue Mountains City Council [2018] NSWLEC 1025*, the Blue Mountains City Council (Council) was asked as asked about the approach she took upon

finding a minor non-compliance with the regime with respect to a child resistant barrier. *“Her approach is to issue a direction (as opposed to a warning) on each occasion, together with providing information to the owner about what needed to be done to achieve compliance”.*<sup>7</sup>

Further *“... that there was no legal requirement to provide an inspection report, and a re-inspection would occur to assess whether the non-compliance had been attended to. Her approach is to issue a direction under s 23 of the SP Act within 7 days of the inspection, because of the significant risk of drowning. It would be a rare event for her to issue a notice.”*<sup>8</sup>

Mr MacDonald has complained that he was not issued with an inspection report on the various occasions that the inspections have occurred. The Council’s expert evidence is *“..that there is no obligation to provide such a report. Mr Crane also conceded in cross-examination that reports of inspections are usually prepared, but this did not happen in the case of Mr MacDonald’s pool.”*<sup>9</sup>

Martin SC observed *“.. that while this may be the case, the system would operate more fairly if a report were in fact provided”.*<sup>10</sup>

As it is considered that the system would operate more fairly if a report were in fact provided, should not the priority be to adequately and appropriately inform the pool owner of the issues, before increasing fees.

Continuation of this Council reporting model would create an environment where an ordinary person may perceive that the **pool owner is being set up to fail and Council is milking the cash cow.**

**TritonPSI SUGGESTS** that clause 20(1) of the proposed regulation should be amended so that it applies equally to council inspections conducted under section 22B or section 22C of the Act.

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<sup>7</sup> *Andrew Charles MacDonald V Blue Mountains City Council [2018] NSWLEC 1025, para 79*

<sup>8</sup> Ibid,

<sup>9</sup> *Andrew Charles MacDonald V Blue Mountains City Council [2018] NSWLEC 1025, para 87*

<sup>10</sup> Ibid,

### 6.3 Entering Information onto the Register (clause 18)

**RIS Question: 9 Do you believe that registering certificates of non-compliance in the Register will lead to improved pool safety compliance and rectification of issues?**

**TritonPSI SUPPORTS** the capturing of all relevant data, but **TritonPSI DOES NOT BELIEVE** that the registering of certificates of non-compliance would lead to improved pool safety compliance rectification of issues.

At present the register does not capture any inspections conducted under section 22B of the Act, or any details of any exemptions granted, or Notice of Intention to Issue a Direction or a Direction has been issued.

Capturing of such inspections and documents on the register will assist all future inspectors to assess the swimming pool barrier against the correct benchmark/ conditions

Education and appropriate reporting is fundamental to improved pool safety compliance and timely remediation of issues.

## 7 PUBLIC ACCESS REQUIREMENTS

### 7.1 Local authorities will be responsible for supplying Australian Standards, Building Code of Australia and Cardiopulmonary Guidelines (clause 29)

**RIS Question: 10 Will providing access to an expanded range of Australian Standards improve compliance with safety obligations? If so, does the proposed Regulation identify all possibly relevant Australian Standards?**

**TritonPSI BELIEVES** that access to the Australian Standard will increase the awareness but access to the Australian Standard will provide a means of obtaining knowledge on the swimming pool barrier requirements, it will be diluted by the absence of a pool owner not being able to access relevant training and periodical regulatory / industry information.

For example, the BPB's newsletter / circular issued by the BPB on out of ground pool walls (July 2016) or the BPB's newsletter / circular on the application of clause 2.3.1 (Feb 2016) was not circulated, as far as TritonPSI is aware, to parties other than certifiers. Yet they must comply with such requirements.

**RIS Question: 11** Are local authorities best placed to continue to provide access to documents, including an expanded range of Australian Standards? If so, how long (if any) would local authorities require in order to provide access to the expanded range of Standards?

**TritonPSI BELIEVES** that local authorities are best placed to provide access such documents.

## **Tweed Shire Council Comments**

### **Clause 24**

It is requested that this Clause include a requirement to require the Register to receive data to identify if the certifier is a private E1 accredited certifier or a Council certifier per local government area .

This would allow Councils to monitor their Pool Inspection Programs with greater insight into how many pools are being handled by the private sector and greater accuracy for budget allocation to the Program.

### **Savings Provisions**

It would be preferred if all pools were required to comply with the 2012 Australian Standard.

### **Exemptions clause 6 & 7**

All pools should be required to have a fully enclosing isolation fence.

Regards

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Planning and Regulation | Building and Environmental Health



[www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au)  
Civic and Cultural Centre Tumbulgum Road Murwillumbah NSW 2484 | PO Box 816 Murwillumbah NSW 2484

Dear Sir Madam

Whilst the Regulation is proposed to be changed, could the NSW Government consider the **fee** mandated by the Regulation for Councils to consider, assess and provide an Exemption under **Clause 13 Part 4** be raised from \$70.00 to a minimum of **\$270.00**?

This figure is considered reasonable when the following factors are taken into account;

1. The administrative procedures involved in receiving the application,
2. The amount of time undertaken to carry out an inspection,
3. The amount of time undertaken to report on the matter,
4. The amount of time undertaken to peer review the matter,
5. The administrative procedures involved in advising of the outcome of the application,  
and
6. The carrying of all the risk associated with any exemption provided.

Your careful consideration of this matter would be appreciated, and should you wish to discuss the matter further please contact me on

Regards

**WILLOUGHBY CITY COUNCIL**  
PO Box 57 Chatswood NSW 2057

Dear Sir/Madam

I attach Wollongong Council's submission for comment to the changes for the Swimming Pools Regulation 2018.

Kind regards



Post Locked Bag 8821 Wollongong DC NSW 2500

[www.wollongong.nsw.gov.au](http://www.wollongong.nsw.gov.au)



**Proposed Changes include:**

### **Preliminary Matters**

Date of Commencement - (clause 2)

Definitions (clause 3)

Reference to compliance with AS 1926.1-2007 or Building Code of Australia (clause 4)

1. Are there any comments on the preliminary matters or do any other updates need to be made to the preliminary matters in the proposed Regulations?

**Response:** **Option 2: Make the proposed Regulation**

### **Spa Pools**

Lockable child resistant structures (clause 9)

2. Should pool owners have the flexibility to design innovative solutions to fasten lockable child-resistant structures for spa pools, without compromising pool safety?

**Response:** **Option 1: Maintain the status quo**



## **Warning Notices**

Minor changes to key statements that appear on warning notices (clause 10(1))

Removal of capitalisation (clause 10 (1))

3. Do you consider that the proposed changes to the content of the warning notices (key statements) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?

**Response:** Option 1: Maintain the status quo

Updated Cardiopulmonary Resuscitation (CPR) information (clause 10(1))

Definitions (clause 3)

4. Do you consider that the proposed changes to the content of the warning notices (key statements) will help educate pool owners, occupiers and users about pool safety and pool safety obligations?

**Response:** Option 1: Maintain the status quo (change could lead to misinterpretation of resuscitation content on Warning Notice by manufacturers. Diagrams are beneficial to assist pool users should the need arise to provide CPR)

New obligation to display warning notices during construction (clause 10(3))

5. Do you agree that a warning notice should be required to be displayed from construction until an occupation certificate or certificate of compliance has been issued?

**Response:** Option 2: Make the proposed Regulation

6. Given the changes to warning notices, how long would be required to allow manufacturer's and pool occupiers to produce and install the new notices? consider;
  - (a) to upgrade the existing sign, already required under the Act
  - (b) to create new signs for pools under construction

**Response:** (b) to create new signs for pools under construction – 3 months from 1 September

## **Fees**

Fees for exemption applications (clause 13)

7. Do you agree that the cap on fees for exemption applications should be increased to match the maximum fees charged for pool inspections?

**Response:** Option 2: Make the proposed Regulation

Fees for pool inspections (clause 19)

8. Are there any reasons why a local authority should not be allowed to charge for third and subsequent inspections?

**Response:** Option 2: Make the proposed Regulation

### Swimming Pools Register

Entering information onto the register (clause 18)

9. Do you believe that registering certificates of non-compliance in the Register will lead to improved pool safety compliances and rectification of issues?

**Response:** Option 2: Make the proposed Regulation

Public Access requirements

Local authorities will be responsible for supplying Australian Standards, Building Code of Australia and Cardiopulmonary Guidelines (Clause 29)

10. Will providing access to an expanded range of Australian Standards improve compliance with safety obligations? If so, does the proposed Regulations identify all possible relevant Australian Standards?

**Response:** Option 2: make the proposed Regulation

11. Are local authorities best placed to continue to provide access to documents, including an expanded range of Australian Standards? If so, how long (if any) would local authorities require in order to provide access to the expanded range of Standards?

**Response:** No - access to documents, including expanded range of Australian Standards should be provided by Service NSW and not the responsibility of Councils .