



Regulatory Impact Statement

Swimming Pools Regulation – June 2018

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Executive summary

The Swimming Pools Regulation 2008 (the 2008 Regulation) is scheduled for automatic repeal on 1 September 2018 under the *Subordinate Legislation Act 1989*.

The 2008 Regulation supports the *Swimming Pools Act 1992* (the Act). The Act sets out the responsibilities of pool owners and occupiers as well as the role of local authorities. It mandates that swimming pools must be surrounded by a child-resistant barrier to restrict access, and provides compliance and enforcement functions for local authorities.

It is proposed that a Swimming Pools Regulation 2018 (the proposed Regulation) be made, retaining many of the existing provisions while making amendments to improve safety outcomes. The main changes in the proposed Regulation are as follows:

- 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.

This Regulatory Impact Statement (RIS) sets out the rationale and objectives of the proposed Regulation. It includes alternative options and an assessment of the costs and benefits of each of these. The proposed Regulation is the option which is considered to provide the greatest net public benefit.

Consultation process

Making a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the proposed Regulation, whether or not it is addressed in this RIS. Matters covered by the principal Act – *Swimming Pools Act 1992* – are not the subject of the consultation process.

We would prefer to receive submissions by email and request that any documents provided to us are produced in an 'accessible' format. Accessibility is about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>.

We invite you to read this paper and provide comments. Additional copies of the RIS and the proposed Regulation can be downloaded from www.fairtrading.nsw.gov.au. Printed copies can be requested from NSW Fair Trading by phone on (02) 9895 0791.

Please forward submissions by:

Email to: SPregulation2018@finance.nsw.gov.au

Mail to: Swimming Pools Regulation 2018

Better Regulation Division, Department of Finance, Services and Innovation

McKell Building

2-24 Rawson Place

SYDNEY NSW 2000

The closing date for submissions is close of business Friday, 29 June 2018.

Important note: release of submissions

All submissions will be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with reasons. Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*). It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

Identified stakeholders

The RIS has been provided directly to some stakeholder organisations. A list of these stakeholders is provided at Appendix 4.

Evaluation of submissions

All submissions will be considered and assessed and the proposed Regulation will be amended, if necessary, to address issues identified in the consultation process. If further information is required, targeted consultation will be held before the proposed Regulation is finalised.

Commencement of the Regulation

After the Minister for Innovation and Better Regulation has finalised the proposed Regulation, it will be submitted to the Governor for approval.

Once approved by the Governor, the Regulation will be published on the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au and in the NSW Government Gazette. Information on how to access the Gazette is available on the NSW Parliamentary Counsel's website.

The proposed Regulation will commence on **1 September 2018**.

Need for government action

Government action is necessary as the 2008 Regulation is due for automatic repeal on 1 September 2018. Without a Regulation in place the Act could not be effectively administered or enforced. It is therefore necessary that new regulations are made.

The 2008 Regulation has been incrementally amended over the years. The proposed Regulation seeks to further improve upon the 2008 Regulation to ensure that this important legislative regime functions more effectively. The proposed amendments seek to deliver better safety outcomes for pool owners, users and the broader community.

Objective and rationale of the Regulation

Objective

The primary objective of the proposed Regulation is to provide legislative support and administrative detail for the operation of the Act. The Act establishes safety standards and obligations concerning swimming pools to protect against drownings, particularly those involving younger children. The Act:

- requires that swimming pools be surrounded by a barrier to restrict access, and that the barrier be maintained;
- requires the display of warning signs in the immediate vicinity of swimming pools;
- preserves grandfathered legislative exemptions for certain classes of swimming pools and empowers local authorities to exempt swimming pools from barrier requirements on a case-by-case basis;
- sets out the compliance and enforcement role of local authorities and authorised officers; and
- establishes the NSW Swimming Pools Register.

The specific objectives of the proposed Regulation remain the same as the 2008 Regulation. That is, to make provisions with respect to:

- standards for the restriction of access to outdoor and indoor swimming pools and spa pools, and the effects of changes to prescribed standards on existing swimming pool barriers;
- council reporting requirements for inspections, fees payable for inspections, and the time for carrying out swimming pool inspections;
- certificates of non-compliance by local authorities if a pool does not comply with the requirements in the Act;
- information to be entered on, and the fees payable for information from, the NSW Swimming Pools Register; and
- public access to Australian Standards, the Building Code of Australia and the Cardiopulmonary Resuscitation (CPR) Guidelines.

Rationale

The proposed Regulation is necessary as it provides the legislative support and administrative detail necessary for the effective operation of the Act. Without any Regulation, the Act could not be effectively administered or enforced.

It is necessary to remake the 2008 Regulation at this time because:

- under the sunset provisions contained in the *Subordinate Legislation Act 1989*, the 2008 Regulation will be automatically repealed on 1 September 2018 if it is not re-made, and
- without a supporting Regulation, the Act cannot operate effectively or be enforced and administered.

Further, by making the proposed Regulation it is an opportunity to make amendments that deliver better safety outcomes for pool owners, users and the broader community.

Options for achieving objectives

The primary objective of the proposed Regulation is to provide legislative and administrative detail to support the operation of the Act. There are 3 options for achieving this objective and they are:

Option 1: Maintain the status quo

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.

Impact assessment of options

Assessment of option 1

Maintain the status quo – Do not make the proposed Regulation and instead remake the 2008 Regulation in identical form (that is, without any changes).

Option 1 – Costs

The costs on pool owners and occupiers, industry, local authorities and the NSW Government would remain substantially the same. However, there would be an opportunity cost in terms of failure to clarify the intent of some clauses in the Regulation and failure to adopt some additional changes designed to improve safety outcomes. Without the proposed changes to clarify intent, remove confusion and other changes discussed in option 2, pool owners, industry and local authorities would incur unnecessary costs when seeking to discharge compliance or enforcement obligations or functions.

The overall cost impact of option 1 has been assessed as low.

Option 1 – Benefits

Remaking the 2008 Regulation in its current form would achieve the objectives of the Act. As its provisions are already relatively familiar to pool owners, industry, local authorities and Government, no changes would be required to existing practices and procedures, saving time and money.

The primary benefits of option 1 relate to the time and effort saved in not having to adapt to any new legislation or requirements. Other benefits would include the administrative savings stemming from the ability to reuse existing guidance, advice and communication materials. By contrast, if the proposed Regulation was adopted, new materials would need to be created and implemented, and this would incur costs.

The overall benefits of option 1 have been assessed as low.

Option 1 – Conclusion

Option 1 would still allow for the Act's intentions to be achieved, but it would not do so in the most effective and beneficial way given the potential for improvements. Remaking the 2008 Regulation in its current form would not impose any new costs on pool owners and occupiers, industry or local authorities but it would also not result in any significant benefits or improvements to swimming pool safety. There is also an opportunity cost associated with this option because the proposed changes in option 2 would not be incorporated. For these reasons, **option 1 is not the preferred option**.

Assessment of Option 2

Make the proposed Regulation – the provisions of the proposed Regulation would provide updated legislative support and administrative detail for the Act.

Option 2 – Costs

There would be limited additional costs incurred under the proposed Regulation as the proposed Regulation still maintains many of the existing provisions. The following proposed changes have been identified as potential costs under option 2.

The proposed Regulation makes minor changes to the content of existing warning notices and imposes a new obligation to display a warning notice during construction of a swimming pool. For those subject to the obligation there will be small costs involved in having to display new signs. Such changes are not anticipated to impose significant costs given the inclusion of a savings provision for existing signs (clause 10(2), proposed Regulation). Warning notice suppliers would have to create and supply new signs, and eliminate existing stock. It is considered that the impact of such change could be reduced by publicising the forthcoming changes to industry before commencement so they had time to adjust their business practices accordingly.

Clause 13 of the proposed Regulation contemplates increasing the cap on fees for applications for an exemption (under section 22 of the Act) from \$70 to \$150, while clause 19 contemplates modifying the fee cap on pool inspections so that local authorities can charge up to \$100 for third and subsequent inspections. While these additional fees would be borne by pool owners, they would better reflect the level of council resources involved and some of the costs are avoidable (in the case of subsequent pool inspections).

Clause 18 of the proposed Regulation mandates that local authorities and accredited certifiers lodge details of certificates of non-compliance on the NSW Swimming Pool Register. The change would likely result in minor additional administrative costs for these certifying authorities. In addition, the increased visibility of known non-compliant pools may result in an increase in monitoring costs for councils. However, it is noted that such an amendment is also a benefit and may assist councils in better fulfilling their compliance obligations under the Act.

Clause 29 of the proposed Regulation expands public access to Australian Standards. Under the proposed Regulation, local authorities would be obliged to make available AS 1926 – 1986, AS 1926.1 – 2007, AS 1926.2 – 2007 and AS 1926.1 – 2012 (not just AS 1926.1 –2007), as well as the Building Code of Australia and new CPR Guidelines for public inspection. As Australian Standards are copyrighted materials which attract a fee, local authorities may bear an increased cost in order to provide access to these required items. However, even under the current regulatory regime, councils would have some form of access to all these standards in order to discharge their compliance and enforcement functions.

Given the proposed Regulation continues with much of the existing regulatory framework, the overall cost impact of option 2 has been assessed as low.

Option 2 – Benefits

The proposed Regulation makes changes to the 2008 Regulation, designed to improve safety outcomes, provide flexibility and clarify the intent of some of the existing provisions. The benefits of some of the proposed changes in option 2 are discussed below.

Some changes are designed to increase flexibility where the potential for consumer detriment is low. Under clause 9 of the proposed Regulation, spa pool lids and other such lockable structures can be fastened to the spa pool itself (already allowed under the 2008 Regulation) or alternatively fastened to a structure of substantial construction adjacent to the spa pool. Changes to the requirements for fastening of spa pool lids would potentially deliver compliance savings for spa pool owners as they would be afforded a greater range of options to meet the regulatory requirements, and allow the development of innovative solutions without compromising safety.

Some changes would also be made to reduce unnecessary restrictions on the presentation of warning signs (such as clarifying that capitalisation is not required). Instead, warning notices would focus on using active language to reinforce safety measures. The new obligation to display warning notices during construction of a swimming pool gives effect to a coronial recommendation and is designed to improve safety outcomes.

Minor changes have also been made to the language of some provisions in order to clarify the intent and avoid possible misapprehension (such as clarifying references to compliance with the Building Code of Australia in clause 4 and existing complying swimming pools in clause 31).

The proposed Regulation increases the cap on exemption fees, allowing local authorities to now charge up to \$150 for an exemption application, making it consistent with the fees that local authorities can charge for a first pool inspection. The change seeks to benefit local authorities by better reflecting the level of resources involved. It may also enable councils to undertake more involved assessments of exemption applications.

The modified fee schedule for pool inspections contemplated by the proposed Regulation seeks to facilitate safety outcomes by encouraging owners to actively identify and rectify non-compliance issues. Under the present structure, owners with non-compliant pools have little incentive to remediate problems in a timely manner, as later inspections do not incur a cost. The change would also better reflect the level of council resources involved in providing their services, as experience suggests that it typically takes around three inspections to get a non-compliant pool compliant.

The change to mandate that details about certificates of non-compliance be entered into the NSW Swimming Pools Register seeks to benefit local authorities and the broader community. It is intended to

provide greater transparency and awareness for pool non-compliance to assist councils and pool owners respond more effectively.

Expanded access to standards is designed to facilitate compliance with the Act and regulatory requirements, and benefit the community at large.

Overall, the benefits of option 2 have been assessed as medium.

Option 2 – Conclusion

Option 2 is the most effective and beneficial option in providing and implementing regulatory support for the Act. Making the proposed Regulation provides benefits to the community through enhanced pool safety standards, further incentivising compliance and updating the 2008 Regulation to be more reflective of current practices. It would do so without imposing significant additional costs on pool owners. Given the potential impacts of Option 2, as outlined above, and taking into account that the option of letting the 2008 Regulation sunset which would likely result in more costs than benefits, the **preferred regulatory option is to remake the 2008 Regulation with the proposed amendments** (Option 2).

Assessment of Option 3

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.

Option 3 – Costs

The 2008 Regulation provides considerable legislative support to the Act. Without any Regulation in place the Act would not be able to fully operate or achieve its intended aims.

Compliance costs for pool owners and occupiers would not be completely eliminated despite the absence of any Regulation. Instead owners and occupiers would face confusion about the way in which they should discharge the obligations imposed by the Act. For example, the Act would still mandate that swimming pools be surrounded by child-resistant barriers and that warning notices be displayed, but there would be no Regulation setting out the standards for those barriers or the content of those warning notices. In fact, those concerned about pool safety may face increased transaction costs as they seek advice and information from different sources.

Local authorities would still have compliance and enforcement obligations under the Act but would be unable or hampered in discharging these obligations without the legislative detail provided by a Regulation. Local authorities would continue to inspect swimming pools and continue to be able to give directions but would, in practice, be unable to issue certificates of compliance or directions, given the absence of set standards against which to determine compliance.

Industry would be significantly hampered by the lack of legislative detail. For example, private certifiers would be unable to issue certificates of compliance or notices of non-compliance given the absence of standards.

Allowing the 2008 Regulation to lapse with no replacement Regulation would result in a regulatory regime that is unable to effectively operate. Without effective regulatory oversight of swimming pools there would be an increased risk of drownings in swimming pools in NSW, and increased costs to the NSW community from fatal and non-fatal drownings.

Reinstalling a regulatory scheme in the future would be far more difficult, costly and time consuming after a protracted absence. Due to this, the costs of option 3 have been assessed as high.

Option 3 – Benefits

There are likely to be no significant benefits to this option given the Act could not function as intended without a supporting Regulation.

There would be some reduction in compliance and administrative costs for pool owners and occupiers given some of the legislative obligations otherwise imposed on them would be rendered ineffective and local authorities would be unable to charge fees for pool inspections.

There would be minor savings achieved in time and savings to the NSW Government in not having to remake the 2008 Regulation nor carry any of the administrative responsibilities of a regulation. Local authorities would incur savings as they would no longer need to provide public access to various codes and standards.

The numerous negative flow-on effects mentioned above would however, outweigh any such benefits. As such, the benefits of option 3 have been assessed as low.

Option 3 – Conclusion

Permitting the 2008 Regulation to expire, without any replacement Regulation, is not considered appropriate. This option would not achieve the Act's objectives, undermining the protections against drowning for all pool users, especially young children. The risks and costs associated with eliminating minimum standards in relation to swimming pool barriers and effectively relying on pool owners to self-regulate significantly outweigh any potential benefits to the pool owners and users and Government.

For these reasons, **option 3 is not the preferred option.**

Discussion of the proposed regulation

Submissions are welcome on any aspect of the proposed Regulation or any other relevant issue, whether or not raised in this RIS. However, the following discussion points provide greater context for some provisions in the proposed Regulation. A comparison of the 2008 Regulation and the provisions of the proposed Regulation is provided in Appendix 2.

Preliminary matters

Date of Commencement (Clause 2)

The proposed Regulation provides for commencement on 1 September 2018, as the 2008 Regulation is due to be automatically repealed on that date due to the Subordinate Legislation Act 1989. A commencement date of 1 September 2018 for the proposed Regulation will avoid any gap in the regulatory framework for swimming pools.

This is a usual legislative practice and no comment is required.

Definitions (clause 3)

The definition of ‘the Cardiopulmonary Resuscitation Guideline’ has been changed from ‘Guideline 7 published in February 2006’ to mean Guideline 8: Cardiopulmonary Resuscitation published in January 2016 by the Australian Resuscitation Council, reflecting that Guideline 7 referenced in the 2008 Regulation has been superseded.

References to compliance with AS 1926.1—2007 or Building Code of Australia (clause 4)

The wording has been changed in a minor respect in the proposed Regulation, although the intent of the clause remains the same as the clause in the 2008 Regulation. 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.

- 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?**

Spa Pools

Lockable child-resistant structures (clause 9)

A spa pool is not required to be surrounded by a child-resistant barrier so long as access is restricted in accordance with the standards set out in the Regulation, at all times when the spa pool is not in actual use (section 20, the Act). The 2008 Regulation exempts a spa pool from the barrier requirement if ‘a lockable child-safe structure (such as a door, lid, grille or mesh)’ is fastened to the spa pool by a device that is itself of substantial construction, and fulfils the other criteria in that provision (clause 9).

Clause 9 of the proposed Regulation aims to give flexibility to owners whilst still maintaining safety standards. Under the proposed Regulation, a spa pool lid could, for example, be fastened:

- to the spa pool, *or*
- to a structure of substantial construction 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.

The change is designed to allow owners to use innovative solutions to safely fasten their spa lids or other lockable child-resistant structure.

A minor change has also been made to the wording in clause 9 of the proposed Regulation so that it refers to a ‘lockable child-resistant structure’ rather than a lockable child-safe structure’, to ensure consistency with the language used in the Act.

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

Warning Notices

The Act provides for warning notices relevant to pool safety to be displayed (section 17), with the 2008 Regulation setting out the content of those signs.

Minor changes to key statements that appear on warning notices (clause 10(1))

The proposed Regulation amends the content of a warning notice to ‘Young children should be *actively and responsibly* supervised when using this swimming pool’ (italics illustrative for the purpose of this RIS only). During past consultation, some stakeholders emphasised greater focus on active adult supervision as the key to protecting young children, and the need to find ways in which to better communicate this message across various mediums. Accordingly, 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.

Additionally, 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). This change, similarly to the change requiring active supervision, has been proposed so that pool users are provided with more relevant information about the requirements that apply to pool gates.

Removal of capitalisation (clause 10(1))

Within the 2008 Regulation, the statements that must appear on the warning notices are written in capitals. However, capitalisation was not intended to be a specific requirement for warning notices. In an effort to avoid misapprehension and reduce needless red tape, the proposed Regulation sets out the prescribed messages in lower case, with warning notices able to be written in whichever case.

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?

Updated Cardiopulmonary Resuscitation (CPR) information (clause 10(1))

Warning notices must include a flow sequence (now termed a flow chart under the proposed Regulation) based on CPR Guidelines published by the Australian Resuscitation Council. As discussed in **Definitions (clause 3)** above, the definition CPR Guidelines has been updated to reference Guideline 8. The proposed Regulation makes minor changes to the resuscitation content required on warning notices, to reduce and streamline the content so that relevant information is presented with minimal restrictions as to the format in which it is displayed. The proposed Regulation no longer mandates that the flow chart must be illustrated by drawings with key words only in bold print (the Guidelines themselves do not use drawings). Sign manufacturers can instead determine the best way in which to present the key information on signage.

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?

New obligation to display warning notices during construction (clause 10(3))

The proposed Regulation introduces 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. The new obligation is contained in subclause 10(3) of the proposed

Regulation, and readers should look to the provision for the precise wording of the obligation and warning.

The maximum penalty for breach of the new obligation will be 5 penalty units, which is considered appropriate as it is same as the existing penalty for failing to display a warning notice under section 17(1) of the Act, and offences created by regulations can only set a maximum of 5 penalty units (section 38(2), the Act).

The new obligation has been created in response to a recommendation made by the NSW Coroner's Court earlier this year. On 27 February 2018, the NSW Deputy State Coroner handed down findings at an inquest into the death of a 21 month old infant who died in hospital after a near-drowning incident in a backyard swimming pool. The owner's family and their guests had begun using the swimming pool before an occupation certificate had been issued.

The Coroner's Court noted that the Act already provides for warning notices to be maintained for completed pools, and so similarly recommended that:

'consideration be given to amending the *Swimming Pools Act 1992* and *Swimming Pools Regulation 2008* to provide for warning notices to be erected and maintained during the construction of a swimming pool, which stipulate that a swimming pool is not to be occupied or used until a Final Occupation Certificate by a certifying authority is issued'.

Whilst a relatively minor addition during the construction phase of a swimming pool, this new warning notice identifies hazards and seeks to discourage pool users from entering a partially finished or incomplete pool site. The obligation to display this new warning notice would endure until a relevant occupation certificate or a certificate of compliance for the swimming pool has been issued.

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?

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

Fees

Fees for exemption applications (clause 13)

Clause 13 of the proposed Regulation increases the maximum fee that local authorities may charge for an application for an exemption. Under the 2008 Regulation (clause 13), local authorities can charge

owners up to \$70 for an application made under section 22 of the Act to exempt the swimming pool from the requirements of Part 2.

The proposed Regulation increases the cap on fees, so that a local authority can charge up to \$150 for an exemption application, making it the same amount as that able to be charged by local authorities for a first inspection of a pool. The increased fee cap under the proposed Regulation recognises that 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.

With the increased fee cap better reflecting costs incurred by local authorities, 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.

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 pool inspections (clause 19)

Clause 19 of the proposed Regulation modifies the fee schedule for pool inspections to enable local authorities to charge for third and subsequent pool inspections. Under the 2008 Regulation (clause 18A), local authorities are unable to charge for carrying out a third or subsequent inspection for the same certificate of compliance.

The structure of the fee schedule for pool inspections in the 2008 Regulation does not encourage local councils or owners to actively participate in identifying and fixing swimming pool dangers. Local councils often do not recover costs, as experience suggests it typically takes around three inspections to get a non-compliant pool compliant. Owners with non-compliant pools have no incentive to remediate problems in a timely manner, as later inspections do not incur a cost.

Consistent with the Government Response to the Independent Review of Swimming Pool Regulation, the proposed Regulation modifies the cap on fees to allow local authorities to charge for third and subsequent inspections up to the same amount as already allowed for second inspections (\$100). The modified fee schedule will assist local authorities with their regulatory responsibilities while encouraging owners to make prompt compliance.

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

Swimming Pools Register

Entering information onto the register (clause 18)

The proposed regulation requires local authorities or accredited certifiers who issue a certificate of non-compliance for a swimming pool to ensure that details of the certificate are entered into the Register. It also details that this must be done within three business days of the certificate being issued. Under the 2008 Regulation, no such obligation existed for non-compliance certificates.

The change brings certificates of non-compliance into line with certificates of compliance, which are already required to be entered into the Swimming Pools Register under the 2008 Regulation. Recording the non-compliance data provides local authorities with greater awareness of the level of compliance within their jurisdiction, enabling more informed monitoring of compliance and will help to inform their inspection programs. It also strengthens the capabilities of the Register, furthering its relevance to pool owners, local authorities and pool 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?

Public access requirements

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

The proposed Regulation changes the prescribed documents made available to the public.

In the 2008 Regulation, local authorities and the Department (previously the Office of Local Government (OLG)) made available the Building Code of Australia, the CPR Guidelines and Australian Standard (AS) 1926.1 – 2007 *Swimming pool safety, Part 1, Safety barriers for swimming pools* for public inspection.

But different standards apply in NSW, depending on the date of construction of a swimming pool. Obtaining access to the various AS 1926, especially historical versions, may be cumbersome given these Australian Standards are copyright documents that often must be purchased from SAI Global.

The proposed Regulation amends clause 29 to oblige local authorities to make available the Building Code of Australia, the CPR Guidelines and any applicable Australian Standards (not just AS 1926.1 – 2007) for public inspection. Under the proposed Regulation, local authorities would provide access to the following Australian Standards:

- 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.

In contrast to the 2008 Regulation, the Department would no longer provide access to the various documents. Local authorities are best placed to continue to facilitate public inspection, given their 'front line' regulatory role and regular interactions with stakeholders. The Department of Finance, Services and Innovation (having taken over from the Office of Local Government) has lesser consumer recognition amongst the pool sector, and accordingly, it is proposed to streamline access so that local authorities continue to provide access.

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?

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?

Appendix 1

Background information

In NSW, swimming pools are governed by the *Swimming Pools Act 1992* (the Act). The Act applies to swimming pools and spa pools that are located, or being built, on site with a residential building, movable dwelling or tourist and visitor accommodation.

The law applies to any excavation, structure or vessel including swimming pools and spa pools that are capable of being filled with water to a depth greater than 30cm, and used, designed, manufactured or adapted for swimming, wading, paddling or any other human aquatic activity.

The Act was substantially amended in 2012, with implementation occurring in later stages. These amendments established the Swimming Pool Register and required local councils to develop inspection programs and conduct mandatory periodic inspections of certain pools. The Act and related property legislation were also amended to provide for various sale and lease provisions for properties with swimming pools.

Appendix 2

Summary of changes in the proposed Regulation

The following table sets out the proposed changes and amendments to the Regulation:

Clause in Proposed Regulation	Proposed change to clause	Reason for change
3(1) - Definitions	Definition of 'Cardiopulmonary Resuscitation Guideline' changed from Guideline 7 to Guideline 8.	Definition updated as Guideline 7 referenced in the current Regulation has been superseded by Guideline 8.
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.	To clarify the intent of the clause.
5(1) – General requirements for outdoor pools	Barriers must be designed, constructed, installed and maintained in accordance with the requirements as set out in the <i>Building Code of Australia</i> . Note added about the legislation prevailing over the <i>Building Code of Australia</i> .	To provide clarity. For consistency with the language of the Building Code, the clause has been amended to 'requirements as set out in the <i>Building Code of Australia</i> '. Promote understanding that legislation prevails to the extent of any inconsistency with the Building Code of Australia.
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> .	To provide clarity. For consistency with the language of the Building Code, the clause has been amended to 'requirements as set out in the <i>Building Code of Australia</i> '.
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.	To provide increased flexibility for how spa lids (and other lockable structures) can be fastened, without compromising safety.
10(1)(a) – Contents of warning notices	Text appearing on warning notices is no longer capitalised.	To clarify the intent of the clause, which is to mandate key messages, not to mandate upper or lower case of the text.

Clause in Proposed Regulation	Proposed change to clause	Reason for change
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’	To provide greater information on level of supervision and standard of pool gates required.
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	To improve consistency with the CPR Guidelines, and remove unnecessary references.
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.	To update the dates specified in the savings provision. Warning notices to which this subclause applies can continue to be displayed, without an immediate need to replace the signs. Enables a progressive replacement of warning notices, as pools are substantially altered or rebuilt.
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.	To give effect to a coronial recommendation that warning notices be displayed during the construction of a swimming pool.
11 – Legibility of warning notices	Applies the relevant legibility requirements to the new warning notice introduced in subclause 10(3).	To ensure consistency, with the same legibility requirements applying to all warning notices.
13(1) – Fee for application for exemption	Maximum fee for an application for exemption from barrier requirements increased to \$150 (previously \$70).	Application for exemptions require similar amounts of work as a pool inspection, so it is appropriate that they have equivalent maximum fees.
16(1) – Community engagement	Inserts ‘For the purposes of section 22B (5) of the Act,’ in clause 16.	To provide clarity, by referencing the power under which the particular clause is made.
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	Brings certificates of non-compliance into line with certificates of compliance, which are already required to be entered into the Swimming Pools Register and within 3 business days. This change will assist local

Clause in Proposed Regulation	Proposed change to clause	Reason for change
	Pools Register, within 3 business days of issuing.	councils monitor non-compliance in their area.
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.	A recurring inspection cost will encourage pool owners to rectify compliance issues promptly. Clause 18A(2) of the 2008 Regulation removed to allow for this.
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.	To reflect that administrative responsibility has been transferred from the Office of Local Government to the Department of Finance, Services and Innovation (DFSI), and to provide clarity.
22(1) – Special provision relating to acquired premises	Swimming pools situated on premises acquired after 24 March 2016 are subject to this clause.	To provide clarity and specify the date the provision took effect.
22(2)(b) – Special provision relating to acquired premises	Child-resistant barriers or means of access must comply with the relevant standards.	To provide clarity on the standard applicable for the completion of work.
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.	Removed ambiguity around whether councils interpreted it to mean that they could choose to report on one of the listed inspection types instead of the ones that are applicable.
N/A	20 – ‘Certificates of identification’ removed.	The <i>Swimming Pools Amendment Act 2009</i> removed ‘prescribed form’ from section 27(2) of the Act.
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.	To improve access to a range of applicable Australian Standards, and streamline delivery of access. Local authorities would also continue to give access to the Building Code of Australia and Cardiopulmonary Resuscitation Guidelines.
31(1) – existing complying swimming pools	Swimming pools constructed or installed before 1 September 2008 that complied with Part 2	To provide clarity on when existing complying pools can continue to comply with earlier standards.

Clause in Proposed Regulation	Proposed change to clause	Reason for change
may continue to comply with earlier standards	of the Swimming Pools Regulation 1998 may continue to comply.	
N/A	Certificates of compliance section removed.	No longer applicable as Section 24 of the Act was repealed in the <i>Swimming Pools Amendment Act 2012</i> and the 6 month period following has lapsed.
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.	Clarity to address the nature of existing non-compliance certificates.
Schedule 1 – Penalty notice offences	Removed ‘Certificate of Identification’	No longer necessary for the Regulation to prescribe the exact certificate.
Schedule 1 – Penalty Notice Offences	Prescribes the amount payable under a penalty notice (\$110) issued for non-compliance with the new warning notice (clause 10(3)).	To accompany the creation of a new offence in clause 10(3), and sets the same amount as that for penalty notices issued against failure to display warning notices under section 17(1).

Minor Changes	
Proposed change to clause	Reason for change
Changed from ‘18A’ to ‘19’	Changed for clarity and consistency across legislation. Clause structure changed to modernise and update.
Changed from ‘18B’ to ‘20’	
Changed from ‘18AB’ to ‘21’	
Changed from ‘18BB’ to ‘21’	
Changed from ‘18BC’ to ‘23’	
Changed from ‘18C’ to ‘24’	
Changed from ‘18D’ to ‘25’	
Changed from ‘18E’ to ‘26’	
Changed from ‘18F’ to ‘27’	
Changed from ‘19’ to ‘28’	

Moved from '21' to '29'	
Moved from '22A' to '30'	
Moved from '23' to '31'	
Moved from '24' to '32'	

Appendix 3

Summary of the proposed Regulation

Clauses 1 and 2 provide the name and date of commencement of the Regulation.

Clauses 3 and 4 provide references to definitions and phrases used in the Regulation.

Clause 5 prescribes the general requirement for outdoor swimming pools.

Clauses 6 and 7 prescribes the standards required for swimming pools to be exempt from requirements for residential buildings, large properties and waterfront properties.

Clause 8 prescribes the general requirements for indoor swimming pools.

Clause 9 prescribes the standards requirements for exemptions for spa pools.

Clause 10 prescribes the contents of warning notices and the obligation to display warning notices.

Clause 11 prescribes the legibility requirements of warning notices.

Clause 12 prescribes details on applications for exemptions granted by local authorities.

Clause 13 prescribes the fee cap for exemption applications.

Clause 14 prescribes some circumstances that justify exemptions.

Clause 15 prescribes details on the notice concerning decisions on exemptions

Clause 16 prescribes the community engagement requirements for inspection programs and certificates

Clauses 17 and 18 prescribes the time for carrying out inspections and entering information on the Register.

Clause 19 prescribes the fee cap for inspections.

Clause 20 prescribes the notices by local authorities if a pool is non-compliant.

Clause 21 prescribes certificates of non-compliance if a pool is non-compliant.

Clause 22 prescribes special provisions relating to acquired premises.

Clause 23 prescribes council reporting requirements for inspections.

Clause 24 prescribes the information requirements for pool registration.

Clause 25 prescribes the maximum fee for provision of registration information.

Clause 26 defines the authorised persons that may access the Register.

Clause 27 prescribes the alternative qualification for accredited certifiers.

Clause 28 prescribes requirements for directions given by local authorities.

Clause 29 prescribes public access requirements for Australian Standards, Building Code of Australia and Cardiopulmonary Resuscitation Guidelines.

Clause 30 details the effect of changes to standards for existing complying swimming pool barriers and means of access.

Clause 31 details how existing complying swimming pools may continue to comply with earlier standards.

Clause 32 prescribes savings

Appendix 4

List of stakeholders

The following stakeholders have been provided with a copy of the proposed Regulation and this RIS:

Industry

- CPD Training
- Australian Institute of Building Surveyors
- Housing Industry Association
- Swimming Pool & Spa Association
- Law Society of NSW
- Master Builders Association
- iComply Pool Safety Certification
- Certify My Pool
- Concert Building Certifiers
- Building UpSkills
- Real Estate Institute of NSW

Water safety advocates

- Royal Life Saving Society NSW
- AUSTSWIM
- Sydney Children's Hospital Network
- Kidsafe
- Hannah's Foundation
- Samuel Morris Foundation

Local Government

- Randwick City Council
- Willoughby Council
- Dubbo Regional Council
- Wentworth Shire Council
- Wagga Wagga City Council
- Shoalhaven City Council
- Woollahra Council
- Parkes Shire Council
- Sutherland Shire Council

