



SUBMISSION BY THE
Swimming Pool & Spa Association of NSW

to the

**Division of Local Government
Department of Premier and Cabinet**

Proposed Amendments to

**THE SWIMMING POOLS ACT REVIEW
DISCUSSION PAPER**

February 2012

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Feb. 12

Swimming Pools Act Review
Division of Local Government, Department of Premier and Cabinet
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**SUBMISSION ATTACHED
TO THIS DOCUMENT**

Name:

Swimming Pool & Spa Association of NSW (SPASA NSW)

Organisation (please tick the applicable box below):

Pool owner	<input type="checkbox"/>	
Council	<input type="checkbox"/>	
Water safety advocacy organisation	<input type="checkbox"/>	
Industry organisation	<input checked="" type="checkbox"/>	Peak Industry Association
State agency	<input type="checkbox"/>	
Other:	<input type="checkbox"/>	

If 'Other', please specify:

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QUESTIONS

Swimming Pool Register

1. Should the NSW Government develop and maintain an on-line, State-wide register of swimming pools containing certain prescribed information about the pool including (but not limited to) address, type of pool, date of construction/installation as well as date of any inspection and result.

Yes
No
Unsure

Refer to Item 1 within the attached Submission

2. Should each private swimming pool owner be required to directly register their swimming pool, at no cost, via the on-line, State-based register at no cost to themselves with the option for pool owners to request councils to register their pools on the pool owner's behalf for a fee of no more than \$10?

Yes
No
Unsure

Refer to Item 2 within the attached Submission

3. Should the swimming pool registration process include a 'self-certification' process that requires the pool owner to complete a swimming pool safety checklist and certify that, to the best of their knowledge, their swimming pool barrier complies with the requirements of the *Swimming Pools Act 1992* with the option for pool owners to request councils or private certifiers to certify their pool as compliant with the Act on the pool owner's behalf for a fee?

Yes
No
Unsure

Refer to Item 3 within the Attached Submission

4. Should a new offence be established for failing to register a swimming pool attracting a penalty notice amount of \$220, with a maximum penalty of \$2,200, with a transitional period of at least twelve months so that there is sufficient time for pool owners to be notified of the requirement to register their pool?

Yes
No
Unsure

Refer to Item 4 within the attached Submission

Swimming Pool Barrier Inspection Program

5. Should councils be required to, in consultation with their communities, develop and publish on their websites a swimming pool barrier inspection policy and program that is acceptable and affordable to their community?
- Yes
- No Refer to Item 5 within the attached Submission
- Unsure
6. Should councils be required to undertake mandatory, periodic inspections of pools associated with tourist and visitor accommodation and other multi-occupancy developments at least every 3 years?
- Yes
- No Refer to Item 6 within the attached Submission
- Unsure
7. Should any property with a swimming pool be inspected, and have a valid compliance certificate issued under the Swimming Pools Regulation 2008, before the property is leased or sold (with appropriate parallel amendments made to conveyancing, residential tenancy and land use planning legislation made), with compliance certificates for pools on leased properties being valid for a period of 2 years, even if the pool is leased in the interim?
- Yes
- No Refer to Item 7 within the attached Submission
- Unsure
8. Should councils be able to set an inspection fee, in consultation with their communities, and charge that fee for each inspection undertaken to reflect the actual cost of the inspection to a maximum of \$150 for the initial inspection and to a maximum of \$100 for one additional re-inspection, should it be necessary but with no additional inspection fees charged for any subsequent re-inspections?
- Yes
- No Refer to Item 8 within the attached Submission
- Unsure
9. Should councils be required to report annually on the number of swimming pool inspections undertaken and the level of compliance with the requirements of the Swimming Pools Act?
- Yes
- No Refer to Item 9 within the attached Submission
- Unsure

Other Proposed Amendments

10. Should the Swimming Pools Act be amended to include a provision to clarify that, where an existing swimming pool that is exempt from the Act's fencing requirements is fenced voluntarily, such fencing must meet the Act's requirements for a compliant, four-sided barrier (effectively 'disapplying' or removing the exemption)?
- Yes
- No Refer to Item 10 within the attached Submission
- Unsure
11. Should the Swimming Pools Act be amended to clarify council powers of entry to inspect private swimming pool barriers and make these consistent with the Local Government Act 1993?
- Yes
- No Refer to Item 11 within the attached Submission
- Unsure
12. Should the definition of 'swimming pool' in the Swimming Pools Act be amended by replacing the words '300 mm or more' with 'greater than 300 mm' to increase national uniformity?
- Yes
- No Refer to Item 12 within the attached Submission
- Unsure
13. Should the term 'hotel or a motel' be replaced with the term 'tourist and visitor accommodation', wherever occurring in the Swimming Pools Act, to make it consistent with instruments called up through the Environmental Planning and Assessment Act?
- Yes
- No Refer to Item 13 within the attached Submission
- Unsure
14. Should there be a delayed commencement of a period of 12 months for the introduction of a new offence for failing to register a swimming pool and a delayed commencement of 6 months for all other proposed amendments to the Swimming Pools Act?
- Yes
- No Refer to Item 14 within the attached Submission
- Unsure

**SUBMISSION ATTACHED
TO THIS DOCUMENT**

ABOUT SPASA NSW

The Swimming Pool & Spa Association of NSW (SPASA NSW) is the peak body within NSW and the ACT's pool and spa industry, representing hundreds of Australian businesses. Members of SPASA NSW include leading 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 interests of pool and spa owners.

SPASA NSW is 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 author of this submission is a nominated SPASA NSW committee member on the following *Australian Standards Committees*:

CS-034

- AS1926.1 *Swimming Pool Safety - Safety Barriers*
- AS1926.2 *Swimming Pool Safety - Location of Safety Barriers*
- AS1926.3 *Swimming Pool Safety - Water Recirculation Systems*

CS-059

- AS2610.1 *Spa Pools – Public Spas - Part 1*
- AS2610.2 *Spa Pools – Private Spas - Part 2*

CS-093

- AS/NZS 2416.1 *Water Safety Signs and Beach Safety Flags – Part 1*
- AS/NZS 2416.2 *Water Safety Signs and Beach Safety Flags – Part 2*
- AS/NZS 2416.3 *Water Safety Signs and Beach Safety Flags – Part 3*

CS-021

- AS1900 *Flotation Aids for water familiarisation and swimming tuition*

Cross Agency Working Group

The Swimming Pools Act Review Discussion Paper refers to “A Cross Agency Working Group met in 2010 and 2011 to develop a coordinated response to these repeated calls for a strengthened legislation. This working group also considered swimming safety initiatives being undertaken in other States, including strengthened Queensland legislation”.

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SPASA NSW is extremely disappointed that we were not included or consulted on recent "Water Safety Round Table" meetings even though we are a significant and relevant industry stakeholder.

Our omission from such important meetings is extremely concerning, in particular, in light of the many safety initiatives we have worked on to improve water safety over the last few years.

Despite the above oversights, SPASA NSW now welcomes the opportunity to comment on the proposed amendments to the *Swimming Pools Act 1992* (and other relevant legislation) proposed in the discussion paper to increase the safety of very young children around backyard swimming pools.

BACKGROUND

Swimming Pools Laws in NSW and the entire country have been designed with the view of enhancing safety in and around swimming pools by restricting access to swimming pools by small children. All States and Territories in Australia have enacted legislation in relation to restricting access to swimming pools; however, legislations differ significantly across the States and Territories.

There are many State and National bodies focused on water safety for all Australians.

Whilst all have the principal desire to reduce or eliminate deaths associated with drowning there are many different objectives and deep seated beliefs in how the problem can be addressed.

The term swimming pool encompasses all in-ground and above-ground swimming pools irrespective of the method of construction or materials used.

A swimming pool is defined as any excavation, structure or vessel used primarily for swimming, wading, paddling, or the like, including a spa pool (but not a spa bath) and capable of being filled with water to a depth of 300 mm or more.

The installation of a swimming pool requires homeowners to obtain a Complying Development Certificate OR Development Consent and a Construction Certificate under the Environmental Planning & Assessment Act.

Swimming pools in NSW are governed by the; Swimming Pools Act 1992, Swimming Pools Regulation 2008, Building Code of Australia and various Australian Standards.

There are over 350,000 constructed swimming pools in NSW with approximately 5,500 to 6,000 new swimming pools being constructed each year.

Whilst there is no hard data in relation to portable swimming pools in Australia, there is an anecdotal view that there are well in excess of 100,000 of these types of pools in existence in NSW.

The 2011 ACCC Draft Regulatory Proposal for Portable Swimming Pools defined a portable swimming pool as:

'A swimming or wading pool that is intended for domestic use and is:

- *assembled by hand and readily carried by hand by an adult when empty without disassembly; or*
- *pre-moulded and readily carried by hand by an adult when empty; or*
- *inflatable and readily carried by hand by an adult when inflated and empty.'*

Portable swimming pools capable of being filled with water to a depth of 300mm or more that are purchased online or through a discount retailer may pose a higher potential hazard to the consumer when compared to traditional selling practices through specialist pool & spa outlets.

Portable swimming pools are becoming more and more popular due to a number of factors:

- Portable swimming pools are relatively inexpensive
- They are easily accessible to consumers via various retail & online outlets
- The ease with which they can be constructed or installed
- Consumers do not consider portable pools as having the same risk profile as a constructed or above ground pool

Consumers can simply purchase a portable swimming pool online or through discount retailers and either pick up or have the pool delivered directly to their door where it is set up without a second thought to the many warning hazards.

Above Ground Pools remain an affordable alternative for consumers when compared to concrete and fibreglass swimming pools. Again there is very little data; however, we believe there are in excess of 50,000 above ground pools installed in NSW.

Under current legislation, only a Licensed Builder or Swimming Pool Builder (Cert IV Qualification) can install an Above Ground Pool. Again, consumers simply purchase these types of pools and install them with no regard to the licensing or the legislative requirements.

Adding to the problem is that very few Licensed Builders or Swimming Pool Builders actually undertake this type of work.

SPASA NSW has always advocated that an above ground pool should be installed via a Certificate III qualified pool and spa technician. By introducing this change, consumers have the ability to access numerous licensed installers in 100's of locations whilst obtaining the right advice. There could also be a requirement that these pools need to be registered by the installer.

Whilst some online and discount retailers operate legitimate businesses that work within the regulatory and legal framework associated with their products and/or supplies, there are many more retailers who market and sell products that may not comply. The lack of expert advice or promotion and sale of non compliant products provides significant safety concerns to unsuspecting consumers.

SPASA NSW strongly believes that retailers have a duty of care to consumers not only to sell items of merchantable quality which are compliant but also be trained to provide adequate advice on products they are selling. This advice should include mandatory requirements for barriers around swimming pools.

The Swimming Pools Act

The *Swimming Pools Act 1992* prescribes the fencing requirements of backyard swimming pools in NSW.

A review of the *Swimming Pools Act 1992* was undertaken in 2009 to identify appropriate amendments to enhance the safety of children under the age of five years around private ('backyard') swimming pools in NSW.

The review considered research which indicates that the risk of toddler drowning is significantly less in pools with stronger barrier requirements. The review also included consultation on reform options with the local government sector, water safety advocacy groups, swimming pool industry groups, State Government agencies, pool owners and others.

The Amendment Act which was assented on the 14th December 2009 introduced the legislative framework for a four-sided, child-resistant pool barrier to be consistently applied to all newly constructed private pools in NSW. It also provided appropriate additional mechanisms to encourage compliance with the legislation.

The amended act included the following amendments:

Removal of automatic exemptions for new pools

The Amendment Act removes the automatic exemptions from the four-sided barrier requirement for new pools on very small properties (less than 230 square metres), large properties (2 hectares or over) and waterfront properties.

Requirement for councils to investigate complaints

The Amendment Act provided councils with the power to investigate complaints received about possible non-compliance with the Act. Councils were required to commence investigation of a written complaint within 72 hours, where practicable.

Ability for councils to rectify non-compliant pool barriers

The Amendment Act gave councils optional power to enter a property to undertake remedial work to rectify deficient pool barriers in situations where the owner has failed to comply with a direction to comply with the Act, or where councils consider that the requirements of the direction need to be carried out urgently.

Requirement to issue a notice of intention to serve a direction to comply

The Amendment Act introduced the requirement for councils to serve a notice of intention to serve a direction on a pool owner to comply with the Act at least 14 days before serving the direction.

Increase to penalty amounts for offences under the Act

The Amendment Act increased the maximum court-imposed penalty amounts for most offences under the Act from \$1,100 to \$5,500, including failure to provide and maintain a swimming pool barrier to standard and failure to keep gates securely closed when not in actual use.

SPASA NSW comments Swimming Pools Amendment Act 2009

SPASA NSW provided submitted comments on the Swimming Pools Act Review to the Department of Local Government in May 2009.

A summary of comments SPASA NSW submitted included:

- SPASA NSW submitted that it had the expertise and sufficient membership to work with local government in undertaking barrier inspections, provide compliance certificates as well as assist in the creation and maintenance of a local government pool register
- Councils must treat swimming pools in the same manner as any developed structure within a property in their electorate and they cannot be an effective authority when it excludes registering and administering swimming vessels
- CPR Training should also be taught as part of the schooling syllabus where children are able to both learn the skill whilst reinforcing the safety message around the swimming pool
- Proceeds from penalties imposed on pool owners by a Council or a court should go towards Pool Awareness Programs as well as subsidised CPR and swimming lessons for the local community
- Pool owners should have a choice as to which inspector they would like to use. A register of Certified Inspectors who pool owners can use should be created and made available to consumers
- Concerns relating to the number of inflatable pools currently sold on the market through online and discount retailers without any reference to the Act or Regulation. Retailers need a more onerous approach to selling inflatable pools
- Existing pools which are unable to comply with current or retrospective laws due to impracticality or complexity of the site may work with an independent expert/s or consultant to provide an "Alternative Solution".

Other Recent Amendments

The Swimming Pools Regulation

The *Swimming Pools Regulation 2008* was re-made on 1 September 2008. It calls up *AS1926.1-2007 Swimming Pool Safety, Part 1: Safety barriers for swimming pools*, which includes new requirements for non-climbable zones, mesh sizes for fences, retaining walls that form part of a barrier and balconies that project into the pool area.

On 1 May 2011 the Swimming Pools Regulation was amended to replace certain references to the Australian Standard 1926.1-2007 Part 1: Safety barriers for swimming pools (the standard) with references to the Building Code of Australia (BCA).

These new requirements apply to new pools only and do not significantly increase costs. Existing pools, as defined by the Act, will not be required to comply unless there are substantial alterations made to the child resistant barrier.

Conveyancing (Sale of Land) Regulation 2010

Recent amendments made to the Conveyancing (Sale of Land) Regulation 2010 mean that from 1 September 2010 contracts for the sale of land must include a warning in relation to a land owner's obligations under the *Swimming Pools Act 1992* which states that:

*"An **owner of a property** on which a swimming pool is situated must ensure that the pool complies with the requirements of the *Swimming Pools Act 1992*. Penalties apply. Before purchasing a property on which a swimming pool is situated, a **purchaser** is strongly advised to ensure that the swimming pool complies with the requirements of that Act."*

Residential Tenancies Act 2010

Section 52 of the Residential Tenancies Act provides that a landlord must comply with a landlord's statutory obligations relating to the health or safety of the residential premises. Section 52 includes the following note:

*"Such obligations include obligations relating to swimming pools under the *Swimming Pools Act 1992*."*

PROPOSED AMENDMENTS

Swimming Pool Register

1. Require the NSW Government to develop and maintain an on-line, State-wide register of swimming pools, through the Division of Local Government, Department of Premier and Cabinet, containing certain prescribed information about the pool including (but not limited to) address, type of pool, date of construction/installation as well as date of any inspection and result.

Local Government is responsible for policy development and implementation of land use planning as well as regulating a wide range of activities that may impact upon the community. In this regard, Councils cannot be an effective authority if they exclude swimming pools from their records database.

A swimming pool register can only be useful if the information collected is collated so that it can be examined at a state-wide level.

SPASA NSW supports the Division of Local Government treating swimming pools in the same manner as other constructed buildings within a properties boundary.

Any proposed Swimming Pool Register should not be limited to only capture "Concrete" and "Fibreglass" swimming pools but also seek to include "Portable" and "Above Ground" swimming pools that are capable of being filled 300mm or more.

Retailers should be required to collect sufficient data from the consumer at the point of sale in order to record the relevant details on the Swimming Pool Register.

2. Require that each swimming pool owner register their swimming pool via the on-line, State-based register at no cost using a standard form approved under the Swimming Pools Regulation 2008 (the Regulation). This includes swimming pools that form part of a tourist and visitor accommodation complex, and other multi-occupancy developments such as strata and company titles including town house and unit complexes. This would be a once-only registration process. Pool owners would be provided with the alternative of requesting that their local council complete the on-line registration process on their behalf using a standard form completed by the pool owner, at a cost of no more than \$10.

The online registration process would seem the most efficient way to harness large amounts of information over short periods of time, however, there are many members of the community where even this process may not be an option for them.

Such as:

- The elderly
- The unemployed
- The disabled
- Having no access to a computer and/or internet
- An inability to read sufficiently

In this regard, SPASA NSW does not support the Division of Local Government charging disadvantaged members of the community. Any such charges should be absorbed and/or offset against penalties that are issued.

3. Require that, as part of the registration process, pool owners undertake a 'self-certification' process of their pool by completing a safety checklist and a statement that, to the best of their knowledge, the barrier complies with the standard required by the Act at the time the pool was built. Pool owners would be provided with the option of requesting that their local council or a private certifier undertake the certification process on their behalf for a prescribed, maximum fee for local councils and at market cost for private certifiers.

The principles of self-certification are based on giving people who are competent in their field the ability to self-certify that their work complies with a specific Act and/or Regulation without the need to employ an expert and incur fees.

SPASA NSW does not consider owners of pools competent in undertaking Self certification of their swimming pools. Furthermore, we consider it improper and even careless for the Division of Local Government to rely on pool owners to self certify their swimming pool by following a suggested checklist. Additional concerns relate to the owners of the swimming pools who have "Self Certified" being exposed to litigation in the event of a drowning or other related incident.

We would strongly argue that any checklist would be unable to capture all aspects of:

- Australian Standards
- Swimming Pools Act 1992
- Swimming Pool Regulation 2008
- Building Code of Australia

The inspection of a swimming pool environment should only be carried out by a trained individual who is able to correctly interpret the above legislative instruments as well as understand their interaction when it comes to compliance.

It is disappointing that the Discussion Paper only refers to "*local council*" or a "*private certifier*" as *the only parties able to undertake certification process*.

SPASA NSW will argue elsewhere in this submission for suitably qualified Individuals within the swimming pool & spa industry who should also be considered as a viable alternative.

Such arrangements are already in place in Queensland where inspections are undertaken by private certifiers and individuals within the swimming pool & spa industry who are licensed by the Pool Safety Council (PSC) as pool safety inspectors.

It would be prudent for the Division of Local Government to consult SPASA NSW regarding a saturated execution of a mandatory inspection regime throughout NSW.

4. Establish a new offence for failing to register a swimming pool attracting a penalty notice amount of \$220, with a maximum penalty of \$2,200, with a transitional period of twelve months so that there is sufficient time for pool owners to be notified of the requirement to register the pool.

The proposal to establish a new offence replicates the requirement by the Queensland Department of Local Government and Planning where failing to register your pool attracts a penalty of similar amounts.

The association can see no valid reason why a home owner would not willingly comply with a request to register their swimming pool. In this regard, there would be very few circumstances giving rise to a penalty notice being issued, however, an appeals process allowing the home owner to “show cause” as to why they are not guilty of an offence needs to be in place to deal with unforeseen or special instances.

Swimming Pool Barrier Inspection Program

The Government is also considering amendments to the Swimming Pools Act that:

5. Require that councils, in consultation with their communities, develop and publish on their websites a swimming pool barrier inspection policy and program that is acceptable and affordable to their community.

The Division of Local Government website informs visitors that there are 152 Councils operating in NSW.

The proposal for “*Councils to develop and publish a Swimming Pool Barrier Inspection Policy and Program that is acceptable and affordable to their community*” is riddled with predictable confusion. In essence, the proposal may lead to 152 Councils administering different inspections regimes in NSW.

There are many foreseeable problems for local government to be weary of in the creation of a Swimming Pool Barrier Inspection Program. A poor Swimming Pool Barrier Inspection Program could fail due to:

- Patchwork of different inspection regimes (152 councils)
- Poor design of the Inspections program/s
- Capability to monitor and enforce
- Councils resources
- Cost due to size of council

Any Swimming Pool Barrier Inspection Program must be state based. Local councils should not be able to develop individual compliance programs which will create significant perplexity amongst professionals who will have to navigate through a complex web of bureaucracy.

A consistent Swimming Pool Barrier Inspection Program should be able to increase compliance. It would build public awareness of fencing requirements.

6. Require mandatory inspection by councils of pools associated with tourist and visitor accommodation and other multi-occupancy developments at a period of no greater than 3 years for the same inspection fees outlined in 8 below.

Swimming pools within visitor accommodation and multi-occupancy developments enjoy a higher rate of use than swimming pools within a single dwelling. In this regard, any barrier inspection program should recognize this important variance. We believe that 2 years may be more appropriate.

Qualified individuals within the swimming pool & spa industry should also be considered as a viable alternative in undertaking certification of visitor accommodation and multi-occupancy developments.

7. Require that any property with a swimming pool must be inspected, and have a valid compliance certificate issued under the Swimming Pools Regulation 2008, before the property is leased or sold (parallel amendments to conveyancing, residential tenancy and land use planning legislation may also be required). The compliance certificate would be valid for a period of 2 years, even if the property is sold or leased again in the interim.

The Land and Property Management Authority has already made changes in 2010 to the Conveyancing (Sale of Land) Regulation 2010, so that the following warning notice is included in any contracts at point of sale:

"An owner of a property on which a swimming pool is situated must ensure that the pool complies with the requirements of the Swimming Pools Act 1992. Penalties apply. Before purchasing a property on which a swimming pool is situated, a purchaser is strongly advised to ensure that the swimming pool complies with the requirements of that Act."

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However, this is only a warning notice and pool owners are not forced to make their swimming pool comply before they sell or lease the property.

SPASA NSW supports further changes to the Conveyancing (Sale of Land) Regulation where it requires the swimming pool to be made compliant when a property is sold or leased, however, in the case of a sale, there are many instances where homeowners do not have the financial means to comply or the sale of the property is conditional upon the purchaser arranging compliance after settlement. In such instances, it would be reasonable to allow 90 days after settlement for the work to commence.

8. Provide that councils may charge an inspection fee for each inspection undertaken to reflect the actual cost of the inspection to a maximum of \$150 for the initial inspection and to a maximum of \$100 for one additional re-inspection, should it be necessary as a result of the initial inspection. It is further proposed that no additional inspection fees could be charged for any subsequent re-inspections.

Qualified individuals within the swimming pool & spa industry should also be considered as a viable alternative in undertaking initial and subsequent inspections as is the case in Queensland.

9. Require councils to report annually on the number of swimming pool inspections undertaken and the level of compliance with the requirements of the Act.

Councils will be required to invest in additional resources if they are to undertake inspections as well as comply with an annual reporting regime.

We have previously mentioned there are approximately 350,000 Constructed swimming pools, 50,000 Above Ground swimming pools and 100,000 Portable swimming pools located in backyards in NSW

It is universally agreed that inspections of all Portable pools is extremely difficult to police due to many factors not limited to their size, portability as well as how they are offered for sale. As previously mentioned, retailers should be required to collect sufficient data from the consumer at the point of sale in order to record the relevant details on the Swimming Pool Register.

See Example over the page

Assumptions

Given the above swimming pool figures, it is reasonable to assume that 400,000 swimming pools may require inspections.

This figure is made up of the following:

- 350,000 constructed swimming pools
- 50,000 Above Ground swimming pools

NB. Portable swimming pools are not included within the below example.

The below example illustrates the enormous coordinated effort required to inspect the abovementioned swimming pools over 12, 24 and 36 months.

Example:

Time Frame	Swimming Pools Inspected Per Annum	<u>Daily Inspections</u> required to achieve saturation
12 months	400,000	1,905 Daily Inspections
24 months	200,000	952 Daily Inspections
36 months	133,333	635 Daily Inspections

** Inspections per day calculated on 42 working weeks per annum (210 Business Days)*

** No assumptions have been made regarding availability of homeowners, repeat visits, compliance administration, travel times etc*

The Division of Local Government must consider qualified individuals within the swimming pool & spa industry as a complimentary addition to Council Inspectors and Private Certifiers if it is serious about timely coverage of swimming pool barriers.

Other Proposed Act Amendments

10. Include a provision to clarify that, where an existing swimming pool that is exempt from the Act's fencing requirements is fenced voluntarily, such fencing must meet the Act's requirements for a compliant, four-sided barrier. This would effectively 'disapply' or remove the exemption.

This proposal presents many problems.

It may be seen as a disincentive for owners of exempt pools to voluntarily fence their pool if this were to disapply or remove the exemption.

In addition, homeowners with existing exempt swimming pools may have voluntarily installed a barrier before the introduction of legislation and subsequent amendments thus making it impossible, complex and expensive to comply with retrospective legislation.

The proposed provision may create an unintended consequence for owners of exempt swimming pools who may consider installing a barrier voluntarily.

11. Clarify and make consistent with the *Local Government Act 1993* council powers of entry under the Swimming Pools Act to inspect private swimming pool barriers.

The Local Government Act 1993 and the Swimming Pool Act 1992 already addresses powers available to council to inspect swimming pool barriers. We are unable to comment further without first being provided with what is proposed.

12. Amend the definition of 'swimming pool' in section 3 of the Act by replacing the words '300 mm or more' with 'greater than 300 mm' to increase national uniformity.

Whilst we consider the current wording within the Act sufficient, we accept that the proposed change will bring the Act into line with Australian Standards and other state legislations and/regulations.

13. Replace the term 'hotel or a motel' with 'tourist and visitor accommodation' wherever occurring in the Act to increase consistency with other legislation.

This proposed replacement term from "hotel or a motel" to "tourist and visitor accommodation" is seen as a minor change; however, this it will create a significant inconsistency within the Department of Health NSW – Public Swimming Pool and Spa Pool Guidelines.

The Guidelines have equal application to all swimming pools and spa pools but were specifically drafted for application to the following pools:

- municipal swimming pools and spa pools,
- pools where the public, members and their guests, customers and patrons may have reasonable access as part of a service or workplace and includes:
 - **hotels and motels**
 - clubs
 - schools
 - gymnasiums & health resorts
 - squash and tennis centres
 - recreational resorts
 - hospitals (hydrotherapy pools)
 - workplaces, and
 - places of adult entertainment

Proposed Commencement and Information for Swimming Pool Owner

14. With the exception of proposed Amendment 4, which provides for a 12 month transition period before commencement of the new offence for failing to register a swimming pool, a commencement period of 6 months is proposed for the other new provisions. During this period strategies will be implemented to ensure all swimming pool owners are provided with information on their responsibilities to ensure that they comply with the requirements of the Swimming Pools Act.

The commencement period of 6 months for the “other new provisions” is seen as ambitious and unworkable in their current form.

Further consultations with stakeholders is necessary to ensure that any new Swimming Pool Barrier Inspection Program implemented is sufficiently debated, scrutinized and evaluated.

TRAINING FOR SWIMMING POOL INSPECTORS

Registered Training Organisations should have access to deliver the agreed Accredited “Swimming Pool Barrier Inspection Course”. Alternatively, a “Swimming Pool Barrier Inspection Course” maybe delivered by Registered Training Organisations using detailed Module Guidelines to achieve the desired learning outcome.

The Division of Local Government must consider qualified individuals within the swimming pool & spa industry as a viable alternative in undertaking initial and subsequent inspections in order to reach complete saturation.

SPASA NSW is 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 employers and the wider community.

Courses aligned with Licence classes within the swimming pool and spa industry include:

- CPC40808 Certificate IV In Swimming Pool and Spa Building
- 91520NSW Certificate III in Swimming Pool Repairs, Servicing & Interior Finishes
- BCG40106 } Certificate IV in Building and Construction
- CPC40108 }
- CPC40110 }

Experts Within The Swimming Pool Spa Industry Include:

- Engineering
- Hydraulic
- Consultants
- Fencing

SWIMMING POOL BARRIER INSPECTION COURSE

SPASA NSW has also developed and is delivering the following course:

- SPASA3017A Inspect Swimming Pool and Spa Safety Barriers

The SPASA NSW course follows similar structure to the Queensland: *“Swimming Pool Safety Inspector Course Guidelines”*.

Learners who complete the *“Inspect Swimming Pool and Spa Safety Barriers”* course are taught to:

- locate, interpret and apply relevant information, standards and specifications
- comply with site safety plan and OHS legislation, regulations and codes of practice applicable to workplace operations
- comply with organisational policies and procedures, including quality requirements
- safely and effectively use tools, plant and equipment
- communicate and work effectively and safely with others
- as a minimum, inspect and report on swimming pool and spa barrier compliance, ensuring:
 - correct identification of barrier requirements
 - correct selection & use of processes, tools & equipment
 - completing all work to specification
 - completing reports to specification

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STATISTICS

The introduction of mandatory pool fencing in NSW in the 1990s helped decrease the number of drowning deaths, however, fencing cannot lay claim for the decline in drowning alone. Much work has been achieved through governmental, voluntary and not for profit organisations investing in better education, water safety programs, CPR training and better improved overall awareness.

The below statistics have been compiled using data from the **Royal Life Saving Society of Australia (RLSSA) NSW Drowning Reports** from 2002-2010 and highlights the drowning data among children under the age of five in NSW.

Royal Life Saving Society of Australia (RLSSA) NSW Drowning Reports

Year	Drowning Deaths	Deaths in pools Age 0 - 5
1997	17	10
1998	18	4
1999	16	7
2000	14	5
2001	7	2
2002	13	5
2003	9	4
2004	15	9
2005	7	3
2006	12	6
2007	8	4
2008	13	10
2009	10	7
2010	8	6
2011	12	6

1992
Introduction of the Swimming Pools Act 1990

2007
Introduction of AS1926.1-2007

2008
Introduction of the Swimming Pool Regulation 2008

2010
Amendments to the Swimming Pool Act 1992 which included Removal of Exemptions and inclusion of 4 sided fence

Statistics over the last 10 years indicate that legislative changes over this period have not produced the desired results. The statistics also highlight the fact that legislation cannot be the only part of the solution. Moreover the data that makes up the statistics emphasizes that the legislative component when compared to other complimentary solutions is not balanced.

It is evident that what makes a pool 'safe' is complex. Many parts make up the solution and already work towards pool safety. The relevant legislative instruments look at the type and location of pool barriers. It does not look at the other elements that contribute to swimming pool safety such as active supervision, behaviour, contributing factors and neglect.

HEALTH PROFESSIONAL REPORTING

Data on drowning should be accurate, representative and comprehensive.

Whilst statistics are available on a National and State basis there are obvious gaps in the type of data, consistency and generalisations published within these reports.

Health Professionals across Australia deal with the consequences of drowning on a regular basis, yet there are few studies on drowning incidents of prognostic factors and outcomes of drowning. The lack of consistency makes assessment and analysis of studies difficult, both individually and as a whole.

To measure the success of home swimming pool safety legislation, it is important that there is adequate and accurate reporting of home swimming pool drownings.

The coroner could be asked to develop a Standard Reporting Format for drowning fatalities to ensure uniform reporting, particularly details concerning:

1. Means of Entry	2. Contributing Factors
3. Compliance Status	4. Age Group Consistency
5. Type of Pool	6. Other

SWIMMING POOL SAFETY

The NSW Government should provide significantly more funding for a well-coordinated, ongoing education and awareness campaign each year, particularly leading up to the summer months.

Continuing media campaigns, reinforced by voluntary standards to ensure the media and advertising sectors depict fenced pools and spas, could assist in achieving greater compliance. Media campaigns can also encourage pool owners to adopt safety behaviours, such as maintaining fences, never propping gates open, removing climbable objects from the pool surrounds, and learning cardiopulmonary resuscitation (CPR) skills.

PROTECT YOUR POOL, PROTECT YOUR KIDS

SPASA NSW worked with the Children's Hospital at Westmead (CHW) and the Samuel Morris Foundation in the development of the "Protect Your Pool, Protect Your Kids" – Video to educate pool owners about pool fencing and the common faults.

The purpose of the Protect Your Pool, Protect Your Kids video offers vital information to pool owner's concerning their legal requirements, how they could recognise faults with their pool fencing and how they could repair them to become compliant with the legislation.

SPASA NSW is extremely proud to have assisted the Children's Hospital at Westmead (CHW) in the development of this swimming pool safety initiative. Moreover, it is our strong view that this video is the most important and detailed educational swimming pool safety initiative currently available anywhere.

Initiatives such as this guarantee benefits in the way of saving lives as well as promoting our industry as socially and morally responsible.

Our entire industry has, and will continue to proudly promote the "Protect your Pool, Protect Your Kids" video to consumers via a number of avenues.....so to should The Division of Local Government.

the childr^en's hospital at Westmead

Kids can drown in inflatable pools too!

Protect Your Pool, Protect Your Kids

Protect Your Pool, Protect Your Kids

View our online video showing common pool fencing faults and how to spot them at www.chw.edu.au/kidshhealth/pool_fencing

By law, all pools that can be filled with 30cm of water or more must have a fence. For more information on safe pool fencing, please visit www.kidshhealth.chw.edu.au/projects/drowning-prevention/waterproof-pool-fencing

View our online video showing common pool fencing faults and how to spot them at www.chw.edu.au/kidshhealth/pool_fencing

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CONCLUSION

Every time there is a terrible drowning accident involving a child, there are calls for more aggressive fencing around pools and the addition of fencing around dams, wharves and rivers or draconian new laws, no matter how impractical or ill thought out.

It is part of a cultural foundation in which any tragedy that we are faced with is not just the result of bad luck or carelessness or simple human error but is the fault of inadequate regulation. There is this fantasy that with enough government intervention we can create a safety utopia. The truth is that the solution is much more complicated.

Of course, many lives have been saved and injuries prevented by fencing, however, it is prudent that regulators do not remove the imperative of common sense skills needed by parents and carers to monitor and identify potential dangers.

Whilst SPASA NSW supports in principal the creation of a *Swimming Pool Register* and a *Swimming Pool Barrier Inspection Program* it does not support the view that further regulation is the only answer.

A common sense outlook would be to invest in swimming pool safety with a holistic approach which includes some of the areas already covered within this paper rather than just rely on more fencing legislation.

Yours Sincerely

A handwritten signature in black ink, appearing to be 'Spiros Dassakis', enclosed within a hand-drawn oval border.

Spiros Dassakis
Chief Executive Officer