



Premier & Cabinet
Division of Local Government

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Department of Premier and Cabinet

SWIMMING POOLS ACT 1992 **REVIEW**

DISCUSSION PAPER



January 2012



PURPOSE

The purpose of this Discussion Paper is to seek from pool owners, local councils, key water safety organisations, State agencies and the wider community an indication of the level of support for a range of proposed amendments to the *Swimming Pools Act 1992* (and other relevant legislation) proposed in this paper to increase the safety of very young children around backyard swimming pools.

BACKGROUND

The Swimming Pools Act was introduced to require four-sided child resistant barriers to a prescribed standard to surround private pools in NSW.

A comprehensive review of the Act was undertaken in 2008 to identify appropriate amendments to enhance the safety of children under the age of five years old around private ('backyard') swimming pools in NSW. A *Swimming Pools Act 1992 Review – Options Paper* was released in 2009. The Review Report and Options Paper are available on the website of the Division of Local Government, Department of Premier and Cabinet (the Division). This work informed the development of the *Swimming Pools Amendment Act 2009*, which commenced on 14 December 2009.

The Amendment Act provided the legislative framework for a high standard of four-sided, child-resistant pool barriers to be consistently applied to all newly constructed private pools in NSW. It also provides appropriate additional mechanisms to encourage compliance with the legislation.

Since then the NSW Deputy State Coroner, the NSW Child Death Review Team and a range of pool safety advocacy organisations have consistently called for a further strengthening of the Act.

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.

The NSW Government is now considering further amendments to strengthen the Act.

Your views on the proposed amendments are sought by completing and forwarding to the Division the feedback form attached to this paper.

OVERVIEW

Compared to the number of private swimming pools in NSW (estimated to be in excess of 340,000) the number of fatal drownings of young children in private swimming pools is relatively low (approximately 6 per year based on the 5 year average to June 2009). However, the Government takes the view that every death or injury to a child in a swimming pool accident is significant and that most, if not all, are preventable.

Since the introduction of the 2009 amendments, initial data suggests that the number of deaths of young children have dropped slightly, with four deaths being reported during the 2010/11 swimming season. However, given the very low numbers, conclusions cannot be drawn about the effectiveness of these recent amendments. Further, anecdotal evidence suggests that faulty barriers continue to be a major contributing factor to drownings, with between 60% and 80% suspected of being non-compliant.

The importance of swimming pool safety is underscored by a series of findings handed down by the Deputy State Coroner in 2010 and 2011. The Deputy Coroner found that the breakdown of supervision and the failure to ensure the barrier was properly constructed and maintained were significant contributing factor to the deaths of several children. The Deputy Coroner stated, among other things:

A barrier fence surrounding a home swimming pool is not a first line of protection for young children. Supervision is always the first line of protection however no matter how vigilant a carer may be supervision of a young child can break down. It is in these situations that the barrier fence gives added protection by preventing the child from gaining access to the danger that the pool poses for them... It is trite to say that there is no point in having a barrier fence around a home swimming pool if it is not compliant or effectively maintained.

The NSW Government, having considered the various Coronial findings and recommendations, the views of pool safety advocates and others in the community as well as the report of the Cross Agency Working Group, is considering the development of further strategies to improve private swimming pool safety including:

1. The ongoing promotion of community and industry understanding of swimming pool safety

The NSW Government has a three year funding agreement with Royal Life Saving Society NSW (RLSS) which commenced 1 June 2010. The funding provided contributes towards various RLSS water safety campaigns and initiatives. Campaigns include the 'Keep Watch' campaign which specifically targets water safety in the home, including backyard swimming pools. The Children's Hospital Westmead has available additional educational material.

The Government will continue to develop additional strategies to highlight the importance of pool safety, including the responsibility to ensure supervision of young children around swimming pools and reinforcement of pool owners' responsibility to maintain pool barriers to legislated standards.

2. Strengthening the Swimming Pools Act regarding:

- Pool owners being required to register and self-certify their swimming pools
- The development and maintenance of a State-based swimming pool register
- Barrier compliance inspections
- Encouraging owners of exempt swimming pools to voluntarily install four-sided barriers in accordance with the current Australian Standard.

The NSW Government has considered in detail other proposed options to strengthen the Act, including initiatives being undertaken in other States. At this stage the Government is not proposing to proceed with these options, as the costs are likely to outweigh the benefits in NSW.

The NSW Government is committed to strengthening child safety around backyard swimming pools while avoiding the imposition of unnecessary additional costs on NSW pool owners and councils.

Community views are therefore being sought on the following proposed amendments to the Act before proceeding.

PROPOSED AMENDMENTS

Swimming Pool Register

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

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.
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.
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.
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.

Reasons these amendments are being proposed

The strength of these proposals is that they place the onus on pool owners to certify and register their pools and highlight the importance of pool owners taking responsibility for ensuring barriers are compliant at all times, rather than relying on third-party certifiers

giving pool owners assurance that the pool barrier is safe and compliant at a particular point of time.

The on-line, State-based register would be maintained by the Division of Local Government, Department of Premier and Cabinet. A centralised register would support further swimming safety strategies, which might include on-line reminders about checking the integrity of the swimming pool barrier.

Importantly, this proposal is for a once only registration and self-certification. It is administratively simple and convenient for pool owners. It will also provide councils with access to a consistent database to update information, plan local community education programs and manage an inspection program. While some will argue that self-certification should be more frequent, this comes at a cost. A planned evaluation three years after implementation would consider the need for more frequent self-certification.

Registration on-line will be at no cost for pool owners. However it is recognised that some may choose to register their pool with their local council which will cost \$10.

Pool owners would have access to user-friendly checklists that address the core components of the Australian Standard for swimming barriers called up by the Regulation. This is seen as an important means of raising pool owner awareness of their responsibility in maintaining a compliant pool barrier and of pool safety issues generally. A Home Pool Safety Checklist, similar to that which is proposed, is currently available on the Division's website at www.dlg.nsw.gov.au.

It is recognised that some pool owners will be reluctant or unable to self-certify that their pool barrier complies with the requirements of the Act. Pool owners will be able to request a council to certify their pool, as currently provided for at a maximum fee of \$70 in the Regulation, or employ an accredited private certifier to inspect their pool at market cost.

One of the risks with these proposals is that pool owners may fail to register their pool. A campaign would be undertaken to raise public awareness regarding the new requirements. A maximum penalty of \$2,200 would apply for failing to register a pool. Further, councils are currently required to, and have powers to, investigate all complaints about pools.

The council barrier inspection program (proposed below) would provide a measure as to how well pool owners are able to self-certify their pool barrier that would feed into the planned evaluation of the proposed amendments. Should pool barrier compliance not increase, further strengthening of legislation may be considered.

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.
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.
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.

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.
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.

Reasons these amendments are being proposed

The Swimming Pools Act does not currently require councils to undertake systematic swimming pool barrier inspection programs, although councils have the ability to undertake random or systematic inspections and some do so. Those that do undertake inspections report high levels of non-compliance (between 60 and 80%), potentially exposing many children to risk. Currently councils must cover the cost of inspection programs from general revenue which restricts their ability to do so.

Systematic barrier inspection programs have been called for consistently by a range of stakeholders.

The number of pools in NSW (340,000 plus) is such that any inspection program that seeks to examine all pool barriers in a defined period of time would be very resource intensive with high costs for government, councils and the community. At best it would only be possible to inspect all pools once every four years, depending on the size of the council. For some large councils this would require some 5,000 inspections per year. Given the high numbers and costs involved, the value of mandatory periodic inspections is questionable.

However, there is a clear need to encourage some level of inspection to address concerns and encourage compliance.

While inspections have limited value, as they only test compliance at a particular point of time, each deficiency identified potentially saves the life of a child. They also increase pool owners' pool safety awareness at the time of the inspection.

The development of an inspection program also has significant broader public educational value. The requirement for councils to consult on a swimming pool inspection policy and program and to annually publish inspection results will raise community awareness.

In smaller local government areas it may be possible to inspect all pools in a given period. In larger areas councils may need to adopt an audit based approach which seeks to inspect a defined percentage of pools in any given year. Councils are best placed to make this decision in consultation with their communities.

Councils would be able to charge an inspection fee, in consultation with their communities to ensure that it is acceptable and affordable, and to charge that fee for the initial inspection and the first re-inspection (if required) to reflect the actual cost of the inspection. The fee would be listed in each council's annual Operational Plan.

Without the ability to charge any inspection fees councils will have no, or limited, capacity or incentive to implement effective inspection programs. While councils would be required

to consult with communities in setting inspection fees, to safeguard against fees that are unaffordable to pool owners, it is proposed to prescribe the following:

- A maximum of \$150 per initial inspection
- A maximum of \$100 for the first re-inspection required to check completion of upgrading work to the child resistant barrier as a result of the initial inspection
- No fee to be charged for any subsequent re-inspections required.

The proposed requirement that councils undertake mandatory, periodic inspections of swimming pools associated with tourist and visitor accommodation, as well as other multi-occupancy developments, would address the higher risks associated with pools used more frequently and by a wider range of people, such as pools in hotels, motels, serviced apartments, backpacker accommodation, town house and unit complexes. These pools would be required to be inspected by councils at a frequency to be determined in consultation with the local community but at intervals of no greater than 3 years.

The proposed requirement that any property with a swimming pool must be inspected and have a valid compliance certificate before the property is leased or sold provides new tenants and property purchasers with the assurance that any swimming pool on the property they are leasing or buying has a compliant barrier.

Coronial findings have demonstrated increased risk regarding pools on leased properties as landlords may be unaware of any deficiencies in the integrity of the pool barrier and may be reluctant to make repairs due to the additional costs involved. Similarly, property purchasers may not be aware of pool barrier deficiencies and may also be reluctant to make repairs to the pool barrier unless required to do so. It is proposed that compliance certificates issued under this provision will be valid for a period of 2 years. This is similar to legislation introduced in Queensland in 2010.

The proposed requirement that councils report on the number of swimming pool inspections undertaken and the level of compliance with the requirements of the Act annually would enable the collection of important data about the level of pool barrier compliance within each community and to measure trends over time. This data would assist councils to develop targeted safety strategies. The data would also assist in evaluating the effectiveness of the legislative amendments.

Other Proposed Act Amendments

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

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

Reasons these amendments are being proposed

Proposed Amendment 9 is to address the issue of currently exempt pools (that is, pools constructed prior to 1 August 1990 and pools on very small (less than 230 square metres), large (2 hectares or more) and waterfront properties constructed before 1 July 2010) being voluntarily fenced but to an unsatisfactory standard. Anecdotal evidence suggests that a number of children have drowned in voluntarily fenced pools that have deficient barriers which, while they may create the illusion of a safe barrier, present a safety hazard for young children. The intent of this amendment is to remove ambiguity about exempt pools that have been voluntarily fenced. This provision will also prevent the removal of a fence which has been constructed around a previously exempt pool.

The intent of proposed Amendment 10 is to ensure that council officers are able to effectively implement swimming pool inspection programs and to align powers of entry under the Swimming Pools Act with those powers provided for in the Local Government Act (sections 191 – 201).

Proposed Amendments 11, 12 and 13 are machinery amendments to make the definitions in the Swimming Pools Act consistent with definitions called up in instruments under the *Environmental Planning and Assessment Act 1979* (for proposed Amendments 11 and 13) and in the Australian Standard for swimming pool barriers, the Building Code of Australia and other jurisdictions (for proposed Amendment 12).

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.

Reason delayed commencement is being proposed

The intent of the proposed delayed commencement provisions is to allow sufficient time for the proposed swimming pools register and supporting systems to be developed, councils to establish their inspection policy and program, and swimming pool owners to be informed about their new obligations under the Act.

SUPPORTING RESOURCES

The *Swimming Pools Act 1992* and the *Swimming Pools Regulation 2008* can be accessed at www.legislation.nsw.gov.au or through the following hyperlinks:

[Swimming Pools Act 1992 No 49](#)

[Swimming Pools Regulation 2008](#)

HOW TO MAKE A SUBMISSION

It is requested that submissions are made in writing using the attached feedback form. Should you wish to make additional comments please provide these on additional pages.

Your submission can be lodged in the following ways:

By email to: swimmingpools@dlg.nsw.gov.au

By post to: Swimming Pools Act Review
Division of Local Government, Department of Premier and Cabinet
Locked Bag 3015
NOWRA NSW 2541

By fax to: 02 4428 4199

The closing date for submissions is **Friday 24 February 2012**.

All submissions may be made publicly available. If you do not want your personal details or any part of the submission released, please indicate this clearly in your submission together with reasons. You should be aware, however, 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*).

Submissions will be analysed and a report on the findings provided to the Minister for Local Government for consideration.



FEEDBACK FORM

Name: _____

Organisation (please tick the applicable box below):

- Pool owner
- Council
- Water safety advocacy organisation
- Industry organisation
- State agency
- Other:

If 'Other', please specify: _____

Postal Address: _____

Email Address (if applicable): _____

Closing date: Friday 24 February 2012.

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

FEEDBACK FORM

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

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

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

FEEDBACK FORM

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

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

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

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

Unsure

FEEDBACK FORM

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

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

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

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

Unsure

