

ATTACHMENT 1



17 June 2008

Swimming Pools Act and Regulation Review
Department of Local Government
Locked Bag 3015
NOWRA NSW 2541

Attention: Mr Wayne Trudgen - Principal Policy Officer

Dear Mr Trudgen

Swimming Pools Act Review - Call for Submissions on Swimming Pools Regulation and Regulatory Impact Statement (RIS)

In refer to your Circular 08-26 of 12 May 2008 concerning the above matter and Council's previous correspondence of 4 January 2007 incorporating a detailed response to the Swimming Pools Act review discussion paper.

I advise a review of the Draft Regulation and RIS has been undertaken taking into account prior concerns expressed in our previous submission to the discussion paper.

In this regard please find outlined below, comments in response to the proposed draft Regulation and RIS.

- **Existing Exemptions**

Council's initial submission advocated that the current exemptions for waterfront, small and large properties and existing pools (ie in respect of unauthorised or legal pools) be removed. Council maintains this view and its support for immediate implementation.

It is acknowledged however, the draft regulation, although accommodating provisions for continuation of exemptions, does serve to improve current requirements for restricting access from a dwelling through "child resistant" (rather than "child safe") doors and windows.

- **Dividing Fences used as part of the Swimming Pool Barrier**

Our 4 January 2007 submission advocated that provision and maintenance of dividing fence pool barriers should be the responsibility of the pool owner.

The intent of the proposed regulation does address this concern by calling up AS1926.1 - 2007. AS1926.1 provides that the non climbable zone be maintained on

the inside of the pool barrier for a dividing fence provided that the fence is no less than 1.8 metres high and therefore, the responsibility for maintaining the integrity of the pool fence barrier in such circumstances will be placed on the pool owner.

- **Spa Requirements**

Our initial submission advocated the current standard permitting the use of spa covers with child safe lockable devices as a barrier option was too lenient. This requirement remains unchanged under the draft regulation and therefore our concern remains. Council requests that further consideration be given to addressing this concern in the draft legislation.

- **Compliance Certificates**

Our initial submission advocated support for mandating requirements to obtain compliance certificates for all new pools and on a periodic basis for existing pools.

It is noted that this issue has not been addressed in the proposed regulation. It is argued that a requirement to obtain a compliance certificate as advocated would contribute to improved compliance rates, as acknowledged by the following comment contained within the RIS which states:

"The research reported in van Weerdenburg et al (2003) demonstrates that there is substantial non-compliance with the Act.

The study also found convincing evidence that the actual level of non-compliance is determined in a large part by how zealous the council is in inspecting pools. For example, two councils in the study that had no active inspection programs recorded non-compliance rates in excess of 50%, while a third Council that had conducted routine inspections recorded non compliance rates below 5%.

It is acknowledged however, that the cost/benefit analysis in the RIS indicates that the analysis does not support resources being allocated to improved inspection and Council related activities. However, it should be emphasised that this issue is primarily concerned with the loss or impairment of the lives of young children and the conclusion is based on cost estimates and assumptions of limited reliance. Perhaps further consideration should be given to relaxing the requirements relating the term of compliance certificate renewals to ease the economic burden in the interest of achieving improved compliance rates.

- **Penalty Notice Amounts**

Our current concern that the Penalty Notice amount of \$220 is inadequate has not been addressed and therefore has been reiterated in this submission. It is considered a penalty in the order of \$600 would be more in line with penalty amounts included in other legislation for serious offences enforced by Local Government.

- **Building Certificates**

Our initial submission indicated support for pool barriers to be included as part of considerations in the issue of building certificates. This has not been addressed and therefore is reiterated in this submission.

- **Powers for Council to undertake rectification works.**

Our initial submission advocated for such powers in the event of non-compliance with a Swimming Pool Direction and as this has not been addressed our concern is reiterated.

Additional Comments

- **Treatment of existing pool fences**

It is considered the intention to require compliance with new or substantially altered fences (once the legislation is introduced) is reasonable. The application of the legislation retrospectively (except in the case of unauthorised pools) as indicated in the sub options within the RIS, is not supported.

The treatment of unauthorised or illegally constructed pools remains unclear with respect to the existing or proposed Swimming Pools legislation.

- **Alternative Options**

The proposed legislation as outlined is considered a preferred option over the alternative options 1-5 identified in the RIS.

Given the brevity of the draft Regulation and RIS consultation period, an opportunity has not been available to consult Council regarding the content of the above submission. It is intended to consult Council at its Ordinary meeting of 8 July 2008. Further details of Council's determination will follow the July Ordinary Meeting.

I take this opportunity to thank you in anticipation of your due consideration of the comments raised in our submission.

If you require any further clarification or information in relation to this submission please contact Mr Paul Curley of Council's Planning and Environment Division on 4645 4604.

Yours sincerely



Paul Tosi
General Manager

ATTACHMENT 2



23 February 2012

Swimming Pools Act Review
Division of Local Government
Department of Premier and Cabinet
Locked Bag 3015
NOWRA NSW 2541

Attention: Mr Wayne Trudgen - Principal Policy Officer

Dear Mr Trudgen

Re: *Swimming Pools Act 1992* Review Discussion Paper - January 2012

In refer to the Division's Circular 12-03 dated 15 January 2012 concerning the release of the *Swimming Pools Act 1992* Review Discussion Paper 2012.

Council, in principle, supports the NSW Government's proposed amendments to the Act (and related legislation) intended to increase the safety of young children around privately owned swimming pools, and accordingly, attached is our completed feedback form and additional comments.

Councillors have been advised of the Review and provided a copy of Circular 12-03 and discussion paper; unfortunately however, due to the restricted timeframe for submission of the review feedback form, Council has not had an opportunity to consider the attached submission. Consequently, a report will be presented to Council at its ordinary meeting on 13 March 2012 following which I will write and notify you of Council's resolution on this matter.

Should you require further clarification or information in relation to this submission please contact Council's Manager Compliance Services, Mr. Andrew Spooner 4645 4614.

Yours sincerely

A handwritten signature in black ink, appearing to read "Jeff Lawrence", followed by a long horizontal line.

Jeff Lawrence
Director Planning and Environment



FEEDBACK FORM

Name: CAMPBELLTOWN CITY COUNCIL

Organisation (please tick the applicable box below):

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

If 'Other', please specify: _____

Postal Address: PO Box 57 CAMPBELLTOWN NSW 2560

Email Address (if applicable): council@campbelltown.nsw.gov.au

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 | <input checked="" type="checkbox"/> |
| No | <input type="checkbox"/> |
| Unsure | <input type="checkbox"/> |



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



FEEDBACK FORM

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

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

Unsure

Please write down any additional comments you have.

See attached comments.

Thank you for taking the time to provide this feedback. Details on the ways you may submit this form and the use of this information are provided on the final page of the Discussion Paper.



23 February 2012

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Swimming Pools Act 1992 Review Discussion Paper - January 2012

FEEDBACK FORM – ADDITIONAL COMMENTS

Swimming Pool Register

- Question 1: The register should provide for restricted public access to enable on-line inquires as to the accuracy and currency of the certification information held.
- Question 2: Dependent on the time required to process each registration application, the \$10 fee may be inadequate. Most councils would have on-line access available through their public library facilities, which swimming pool owners should be encouraged to utilise at first instance.
- Question 3: The reasoning for establishing a 'self-certification' process for pool owners to complete safety checklist and statement is supported from the point of view of encouraging awareness and vigilance of pool barrier adequacy and ongoing maintenance; however, the question of the pool owner's liability in making such certification will need to be considered and clarified.
- Question 4: The penalties for the proposed offence for failing to register a swimming pool is considered inadequate and should be increased to a penalty notice amount of \$550, with a maximum of \$5,500 to reflect the seriousness of offences relating to obligations in respect of pool ownership and maintain consistency of penalty amounts for the majority of such offences under the Act.

Swimming Pool Barrier Inspection Program

- Question 5: Agree, although see also comments at Questions 7 and 8.
- Question 6: Periodic inspections of pools associated with tourist and visitor accommodation and other multi-occupancy developments should be undertaken, however, the proposed mandatory inspection period should be reduced to 1 year.

Question 7: There are a number of factors that can contribute to pool barrier fencing becoming defective, particularly in respect of the operation of self-closing gates, that give rise to concern about the compliance certificates remaining valid for a period of 2-years for leased properties. Concern is also raised that a new tenant taking occupation within the 2-year period may not be fully pool safety aware leading to inobservance of barrier fencing faults and unintended climbing encroachments. The validity of compliance certificates should be limited to a maximum of 1-year.

Council in its submission to the 2008 review of the *Swimming Pools Act 1992*, advocated support for mandating requirements for pool owners to obtain section 24 compliance certificates for all new pools and on a periodic basis for all existing pools. Whilst the amendments of the 2012 review go part way toward addressing this issue, Council remains of the view that a mandated compliance program under the compliance certificate provisions of the Act should be implemented for all pools to ensure that the impetus of the initial swimming pool ownership registration and education programs are maintained.

It seems incongruous that the proposed amendments will in effect create three processes by which certification of a pool can be sought, each with its own regulated or proposed and differing fee structures. I refer to a building certificate under section 149A of the *Environmental Planning and Assessment Act 1979*, a compliance certificate under section 24 of the *Swimming Pools Act 1992*, and the proposed mandatory pool inspections under the 2012 review. What is not apparent is: will a section 149A certificate application also suffice for a section 24 certificate where the building is in the process of sale; what is to prevent a pool owner applying for a section 24 certificate to circumvent the proposed mandatory inspection programs (see Question 8 comments regarding inconsistent fees). If it is the intention that section 24 certificates be issued in all situation where inspections are mandated then this needs to be spelt out and a consistent fee structure applied.

Question 8: It seems inconsistent that the proposed general swimming pool barrier inspection fees are to be calculated to reflect the actual cost of the inspection and allowed to be charged to a maximum of \$150 for the first inspection and a maximum of \$100 for the reinspection; whereas, the fee for a section 24 compliance certificate (including all inspections) is to remain a scheduled fee of \$70 under clause 17(1) of the regulation. Council is of the view that the swimming pool compliance certificate fee does not reflect the actual cost of the inspection and administrative costs involved and should be reviewed in line with the proposed fees for general swimming pool barrier inspections.

Question 9: The proposal to require annual reporting of the number of swimming pool inspections undertaken and level of compliance should not be made unduly onerous, essentially the report should reflect only the numerical statistics in respect of inspections and compliance rates, and be specified under section 428 of the *Local Government Act 1993* that such statistics be included in council's annual report

Other Proposed Amendments

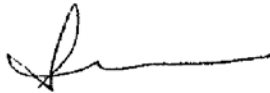
Question 10: Delaying the introduction of an amendment requiring that, where an existing swimming pool that is exempt from the Act's fencing requirements is fenced voluntarily, such fencing must meet the current requirements for a compliant, four-sided barrier (effectively removing the exemption) will, it is anticipated, provide an opportunity for voluntarily erected fences to be removed before the requirement commences.

Question 11: Strongly agree.

Question 14: Agree, except in respect of question 10, see above comments.

For clarification or further information in relation to this submission please contact Council's Manager Compliance Services, Mr. Andrew Spooner 4645 4614.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized initial 'J' followed by a long horizontal line.

Jeff Lawrence
Director Planning and Environment

ATTACHMENT 3

Cost Estimates for Implementation of a Swimming Pool Barrier Inspection Program.

Introduction:

Although the number of premises to be included in the inspection program will not be known until the register is fully established, it is evident the number of pools will be significant and therefore will require the engagement of additional staff.

It is proposed Council employ two specialist pool safety officers, being qualified building surveyors, due to the associated risk and liability associated with the inspection role. These officers would have the principal responsibility for developing and implementing a locally appropriate inspection program that meets the requirements of the Bill. It is estimated that each Pool Safety Officer would conduct 4-5 inspections per day (not including follow up reinspections).

In addition, the officers would be responsible for the development, review and implementation of the extended community education and awareness strategy as well as proactively identifying unregistered and unauthorised pools (which represent a high risk), investigating related customer requests and associated regulatory compliance.

Itemised Cost Estimates

Annual Salary (Building Surveyor Grade 14)	\$65,000
30% Salary On costs (leave provisions, superannuation)	\$19,500
Leaseback Vehicle Expenses (excluding leaseback income) including maintenance and vehicle turnover costs	\$11,000
Total Annual Cost per Pool Safety Officers	\$95,500
Total Amount Cost for 2 Pool Safety Officers	\$191,000

Income

The total cost of the program will be offset by income received for mandatory (inspection program) inspections and voluntary (property sale and lease) inspections.

Income is unable to be estimated with any certainty given the numbers of registered pools and the number of voluntary inspections (annual number of property sales and leased premises) are not currently known. This is complicated as Council will compete with private certifiers for a share of the voluntary inspection market.

In addition, details relating to prescribed inspection and possible owner registration fees are not yet known.