



Submission to:

NSW Fair Trading

on the

Regulatory Impact Statement

Home Building Regulation 2014

Introduction

This submission is made by the Swimming Pool and Spa Alliance (SPASA).

SPASA represents hundreds of Australian businesses within the swimming pool and spa industry. Members of SPASA include pool builders, manufacturers, suppliers, retailers, technical servicemen, subcontractors, installers, consultants and other allied trades, all of whom set themselves apart from the rest of the industry by setting standards of skill, workmanship and ethical business behaviour in the best interests of pool and spa owners.

SPASA is also a Registered Training Organisation (RTO) that provides training and assessment to the swimming pool and spa industry. Our courses are designed in consultation with key industry stakeholders and our qualifications and accreditations are highly valued by government, employers and the wider community.

SPASA welcomes the opportunity to comment on the Regulatory Impact Statement – Home Building Regulation 2014.

Question 1.

Date of Commencement

SPASA submits that a more appropriate start date is 1 February 2015.

Affected persons within the swimming pool and spa industry generally take annual leave over this period. Implementation of changes is likely to be considered by industry mid to late January 2015.

Question 2.

Increase the 'general works' contract threshold

SPASA does not support increasing the general works threshold from \$5,000 to \$20,000.

Additionally, SPASA does not support IPART 'fast-tracking' approach to raise the threshold above which work is regulated by the Home Building Act to \$5,000.

Question 3.

Training requirements for Owner-Builders

SPASA does not support raising the threshold from \$12,000 to \$20,000.

Owner Builders currently can undertake an 'Owner Builder' course for as little as \$88 online and \$288 face to face with both delivery methods taking only a few days or less. The additional requirement for a 'Construction Induction Card' can also be completed online for \$39.

It should be noted that the Australian Skills Quality Authority (ASQA) initiated a review of the 'White Card' in November 2012 in response to persistent stakeholder concerns about the quality of training in the unit of competency 'CPCCOHS1001A Work safely in the construction industry'.

Concerns raised by industry indicated that people issued White Cards may not actually have achieved the introductory knowledge and skills to work safely on construction sites.

Works under the proposed threshold undertaken by owner builders may include balconies, retaining walls and other structural elements to a building(s). The quality and safety of the work poses a threat not only to the owner builder but also to unsuspecting subsequent purchasers who will have no idea what work has been undertaken as there is no requirement to disclose the works.

SPASA submits that owner builders should undertake a revised and more onerous Owner Builder course reflecting adequate Units of Competency and associated Assessments. Such courses should only be delivered by Registered Training Organisations.

Question 4.

Insurance exemption for built-in furniture and cabinetry

SPASA supports a departure from Home Warranty Insurance for built-in furniture and cabinetry when the work is undertaken as a stand-alone contract.

SPASA also strongly advocates a departure from Home Warranty Insurance for the construction of swimming pools and spas.

The net effect of exempting the swimming pool and spa industry from Home Warranty Insurance would also reduce red tape and insurance costs for an industry with a low risk profile.

Question 5.

Clarify definitions for high-rise building insurance exemptions

SPASA supports the need to further clarify the term 'storey' and 'rise in storeys' in the Regulation, so that these are consistent with the National Construction Code.

SPASA does not agree that high-rise buildings should be treated as Commercial buildings as their primary purpose in many instances is residential accommodation, owned by individual Unit Holders.

Unit Holders are in just as much need of protection as individual Home Owners and Single Storey Complex Unit Holders and generally in no better position to pursue their rights for rectification of defects. The Developers should be under the same regime of scrutiny as single dwelling and "Low Rise" builders.

Question 6.

Clarify the definition of 'disappeared' for insurance purposes

SPASA supports the clarification proposed.

Question 7.

Insurance claims limited to works that are required to be insured

SPASA supports the clarification proposed, however, consumers must be provided with better access to information so that they might better understand which works within a contract have a requirement for insurance and which works do not.

Question 8.

Insurance covers only lawful deposits if no work has commenced

Lawful Deposits

SPASA supports that in the event that residential building work has not commenced, the loss or damage indemnified against may only include the loss of any deposit paid.

Meaning of Commencement

SPASA in principal supports the regulation defining the meaning of “commencement”, however, no proposed detail is provided at this time to consider and interactions with other proposed changes.

Also see Question 9.

Question 9.

Insurance covers only lawful deposits if no work has commenced

The Home Building Act 1989 does not provide a definition for the commencement of the erection of a building, the subdivision of land, or the carrying out of work.

Physical commencement has traditionally been interpreted by the courts as a low threshold test, dependant on facts in each case.

SPASA does not see any immediate practical issues; however, there are many unresolved proposed interactions within the RIS still undecided such as excavation and fencing.

Question 10.

Eligibility to make delayed claims against insurance if ‘diligently pursued’

The ‘Policy Position’ in the ‘Position Paper’ allowed a delayed claim to be made for a loss arising from the non-completion of work in circumstances where the homeowner had been diligently pursuing the builder and had properly notified the claim within the insured period.

Commencing proceedings in a court or tribunal is an easy test when establishing if someone has been diligent, however, taking such further steps as are ‘reasonable’ in the circumstances to advance those proceedings is vague and subjective. What is the test for ‘reasonable’ or who decides what is ‘reasonable’?

SPASA is not aware of any data that would result in a departure from the recommended policy position but is happy to review such data if it exists so that we may better understand the deviation proposed in the RIS.

Question 11.

Exemptions from insurance for Government funded works

SPASA supports this proposal.

Question 12.

Exemptions from insurance for Government funded works

Any undertaking to provide protection equivalent to Home Warranty Insurance when a property is sold within six years of the work being done would need to be appropriately legislated.

In addition, consumers would need to be provided with disclosure documents which detail who is providing the equivalent protection and on what basis.

Question 13.

Definition of defect and major defect

SPASA submits that a 'Major Defect' means:

"Any defect in a building that prevents the continued practical use of the building or any part of the building."

Question 14.

Amend the definition of 'structural landscaping'

SPASA supports the proposed definition.

Question 15.

Clarify supervision requirements for some apprentices and trainees

SPASA does not foresee any practical issues with relying on the supervision requirements in section 14(2) of the Home Building Act.

Question 16.

Threshold changes to fast-track key IPART recommendations

Increase the minimum value of residential building

SPASA does not support increasing the minimum value of residential building work to which the Home Building Act applies from \$1,000 to \$5,000, so that a licence would only be required for work valued over \$5,000.

"Qualifications" and "Licensing" are independent from each other BUT when you remove "Licensing" you also remove the compulsion for "Qualifications".

The building and construction industry in NSW is highly regulated and the opportunity to remove unnecessary regulation is welcomed, however it is recognised that industry regulation is needed to protect consumers, ensure health and safety of owners and users of buildings and establish confidence in dealings with the building and construction sector.

SPASA remains concerned that recommendations to 'fast-track' the removal of certain licence classifications and deregulate certain specialised trade tasks, such as Swimming Pool Acid Washing and Fencing under the narrow terms of reducing red-tape and associated costs is fraught with significant danger.

SPASA submits that consumer interests are best safeguarded by qualified individuals holding appropriate qualifications and licensing.

Raise the threshold for requiring an Owner-Builder Permit

SPASA does not support 'Raising the threshold for an Owner-Builder'.

SPASA has seen a spike in the number of owner-builders undertaking work without approval, work that is not sequenced correctly (adding to quality issues) as well as shoddy building practices that may have significant safety consequences.

Despite recently introduced reforms that owner builders will not be able to purchase Home Warranty Insurance, there is no such warning or disclosure on work that is undertaken up to \$10,000.

The unintended consequences of owner-builder regulations and lack of power to monitor and enforce the owner-builder scheme affect the market for licensed builders. The regulatory burdens of licensed builders and owner-builders are unfairly imbalanced particularly when it comes to compliance with Work, Health and Safety, insurance and hiring of trades.

Increasing the threshold for requiring an owner builder permit will increase the risk to subsequent purchasers of property where work has been undertaken by an unskilled "do it yourself" person(s).

Question 17.

Review of building categories to fast-track key IPART recommendations

SPASA submits that excavation work should continue to be regulated under the Home Building Act.

Excavation failures are particularly dangerous because they may occur quickly, limiting the ability of workers (and in some cases others in the vicinity) to escape especially if the collapse is extensive.

The speed of an excavation collapse increases the risk associated with this type of work and the consequences are significant as the falling earth can bury or crush any person in its path.

Financial Risks

Financial risks to consumers are not 'low' as described in the RIS.

Whilst most construction contracts include excavation work not all consumers directly contract with a builder.

Examples include:

- Contract scope does not include excavation work*
- Owner Builders contracting directly with licensed excavators*
- Consumers sourcing quotes from licenced excavators for "variation" work*

Potential financial risks are not limited to: damage to house foundations, underground and overhead services being affected as well as the risk to adjoining properties and structures.

Question 18.

Review of building categories to fast-track key IPART recommendations

SPASA submits that wood and metal fencing should continue to be regulated under the Home Building Act.

Reasons include:

- *The proposal is riddled with unintended safety and compliance issues*
- *Many modern fences now include a variety of materials such as a masonry fence with wooden, metal or glass inserts*
- *Many fences are used as safety barriers with complex prescribed requirements. Eg. Swimming Pools Act and Australian Standards*
- *Safety barriers associated with swimming pools and spas require structural element tests as prescribed under the Australian Standard AS1926.1 – 2012*
- *Issues relating to the erection of swimming pool and spa barriers (and associated pending inspections) will be amplified should the proposal to increase the threshold to \$5000 proceed*

Question 19.

Review of building categories to fast-track key IPART recommendations

SPASA does not support the intent to cease regulating “cleaning” from the Swimming Pool Repairs and Servicing scope.

Surprisingly, SPASA has not been contacted or consulted by the Department or IPART in any consultation or assessment process leading to the current proposal.

Cleaning associated with residential and public swimming pools and spas is an entirely different function to that of cleaning driveways, windows, bricks and other structures.

The monitoring and associated cleaning program for any swimming pool and spa pool must ensure that they are maintained in order for the risk of disease to be halted.

Varying concentrations of chemicals such as Hydrogen Peroxide, Acid and Alkaline Salts are also used to clean swimming pools and spas that present with certain symptoms such as osmosis (black spot), calcium build up and staining. Such chemicals are required to be managed under the Storage and Handling of Dangerous Goods – Code of Practice.

Additionally, cleaning a swimming pool and spa in many instances also requires the use of specific equipment usually connected to the pools hydraulic system. In such circumstances, suction vacuums and pressure cleaners may be used. Further cleaning also frequently extends to the filter(s) and filter medium. This requires knowledge relating to reading and interpreting pressure gauges, understanding chemical levels as well as assessing the condition of the filter medium for replacement.

The operation of hydraulic set ups when cleaning a swimming pool or spa could also lead to injury such as body and mechanical entrapment should valves and associated equipment not be returned to their normal operating positions.

Deregulating Swimming Pool and Spa Cleaning would further promote consumers purchasing, transporting and storing bulk chemicals which is in stark contrast to the 'National Code of Practice for Chemicals of Security' message being driven by the Australian Government Attorney-General's Department which is supported by SPASA and other affected Industry Associations and groups.

Question 20.

Review of building categories to fast-track key IPART recommendations

"Swimming Pool and Spa Technician" is a relatively new occupational classification. These technicians provide post-construction cleaning, servicing and maintenance of domestic, commercial and public swimming pools and spas.

Nationally recognised qualifications¹ for Swimming Pool and Spa Technicians only became available in 2013 as a consequence of the industry reacting to the need to lift health and safety benchmarks as well as formally recognising the complex skill base required by technicians.

The NSW Department of Health 'Public Swimming Pool and Spa Advisory Document' states:

- *Ideally, persons collecting samples should be trained and certified competent in the use of aseptic techniques.*
- *Systems using ozone to re-generate bromine require skilled designers and trained operators to ensure system performance, safety and health conditions.*
- *It is a dangerous chemical (soda ash) and should be handled by trained personnel with appropriate personal protective equipment.*
- *It is a dangerous chemical (dry acid) and should be handled by trained personnel with appropriate personal protective equipment.*
- *It is a dangerous chemical (Hydrochloric acid) and should only be handled by trained personnel with appropriate personal protective equipment.*
- *Microbiological failure: Recommend that pool operators are trained in pool maintenance*

SPASA considers the proposal to remove "cleaning" from the swimming pool repairs and servicing scope as a further dilution of health and safety concerns expressed in question 19.

¹CPP31212 Certificate III in Swimming Pool and Spa Service and CPP41312 Certificate IV in Swimming Pool and Spa Service,

Question 21.

Review of building categories to fast-track key IPART recommendations

SPASA does not foresee problems arising from the proposal to consolidate 'roof' tiling and 'roof slating'.

Question 22.

Review of building categories to fast-track key IPART recommendations

SPASA considers the transitional arrangement appropriate.

Questions 23.

Review of building categories to fast-track key IPART recommendations

CARPENTRY (exterior, non-structural wall cladding in stone)

SPASA does not support expanding the scope of this category to include exterior, non-structural wall cladding in stone.

Whilst the installation of external cladding requires fixing by screws the installation of non-structural wall cladding in stone requires knowledge and a thorough understanding on the relevant types of stones, composites, tiling, adhesives and associated Australian Standards.

CARPENTRY (prefabricated glass fencing)

SPASA does not support expanding the scope of this category to include prefabricated glass fencing.

The proposal is to include prefabricated glass fencing but to exclude custom glass fencing. Prefabricated glass fencing is almost always custom ordered to suit each project. SPASA assumes that 'custom glass fencing' means custom frameless or semi frameless glass.

Glass fencing around swimming pools and spas presents a significant safety concern.

SPASA would argue that Carpenters have little understanding and exposure of the relevant important safety Australian Standards and legislative instruments designed to protect small children.

Standards and Legislation include:

- Relevant Australian Standards
 - AS1926.1 Swimming Pool Safety - Safety Barriers
 - AS1926.2 Swimming Pool Safety - Location of Safety Barriers
 - AS1926.3 Swimming Pool Safety - Water Recirculation Systems
 - AS2820 Gate Units for Private Swimming Pools
 - AS2610.1 Spa Pools - Public Spas
 - AS2610.2 Spa Pools - Private Spas
 - AS2818 Guide to Swimming Pool Safety
 - AS3000 Equipotential Bonding
- Australian Standards
- Swimming Pools Act 1992
- Swimming Pool Regulation 2008

GLAZING

SPASA does not support expanding the scope of this category to include glass fencing.

SPASA would argue that Glaziers would have little understanding and exposure of the relevant important safety Australian Standards and legislative instruments designed to protect small children around swimming pools and spas.

Also see Carpentry above.

JOINERY

SPASA does not support expanding the scope of this category to include prefabricated glass fencing.

SPASA would argue Carpenters would have little understanding and exposure of the relevant important safety Australian Standards and legislative instruments designed to protect small children around swimming pools and spas.

Also see Glazing above.

KITCHEN BATHROOM AND LAUNDRY RENOVATION

SPASA supports the clarification proposed.

METAL FABRICATION

SPASA does not support the proposal to omit references to fences and gates from the Metal Fabrication scope of work.

Deregulation of metal fencing will have enormous consequences to owners of swimming pools and spas at a time when swimming pool and spa inspections are about to commence (29 April 2015).

MINOR TRADE WORK

SPASA does not support the proposal to integrate minor maintenance work into the 'minor trade work' category, as part of deregulating cleaning work.

Minor Maintenance/Cleaning and Minor Tradework contractors are exposed to different types of works requiring very different skill sets.

SWIMMING POOL REPAIRS AND SERVICING (Cleaning)

SPASA does not support the intent to cease regulating "cleaning" from the Swimming Pool Repairs and Servicing scope.

Surprisingly, SPASA has not been contacted or consulted by the Department or IPART in any consultation or assessment process leading to the current proposal.

Cleaning associated with residential and public swimming pools and spas is an entirely different function to that of cleaning driveways, windows, bricks and other structures.

The monitoring and associated cleaning program for any swimming pool and spa pool must ensure that they are maintained in order for the risk of disease to be halted.

Varying concentrations of chemicals such as Hydrogen Peroxide, Acid and Alkaline Salts are also used to clean swimming pools and spas that present with certain symptoms such as osmosis (black spot), calcium build up and staining. Such chemicals are required to be managed under the Storage and Handling of Dangerous Goods – Code of Practice.

Deregulating Swimming Pool and Spa Cleaning would further promote consumers purchasing, transporting and storing bulk chemicals which is in stark contrast to the 'National Code of Practice for Chemicals of Security' message being driven by the Australian Government Attorney-General's Department and supported by affected Industry Associations and their members.

In addition, cleaning a swimming pool and spa in many instances also requires the use of specific equipment usually connected to the pools hydraulic system. In such circumstances, suction vacuums and pressure cleaners may be used. Further cleaning also frequently extends to the filter(s) and filter medium. This requires knowledge relating to reading and interpreting pressure gauges, understanding chemical levels as well as assessing the condition of the filter medium for replacement.

The operation of hydraulic set ups when cleaning a swimming pool or spa could also lead to injury such as body and mechanical entrapment should valves and associated equipment not be returned to their normal operating positions.

Also see Questions 19 and 20.

SWIMMING POOL REPAIRS AND SERVICING (Acid Washing)

SPASA does not support the proposal to omit 'Acid Washing' from the scope of work for 'swimming pool repairs and servicing'.

SPASA rejects the statement that Acid Washing is something "commonly undertaken by homeowners themselves, without any formal training or qualifications."

The Unit of Competency CPPSPS4014A 'Drain and Acid Wash Swimming Pools and Spas' was introduced into the industry's newest qualification 'CPP41312 Certificate IV in Swimming Pool and Spa Service' in 2013 as a consequence of the insurance, health and safety risks associated with Draining and Acid Washing a swimming pool and/or spa.

Chemicals used for 'Acid' Washing include:

- Hydrochloric Acid
- Oxalic Acid
- Phosphoric
- Citirc Acid

Health and Safety Risks:

Swimming Pool and Spa Service Technicians constantly refer to Safety Data Sheets (SDS's) when assessing which product to use when Acid Washing a pool. SDS's provide Swimming Pool and Spa Service Technicians with important information on the properties of hazardous chemicals and how they affect health and safety in the workplace.

Associated Safety Data Sheet's (SDS's) for many of the above chemicals indicate EXTREME risks.

Such risks include: "toxic by inhalation", "causes severe burns", "risk of serious damage to eyes", "skin contact may cause health damage".

Chemical Handling:

- Understanding the various types of Acids for various conditions
- Transportation of Chemicals
- Mixing Chemicals (Acid and Chlorine Interaction)
- Use of appropriate Personal Protective Equipment

Other significant impacts

Owners who 'Drain' and 'Acid Wash' their own pools can cause significant damage to the pool:

Examples of damage include:

- Hydrostatic pressure (when pool is drained) may cause pool to raise (pop) out of the ground
 - Cracking, thinning or delamination of tiles and plaster
 - Plaster may shrink, expand, crack, blister, flake or pop off
 - Surface is etched, becomes rough or the aggregate in the plaster mix is exposed
 - Tiles may fall off the pool or spa
 - Uneven stain removal or surface finish
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Question 24.

Transition to one fire protection plumbing category with an exclusive scope of work

SPASA considers the proposed scope as appropriate.

Question 25.

Transition to one fire protection plumbing category with an exclusive scope of work

SPASA submits that people who have a licence or certificate as a 'plumber' or 'water plumber' be allowed to do some aspects of fire protection work on the provision that they undertake further study.

Question 26.

Transition to one fire protection plumbing category with an exclusive scope of work

SPASA considers the proposed transitional arrangements as appropriate.

Question 27.

Consolidate gas-fitting categories that have the same qualifications requirements

SPASA cannot foresee issues arising by merging LP Gasfitting and Gasfitting into a single category.

Question 28.

Create a new restricted electrical work category for electro-technology trades

SPASA supports the proposed scope for the proposed category of restricted electrical work for electro-technology trades.

Swimming Pool and Spa Service Technicians must be recognised as suitable Certificate III Tradesmen to undertake further training for a 'Disconnection and Reconnection' of fixed electrical equipment licence.

Swimming Pool and Spa Service Technicians qualifications include:

- 91520NSW - Certificate III in Swimming Pool Repairs, Servicing and Interior Finishes
- CPP31212 - Certificate III in Swimming Pool and Spa Service
- CPP41312 - Certificate IV in Swimming Pool and Spa Service

Currently, there is some confusion as to whether a Swimming Pool and Spa Service Technician who achieves a Certificate III or Certificate IV level qualification can undertake a 'Disconnection and Reconnection' of fixed electrical equipment course and then apply for a licence.

This has resulted in some Swimming Pool and Spa Service Technicians having a 'Disconnection and Reconnection' of fixed electrical equipment license and some that do not – all dependant on who they spoke to and which Fair Trading office they applied at.

Question 29.

Consistent processing component for renewal and restoration fees

SPASA is not aware of any practical issue in drafting this provision.

Question 30.

Application fee exemptions

SPASA considers the fee exemption for Victorian-based plumbers appropriate; however, measures should be put in place to allow for the practice to be rescinded or amended if future changes to the Victorian legislation do not support the reciprocal arrangement.

Question 31.

Insurance exemption for work done for retirement village operators

SPASA considers the scope proposed as appropriate.

Question 32.

Exemptions for employees of electricity supply authorities

SPASA supports the maintaining the exemption and note.

Question 33.

Authority-holders may not trade while contesting a rejected restoration

SPASA does not support removal of the 30 day grace period whilst an appeal is being heard.

Licensees should be provided with natural justice and not stripped of their license or their ability to earn income prior to their 'Appeal' being heard.

Unintended consequences of removing the grace period and a licensee winning an appeal include:

- Employee jobs and entitlements
- Contractual repercussions
- Liquidated damages or other financial and non-financial milestone penalties

Licensees or Certificate Holders should not be prevented from working during an appeal as this practice could have enormous financial and job related repercussions if the appeal is successful.

Description of Work Authorised – Schedule 2

SPASA proposes the description of works for Swimming Pool Building and Swimming Pool Repairs and Servicing in schedule 2 of the draft Home Building Regulation be expanded to reflect educational outcomes and the onsite similarities with associated work.

SPASA proposes the below new ‘Description of Work Authorised’ – Schedule 2

Swimming pool building – Revised Description

All work involved in the construction, renovation, alteration, repair, extension, maintenance, decorative or protective treatment of a swimming pool. It includes all other works directly associated with a swimming pool installation such as surrounding soft and structural landscaping, retaining walls, pergolas decks, safety fencing, pool water filtration and heating, and includes all work within the scope of the category of swimming pool repairs and servicing.

All specialist work directly associated with the correct and safe installation and functioning of a swimming pool that is an integral part of an overall contract to carry out swimming pool building work.

*For the purposes of this category, **swimming pool** includes a swimming pool or spa pool as defined in the Swimming Pools Act 1992.*

Swimming Pool Repairs and Servicing – Revised Description

Work involved in the servicing and repair of elements of an existing swimming pool, including internally reticulated pool plumbing not connected to a potable water source, solar thermal heating systems that are not hard wired (excluding any solar photovoltaic (PV) systems), and equipment installation (including filters and skimmers). It also includes any additions, alterations and repairs of a non-structural nature such as tiling, paving and the painting or surfacing (rendering or application of surface coatings) and fencing repairs and maintenance. It does not include any work related to landscaping associated with a pool or spa installation.

*For the purposes of this category, **swimming pool** includes a swimming pool or spa pool as defined in the Swimming Pools Act 1992.*

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