



Submission

Independent Review of the Swimming Pool Barrier Requirements
for Backyard Swimming Pools in NSW

INTRODUCTION

This submission is made by the Swimming Pool and Spa Association of NSW & ACT (SPASA).

SPASA represents hundreds of businesses within the swimming pool and spa industry.

Members of SPASA include pool builders, service technicians, retailers, manufacturers, suppliers, 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 has consulted with industry regarding the Independent Review of the Swimming Pool Barrier Requirements for Backyard Swimming Pools in NSW and our comments are tabled within this document.

Review of the Swimming Pool Barrier Requirements for Backyard Swimming Pools in NSW

6.1.1 Pool barrier standard setting and documentation

Question

Do you support the following possible approaches to a pool barrier standard?

- **Control of when and if the State adopts a revised national standard**

SPASA supports the concept of controlling when and if the State adopts a revised national Standard on the proviso that a Pool Safety Council or Committee made up of key industry stakeholders has carriage over the decision.



- **Provide ready access to pool professionals to the standard**

In the interests of safety, such standards should not be protected under copyright, particularly when Standards Australia is charged by the Commonwealth Government to meet Australia's needs for contemporary, internationally aligned Standards and related services.

Accordingly, SPASA submits that the swimming pool and other related industries have ready access to the Standard at no cost.

- **Provide an easy to understand explanation for the general public**

Providing an easy to understand explanation for the general public is imperative in ensuring compliance with a State Standard. The same explanatory document should be used by pool certifiers state-wide.

6.1.2 Multiple versus one standard

Question

Do you believe the benefits of having a single pool barrier standard outweigh the costs of upgrading of existing pools and should be proceeded with?

As seen in Queensland, establishing a State Standard can have various benefits such as no automatic flow through of variations in the Australian standard to the State standard. It would also be possible to provide interpretations and advice on the standard; and documentation can be provided which clearly explains the standard to both the industry and the general public.

SPASA supports the development of a State Standard on the proviso that:

- a) A Pool Safety Council or Committee made up of key industry stakeholders that have carriage over development, implementation, future changes and interpretation.
- b) Owners are provided with a five year transition period to comply
- c) Allow flexibility to for exemptions where the adoption of the new standard would be impractical or unfeasible.
- d) An enhanced and workable version of the section 22 exemption provision is provided to allow for the proper management and assessment of exemptions in practice.
- e) Development of a carefully constructed practice guide for certifiers to ensure accuracy and consistency

6.1.3 Issues associated with interpreting the Australian Standard 1926.1-2012 and legislation

Questions

Do you support the need for an interpretation service to answer queries about the swimming pool barrier standard and how it should be applied?

Standards Australia's organisational policy is that they do not offer guidance or provide interpretations on any standards for any sector under any circumstances.

The Standards Australia process when faced with a query from an individual or an organisation is that Standards Australia circulates that query to Committee Members and it is up to members as to whether they are able to further clarify the issue raised by the enquirer.

Standards Australia follows this process regularly and clarification is provided by Committee Members on a range of interpretational issues.

Standards Australia does not stand behind any comments made or clarifications that are provided by Committee Members as members are simply the conduit that allows for a Standard to be developed.

Ironically, Standards Australia cannot exist without the participation of technical and other experts that make up the Australian Standard and yet it is these same experts that Standards Australia advises are acting in a private capacity when providing clarification or making comment. The two positions are incompatible.

Despite the Standards Australia position, if clarification is provided by Committee Members when a query is raised then it is not unreasonable for the enquirer to rely on that clarification in the absence of anything else.

SPASA acknowledges that there is some merit for a dedicated Pool Safety Council or Committee based advisory service where matters regarding the standards that are not able to be satisfactorily resolved with Standards Australia.

SPASA sees its participation on such a Council or Committee as critical to ensure a balanced constitution of members are consulted and take ownership of decisions made.

Most importantly, there is sufficient interpretive data and clarification from Queensland and other jurisdictions in relation to queries that continually arise. It would be sensible for there to be cross border interactions when queries arise to allow for established interstate interpretations to be considered before creating new ones.

SPASA does not support the norm whereby a unilateral subjective and unsubstantiated approach provided by individuals and organisations to queries and interpretations has the ability to steer query outcomes.

Do you have any additional matters that you feel need clarification with AS1926.1-2012 beyond those matters set out in Table 6.2 of this paper?

General Statement:

SPASA submits that any clarification, variation or deletion of a clause within the Standard requires sufficient justification and should be considered against alongside any available evidence data or established positions from other jurisdictions.

As previously advised, SPASA does not support the norm whereby a unilateral subjective and unsubstantiated approach provided by individuals and organisations to queries and interpretations has the ability to steer query outcomes.

1. Non climbable zones(NCZ) Clause 2.2.3

- This Clause should remain unchanged. In the development of the 2007 Standard, Dr Pitt, a respected and renowned epidemiologist from the Mater Children’s Hospital in Brisbane, a member of the AS-034 Committee who, over a period of more than 20 years of research, testing and campaigning for more stringent pool barriers, advised the Committee that his research and testing had indicated that the simple presence of a barrier of not less than 1,800 mm was sufficient deterrent to young children whether it is climbable or not.
- SPASA is not aware of any evidence indicating that a young child has breached such a barrier or any other data to support the removal of clause 2.2.3.

2. Boundary barriers adjoining public land

An amendment permitting such barriers on a boundary to public open space would be seen as a sensible idea.



3. The 500mm Exclusion Zone

The current AS1926.1 Australian Standard was published in November 2012.

Certifiers, Council Inspectors, and other industries such as building, fencers and structural landscapers and the swimming pool and spa industry, have previously worked with the correct interpretation whereby clause 2.3.1 did not apply to the boundary barrier.

Since the Standard was first published 2012, in excess of 10,000 plus swimming pools have been approved and constructed whereby clause 2.3.1 did not apply to the boundary barrier.

The Standard is Australian Standard and SPASA is not aware of any other jurisdiction in Australia that has had difficulties with interpreting this clause.

A number of Standards Australia CS-034 Committee Members have already formally written to Standards Australia advising them that Clause 2.3.1 did not apply to the boundary.

4. Permitted items within a pool area

There are now two case studies that provide sufficient guidance:

1. *Medway v Pittwater Council* – Where it was determined that a shade structure was permitted in an outdoor swimming pool area.
2. *Pearson v Thuringowa City Council* – Where it was determined that a gazebo was permitted in an outdoor swimming pool area.

Based on the *Pearson v Thuringowa City Council* and *Medway v Pittwater Council* interpretations, structures that are permitted in an outdoor swimming pool area could include (but are not limited to): a shade structure; gazebo; cabana; pergola; pavilion; chairs; a pool shed that contains pool equipment; a diving board; a flag pole; outdoor shower; garden lights; filtration equipment; and a pool slide.

It should also be noted that preventing shade structures such as gazebos and cabanas is counterproductive as:

- It encourages adult supervision from outside the direct pool environment where they can sit and seek shelter from the sun.
- Preventing a structure within the pool area has no bearing on whether or not a young child gains access to the pool area.

Moreover, the Government's own findings and Recommendation within the 2008 Review of the Swimming Pools Act 1992 stated:

Recommendation 4: (section 12(c) of Act) : - *“Given the absence of evidence linking drownings to structures within swimming pool fences on residential properties, it is recommended that no change be made in regard to structures within the bounds of barriers around non-exempt private swimming pools (ie. that structures continue to be permitted within barriers surrounding such pools).*

Pergolas, arbours, pavilions and other forms of shade structures provide parents and guardians with the ability to sit or stand within the pool enclosure whilst relying on appropriate sun protection when supervising their children.

Forcing parents and guardians to seek shelter from the sun outside the swimming pool barrier whilst they are supervising their children is not consistent with the “arms-reach” supervision message.

There are already thousands of swimming pools in NSW with structures located within the barrier and as per the government's own recommendation above, there is no data that would support the continual exclusion of structures within the swimming pool barrier.

5. Minimum distance between the pool barrier and the pool

Mandating a minimum area between a pool barrier and the pool is unnecessary and not feasible for many pools.

Examples include (*but are not limited to the following*):

- Where a pool is located on the property boundary.
- Where a house wall is used as part of the barrier.

6. Whether the pool area can be used for general access

Numerous reasons exist for why a pool may require more than one access point. Examples include (*but are not limited to the following*):

- Where a property backs onto a rear lane
- Where another residential dwelling on the same lot
- To access pool and spa plant equipment
- Where a rear lane car garage is situated between the pool and the dwelling
- For an indoor or indoor/outdoor pool

SPASA is not aware of any data to support or justify restricting more than one pool area entry point, especially if all the barrier and access points comply.

7. Posts, tree trunks and vegetation within the NCZ

Clarity and better guidance is essential here.

Pool owners with screening plants and hedges such as Camellias, Viburnum, Conifers, Murrayas, Westringa, Grevillea and Lomandra species growing along their boundary fence that encroach the NCZ are being ordered by some council inspectors and private certifiers to remove them without any regard to whether they are climbable or whether they in fact provide added safety to the pool zone.

Queensland legislation sensibly permits objects such as smooth tree trunks or other non-climbable vegetation in the NCZ as they are either not climbable by young children and they create an additional barrier for young children.

Further, in Queensland and in other jurisdictions;

- Bushes with dense, spiked, thorned, rough or otherwise irritating or hindering foliage that would deter a young child from climbing are considered acceptable
- Bushes or shrubs that are fragile or crush easily or are so weak that a child could not climb them are also considered acceptable
- Thick bushes that provide an additional obstacle and prevent the child from seeing the pool make that barrier more effective and are acceptable

8. Height of latch

With the introduction of the NCZ and its application to gates the "lowest horizontal member" is no longer relevant. Also, Clause 2.4.2.2 cannot be read in isolation from 2.4.2.3. A latch within 900 mm reach of a child would require the shields specified and thus not be "within reach".

9. Failure of gates and latches

Whilst this may sound reasonable on face value, SPASA holds the following concerns:

- Gates come in all materials, shapes and sizes. A builder or fencer may purchase a gate from one entity and posts, hinges and latches from others.
- Builders currently are able to build a barrier out of a number of materials to suit a design brief or particular surrounds.
- Self-contained units provide no guarantee of continual operation even with a built in tolerance.
- SPASA is not aware of any manufacturer that actually builds a self-contained unit gate.
- If implemented, how will the suggested change be tested and policed?
- With the exception of Specialist work, the threshold for requiring a licence for building and general trade work has been raised from over \$1,000 of work to over \$5,000 (including labour and materials). This includes the construction and installation of pool barriers. *Note: SPASA strongly opposed increasing the threshold at time of consultation.*

SPASA submits that as a minimum the threshold for requiring a licence for installing or constructing a pool barrier be reduced back \$1,000 (including labour and materials).



10. Wet Edge or Infinity Pools

What is being proposed is contrary to the requirements in every other jurisdiction.

Moreover, SPASA is not aware of any available data in Australia to warrant such a change to the Standard by requiring a barrier to restrict access to the water fall and collection pond.

On a separate point, with the exception of NSW, Out of Ground Pool Walls that comply and/or exceed the requirements of AS1926.1 for a barrier are considered effective barriers

This variation ONLY applies in New South Wales and its application in practice is illogical, needless and in some instances the additional barrier immediately in front of the out of ground pool wall is more dangerous than relying on just the pool wall itself as the barrier.

More information on Out of ground Pools can be found [HERE](#).

11. 1800mm fall deterrent within standard

Boundary barriers

SPASA advocates the removal of the NCZ on the boundary wall as it is of no use. The boundary barrier is the safest barrier of all with there being no recorded drowning or incidents over or through a boundary barrier.

Retaining wall above pool

There is no NCZ on a retaining wall above the pool as the Standard's requirements are for a wall within the pool area. SPASA does not see or understand the basis for this. Where access is available to the top of such walls other safety legislation will impose a balustrade or other safety devices thereon.

Window

The main deterrent of a window is its height above floor level inside the dwelling. A NCZ on the outside of a window would serve no realisable purpose.

Balcony over pool area

A balcony over a pool area is already required by Clause 2.8 to be outside NCZ's 2 and 3, and if not, require it to have a compliant pool barrier affixed thereto.



12 Restricting entry to a pool area

Climbing dynamics for young children vary immensely.

The Standard is a Technical document and such commentary should be external to Standards.

Any commentary or explanation on climbing up 1200 mm or down 1800 mm is not generally required in the Standard, however, there may be some merit in explaining how the CS-034 Committee came to select both the 1200mm and 1800mm heights.

Any other expanded commentary should be via the proposed yet to be released guide.

6.1.4 Temporary pool fencing

Question

Do you believe it is necessary to establish an explicit standard or requirement for temporary pool fencing?

Whilst SPASA and its members support the need for temporary pool fencing during construction it is important to note the differences between a *permanent* and a *temporary* pool barrier.

A *permanent* barrier is required to protect young children from entering a swimming pool environment after the pool has had its final inspection whereas a *temporary* barrier is required to protect everyone from falling into an excavation during the construction phase.

Excavations are part of a worksite and as such it is impractical to install or construct a barrier that is equivalent to that for permanent pool barriers where the site conditions can vary dramatically during each phase of construction.

A more practical approach would be to consider what SPASA already provides for in its contracts: *“The Builder is to ensure that temporary safety fencing of a type acceptable to WorkCover and suitable to the site conditions is in place during the construction of the pool.”*



6.1.5 Pool barrier materials

Question

Do you support requiring pool barrier material being required to be tested and subject to an identification system as a product meeting the required standard?

The Standard already applies the following test requirements for pool barriers:

- Glass used in pool barriers must comply with the provisions of AS 1288.
- Sub-clause 2.4.4 and Appendixes A, B, C, D, E and F already provide for a process whereby manufacturers gain certification for their barrier.

These tests generally apply to of the shelf pool barrier panels and components and are not designed for wooden internal and boundary barriers nor do they apply to pool barriers that are designed and constructed as one off pieces by landscape designers, architects and builders.

Moreover, it is important to note that the apparatus for testing barriers and other components in the Australian Standard was never intended for infield testing. Accordingly, the Australian Standard advises that Appendix A *“Test For Strength And Rigidity Of Barrier Opening” is to be used by manufacturers to gain certification for their barrier. It is not designed for in-field testing.*

SPASA submits that pool barriers are not plumbing or building materials as covered by the Code Mark and Watermark Quality Identification System but rather a constructed or installed product which has the added requirement of requiring a skilled tradesman to ensure correct installation.

Accordingly, SPASA remains very cautious of supporting additional imposts in the absence of a Preliminary Impact Assessment (PIA) being undertaken. A PIA will provide for an appropriate assessment to be undertaken whilst considering what the problem is, what evidence exists, what solutions are available as well as any cost imposts to industry and the pool owner.

Do you support the withdrawal of current exemptions from the pool barrier safety standards, with a phase in period for pool owners to comply and allow councils to assess exemptions and alternative suitable safety arrangements on a case by case basis subject to guidelines?

SPASA supports the withdrawal of current exemptions from the pool barrier safety standards:

- 1) as part of a change to move to a single Standard,
- 2) with a 5 year phase in period for pool owners to comply and
- 3) allow councils to assess exemptions and alternative suitable safety arrangements on a case by case basis subject to guidelines?

6.2.2 Section 22 exemptions

Question

Do you believe there is sufficient guidance available at present to enable councils to assess applications for exemptions from the pool barrier standards?

NO.....Almost all local authorities have been reluctant to grant an exemption or consider an alternative solution. Members of SPASA report that local authorities have become risk-averse when faced with an “Application for an Exemption” or an “Alternative Building Solution”.

The exposure to liability is at the forefront of their minds despite the fact that in many instances the exemption or alternative solution sought – satisfies or exceeds the legislative and technical requirements of the standard.

SPASA strongly supports the need to enhance guidance and education in the area of exemptions and alternative solutions.

6.2.3 The case of portable pools and spas

Question

Do you support requiring additional controls on the sale and use of portable pools and spas such as provision of information on safety requirements and registration at point of sale, inspection of the pool once installed as well as greater consumer education?

Modifying current legislation to include compulsory fencing to be sold with all portable pools is an impossible and unmanageable option.

Legislation and Safety Standards already exist that deal with all portable pools.

Portable Pools come in all shapes and sizes of varying designs, quality and price points. Fences also come in all shapes and sizes of varying designs, quality and price points.

It is impossible and impractical for any outlet to stock some or all available barrier options in store. One customer may want a tubular barrier whilst another may want to have a builder construct or install a wooden, window, combination or other type of barrier.

SPASA supports:

- The need for consumers to receive better expert advice when purchasing a portable swimming pool
- Regulating portable pool sales through specialist pool and spa retail outlets/operators
- Point of Sale Registration of Portable Swimming Pools and Spas

6.3 Swimming Pool register

Question

As a user of the register how would you rate it on a scale of 0 to 10 for ease of use and usefulness (0 being not useful and extremely hard to use while 10 is very useful and very easy to use)?
Please provide any suggestions on how it could be improved and made more useful

A swimming pool register is only as useful as the information that is collected.

SPASA has formed the view that the current Swimming Pool Register is deficient, confusing and under-utilised.

Swimming Pool Register enhancements as a minimum should include the ability for:

- Identification of Types of Swimming Pools and Spas
- Pool Owner interaction via newsletters, alerts and safety messages
- E1 Certifier interaction via specific newsletters, alerts, safety messages, sharing of case studies and compliance related information, surveys and online CPD opportunities
- Access to statistical data by Key Industry Stakeholders

6.4 The role, function, training and fees for certification

Questions

Do you believe there is merit in accredited pool certifiers being able to undertake minor repairs where there are non-compliant matters that can be rectified relatively easily?

E1 Certifiers should be able to carry out minor repairs/modifications barrier to the value of \$1,000.00 (including labour and materials) to remove the need for multiple re-inspections of a pool and/or spa environment.

Examples of work may include (but not limited to the following):

- Supply and Install of CPR Signs
- Supply and Install of Gate Hinges and Latches



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Do you support council inspectors and accredited pool certifiers being required to fully document each pool inspection, including photographs and supporting notes?

The Office of the Australian Information Commissioner (OAIC) advises that you should only collect personal information that is reasonably necessary (and for agencies, directly related) to carry out your functions or activities.....*Over-collection can increase risks for the security of personal information.*

Any entity that collects and holds personal information must consider what appropriate security measures are required to protect the personal information. Robust internal personal information-handling practices, procedures and systems for E1 Certifiers is of paramount importance.

There is currently no established requirement or system for E1 certifiers to manage personal information that they may collect.

Accordingly, each E1 Certifier has a different way of implementing practices, procedures and systems that will ensure compliance with a client's privacy as well as the keeping information they collect secure.

Photographs of an individual's swimming pool environment and surrounding environment (including the home) adds a further level of concern regarding a homeowners privacy and security should that information not be securely kept.

SPASA submits that data collection by Council Inspectors and Pool Certifiers should include photographs but that Pool Certifiers be required to appropriately protected data by a minimum *Record Keeping Standard.*

6.4.2 Accreditation and training

Questions

Do you believe accredited pool certifiers should be required to undertake Continuing Professional Development?

The importance and focus for Council Inspectors and Pool Certifiers should be to provide them with access to a Continual Professional Development Program which seeks to improve the interpretation and application of the Act, Regulation, BCA and safety related Australian Standards.

Pool barrier inspectors in Queensland are required to obtain the following points per year:

- Pool safety inspectors (excluding licensed building certifiers) require 6 points, and
- Building certifiers require 4 points.

How else are Pool Safety Inspectors supposed to keep up to date with any new changes, case law, interpretational issues, difficult assessments which they can learn from, and other such important information?

There can be no valid or sensible justification for why Council Inspectors and Pool Certifiers should be excluded from participating in a Continual Professional Development Program.

Do you support council pool inspectors being required to undertake the E1 course and being accredited and A1 to A3 building certifiers wishing to undertake pool certification being required to do the E1 course?

SPASA submits that Council Inspectors and A1 to A3 Building Certifiers wishing to undertake pool certification must be required to undertake the same training as E1 Certifiers.

Is there merit in broadening the prequalification requirements for entry to the E1 course and possible accreditation as a pool certifier provided there is relevant experience in the building and swimming pools area and a requirement for pre training in the Building Code of Australia and swimming pool standards as a pre-requisite?

A career as an E1 Certifier is currently limited and may only be attractive to a small group of individuals when you consider the current restricted eligibility criteria. Despite the restricted criterion, there are many more experienced individuals that should be considered as a welcome addition to the E1 pool of certifiers.

Such people could simply add E1 Certification Services on top of their current business offerings whilst others who may not want to have a career in part-time or full-time certification can supplement their income in peak times or at times of their choosing.

With the safety of young children around private pools and spas in sharp focus it is important that Government and the BPB also consider Licensed *Swimming Pool and Spa Service Technicians* as a viable and available addition in undertaking inspections of barriers.

Swimming Pool and Spa Service Technicians service thousands of residential pools in NSW every week. The first thing a *Swimming Pool and Spa Service Technician* does when he/she enters a property is open the pool gate.

The E1 eligibility criteria must be broadened to allow for other industry related experienced individuals such as:

- Pool and Spa Technicians
- Pool and Spa Consultants
- Other experienced individuals



Do you believe there is merit in having the E1 pool certification training course recognised by the national vocational training regulator, ASQA?

E1 Certification is ultimately about the “Safety” of young children around swimming pools and spas. For that reason, the educational function specific to the E1 Course should *not be* handled, assessed or managed by the Building Professionals Board (BPB).

The E1 Course must be overhauled into an accredited course and overseen by an appropriate authority such as the Australian Skills Quality Authority (ASQA) as is the case with the Queensland *31005QLD Accredited Swimming Pool Safety Inspections Course* to become a Pool Safety Inspector.

SPASA submits there must be a minimum benchmark requirement for all training providers that is managed by an “appropriate” authority such as Australian Skills Quality Authority (ASQA) such as is the case in Queensland.

Do you support persons undertaking pool barrier installation work being required to have suitable training in pool barrier standards and being accountable for constructing in line with those standards?

YES.With the exception of Specialist work, the threshold for requiring a licence for building and general trade work has been raised from over \$1,000 of work to over \$5,000 (including labour and materials). This includes the construction and installation of pool barriers.
Note: *SPASA was strongly opposed to increasing the threshold at time of consultation* and believes there is a strong case to reduce it back to \$1,000.

6.4.3 Support and accountability of accredited certifiers

Question

Do you believe the following support and accountability mechanisms would be helpful for E1 certifiers and the operation of the certification system:

- Help line
- Peer Review Panel
- Practice Guide
- Audit Program

Yes..... A dedicated Pool Safety Council or Committee could oversee such functions.

6.4.4 Fees

Question

Do you support giving councils greater flexibility in setting fees for pool certification and assessing applications for exemptions, subject to the fee being a cost recovery charge and being subject to periodic independent review?

There are currently 152 Councils in NSW.

Allowing each Council to set their own fees will see pool owners charged with varying cost recovery fees dependant on where they reside and how many employees a particular council has on its staff.

SPASA submits that the current regulated charge be maintained by Councils but allow for a systemised approach to address increases to cost recovery and inflation.

6.5 Certification requirements

6.5.1 Preparedness to commence the sale and lease provisions

Question

Which do you believe is the most appropriate course of action for commencing the sale and lease provisions;

- Defer commencement say six months to a quieter period of the property year;

SPASA does not support commencement of the sale and lease provisions to a quieter period of the property year despite the fact that we acknowledge and have previously provided advice that April is not the optimum time to implement the Swimming Pool Barrier Program.

There have been two previous delays. Any further delay will have significant impact on homeowners and industry confidence as to whether the program is going to happen and whether they should take the implementation seriously.

- Commence the lease provision as planned and the sale provision six months later;

As Above.

- Commence sale and lease provision as planned, with or without flexibility in timing of the compliance certificate;

SPASA supports the 29th April 2016 implementation BUT only if government moves quickly to address the many shortcomings raised within this submission, and in particular, expanding the criteria for individuals to become E1 Certifiers and the urgent establishment of a *“Pool Safety Council or Committee”*.

6.5.2 Whether the obligation to obtain a compliance certificate should be transferred to the purchaser under certain circumstances

Question

Is there merit in allowing the purchaser of a property to take responsibility for ensuring a non-compliant pool is made compliant in a reasonable time after settlement and with the council to have an enforcement role to ensure this occurs?

SPASA supports the concept of the purchaser of a property taking responsibility for ensuring a non-compliant pool is made compliant in a reasonable time after settlement via a non-compliance statement. Ninety days should be considered a reasonable time but triggers should be in place to extend such a period if required

The process can be easily be tracked via enhancing the functions on the existing ‘Swimming Pool Register’. This process already exists in Queensland.

6.5.3 Sale and lease model versus a periodic inspection model

Questions

Would you support an expanded pool inspection system that involves providing a more effective way to achieve compliance than the current sale and lease compliance arrangements?

Based on the programs historical failures, SPASA would advocate that the pool inspection program not be expanded until such time as the current proposed sale and lease provisions are competently rolled out as well as some of the other proposed areas within this document are addressed such as a single standard and a guide.

Periodic inspections could be considered as part of a modified Act and Regulation referencing *“one”* Standard and no exemptions.

6.6 Compliance and Enforcement

6.6.1 Documenting non-compliance

Question

Where a pool is assessed as non-compliant do you believe there is a need for both accredited pool certifiers and council pool inspectors to give a clearer explanation of why it is non-compliant and provide options for how the problems could be rectified, but noting that there could be multiple ways to achieve rectification?

YES.....SPASA submits that both council inspectors and accredited certifiers have a responsibility, where a pool is non-compliant, to clearly explain why it is non-compliant and identify the options to address the non-compliance, while noting that there may be other options and encouraging the pool owner to investigate and consider what would be the best solution.

6.6.2 Greater discipline with the section 22E process

Question

Do you believe there needs to be greater responsibility taken by an accredited pool certifier to seek to resolve matters of pool non-compliance before the matter is transferred to the relevant council?

SPASA submits the following:

- There are many reasons for which a homeowner should have a right to choose to remove and replace a Certifier. Eg. Non-performance and timing issues. This homeowner right should not be removed or complicated by having homeowners seek permission through a lengthy and possibly subjective process.
- Expanding the period within which a private certifier seeks to achieve compliance from six weeks to three months, with the ability to extend further if the certifier attests that substantial progress is being made is a sensible and rational approach.



6.6.3 Council compliance program

Question

Do you believe there needs to be a broad consistency in the approach taken by local government councils to the design and operation of swimming pool compliance programs?

The concept of 152 Councils developing their own Swimming Pool Barrier Inspection Policy and Program is riddled with predictable confusion.

There are many foreseeable problems for local government if Council are allowed to continue to work independently of each other.

Issue that have already arisen include:

- Patchwork of different inspection regimes (152 councils)
- Poor design of the Inspections program/s
- Capability to monitor and enforce
- Council resources
- Costs

SPASA submits that any Swimming Pool Barrier Inspection Program must be state based. Local councils should not be able to develop individual compliance programs.

A consistent state-wide Swimming Pool Barrier Inspection Program should be able to increase compliance as well as build public awareness of fencing requirements.

6.7 Supervision, education and training of pool owners and users

Questions

Do you believe enough is being done to educate pool owners and users in pool safety and the importance of active supervision where children are pool users?

SPASA submits that Government urgently establish a dedicated Pool Safety Council or Committee with the function of:

- Advising the Government on pool safety policy and practice
- Providing a HELP LINE to homeowners and Pool Certifiers
- Engaging ALL industries in delivering a consistent message about pool safety and how to achieve and maintain it.

What more needs to be done in the area of educating the community in both the importance and the approach to 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.

Media campaigns can also encourage homeowners 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.

6.8 Responsibility for and clarity of the Swimming Pool Act

6.8.1 Clarity of the Swimming Pool Act and Regulation

The Act

Clarification of residential building definition and inclusion of a pool area definition

See item 4. permitted items within a pool area in section 6.1.3

Section 4 Swimming pools to which this Act applies

There is no definition in the Act or Regulation for: “situated”, “installed” or “constructed”.

A fibreglass swimming pool may be installed but may not yet be complete (coping fencing etc).

A concrete swimming pool shell may have been constructed but may not yet be complete (coping fencing etc).

A concrete or fibreglass swimming pool may be situated on premises despite construction not being complete (coping fencing etc).

There are many examples where a lack of a definition is an issue. One example is where Councils advise that an application for an exemption can only be made in respect of a proposed pool and an existing pool, but not when one is under construction. This means that a homeowner who has started constructing their swimming pool and then wishes to apply for an exemption because of an unforeseen event, impractical build solution, and design change or because of special circumstances first has to construct their swimming pool in accordance with their current approval before they can apply for an exemption.

SPASA supports expanding Section 4 to allow for the above circumstances.

Part 1, Division 1, 2 and 3

SPASA considers the combining of three divisions into one and the grouping of all common features as a sensible approach to simplifying the Act.

Section 17 Warning notices must be erected near swimming pools

SPASA supports resuscitation charts being clearly visible from the pool area.

Section 18 Owner may decide location of the barrier

See item 4. Permitted items within a pool area in section 6.1.3.

Moreover, SPASA submits that the owner should continue to be able to determine the location of the barrier as long as it complies with the requirements of the Standard.

Section 20 exemption for spa pools

SPASA supports the concept that once a spa takes on the attributes of a swimming pool that the spa exemption should cease to apply

Section 21 Multiple swimming pools in close proximity

It is generally acknowledged that the Register is not the most optimum or user friendly platform.

SPASA submits that the Register be updated to allow for greater flexibility in order for it to cater to real world scenarios.

Section 22 Local authority may grant exemptions from barrier requirements that are Impractical or unreasonable in particular ways

The assumption is always that an Exemption or an Alternative Solution will lead to a less safe pool and spa environment. In many cases, Section 22 Exemptions and Alternative Solutions significantly exceed the technical requirements of the Australian Standard.

SPASA submits that new and existing pools which are unable to comply with current or retrospective laws due to the design, impracticality, complexity thereof or compliance is considered unreasonable, should be able to work with an independent expert/s or consultant to seek a Section 22 Exemption or an "Alternative Solution".

SPASA supports all Section 22 exemptions being recorded on the Register and only checked again when next sold or leased.

Section 22A definition

SPASA supports the inclusion of E1 within Section 22A.

Section 22E Notices by accredited certifier if pool does not comply

SPASA supports:

- Both accredited certifiers and council inspectors being required to provide “detailed” notices.
- The need for certifiers to follow up in the event the pool is assessed as non-compliant

Section 23 Local authority may order compliance with the Act

SPASA supports the view that a notice of intention to issue an order is not required where a notice under section 22E has been already issued.

Section 23A Council to carry out works

SPASA supports the need for a notice to be served on the owner with a copy to the occupier where the owner is different to the occupier.

Section 26 Appeals against decisions of local authority and Section 30 Land and Environment Court

SPASA strongly supports the development of a simpler, more timely and less costly process for resolving disputes as is the case in Queensland.

Section 27B Powers of entry and search warrants-local council

SPASA is unable to provide feedback here as not enough information is provided in relation to which “relevant sections” are proposed to be included from the Local Government Act.

The Regulation

Clause 3 definitions

SPASA supports the need for AS 1926.1-2007 to be replaced with AS 1926.1-2012 in the Regulation.

Clause 4

This clause contradicts section 23 of the Act which requires an upgrade to the latest standard

Some owners of older pools are being issued with rectification orders requiring them to update their pool barrier and boundary fence to the current AS1926.1 - 2012 Australian Standard rather than have them rectify their barrier to the regulation and standard applicable at the time the swimming pool was approved and constructed.

Division 4 Clause 15 of the Act states that a Child resistant barrier must be in good repair.

A couple of Points:

- Many pool owners have relied on professional advice in relation to their installation or rectification – If an inspector, certifier or professional has given a homeowner the wrong advice then why should the homeowner be expected to undertake the work twice.
- In many instances, maintenance could mean the installation of a new barrier. This may be due to corrosion, ground movement or damage etc. This is not and should not require an upgrade to the most current standard.
- Pool owners should be able to keep their barriers maintained and in good repair and not be punished them for the very thing the Act expects them to do – *maintain the barrier(s)*.

SPASA submits that pool owners should be able to rectify their barrier to the regulation and standard applicable at the time the swimming pool was approved and *constructed even when a non-compliance is identified at the time of inspection.*

Off the plan sale

SPASA supports an exemption in the regulation to allow for a compliance certificate and registration only once the vendor completes the pool and prior to occupation.

Clauses 5 (general requirements for outdoor swimming pools),6(Standards required for certain swimming pools to be exempt from requirement to separate swimming pool from residential building),7(Standards required for swimming pools on large or waterfront properties to be exempt from requirement to surround swimming pool) and 8 (general requirements for indoor swimming pools)

SPASA supports combining the above into one clause with common features combined and with clearer identification of the differences

Clause 9, standards required to be exempt from requirement to surround spa pool

Whilst the Regulation already provides a great deal of guidance in this area, SPASA is happy to support making Clause 9 clearer.

Clause 10(2) contents of warning notices

SPASA supports removal of the August 2008 warning sign due to the substantial differences in the current sign requirements.



Clause 11 Legibility of warning notices

SPASA supports resuscitation charts being clearly visible from the pool area but does not agree with the assumption provided that *“the sign needs to be in clear sight of the pool and preferably at the shallow end where it is likely any resuscitation would take place.”*

A rescuer is more concerned with getting a young child to “any” edge of the pool coping as opposed to making a conscious decision to get them to the shallower part of the pool first.

Clause 13 exemption application form

SPASA is not opposed to the fee increasing, however, past experience has seen a number of exemptions been refused with little regard to exemption application validity.

Any proposed cost recovery fee should not be used as a disincentive mechanism and that a substantiated rationale is provided in for every exemption application.

Clause 18A Fee for inspection – Refer to comments under 6.4.4 Fees.

Clause 21 Public access to AS 1926.1-2007,BCA and CPR

SPASA supports providing the public with access to all safety Standards, BCA and CPR tools on all Council websites.



Clause 23 Existing complying swimming pools may continue to comply with earlier standards

Currently the meaning of “substantial” is merely one person’s interpretation and there is a significant discrepancy with how determinations relating to what is “substantial” are being dealt with in practice. Consequently, in many cases, homeowners are being forced to comply with unreasonable, heavy handed and highly questionable rectification orders.

SPASA does not see the replacement of one damaged barrier or fence panel (that is the same or similar and compliant) as constituting a “substantial” change.

The Swimming Pool Act 1992 states that a Child resistant barrier “must be in good repair” and “maintained in accordance with the standards prescribed by the regulations.”

A couple of Points:

- Many pool owners have relied on professionals and local authorities for advice in relation to their installation. Their advice and interpretation on what is substantial varies from council to council and private certifier to private certifier.
- In many instances, maintenance could mean the replacement of a barrier or sections of a barrier as a consequence of damage, disrepair, corrosion or ground movement etc
- A fallen tree or some other type of accident may cause damage to a barrier or sections of a barrier that require one or more panels to be replaced.
- Ground movement may also require a barrier or sections of the barrier and footings to be replaced.

Pool owners should be able to keep their barriers maintained and in good repair and not be burdened with draconian interpretations that punish them for doing the very thing the Act expects them to do – **maintain their barrier(s)**.

SPASA submits that pool owners should be able to maintain and rectify issues with their barrier to the same standard and regulation that applied at the time the swimming pool was approved and constructed without being forced to spend thousands of dollars to upgrade the “entire” barrier.

SPASA proposes the following in the absence of a definition for “Substantial Change”:

*“**Substantial Change** is one where it does not relate to the maintenance of a barrier or its components including the replacement of a barrier or portions of a barrier in the same location due to damage or wear and tear.”*

Without a definition it is predictable that homeowners will be exposed to different interpretations that will result in increased and protracted disputes.



Questions

On a scale of 0 to 10 (0 being totally unclear and 10 being totally clear) how would you rate the Swimming Pool Act 1992 and the Swimming Pool Regulation 2008 in regards to ease of understanding and use?

SPASA acknowledges that that Swimming Pool Act 192 and The Swimming Pool Regulation 2008 both require a revision BUT any revision(s) will require its own Consultation Discussion Paper that is independent of this process.

If you have any additional suggestions to improve the clarity of the Act and Regulation please let us know.

As above

6.8.2 Ministerial responsibility for the Swimming Pools Act and Regulation

6.9 Resourcing the swimming pool safety function

SPASA submits that Councils should be permitted to contract out the pool inspection function to accredited pool certifiers as is the case in Western Australia.

As previously stated and in the interests of safety and consistency, Council Inspectors, A1 to A3 and E1 Certifiers wishing to undertake pool certification must be required to undertake the approved E1 Course as well as be required to participate in a Continual Professional Development Program.

For further information:

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