



Government of **Western Australia**  
Department of **Mines, Industry Regulation and Safety**  
**Building and Energy**



# **Swimming Pool and Safety Barrier Control**

**Decision Paper**

**April 2021**

This Decision Paper has been prepared consistent with the Western Australian Government's requirement for Regulatory Impact Assessments

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## Glossary

The following is a summary of key terms frequently used in this document. The definitions listed apply unless otherwise indicated.

AS	Australian Standards.
AS1926.1-1993	Australian Standards 1926.1- 1993 – <i>Swimming Pool Safety Fencing for Swimming Pools</i> incorporating amendment no. 1.
AS1926.2-2007	Australian Standards 1926.2-2007 – <i>Swimming Pool Safety: Location of safety barriers for swimming pools</i> incorporating amendment no. 1 and 2.
AS1926.1-2012	Australian Standards 1926.1-2012 – <i>Swimming Pool Safety: Safety barriers for swimming pools</i> .
BCA	Building Code of Australia, which forms part of the NCC.
builder	The person contracted by the property owner to install and construct a swimming pool.
Building Act	<i>Building Act 2011</i> (WA).
Building and Energy	Department of Mines, Industry Regulation and Safety – Building and Energy Division (merger of the former Building Commission and Energy Safety).
Building Regulations	<i>Building Regulations 2012</i> (WA).
Building Commissioner	Statutory office created under section 85 of the <i>Building Services (Complaint Resolution and Administration) Act 2011</i> (WA).
building permit	A permit granted under section 20 of the Building Act that authorises the carrying out of building work.
CDC	A Certificate of Design Compliance, also known as a BA3 (approved form number), is used by a registered building surveyor to certify that plans and specifications for proposed building work satisfy the minimum technical requirements of the applicable building standard.
Consultation Paper	The consultation paper prepared and released to stakeholders by Building and Energy titled, 'Swimming pool and safety barrier: Targeted Consultation Paper' (January 2019).
Consumer Protection	DMIRS – Consumer Protection Division.
DMIRS	Department of Mines, Industry Regulation and Safety.

Decision Paper	This document.
Government	The Government of Western Australia.
local government	Local Government Authority, including a local council or municipal body.
NCC	National Construction Code.
NCZ	Non-climbable zone, as defined in AS1926.1-2012
Notice of Completion	An approved form, also known as a BA7 (approved form number), that is used by a builder to confirm that building work, the subject of a building permit, has been completed.
permit authority(s)	Only a local government prescribed in Schedule 5 of the Building Regulations as a permit authority for a building or incidental structure (including a swimming pool or safety barrier) as defined in section 6 of the Building Act.
Ombudsman	Statutory office created under section 5 of the <i>Parliamentary Commissioner Act 1971 (WA)</i> .
Ombudsman's Report	A report prepared by the Ombudsman titled, 'Investigation into ways to prevent or reduce deaths of children by drowning', (November 2017).
owner	The owner of a private property in WA on which a swimming pool is located.
RIA	Regulatory Impact Assessment.
safety barrier	Continuous chain of components that is intended to restrict access of young children into a private swimming pool area, typically including fences, gates, walls, sides of buildings, child-resistant windows, and child-resistant door-sets where permitted.
RLSSWA	Royal Life Saving Society Western Australia.
SPASAWA	Swimming Pool and Spas Association of Western Australia
stakeholder(s)	Individual(s) or organisations(s) who provided submissions in response to the Consultation Paper released as part of Stage 2 of the review process.
Stage 1 review	Process undertaken with the Working Group from May until July 2018 that resulted in the development of a Minimum Standard.

Stage 2 review	Process involving the release of the Consultation Paper and consideration of the submissions received from stakeholders. Stakeholder feedback was sought on the Minimum Standard developed in Stage 1.
swimming pool or private swimming pool (interchangeable)	An excavation or structure containing water and principally used, or that is designed, manufactured or adapted to be principally used for swimming, paddling, or the like, including a bathing or wading pool, or spa, that is associated with a single dwelling or less than 30 sole-occupancy units in grouped housing, which has the capacity to contain water that is more than 30cm deep.
WA	Western Australia.
WALGA	The Western Australian Local Government Association.
Working Group	The Working Group formed by Building and Energy in May 2018 to complete Stage 1 of the consultation process, comprising representatives from WALGA and some local governments.

# Contents

<b>Glossary</b> .....	<b>2</b>
<b>Contents</b> .....	<b>5</b>
<b>Executive Summary</b> .....	<b>6</b>
<b>Background</b> .....	<b>9</b>
Legislative Framework.....	<b>10</b>
Building standards.....	<b>10</b>
Brief history of technical requirements.....	<b>11</b>
Difficulties experienced in WA .....	<b>13</b>
Ombudsman’s Report.....	<b>13</b>
Review process .....	<b>13</b>
Purpose of this Decision Paper .....	<b>15</b>
Next steps .....	<b>15</b>
<b>Overview of Decisions</b> .....	<b>16</b>
<b>Reasons for Decisions</b> .....	<b>23</b>
Decision 1 – Building Permits, Notice of Completion and first barrier inspections.....	<b>23</b>
Decision 2 – Barriers for pools under construction and other temporary barriers .....	<b>34</b>
Decision 3 – Reinspection of non-compliant safety barriers.....	<b>42</b>
Decision 4 – Compliance and enforcement strategy for barrier compliance.....	<b>48</b>
Decision 5 – Four-yearly inspections: Administering, record keeping and reporting.....	<b>51</b>
Decision 6 – Swimming pool barrier inspection charge.....	<b>57</b>
Decision 7 – Inspection of pools with a depth of water 30cm or less.....	<b>62</b>
Decision 8 – Barrier inspections at sale/rent of property .....	<b>68</b>
Decision 9 – Excluded areas of the State .....	<b>71</b>
Decision 10 – Concessions for pre-November 2001 swimming pools.....	<b>79</b>
Decision 11 – Boundary fences .....	<b>87</b>
Decision 12 – Training for swimming pool inspectors .....	<b>94</b>
Decision 13 – Display of CPR charts.....	<b>101</b>
Decision 14 – Portable swimming pools .....	<b>104</b>
Decision 15 – Spa baths.....	<b>108</b>
Decision 16 – Swimming pool covers and blankets .....	<b>110</b>
<b>Implementation and Evaluation</b> .....	<b>113</b>
<b>Appendix 1: Ombudsman’s recommendations</b> .....	<b>114</b>
<b>Appendix 2: Minimum Standard Process – Pool barrier compliance</b> .....	<b>119</b>
<b>Appendix 3: List of stakeholder submissions to Stage 2 of the review</b> .....	<b>123</b>

## Executive Summary

This Decision Paper is the final stage of an extensive review of WA's regulatory requirements for swimming pools and their associated safety barriers, following the recommendations in the Ombudsman's Report on ways to prevent or reduce deaths of children by drowning.

















The Decision Paper sets out 16 decisions on how the Government intends to improve the regulatory requirements, taking into consideration the feedback received through an extensive two-staged consultation process.

The impacts of each decision are presented and have been duly considered. In a number of instances, non-regulatory interventions have been determined as the best method to improve safety outcomes, as well as address the recommendations in the Ombudsman's Report.









The table below describes the decisions applicable to each of the relevant recommendations in the Ombudsman's Report. Regulatory action refers to amendments to the Building Regulations. Non-regulatory action refers to other measures, such as formal guidance and information to LGAs and/or the industry.

The Ombudsman's Report contains 25 recommendations, 20 of which are directed to the Building Commissioner and dealt with in this Decision Paper. Of the remaining five recommendations; three required collaboration with Consumer Protection and are noted in this Decision Paper (recommendations 3, 4 and 23); and two are being addressed through other work within DMIRS and were not considered in this Decision Paper (recommendations 1 and 2).

## Summary of decisions on Ombudsman's report

<b>Key</b> <b>Action required:</b>  Combination of regulatory and non-regulatory action is needed.  Non-regulatory action only is needed.	
Ombudsman's recommendation (summary)	Action
<b>Recommendation 3:</b> Develop and implement further strategies to ensure appropriate responses to rental properties with non-compliant swimming pool safety barriers.	
<b>Recommendation 4:</b> Consider the introduction of requirements to provide a copy of the most recent swimming pool barrier inspection form for rental properties.	
<b>Recommendation 5:</b> Review the operation of Notices of Completion under the Building Act in order to determine the level of compliance.	
<b>Recommendation 6:</b> Work with local governments to increase the level of compliance with Notice of Completion requirements, giving consideration to education/training/advice, risk based compliance audits, targeting un-registered builders, and the use of Building Act sanctions.	
<b>Recommendation 7:</b> Monitor local government compliance with the requirement under the Building Regulations to undertake 4-yearly inspections of safety barriers, and require local governments to report on compliance annually.	
<b>Recommendation 8:</b> Provide guidance to local governments on the manner and form/key elements of information/records management of swimming pools and safety barriers.	
<b>Recommendation 9:</b> Review the concessions provided for pre-November 2001 swimming pools.	
<b>Recommendation 10:</b> Clarify with local governments the charges that can be imposed for inspections of swimming pools/barriers.	
<b>Recommendation 11:</b> Consult with local governments regarding the adequacy of inspection charges – amend the Building Regulations where appropriate.	
<b>Recommendations 12:</b> Consider the appropriateness of coordinating the development and provision of a training program for swimming pool barrier inspectors.	
<b>Recommendation 13:</b> Consider improvements to training in compliance promotion and conflict resolution.	
<b>Recommendation 14:</b> Consult with local governments and other stakeholders to consider development and provision of a program of CPD for swimming pool inspectors.	
<b>Recommendation 15:</b> Consider promotion to local governments of a quality assurance process for safety barrier inspections.	
<b>Recommendation 16:</b> Work with local governments and other stakeholders to develop a template safety barrier inspection checklist incorporating required elements to meet applicable building standards.	



Ombudsman's recommendation (summary)	Action
<b>Recommendation 17:</b> Work with local governments to ensure training is provided on the template swimming pool barrier inspection checklist so that forms are consistently completed.	
<b>Recommendation 18:</b> Develop an evidence based enforcement strategy to improve compliance with legislative requirements – determine if legislation amendments are required to support the effectiveness of the enforcement strategy	
<b>Recommendations 19 and 20:</b> Consult with local governments and other stakeholders to consider the issue of reinspection of pools that don't comply and consider a reinspection charge. Consider possible amendments to the Building Regulations	
<b>Recommendation 21:</b> Review requirements in force in other jurisdictions for temporary barriers and determine whether any should be considered for WA	
<b>Recommendation 22:</b> Collaborate with government agencies and stakeholders to develop compliance strategies for portable swimming pools/spas, ensure owners are aware of regulatory requirements, and assist local governments to identify when inspections may be required.	
<b>Recommendation 23:</b> Consider opportunities for retailers and suppliers to inform purchasers at the point of sale of the risk of children drowning in portable pools and spas and the need to comply with building legislation requirements.	
<b>Recommendation 24:</b> Promote to local government the good practice of conducting random inspections of decommissioned swimming pools to ensure they are not in use and requiring a barrier.	
<b>Recommendation 25:</b> Consider amending the Building Regulations to extend requirements for swimming pool barriers across the State. If such amendment is not considered desirable, work with local governments in the excluded areas to provide advice on the need to provide barriers for new swimming pools in line with the applicable building standards.	

Following the publication of this Decision Paper, Building and Energy will work closely with stakeholders to develop the necessary regulatory amendments and guidance material to ensure WA has in place best practice requirements to reduce the risk of young children drowning in swimming pools.

## **2** Background

In WA, drowning is a leading cause of accidental death in young children, with most drowning incidents occurring in private swimming pools located on residential properties. These incidents have commonly occurred after a child gains access through an open gate, a gap in the safety barrier, or by climbing over the safety barrier<sup>1</sup>.

Statistics demonstrate that the percentage of young children who have died by drowning in private swimming pools has reduced over time. This has been largely attributed to the introduction of safety barrier requirements and community education initiatives. For instance, from 1988 to 1996 there was an average of 4.9 drowning deaths per year, whereas from 2012/13 to 2016/17 there was an average of 2.2 drowning deaths per year<sup>2</sup>.

Drowning incidents lead to one of three possible outcomes;

- death,
- non-fatal drowning; and
- non-fatal drowning with morbidity (injury).

The numbers of non-fatal drownings are almost impossible to ascertain as not all drowning incidents require hospitalisation or seek out medical attention<sup>3</sup> and, as such, they often go unreported and unrecorded. The RLSSWA estimates that for every fatal drowning in WA, an average of ten children will be admitted to hospital<sup>4</sup>. A number of these children will be left with some long-term impairment as a consequence of a drowning incident.

Often the discussions around drowning incidents only focus on the drowning victim. However, drowning incidents have a resounding impact upon families, friends, colleagues and communities. Drowning can lead to family breakdowns and contribute to mental health issues such as depression and anxiety. Non-fatal drownings where injury or disability has occurred can lead to significant ongoing health care costs and a diminished family income.

Young children known to be in or around a swimming pool area should always be actively supervised and their access to the pool restricted. Active supervision is the best known prevention to a child drowning as it requires a responsible adult to ensure their attention is focused solely on any child in or around the pool area all of the time.

However, interruptions and distractions can occur, diverting people's attention elsewhere. This is where a safety barrier, when used correctly, can provide a much needed additional obstacle, or a 'second line of defence', in helping to prevent a young child from gaining access to a swimming pool or spa.

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<sup>1</sup> RLSSWA Drowning Report 2017/18

<sup>2</sup>The proportional difference in drowning statistics is substantially more significant when both the population and the total number of swimming pools in WA are considered.

<sup>3</sup> It is recommended that any person involved in a drowning incident, where respiratory impairment is experienced, be checked by a medical practitioner.

<sup>4</sup> <https://royallifesavingwa.com.au/programs/keep-watch/about-toddler-drowning>

## Legislative Framework

In WA, the legislative framework for private swimming pools and their safety barriers is mandated by the Building Act and the Building Regulations.

For all proposed swimming pools and safety barriers, building approval, in the form of a building permit, is required from the local government permit authority, prior to construction. Some areas of WA are exempt, typically rural/remote areas outside of town-sites.

However, all new swimming pools, regardless of whether or not a building permit is required, are required to have a safety barrier installed at the time of completion.

For existing swimming pools, specific requirements are applicable to the safety barrier. Swimming pools containing more than 30cm of water have an ongoing requirement to have a compliant safety barrier that will restrict access of young children to the pool and its immediate surrounds. Local governments are also required to arrange for an authorised person to inspect the safety barriers to swimming pools located within their districts at intervals of no more than four years.

However, similar to the building permit exemption, some areas of WA are excluded from these requirements, typically rural/remote areas outside of town-sites. These exclusions are specific to existing swimming pools and do not provide exemption from requirements relating to the installation of safety barriers for new swimming pools.

## Building standards

In May 2016, the Building Regulations adopted the Building Code of Australia (BCA) as the applicable building standard for the construction of private swimming pools and their safety barriers.

This new inclusion means that the construction of all new private swimming pools and their associated barriers requires compliance with the BCA. Safety barrier compliance is also assessed every four years via a local government inspection program.

The BCA contains all the performance requirements for the construction of buildings and structures to ensure they perform to certain standards. Compliance with the BCA is achieved by complying with the governing requirements of the BCA and the performance requirements.

Performance requirements are satisfied by one of the following:

1. A deemed-to-satisfy solution;
2. A performance solution; or
3. A combination of the above.

The performance requirements are the minimum level of performance that buildings and building elements are required to meet. The requirements are written as outcomes and are not prescriptive.

For example, the BCA performance requirement relevant to swimming pool safety barriers reads:

*A barrier must be provided to a swimming pool and must —*

- a) be continuous for the full extent of the hazard; and*
- b) be of a strength and rigidity to withstand the foreseeable impact of people; and*
- c) restrict the access of young children to the pool and the immediate pool surrounds; and*
- d) have any gates and doors fitted with latching devices not readily operated by young children, and constructed to automatically close and latch.*

The deemed-to-satisfy provisions are prescriptive technical requirements which provide a specific method to comply with the performance requirements related to private swimming pools and safety barriers. A deemed-to-satisfy solution refers to a design that is proposed to comply with the deemed-to-satisfy provisions.

Performance solutions are methods of complying with the performance requirements of the BCA, other than by a deemed-to-satisfy solution. Performance solutions for safety barriers require specific approval from the relevant local government permit authority.

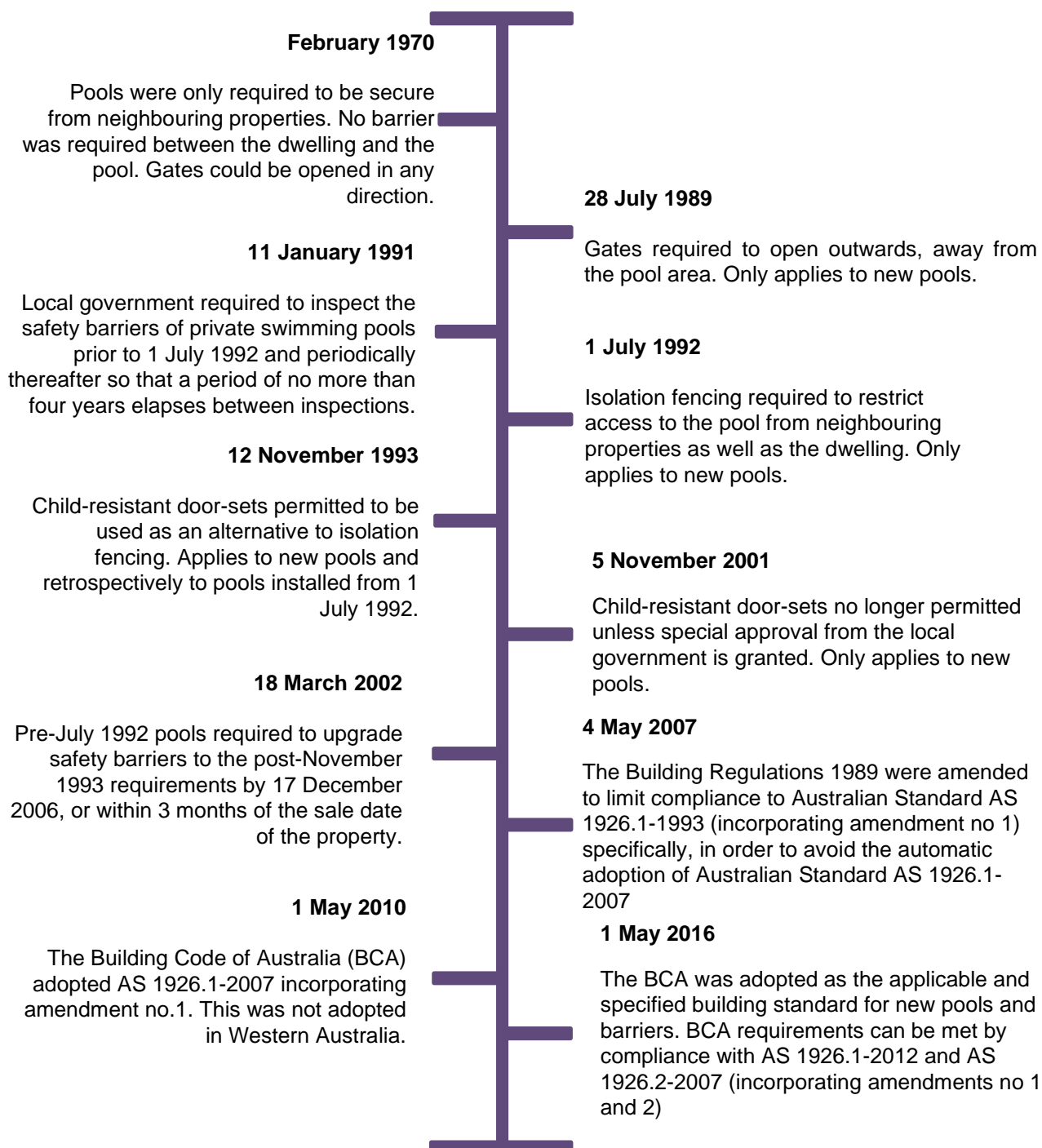
## Brief history of technical requirements

As knowledge and understanding of the risks posed by swimming pools has increased, barrier requirements have also improved.

Changes to regulations and standards over time have resulted in WA having two separate sets of safety barrier requirements and one specific concession, all of which are dependent upon when the swimming pool was installed or when plans for the installation of the pool were submitted to the local government permit authority for approval. In summary, these are:

- **Pre-November 2001:** concession allows swimming pools that received building approval on or prior to this date to use child-resistant doors that comply with AS 1926.1-1993.
- **Pre-May 2016:** private swimming pools can continue to comply with their existing requirements under the Regulations, which reference AS 1926.1-1993, or alternatively comply with the new requirements (that is the BCA); and
- **Post-May 2016:** swimming pools are required to have safety barriers that comply with the edition of the BCA currently in effect. The BCA references AS 1926.1-2012 and AS 1926.2:2007;

The following timeline lists some of the key changes that have occurred throughout WA's regulated swimming pool history.



## Difficulties experienced in WA

Until recently, WA was the only jurisdiction to have an ongoing, regular inspection regime for private swimming pools and their safety barriers. Accordingly, the WA legislative framework has often been referred to by other Australian States and Territories looking to establish an effective compliance monitoring scheme for swimming pool safety barriers.

The framework however is not without some weaknesses and difficulties. These include:

- Difficulties faced by owners, builders and local governments in interpreting and applying the Australian Standards;
- legislative 'gaps';
- differences in the location, size, budget and resources of local government; and
- inadequate educational and guidance material.

Specific to the ongoing inspection process, there are also complications in identifying the correct standard for barrier compliance during an inspection, and issues around gaining entry to properties for the purpose of carrying out inspections.

## Ombudsman's Report

In June 2009, the Ombudsman commenced a review of certain child deaths in WA. The review identified a pattern of cases involving drowning and prompted the Ombudsman to undertake an investigation into those cases, with a view to deciding the appropriateness of making recommendations about ways to prevent or reduce the number of deaths of children by drowning.

On 23 November 2017, the Ombudsman's Report was tabled in the WA Parliament. The report contains 25 recommendations, of which 20 were specifically directed to the Building Commissioner, and five were directed to DMIRS as a whole. A complete list of the Ombudsman's recommendations is provided in [Appendix 1](#).

## Review process

Following the release of the Ombudsman's Report, a review of the WA legislative framework has been undertaken in three stages:

- **Stage 1:** involved the creation of a Working Group, which comprised of representatives from Building and Energy, WALGA and several metropolitan and regional local governments. The Working Group undertook a regulatory mapping process of how the initial mandatory inspection and reinspections of private swimming pools and safety barriers are triggered and undertaken, the approvals process, notices of completion, records management, the pool register, the four-yearly inspection process, and compliance and enforcement actions.

From this regulatory mapping process, the Working Group developed a minimum standard (the Minimum Standard) as a starting point for considering the recommendations in the Ombudsman's Report.

The Minimum Standard was then included in Stage 2 of the review. A copy of the Minimum Standard can be found in [Appendix 2](#).

- **Stage 2:** was the completion and release of a Targeted Consultation Paper for comment to all stakeholders such as local governments, WALGA, building surveyors, pool inspectors, pool builders, pool fence installers, and relevant industry bodies. The Consultation Paper outlined various options for reform and sought stakeholder feedback to assist in deciding which reforms are needed. These included:
  - the Minimum Standard;
  - a compliance and enforcement strategy for safety barrier compliance;
  - reinspection of non-compliant safety barriers;
  - records, templates and reporting on safety barrier inspections;
  - empty swimming pools;
  - training of swimming pool inspectors;
  - barriers for swimming pools under construction and other temporary barriers;
  - concessions for pre-November 2001 swimming pools;
  - excluded areas of WA;
  - building permits and notices of completion;
  - boundary barriers;
  - display of CPR charts;
  - safety barrier inspections at sale/rent of property;
  - swimming pool covers;

42 submissions were received in response to the Consultation Paper. A list of the stakeholders that provided a submission is contained in [Appendix 3](#).

Additional direct consultation with stakeholders also occurred where it was considered necessary to clarify issues or responses.

- **Stage 3:** the Decision Paper; this paper presents the findings from Stages 1 and 2. It addresses the outcome of the consultation with stakeholders, examines the impact of the various options considered in the Consultation Paper, and sets out the preferred approach for Government to address the recommendations in the Ombudsman's Report.

In accordance with the *State and Local Government Partnership Agreement* (August 2017), the Decision Paper was released for a period of 12-weeks consultation with the sector.

## Purpose of this Decision Paper

The Government is committed to a regulatory impact assessment program that considers the fundamental question of whether regulatory action is required or if policy objectives can be achieved by alternate measures, with lower costs for business and the community. In developing and reviewing legislation, the potential costs of regulation must be carefully considered and weighed against the potential benefits.

This Decision Paper has been prepared by Building and Energy to set out the Government's consideration of recommendations for reform. Each of the recommendations directed to the Building Commissioner in the Ombudsman's Report have been addressed, as well as other reforms considered in Stage 1 and Stage 2 of the review.

The purpose of this Decision Paper is to:

- outline the current issues with respect to swimming pools and safety barriers in light of the recommendations in the Ombudsman's Report;
- examine the impacts of reforms based on the feedback from stakeholders; and
- set out the decisions for change.

## Next steps

Following the publication of this Decision Paper, approval to draft amendments to the Building Regulations will be sought, as well as approval to progress the other decisions that do not involve regulatory change (and which specifically respond to the recommendations in the Ombudsman's Report).

Once the decisions are endorsed:

- a formal response will be provided to the Ombudsman, with a copy of this Decision Paper;
- drafting instructions for amending the regulations will be progressed;
- the preparation of guidance and education materials will commence; and
- the implementation of relevant training will commence.



## 3 Overview of Decisions

This part of the Decision Paper provides an overview of the Government's decision on how it intends to reshape the legislative framework for swimming pools and their associated safety barriers.

These decisions are based on the principles of best practice regulation and take full account of the Ombudsman's recommendations and the extensive feedback received in Stages 1 and 2 of the review process.

Both regulatory and non-regulatory options have been considered, and opportunities to reduce unnecessary red tape have also been taken where possible and appropriate.

It is also important to note that many of the decisions contained in this Decision Paper are based on the notion that safety barriers form part of a broader strategy in the prevention and reduction of preventable deaths of young children by drowning in private swimming pools.

The broader strategy identifies supervision as being the primary and most effective element, with safety barriers being a secondary measure only. This notion is supported by the Ombudsman's Report, which states:

*"Swimming pool barriers act as a second line of defence for when a child is not known to be in, on, or around water...the barrier effectively provides this second line of defence" and further, the regulations "...provide for how a barrier to a private swimming pool is to be taken to be suitable for this purpose."*<sup>5</sup>

The intent of safety barriers is to *restrict* the access of young children into a pool area, safety barriers are not intended to be *child proof*. The purpose of the legislative framework is to ensure pool owners provide and maintain effective safety barriers for their pools, supported by mandatory inspections of those safety barriers by local governments at intervals not exceeding four years.

The table below outlines the decisions contained in this Decision Paper. The term 'guidance' adopted in the decision statements refers to advice, information, education, training or any combination thereof that will be provided by Building and Energy.

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<sup>5</sup> Ombudsman's Report page 71

**Key**

**Action required::**

● Combination of regulatory and non-regulatory action.

○ Non-regulatory action only.

Issue (and source)	Decision	Action required
<p><b>1. Building Permits, Notice of Completion &amp; first barrier inspection</b></p> <p>Ombudsman recommendations 5 &amp; 6 <i>Consultation Paper elements 1 &amp; 10</i></p>	<p><b>Amend the Building Regulations to:</b></p> <ul style="list-style-type: none"><li>• require the first barrier inspection to be undertaken by local government only;</li><li>• enable local government to charge a fee for the first barrier inspection, which includes any subsequent compliance reinspections, that is equivalent to the total fee able to be charged within a four year period for inspections under the regular inspection program<sup>6</sup>; and</li><li>• exempt swimming pool barriers from the requirement to obtain a building permit, with the exception of barriers located in high wind regions C and D of the state.</li></ul> <p><b>Provide guidance on:</b></p> <ul style="list-style-type: none"><li>• building permit minimum documentation for swimming pools;</li><li>• the new process requirements to local governments and owners, including specific guidance on notifying and carrying out the first safety barrier inspection;</li><li>• Notice of Completion (BA7) requirements and the use of Building Act sanctions/penalties for not complying, in order to increase the level of compliance; and</li><li>• reducing the building permit validity period for fibreglass swimming pools to six months.</li></ul> <p><b>Collaborate with SPASAWA</b> to educate pool builders on the Notice of Completion requirements.</p>	<p>●</p>

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<sup>6</sup> Private swimming pool safety barriers are inspected by local government at intervals not exceeding four years for the purpose of monitoring the compliance of those safety barriers. Where a local government carries out inspections within that financial year, it may charge each pool owner or occupier of land on which there is a swimming pool (not limited to those inspected) to meet the estimated costs for that financial year of carrying out those inspections. The maximum annual charge is currently \$58.45. Local governments must not charge more than the estimated average cost of conducting those inspections within that financial year. The current maximum a local government may charge for one inspection over the four year period is \$233.80. The maximum annual charge is discussed further at Decision 6 Swimming pool barrier inspection charge and is to be increased to \$78.

Issue (and source)	Decision	Action required
<p><b>2. Barriers for pools under construction &amp; other temporary barriers</b></p> <p>Ombudsman recommendation 21</p> <p><i>Consultation Paper elements 1 &amp; 7</i></p>	<p><b>Not to amend</b> the Building Regulations requirements for temporary barriers.</p> <p><b>Provide guidance</b> on:</p> <ul style="list-style-type: none"> <li>• construction and other temporary barriers in general, including the good practice of having a child-resistant gate and the importance of not propping open or removing portions of temporary barriers;</li> <li>• good practice of reinspecting temporary barriers at intervals not exceeding three months;</li> <li>• approving plank and mesh covers as a performance solution; and</li> <li>• risks associated with pools under construction.</li> </ul>	●
<p><b>3. Reinspections of non-compliant barriers</b></p> <p>Ombudsman recommendations 19 &amp; 20</p> <p><i>Consultation Paper elements 1 &amp; 3</i></p>	<p><b>Amend the Building Regulations</b> to:</p> <ul style="list-style-type: none"> <li>• specifically require reinspection of non-compliant swimming pool safety barriers; and</li> <li>• clarify that the inspection fee incorporates the reinspection of non-compliant barriers (refer to Decision 6).</li> </ul> <p><b>Provide guidance</b> on good practices for:</p> <ul style="list-style-type: none"> <li>• arranging reinspections promptly in the event of non-compliance;</li> <li>• reinspecting non-compliant barriers until compliance is achieved; and</li> <li>• reinspecting non-compliant barriers within a 60-day maximum period, where possible and practicable.</li> </ul>	●
<p><b>4. Compliance and enforcement strategy for barrier compliance</b></p> <p>Ombudsman recommendation 18</p> <p><i>Consultation Paper consultation element 2</i></p>	<p><b>Provide guidance</b> on compliance and enforcement strategies, including the use of available enforcement tools and sanctions (e.g. infringement notices) under the Building Act to penalise non-compliance, in order to achieve higher levels of compliance and encourage a common approach.</p>	●

Issue (and source)	Decision	Action required
<p><b>5. Four-yearly inspections: administering, record keeping &amp; reporting</b></p> <p>Ombudsman recommendations 7 &amp; 8 and part of 15 &amp; 16 <i>Consultation Paper elements 1 &amp; 4</i></p>	<p><b>Amend the Building Regulations</b> to require local governments to report annually to the Building Commissioner, providing sufficient data (as published by the Building Commissioner) to demonstrate progress with the four-yearly inspection program.</p> <p><b>Provide guidance</b> on:</p> <ul style="list-style-type: none"> <li>• organising inspections, accessing properties (including difficulty arranging/gaining access), and carrying out an inspection (including a checklist of all elements to be inspected, barrier access point considerations, and taking photographs);</li> <li>• record management practices appropriate to swimming pool barrier inspections; and</li> <li>• pool register minimum information.</li> </ul>	●
<p><b>6. Swimming pool barrier inspection charge</b></p> <p>Ombudsman recommendations 10 and 11.</p>	<p><b>Amend the Building Regulations</b> to:</p> <ul style="list-style-type: none"> <li>• increase the prescribed annual maximum charge for swimming pool barrier inspections to \$78 to assist local governments reach cost recovery for carrying out the inspection service; and</li> <li>• clarify that this charge includes reinspections of non-compliant barriers.</li> </ul> <p><b>Provide guidance</b> to local government to clarify:</p> <ul style="list-style-type: none"> <li>• the intent that the new annual maximum charge will improve the ability for local governments to achieve cost recovery, and that it incorporates the four-yearly safety barrier inspections, reinspections of non-compliant barriers, and the monitoring/inspection of pools with a depth of water 30cm or less; and</li> <li>• the requirement to actually conduct (not simply arrange) an inspection at intervals not exceeding four years.</li> </ul>	●

Issue (and source)	Decision	Action required
<p><b>7. Inspection of pools with a depth of water 30cm or less</b></p> <p>Ombudsman recommendation 24</p> <p><i>Consultation Paper elements 1 &amp; 5</i></p>	<p><b>Provide guidance</b> to local governments on:</p> <ul style="list-style-type: none"> <li>• the good practice of monitoring the status of private swimming pools with a depth of water 30cm or less for the purpose of ensuring they are not refilled with a depth of more than 30cm of water without a compliant safety barrier in place; and</li> <li>• including the estimated cost of inspecting pools with a depth of water 30cm or less into their estimated cost for the running of their normal four-yearly pool barrier inspection program.</li> </ul> <p><b>Provide guidance</b> to pool owners:</p> <ul style="list-style-type: none"> <li>• of their obligation to ensure the depth of water in their pool remains at 30cm or less;</li> <li>• on the need to notify the local government if their pool is refilled with water;</li> <li>• that the pool will remain on the local government's pool register;</li> <li>• that the pool will continue to be monitored until decommissioned or removed;</li> <li>• the importance of installing a compliant safety barrier prior to refilling the pool with water, and the applicable penalties for failing to do so; and</li> <li>• on decommissioning private swimming pools, conversions (e.g. fish ponds), etc.</li> </ul>	●
<p><b>8. Barrier inspection at sale/rent of property</b></p> <p>Ombudsman recommendations 3 &amp; 4</p> <p><i>Consultation Paper elements 1 &amp; 13</i></p>	<p><b>Not to amend</b> the Building Regulations to require swimming pool safety barrier inspections at sale or rent of a property.</p> <p><b>Provide guidance</b> on:</p> <ul style="list-style-type: none"> <li>• voluntary barrier inspection service available on request to anyone, including potential buyers/sellers/agents;</li> <li>• barrier inspection records/reports being made available on request to potential buyers/sellers/agents; and</li> <li>• barrier inspection records/reports being made available on request to owners and authorised property managers for rental purposes.</li> </ul>	●

<b>Issue (and source)</b>	<b>Decision</b>	<b>Action required</b>
<p><b>9. Excluded areas of the State</b></p> <p>Ombudsman recommendation 25</p> <p><i>Consultation Paper element 9</i></p>	<p><b>Amend the Building Regulations</b> on formal request by affected local governments to require safety barriers for all private swimming pools in all areas of their geographic district.</p> <p><b>Actively engage</b> with affected local governments to remove excluded areas from their district.</p> <p><b>Provide guidance</b> to these affected local governments on:</p> <ul style="list-style-type: none"> <li>• the processes required to remove the regulatory exclusion and satisfy the Government’s commitment to best practice regulation; and</li> <li>• the existing requirement for all new swimming pools in all areas of the State, regardless of excluded areas, to have compliant safety barriers at the time of completion of building work, regardless of whether or not a building permit is required.</li> </ul> <p><b>Provide guidance</b> to owners on the merit of voluntary pool barriers for those pools located in excluded areas of WA.</p>	●
<p><b>10. Pre-November 2001 concession</b></p> <p>Ombudsman recommendation 9</p> <p><i>Consultation Paper element 8</i></p>	<p><b>Not to amend</b> the Building Regulations to remove the concession provided for swimming pools constructed prior to 5 November 2001.</p> <p><b>Provide guidance</b> to owners on the benefits of isolation fences versus child-resistant door-sets.</p>	●
<p><b>11. Boundary barriers</b></p> <p><i>Consultation Paper element 11</i></p>	<p><b>Amend the Building Regulations</b> to provide an additional option for boundary barrier compliance. This option will permit the use of the non-pool side of a boundary barrier where it is at least 1200mm in height and complies with NCZ 1, 2, 3, and where relevant NCZ 4, in addition to other relevant parts of AS 1926.1-2012.</p> <p><b>Not to amend</b> the Building Regulations to prescribe the application of a 500mm clear area on the pool side of the boundary fence.</p> <p><b>Provide guidance</b> on:</p> <ul style="list-style-type: none"> <li>• the additional option for boundary barrier compliance (once enacted); and</li> <li>• the application of AS 1926.1-2012 to boundary fences.</li> </ul>	●

Issue (and source)	Decision	Action required
<p><b>12. Training of swimming pool barrier inspectors</b></p> <p>Ombudsman recommendations 12, 13, 14, 15, 16 &amp; 17</p> <p><i>Consultation Paper elements 1, 4 &amp; 6</i></p>	<p><b>Not to amend</b> the Building Regulations to require the training of pool inspectors.</p> <p><b>Support</b> the development of a voluntary external training course.</p> <p><b>Provide guidance</b> in the form of a training manual to form part of the Pool Inspector Guidelines.</p> <p><b>Provide</b> annual workshops to maintain knowledge and skills of swimming pool inspectors.</p> <p><b>Promote</b> to local governments:</p> <ul style="list-style-type: none"> <li>• the voluntary external training course, encouraging completion by their pool inspectors;</li> <li>• the annual workshops, encouraging attendance by their pool inspectors.</li> </ul>	<p>●</p>
<p><b>13. Display of CPR charts</b></p> <p><i>Consultation Paper element 12</i></p>	<p><b>Provide guidance</b> to owners on the benefits of learning CPR, and displaying CPR charts and their installation locations.</p>	<p>●</p>
<p><b>14. Portable swimming pools</b></p> <p>Ombudsman recommendations 22 &amp; 23</p>	<p><b>Not to amend</b> the Building Regulations to further regulate portable swimming pools.</p> <p><b>Improve public awareness</b> on child safety around portable swimming pools, via campaigns and publications.</p>	<p>●</p>
<p><b>15. Spa baths</b></p>	<p><b>Amend the Building Regulations</b> to specifically exclude “spa baths” from the definition of a “private swimming pool”.</p>	<p>●</p>
<p><b>16. Swimming pool covers</b></p> <p><i>Consultation Paper element 14</i></p>	<p><b>Retain</b> the current WA variation in the BCA to require swimming pool covers, pending the outcome of research by the Water Corporation.</p>	<p>N/A</p>

## 4 Reasons for Decisions

This part of the Decision Paper provides analysis of the reasons for each of the decisions on the reforms to the WA framework for swimming pools.

Where appropriate, a summary of the recommendation from the Ombudsmen's Report is included. A list of the full recommendations can be found in [Appendix 1](#).

### Decision 1 – Building Permits, Notice of Completion and first barrier inspections



#### Ombudsman's recommendations summary

- Review the operation of Notices of Completion under the Building Act in order to determine the level of compliance.
- Work with local governments to increase the level of compliance with Notice of Completion requirements, giving consideration to education/training/advice, risk-based compliance audits, targeting un-registered builders, and the use of Building Act sanctions.

### Background

#### Building permits

Prior to commencement of the Building Act in 2012, there was no requirement for a building permit for a pool safety barrier in WA. Instead, basic information on the safety barrier was included and assessed as part of the building approval for the swimming pool. This included an indicative location of the safety barrier and gate and a statement of compliance with AS 1926.1.

In lieu of a building permit, reliance was placed on an already established pool safety barrier inspection program. Many local governments would issue a letter to the owner at the time the swimming pool building permit was issued to the builder. The letter would inform the owner of their pool barrier obligations and request they contact the local government to arrange an inspection of the pool safety barrier prior to filling the pool with more than 30cm of water. Many local governments continue to do this now.

However, with the commencement of the Building Act came the requirement to obtain a building permit for a pool fence, as pool fencing was not included in the general exemptions for fences. This means both the swimming pool and safety barrier require a building permit.

Under the Building Act, a swimming pool and safety barrier can be grouped together under one building permit, or be approved under separate permits. This flexibility within the legislation means that permit authorities have taken different approaches in dealing with building permit applications for swimming pools and their safety barriers.

Some permit authorities require the pool and safety barrier to be on the same application. Whereas, others allow separate applications, processed at the same time, or at different times.



Separately, the general practices that have developed are misaligned with the intent of the building approval process, creating risks for owners. Typically, pool building companies (builders) submit an application for a building permit for the swimming pool, but not an application for the safety barrier. This is because the builder does not usually install the long-term barrier and only provides a short-term barrier during construction. In most cases, the owner will subsequently organise the installation of the long-term safety barrier with a fencing contractor, making it logical to submit a separate application for a building permit.

Also, at the time of making the application for building permit for the swimming pool, the owner may not yet have decided on who to engage to build the safety barrier, rendering submission of the relevant documents difficult.

As a consequence, some builders name the owner as the builder on the building permit application. This puts the responsibility of the build onto the owner who then carries risk and, from a consumer point of view, this is not a desired outcome.

### **Notice of completion and first barrier inspection**

Under the Building Act, a Notice of Completion form (BA7) is required to be submitted to the permit authority within seven days of the completion of building work. This applies to a building permit for the swimming pool, the safety barrier, or both.

Where a building permit is issued for the safety barrier, the Building Regulations also require a compliance inspection to assess whether the barrier complies with the applicable building standards.

This first barrier inspection is the responsibility of the builder named on the building permit and can be carried out by any person the builder deems appropriate. In practice, this means the builder can carry out the inspection themselves, or use someone else to inspect the barrier and complete the report.

A copy of the associated inspection report must be submitted to the permit authority with the Notice of Completion applicable to the safety barrier.

### **Statement of the issue**

The varying requirements and differing treatment of the building permit application for swimming pools and safety barriers has caused frustration and confusion for builders, and undermines the trust of owners in the builder, local governments and the State's building approvals process.

The same applies to notices of completion and the first barrier inspection. Some local governments have reported that:

- the Notice of Completion for both the swimming pool and the safety barrier are not always submitted; and
- a large number of those submitted for the safety barrier are not accompanied by the required inspection report.

Local governments often rely on the receipt of a Notice of Completion to identify that a swimming pool is complete, in order to undertake an inspection of the safety barrier and to include the pool in the four-yearly inspection program.

Where the builder does not submit a Notice of Completion, the local government may not be aware of the completion of the pool for some time, and the compliance of the associated safety barrier is unable to be confirmed.

Further complications arise when, during the first four-yearly inspection, a non-compliant element of the safety barrier is detected that conflicts with the builder's submitted inspection report.

Local governments have reported that:

- four-yearly inspection programs are identifying a large number of non-compliant elements that should have been identified and remedied at the first inspection organised by the builder; and
- the actual pool fence constructed is of a different type to that which was approved on the building permit (e.g. a tubular aluminium fence approved but a glass fence installed).

The late identification of non-compliant elements, a difference of opinion between the pool inspector and the person who carried out the first inspection, or changes to construction elements causes frustration, added expense to the owner and, in the case of non-compliance, potentially risks the lives of young children who may reside at or visit the property.

In summary, the specific problems relating to building permits, notices of completion, and the first barrier inspection include that:

- the requirement for a building permit for pool fences is administratively cumbersome and the value of this permit is questionable;
- there is a lack of consistency in the approval process;
- many builders no longer submit building permit applications for swimming pools – the owner signs and submits instead (this puts the responsibility of the build on the owner which carries risk and is not optimal from a consumer protection point of view);
- the process of allowing the first inspection to be arranged by the builder is ineffective and there are no qualifications or experience stipulated for the person carrying out this inspection;
- a large proportion of inspection reports are not submitted to local governments (anecdotally, there is suggestion that the same applies to notices of completion); and
- inconsistencies exist between the first inspection arranged by the builder and the local governments' first four-yearly inspection.

## **Outcome of stakeholder consultation**

### **Stage 1 review**

Processes and issues around building permits, notices of completion and the first barrier inspection were considered by the Working Group.

The Working Group provided feedback around variability of permit authority processes. It was noted that some local governments register the swimming pool for the four-yearly inspections upon granting a building permit due to the unreliability of receiving a Notice of Completion.

The Working Group considered a suggestion to streamline the approvals process by removing the requirement for building permits for safety barriers and replacing it with a more effective process for achieving barrier compliance. There was agreement that the initial inspection of the safety barrier, if conducted by the local government instead of the builder, would be the most effective way to ensure compliance and that this inspection should have its own associated fee. It was also suggested that the maximum building permit duration for fibreglass pools should be reduced to six months to enable more effective control.

Removing the builder’s responsibility in providing an inspection report with the Notice of Completion was considered to be a measure that may encourage pool builders to submit the Notice of Completion. The merits of introducing a penalty, able to be issued as an infringement notice, for builders who do not submit a Notice of Completion within the statutory timeframe was also considered and supported (this has since already been introduced).

The Working Group was of the view that minimum requirements for documentation to accompany a building permit application should be considered for swimming pools and safety barriers. Details of any work required to an existing fence, window or door (where they form part of the barrier), in order to achieve a compliant pool safety barrier, should also be considered for this minimum standard.

## Stage 2 review

The Consultation Paper considered the removal of the building permit requirement for swimming pool barriers, and the introduction of a requirement for the first barrier inspection to be conducted by the permit authority only.

As shown in the tables below, mixed responses were received to the specific questions posed in the Consultation Paper. For the avoidance of doubt;

- the ‘No. submissions’ refers to the number of stakeholder submissions which addressed the particular question or proposal in the Consultation Paper; and
- the term ‘neutral’ refers to instances where it was not possible to definitively determine if a stakeholder supported or did not support a proposal.

These terms have been used for other tables in this document.

<b><i>Is there merit in removing the requirement for a building permit for a swimming pool barrier?</i></b>		
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>
33	36%	55%

Those stakeholders who supported removal of the building permit for the safety barrier noted: the current process is antiquated; it creates confusion and an unnecessary regulatory burden to industry and local government; and there is no real benefit in respect of barrier compliance.

Other stakeholders disagreed, commenting that:

- the building permit makes the safety barrier builder responsible for that work, ensures the barrier meets the relevant building standards, and details the barrier and filtration equipment location.

- without a building permit and notice of completion there would be no way of tagging a swimming pool for the four-yearly inspection process.
- one building permit should apply to both the swimming pool and the safety barrier, or a swimming pool permit being conditioned on the provision of a compliant safety barrier.

<b><i>Should a new process be established for managing initial barrier compliance, in lieu of an inspection certificate submitted with a BA7? What should that new process involve?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
29	59%	24%	17%

Those stakeholders who supported establishing a new process for managing initial barrier compliance, noted:

- inspection certificates are rarely received and there is no value in having the inspection carried out by anyone other than local government;
- local government should be proactive;
- a builder's inspection should not be accepted as a final sign off; and
- the first barrier inspection should be mandatory and carried out by an authorised officer from local government.

Stakeholders that did not support a new process indicated local government should not be concerned with who provides the first barrier inspection report, and that the current process should be better enforced.

Some stakeholders suggested the requirement for a Notice of Completion be removed and replaced by mandatory notification to local government once the pool is filled with more than 30cm of water.

<b><i>Is there benefit in reducing the building permit validity period for fibreglass pools to six months?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
29	52%	41%	7%

Stakeholders who supported this proposal contended it would keep a tighter control on the process and assist in determining when to undertake a compliance inspection of the safety barrier. Many local governments advised they had already reduced the validity period for swimming pool building permits, in line with this proposal.

Those stakeholders that did not support the proposal:

- noted that some pools take longer to install for a variety of reasons, including personal and financial circumstances as well as house construction requirements; and
- queried the benefit of such a reduction in the building permit validity period.

<b><i>Is there any evidence to support the claim that BA7s are not being submitted? Please provide evidence.</i></b>		
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>
25	76%	24%

Stakeholder feedback noted that anywhere between 50 and 80 percent of Notice of Completion forms are not received and local governments consistently need to follow up.

Stakeholders that did not support this claim suggested that most Notice of Completion forms were being received, but were not accompanied by the required inspection report, hence the inspection report was seen as the main problem.

Stakeholders were also asked to comment on measures outside of infringement notices that could increase compliance with the requirement to submit a Notice of Completion form for the safety barrier. The majority of stakeholders suggested education, and the removal of the requirement itself.

<b><i>Should the minimum standard for the building permit process include details of the required work on an existing boundary fence, window or door in order for it to be a compliant pool barrier?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
30	80%	17%	3%

Stakeholders who supported this proposal highlighted that swimming pool building permit applications generally lack pertinent details to demonstrate compliance. Whereas those stakeholders opposed argued barrier compliance is complex and would not increase by implementing a minimum standard of documentation.

## **Decision**

Requirements to obtain building permits for both the swimming pool and the safety barrier has led to confusion, frustration, and inconsistency of approach across local governments. This has resulted in owners signing building permit applications for swimming pools, inexperienced and/or inappropriate persons signing inspection certifications for safety barriers, and late identification of non-compliant safety barriers often requiring expensive rectification work and, most importantly, placing young children at risk.

Despite the majority of stakeholders in Stage 2 not supporting the proposal to remove the requirement for a building permit for a safety barrier, a large majority did agree that the initial barrier inspection arranged by the builder should be replaced with a more effective process.

Requiring a building permit for a safety barrier could be considered excessive, given the regulatory requirements for an initial inspection on completion of the safety barrier and the continuous four-yearly inspection program by local governments.

Moreover, the value of a building permit process for a pool fence is considered negligible, with the exception of those located in areas subject to cyclonic conditions. It is considered that safety barrier compliance would be more effectively regulated through a regulatory

amendment that requires local government to inspect the safety barrier at the time it is installed, or shortly thereafter, rather than by retaining the current process arranged by the builder.

Accordingly, it is proposed to exempt those fences that form part of a safety barrier from requiring a building permit. Basic information on the safety barriers will continue to be required as part of the building permit for the swimming pool, such as the indicative location of the safety barrier and gate and a statement of compliance with AS 1926.1. Specific compliance information such as material (glass, aluminium, steel), fixings and test reports will be required to be provided to the owner who will in turn provide it to the inspector at the first inspection.

Proposed pool fences located in high wind areas, region C and D (AS/NZS 1170.2), will continue to require a building permit due to additional concerns.

In addition, the first inspection being arranged by the builder will be removed. Amendments will be made to the Building Regulations to require the first barrier inspection to be arranged/carried out by the local government with an associated fee for service. The associated fee will be equivalent to four times the maximum annual charge prescribed for the inspection of pool safety barriers under the regular four-yearly inspection program. Currently the maximum annual charge is \$58.45, equating to a maximum of \$233.80 for one inspection every four years.

Specific compliance information (evidence of suitability) that was previously collected at the CDC stage by the building surveyor will be collected at the time of the first inspection. Local government pool inspectors could withhold determining a safety barrier as compliant until the evidence of suitability is provided. Products like pool fencing are required to be fit for purpose and fence suppliers and installers should have documentation demonstrating compliance of their products readily available. Failure to provide a product that is fit for purpose, is a breach of Australian Consumer Law.

To support this regulatory change, Building and Energy will develop guidance on providing evidence of suitability to demonstrate the compliance of the safety barrier. This will include:

- informing local government pool inspectors of the documents that should be collected at the first inspection;
- informing safety barrier installers of the documents they should provide to the owner; and
- informing owners about the documents they should receive from the installer and which must be provided to the local government pool inspector.

Guidance will be produced encouraging the owner of the property to contact the local government to organise an inspection of the pool safety barrier. The pool builder will still be required to submit a Notice of Completion within seven days of the completion of the pool. This is effectively notification that a pool has been completed and allows the local government to organise an inspection, if the owner has not already made contact.

The guidance will recognise that at this point the inspected barrier may be either a short-term barrier or a long-term barrier. Where a short-term barrier is inspected, the local government should re-inspect at intervals not exceeding three months, as per Decision 2 of this Decision Paper. This should continue until the long-term safety barrier has been installed and inspected.

In regard to notices of completion for swimming pools, Building and Energy has received no evidence to substantiate claims of non-compliance and no feasible solutions have been offered to help resolve the issues raised in the Consultation Paper.

Building and Energy has already implemented amendments to the Notice of Completion form so that local governments know when a submitted notice relates to a private swimming pool. No further regulatory change will be progressed.

Instead, recommendations 5 and 6 in the Ombudsman’s Report will be addressed, and the level of compliance increased, through collaboration with local government and industry to provide education and guidance. This will include:

- informative publications on notice of completion requirements that can be distributed with the building permit;
- education to local governments on the use of Building Act sanctions and penalties, with a view to increasing the level of compliance; and
- guidance on reducing the building permit validity period to six months for fibreglass pools, and a minimum standard of documentation for private swimming pool building permit applications.

The table on the following page provides an example of how the new process will operate:

<b>Key:</b> PA means local government permit authority; BP means building permit		
<b>Step</b>	<b>Short-term &amp; long-term barrier</b> E.g. in-ground fibreglass pool	<b>No short-term, just long-term barrier</b> E.g. portable pools/above ground spas
<b>Engage pool builder</b>	Owner engages pool builder	Owner engages pool builder
<b>BP</b>	Pool builder submits application for BP for pool to PA	Pool builder submits application for BP for pool to PA
<b>Assessment of application and processing of BP</b>	PA: <ul style="list-style-type: none"> <li>• assesses application for BP</li> <li>• issues BP for pool to builder. Copy provided to owner</li> <li>• creates ‘future’ pool record in register</li> <li>• sends additional guidance to owner – responsibilities, notify PA for inspection, required docs on inspection</li> </ul>	PA: <ul style="list-style-type: none"> <li>• assesses application for BP</li> <li>• issues BP for pool to builder. Copy provided to owner</li> <li>• creates ‘future’ pool record in register</li> <li>• sends additional guidance to owner – responsibilities, notify PA for inspection, required docs on inspection</li> </ul>
<b>Long-term barrier</b>	Owner organises long-term pool barrier	Owner organises long-term pool barrier
<b>Pool installation &amp; OSH requirements</b>	Builder: <ul style="list-style-type: none"> <li>• installs pool</li> <li>• provides OSH ‘suitable barrier’</li> <li>• pool remains empty, ≤30cm water, until ‘pool barrier’ is installed</li> </ul>	Builder: <ul style="list-style-type: none"> <li>• installs pool</li> <li>• provides OSH ‘suitable barrier’</li> <li>• pool remains empty, ≤30cm water, until ‘pool barrier’ is installed</li> </ul>
<b>&gt;30cm of water</b>	Builder: <ul style="list-style-type: none"> <li>• installs short-term pool barrier <ul style="list-style-type: none"> <li>○ may fill pool with &gt;30cm water</li> </ul> </li> </ul> Owner: <ul style="list-style-type: none"> <li>• notifies PA once &gt;30cm water</li> <li>• contacts PA for inspection</li> </ul>	Owner: <ul style="list-style-type: none"> <li>• long-term barrier installed <ul style="list-style-type: none"> <li>○ may fill pool with &gt;30cm water</li> </ul> </li> <li>• collects compliance documentation from installer</li> <li>• notifies PA once &gt;30cm water</li> <li>• contacts PA for inspection</li> </ul>
<b>Notice of Completion</b>	Builder submits BA7 to PA within seven days of completion of pool	Builder submits BA7 to PA within seven days of completion of pool
<b>Record and Inspection</b>	PA: <ul style="list-style-type: none"> <li>• updates pool record to ‘current’</li> </ul>	PA: <ul style="list-style-type: none"> <li>• updates pool record to ‘current’</li> </ul>

<b>Key:</b> PA means local government permit authority; BP means building permit		
Step	Short-term & long-term barrier E.g. in-ground fibreglass pool	No short-term, just long-term barrier E.g. portable pools/above ground spas
	<ul style="list-style-type: none"> <li>inspects pool barrier (as soon as practicable after owner's contact or BA7 receipt, whichever comes first)</li> <li>reinspects short-term barrier at intervals not exceeding three months</li> </ul>	<ul style="list-style-type: none"> <li>inspects pool barrier (as soon as practicable after owner's contact or BA7 receipt, whichever comes first)</li> <li>collects compliance documentation from owner</li> <li>assesses barrier documentation</li> <li>issues inspection report</li> <li>inspects again within four years</li> </ul>
	<b>Owner:</b> <ul style="list-style-type: none"> <li>long-term barrier installed</li> <li>collects compliance documentation from installer</li> <li>contacts PA for inspection</li> </ul>	
	<b>PA:</b> <ul style="list-style-type: none"> <li>inspects long term barrier (as soon as practicable)</li> <li>collects compliance documentation from owner</li> <li>assesses barrier documentation</li> <li>issues inspection report</li> <li>inspects again within four years</li> </ul>	



### **Decision 1 – Building Permits, Notice of Completion & first barrier inspection**

#### **Amend the Building Regulations to:**

- require the first barrier inspection to be undertaken by local government only;
- enable local government to charge a fee for the first barrier inspection, which includes any subsequent compliance reinspections, that is equivalent to the total fee able to be charged within a four year period for inspections-under the current inspection program<sup>7</sup>; and
- exempt swimming pool barriers from the requirement to obtain a building permit, with the exception of barriers located in high wind regions C and D of the State.

#### **Provide guidance on:**

- building permit minimum documentation for swimming pools;
- the new process requirements to local governments and owners, including specific guidance on notifying and carrying out the first safety barrier inspection;
- Notice of Completion (BA7) requirements and the use of Building Act sanctions/penalties for not complying, in order to increase the level of compliance; and
- reducing the building permit validity period for fibreglass swimming pools to six months.

**Collaborate with SPASAWA** to educate pool builders on the Notice of Completion requirements.

<sup>7</sup> Private swimming pool safety barriers are inspected by local government at intervals not exceeding four years for the purpose of monitoring the compliance of those safety barriers. Where a local government carries out inspections within that financial year, it may charge each pool owner or occupier of land on which there is a swimming pool (not limited to those inspected) to meet the estimated costs for that financial year of carrying out those inspections. The maximum annual charge is currently \$58.45. Local governments must not charge more than the estimated average cost of conducting those inspections within that financial year. The current maximum a local government may charge for one inspection over the four year period is \$233.80. The maximum annual charge is discussed further at Decision 6 Swimming pool barrier inspection charge and is to be increased to \$78.



## Impact analysis

Decision 1 involves a combination of regulatory and non-regulatory action. The intent is to streamline the building approvals process for swimming pools and safety barriers, promote consistency across local governments, and improve barrier compliance with the relevant standards. The regulatory amendments also aim to encourage the swimming pool builder to name themselves on the building permit to ensure the responsibility for the build rests with the builder and not the owner.

Decision 1 will result in a marginal increase in costs for owners (consumers) of new swimming pools in WA.

It is proposed to prescribe in the Building Regulations that the charge applicable to the first safety barrier inspection is equivalent to the total allowable charge within a four year period under the current four-yearly inspection program (limited to not exceeding cost recovery). The amount charged is inclusive of any subsequent reinspections, in the event of non-compliance on initial inspection.

Private swimming pool safety barriers are inspected by local government at intervals not exceeding four years for the purpose of monitoring the compliance of those safety barriers. Where a local government carries out inspections within a financial year, it may charge each pool owner or occupier a set amount (up to the prescribed maximum) to meet the costs of carrying out the inspection. The maximum prescribed annual charge is currently \$58.45, equating to a total charge of \$233.80 for the one inspection.

The same will apply to the first barrier inspection. . However, as outlined by Decision 6, this charge will be increased to \$78, equating to an annual increase of \$19.55 or a total of up to \$78.20 over the four year period. . This increase is expected to cover the cost of the inspection and any reinspections needed to ensure compliance of the safety barrier.

While the initial inspection charge is a new cost, this will be partially offset by the removal of the requirement for a building permit for a safety barrier, except for those barriers located in wind regions C and D. The current cost of a building permit is \$166.65, which consists of an application fee of \$105.00 and the Building Services Levy of \$61.65.

Therefore, the maximum total additional cost to the consumer of introducing a charge for the first barrier inspection is expected to be around\$145.35. This figure has been calculated by subtracting the current building permit cost of \$166.65 from the expected new maximum inspection fee of up to \$312.

As the first inspection is currently the responsibility of the builder, it is expected that the cost of organising that inspection will also be saved, but it is not possible to quantify the saved amount.

The marginal increase in upfront costs to owners is expected to be partially off-set for those owners whose safety barriers would have been identified as non-compliant at the time of the first four-yearly inspection by the local government. These owners incur additional costs, sometimes substantial depending on the nature of the non-compliance, up to four-years after the safety barrier installation.

With the local government conducting the first barrier inspection there is increased confidence that the safety barrier will not be identified as non-compliant during the four-yearly inspection

program, eliminating the likelihood of differences of opinion or inexperienced persons conducting initial compliance inspections of safety barriers. This also has the potential to greatly reduce the risks to young children frequenting properties with swimming pools, particularly within the period up until the local government undertakes its first four-yearly inspection of the safety barrier.

## Decision 2 – Barriers for pools under construction and other temporary barriers



### Ombudsman's recommendation summary

- Review the requirements in force in other jurisdictions for temporary barriers for swimming pools and determine whether any should be considered for WA.

### Background

A temporary barrier is usually a structure that is not established on permanent footings. It is a preliminary safety measure put in place to secure the area around a swimming pool during and immediately after construction, until a permanent compliant safety barrier can be installed.

The Ombudsman's Report found that during the six-year investigation period, of the 16 children who died as a result of drowning in a swimming pool, two died following an incident in a swimming pool with a temporary barrier. This is significant as at any given time there will only be a small number of pools relying on such barriers. The number of young children who died as a result of drowning in a swimming pool that was relying on a temporary barrier is disproportionate when compared with the number that died as a result of drowning where a permanent barrier was in use.

The Ombudsman's Report highlighted that most temporary barriers do not have a gate, leading owners to prop open or remove a portion of the fence for access from time-to-time. This undermines the effectiveness of the barrier. Specific circumstances noted in the Ombudsman's Report were:

- a new fibreglass swimming pool had been constructed, the permanent safety barrier had not yet been installed, and a section of the temporary barrier had been loosened to swing open; and
- an existing swimming pool was undergoing renovations, the existing permanent safety barrier had been removed, and the temporary barrier had been propped open

The Ombudsman recommended that consideration be given to further regulating temporary barriers, including establishing time limits and determining the need for inspections.

### Swimming pool construction process

Fibreglass pools are the most common pool type in WA, and are generally installed over a one to two-day period. This includes the excavation, crane in and placement of the swimming pool, and initial backfill. The soil around the pool is backfilled up to approximately half way and the pool filled to approximately one third with water. The pool needs to have water in to prevent bowing. Short-term barriers are generally installed at this stage.

The remainder of the backfill and filling of the pool is completed around three to seven days after initial installation. Following this, trades such as electricians, landscapers, and service technicians may attend the site. The completion of building works is generally considered to be at handover, which is when the pump and filter are turned on and the chemical composition of the water is balanced.

Within seven days of completion of the building work (handover), pool builders are required to submit a Notice of Completion to the local government. This must include an inspection report that confirms that the pool safety barrier is compliant, regardless of whether this is the temporary barrier or the permanent barrier.

The length of time a temporary barrier remains in place can range from one week through to six months, but the average is approximately 30 days. Generally, permanent safety barriers cannot be installed until all backfilling, soil compaction, and paving/landscape works have been completed.

### **Barriers during construction**

During construction of the pool, 'suitable barriers' must be in place to restrict access to the swimming pool site. There are many risk factors to consider, including the risk of young children drowning or suffering a fall.

Under regulation 3.109 of the *Occupational Safety and Health Regulations 1996 (WA)* (OSH laws) the builder is required to ensure a suitable barrier is in place while the pool is under construction in order to manage a range of site hazards. A suitable barrier must restrict access to the building site in a way that is appropriate to the potential hazards but does not necessarily need to comply with the building standards. This includes from the excavation stage through to when the swimming pool has been installed and filled with water.

Some swimming pools need to be filled with water by the builder during the construction process. Statistics show this poses a drowning risk for young children who may access the pool area unsupervised. Under the Building Regulations the owner is required to ensure that a 'compliant pool safety barrier' is in place when the swimming pool contains more than 30cm of water. This requirement applies regardless of whether the barrier is for temporary or permanent use.

However, it is often difficult to comply with the Building Regulations when construction is still underway, due to unstable or sandy unfinished ground and other factors linked to the construction site. In these situations, an alternative safety barrier solution demonstrating compliance with the BCA performance requirements may be more appropriate.

### **Statement of the issue**

The Ombudsman's Report identified a higher occurrence of drowning incidences where a temporary barrier was in use, evidently caused by propping open or removing a portion of the barrier and enabling access to the pool. This leads to questions such as whether or not such barriers should be required to have a gate, whether inspections should be required at certain intervals, and/or whether time limits should be placed on their use.

There is confusion in the industry around the compliance requirements for barriers used during construction, as well as short-term barriers in use for a variety of reasons (e.g. repairs, renovations, etc.). Questions are often asked about the need and ability to comply with the requirements for pool safety barriers in the Building Regulations, and the interface with OSH laws. Responsibilities can become unclear due to the builder being responsible for complying with OSH suitable barrier requirements, and the owner being ultimately responsible for complying with the Building Regulations.

It is currently unclear as to whether the Building Regulation requirements for a 'compliant pool safety barrier' apply to pools during construction, for instance, where fibreglass pools are filled with more than 30cm of water by the builder as part of the construction process. In this situation the builder is still responsible for the construction site and for complying with the OSH requirements for a suitable barrier that manages all risks applicable to that site, including the risk of drowning.

This in turn leads to compliance issues around the use of plank and mesh covers. Such covers do not satisfy the prescriptive requirements of the BCA, but are often used as a method for restricting access to the pool for a temporary period during construction or renovation, and may satisfy the suitable barrier requirements in the OSH laws. It is questionable as to whether plank and mesh covers require local government approval as a performance solution under the BCA (i.e. approved barrier solution under the Building Regulations), or if these covers need only comply with the OSH requirements for a suitable barrier.

## **Outcome of stakeholder consultation**

### **Stage 1 review**

The Working Group considered the issues related to construction and other temporary barriers.

The Working Group was of the view that providing a gate in a temporary barrier should not be mandated, but could be encouraged as best practice. It was determined that temporary barriers should be inspected at intervals not exceeding three months, unless otherwise arranged with the local government.

Plank and mesh covers were also considered by the Working Group, with the consensus view being that, while these covers do not satisfy the BCA prescriptive requirements, they may be considered an appropriate option as a 'short-term compliant pool safety barrier' through a performance solution approved by the local government. The group determined that whether or not plank and mesh covers would satisfy the 'suitable barrier' requirements under the OSH laws is a matter for the builder.

It was identified that the production of guidance material for local governments and the pool industry on short-term barriers would be highly beneficial.

### **Stage 2 review**

Issues associated with temporary barriers were highlighted in the Targeted Consultation Paper.

Similar to the feedback from the Working Group, stakeholders were supportive of guidance on the requirements for temporary barriers.

Stakeholders suggested that temporary barrier should be defined and guidance given on minimum standards, such as acceptable gap measurements, location requirements, ground stabilisation, access point requirements, maximum duration permitted, inspection intervals, and the provision of education to owners.

Stakeholders suggested that a range of acceptable options should be described, including plank and mesh.

The tables below describe the responses to the other specific questions posed in the Consultation Paper.

<b><i>Is there merit in requiring temporary barriers to be inspected at certain intervals (e.g. at intervals not exceeding three months unless otherwise arranged with the local government)?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
30	67%	27%	6%

Those stakeholders that supported an inspection at certain intervals did so on the basis of the changing conditions during the construction process.

Some stakeholders suggested that:

- monthly inspections be required, with the cost borne by the owner to encourage the installation of the permanent safety barrier;
- temporary barriers should only be in place for three months, with horizontal barriers such as plank and mesh covers possibly being allowed to remain longer.

Those stakeholders who did not support inspections highlighted that as building sites are fluid and circumstances change with the responsibility, it is best left with the builder, and swimming pools should not be treated any differently to other construction sites.

Others felt there was no merit in inspections as portions of the barrier would be propped open regardless, making the requirement a drain on local government resources for no benefit.

<b><i>Should a minimum standard for a plank and mesh barrier design be developed and prescribed in the Building Regulations as an acceptable barrier?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
30	87%	10%	3%

Supporting stakeholders suggested the need to provide guidance on the use of plank and mesh, highlighting it does not meet the standards but is a far safer option as a temporary measure on construction sites.

Stakeholders suggested that plank and mesh should be:

- treated the same as any other barrier on construction sites;
- required to be able to support the weight of a child;
- be constructed of steel mesh with gaps not greater than 100mm squares or 20mm plywood strong enough to support the weight of a child; or
- only allowed with an accompanying engineer's certification confirming that it meets the Standard.

Stakeholders further suggested that clarification is needed on whether or not plank and mesh is an acceptable temporary barrier, when local governments could determine that the design was acceptable as a performance solution, and that guidance was required on acceptable plank and mesh designs.

<b><i>Should the Building Regulations require all pool safety barriers to include a gate?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
29	55%	38%	7%

The majority of submissions support a requirement for a gate in all permanent barriers but not for temporary barriers. Comments included:

- Gates for temporary barriers would lead to increased likelihood of the site being accessible due to the ability to easily leave the gate open;
- Any requirement for a gate would not work for plank and mesh covers as no access point is required – specifying plank and mesh as acceptable barriers would mean there is no need for a gate;
- Gates should only be required for temporary barriers if other construction site barriers required the same; and
- The impracticalities of gates being required for temporary barriers due to sandy conditions on construction sites, meaning any gate would not self-close for very long anyway.

## Other jurisdictions

In accordance with the Ombudsman’s recommendation, a review of requirements in other Australian states and territories, including time limits on temporary barriers and inspections and approvals by building certifiers, was undertaken.

The requirements vary across Australia for the use of temporary barriers in respect to access points, inspections and time limits for use.

The following table provides an overview of the review:

	<b>Requirements</b>
<b>Queensland</b>	<ul style="list-style-type: none"> <li>• One gate for any temporary barrier, together with an inspection of the temporary barrier before the swimming pool is filled with 30cm of water, and further inspections after that at intervals not exceeding three months.</li> <li>• A building certifier must inspect and approve the barrier as being compliant.</li> <li>• A time limit of three months is allowed for the use of a temporary barrier, with the possibility of further three-month extensions where deemed appropriate by the building certifier.</li> </ul>

<b>NSW</b>	<ul style="list-style-type: none"> <li>• No specific requirement for safety barriers to have a gate.</li> <li>• Builders and pool owners have a responsibility to ensure that the construction site for a pool is made secure with a compliant child-resistant barrier during the construction period, as excavation works may hold water more than 30cm.</li> <li>• The owner must erect and maintain a pool construction warning notice that states the pool is 'not to be occupied or used' until an occupation certificate or a certificate of compliance is issued.</li> </ul>
<b>Victoria</b>	<ul style="list-style-type: none"> <li>• Gate is required in any permanent safety barrier.</li> <li>• Safety barriers must be completed within six months of the commencement of the swimming pool works, and a compliant safety barrier must be installed prior to filling the pool with more than 30cm of water.</li> <li>• Mandatory notification stages during construction of the pool, one being completion of precautions for public protection.</li> </ul>
<b>South Australia</b>	No inspection requirements for temporary barriers but has a time limit of two months after completion of the swimming pool for the use of a temporary barrier.
<b>Tasmania</b>	<ul style="list-style-type: none"> <li>• Requirement for a gate in any safety barrier, but no requirements for inspections of temporary safety barriers.</li> </ul>
<b>ACT</b>	<ul style="list-style-type: none"> <li>• Requirement for a gate in any safety barrier.</li> </ul>
<b>Northern Territory</b>	<ul style="list-style-type: none"> <li>• No specific requirements for temporary barriers.</li> <li>• A swimming pool should not be filled with more than 30cm of water until a permanent swimming pool barrier is installed.</li> </ul>

## Decision

Consistent with the Government's principles of best practice regulation, consideration has been given to whether the problems with barriers for pools under construction is best resolved through regulatory or non-regulatory measures. For the reasons stated below, it has been determined that the best means at this stage is to implement non-regulatory measures.

Closely related regulatory requirements with respect to construction sites and temporary barriers means complexity already exists. The vastly different circumstances and unpredictability of individual swimming pool construction sites, coupled with the multitude of owners' individual circumstances and choices with respect to installing a safety barrier, makes prescribing workable requirements in the Building Regulations for all likely situations challenging.

As outlined in the table above, each jurisdiction takes different approaches to regulating temporary barriers. It is important to note that the only other jurisdiction that has a regular periodic inspection regime in place like WA is Victoria, which commenced its inspection program in December 2019. An inspection regime based on regular intervals is considered to provide more robust regulatory oversight for ensuring compliance of safety barriers.

The Ombudsman identified that temporary barriers constructed without a gate were a cause of temporary fence panels being propped open, allowing access by small children and increasing the risk of drowning incidents.



Having no access point creates a higher likelihood of part of the safety barrier being propped open in order to gain access, whereas a self-closing, self-latching gate would close automatically after accessing.

However, it is recognised that the inclusion of a gate is no guarantee of reduced risk, as:

- a gate can also easily be propped open and forgotten;
- it could lead to more instances of being propped open given the ease of being able to open the gate; and
- it has the potential to lead to owner complacency in installing a permanent safety barrier.

The Building Regulations do not differentiate between temporary and other safety barriers for swimming pools. The regulatory requirements relate to the performance of a barrier in restricting access by young children to a swimming pool containing more than 30cm of water, with the intent of reducing the risk of drowning incidents. The type of barrier and the length of time it will be there is not of primary concern – it must simply perform the function as stipulated by the BCA. It is therefore problematic to differentiate between temporary and other safety barriers and possibly apply differing regulatory requirements.

The feedback from stakeholders was generally not supportive of regulatory change for temporary barrier requirements, particularly with respect to an access point, but was supportive of the development of guidance materials. The majority of support for requiring an access point in a safety barrier was in relation to permanent barriers, not temporary barriers.

Considering the approach adopted in some other jurisdictions, together with the Ombudsman's recommendations and stakeholder feedback, the preferred approach is to address the issues around temporary barriers through:

1. amending the Building Regulations to require the first barrier inspection (inclusive of temporary barriers) to be carried out by local government (as per Decision 1 above);
2. the development of guidance material on reinspecting temporary barriers within a timeframe not exceeding three months; and
3. the development of guidance promoting the use of child-resistant gates as best practice for temporary barriers.

The regulatory amendments as part of Decision 1, specifically the requirement for local governments to conduct the first barrier inspection rather than the builder, is considered to provide effective oversight when implemented in conjunction with associated guidance material. It is considered that local governments conducting this first inspection shortly after being notified by the owner and/or receiving the Notice of Completion for the swimming pool, along with guidance on reinspecting temporary barriers within a period of three months, will be as effective as the regulatory requirements in Queensland.

This first barrier inspection will often be of the temporary barrier and provides a mechanism for the local government to determine compliance of that barrier and to provide guidance on, and also arrange, the inspection of the permanent barrier once installed. Guidance on

inspecting temporary barriers at periods not exceeding three months, as opposed to regulatory change or prescribing time limits on their use, will allow the required flexibility for local government to determine what is appropriate to each situation.

The impracticalities of enforcing regulatory requirements in regard to access points in temporary barriers are such that it is considered much more effective to provide appropriate guidance and education. It is therefore proposed to develop guidance material advocating the inclusion of a child-resistant gate for all temporary barriers except plank and mesh covers.

Further guidance will be prepared in collaboration with WorkSafe to clarify the requirements for barriers during construction of a swimming pool to assist both builders and owners in understanding their responsibilities. In addition, guidance will be produced on the use of plank and mesh covers.

This guidance is intended to clarify the requirements applicable to pools under construction and, specifically, the interface between OSH and building laws.



### **Decision 2 – Barriers for pools under construction & other temporary barriers**

**Not to amend** the Building Regulations requirements for temporary barriers.

**Provide guidance on:**

- construction and other temporary barriers in general, including the good practice of having a child-resistant gate and the importance of not propping open or removing portions of temporary barriers;
- good practice of reinspecting temporary barriers at intervals not exceeding three months;
- risks associated with pools under construction; and
- the use of plank and mesh covers.

## **Impact analysis**

This decision will have no additional cost impact upon consumers, industry or government.

## Decision 3 – Reinspection of non-compliant safety barriers



### Ombudsman's recommendations summary

- Consult with local governments and other stakeholders to consider the issue of reinspection of swimming pool safety barriers that don't comply and consider a reinspection charge. Consider possible amendments to the Building Regulations.

## Background

Under the Building Regulations the owner of a swimming pool containing more than 30cm of water is required to install a safety barrier that restricts access by young children to the pool and its immediate surrounds. The local government is then required to arrange an authorised person to inspect the safety barrier at intervals not exceeding four years to ensure it is (and remains) compliant.

Reinspection of non-compliant safety barriers should be an important part of any local government's strategy for improving compliance with the requirements of the Building Regulations. Ideally, where non-compliance is detected during an inspection, enforcement of the requirements should include reinspection of that barrier until compliance is achieved.

## Statement of the issue

The Ombudsman's Report identified that neither the Building Act nor the Building Regulations specifically require local governments to undertake a reinspection if a swimming pool safety barrier is found not to comply with the specified standard on inspection. The Building Regulations are silent on reinspection of non-compliant barriers; however this is an implied part of the requirement to monitor compliance through four-yearly inspections.

While the Ombudsman noted that the reinspection process is often used as an effective compliance measure, he considered that, because reinspections of non-compliant safety barriers are not carried out by all local governments, it does not guarantee compliant barriers are installed.

The Ombudsman therefore recommended that, in order to provide clarity, improve consistency across local governments and, ultimately, improve the rate of compliance, consideration should be given to mandating the requirement to conduct reinspections of non-compliant safety barriers in the Regulations.

The Ombudsman further observed that the Building Regulations do not provide a specific reinspection fee and that the cost of reinspection is not necessarily factored into the local government inspection charging model. Further, in some local governments, ratepayers who do not own swimming pools or who own swimming pools with compliant barriers may be subsidising the cost of reinspection through higher rates charges. It was suggested that pool owners who fail to maintain compliance with swimming pool barrier requirements should directly bear the cost of reinspection, or in some cases multiple reinspections, as well as any other compliance actions necessary to achieve compliance. The Ombudsman recommended a funding model be developed for reinspecting safety barriers that do not initially comply with the applicable standards to ensure those owners bear any associated reinspection costs.

## Outcome of stakeholder consultation

### Stage 1 review

The Working Group considered reinspection practices and the Ombudsman recommendations when determining a Minimum Standard for dealing with safety barrier non-compliance.

The Working Group:

- agreed that non-compliant safety barriers should be reinspected until compliance is achieved;
- determined that reinspections should be carried out within a maximum period of 60 days of the initial finding of non-compliance and that local governments should determine on a case-by-case basis the appropriate period of time until the next inspection, having regard to on their own risk analysis; and
- considered that the cost of reinspection of non-compliant safety barriers should be recovered on a user-pays model.

### Stage 2 review

The Consultation Paper sought stakeholder feedback on the reinspection of non-compliant safety barriers.

The tables below describe the responses to the specific questions posed in the Consultation Paper.

<b><i>Do you support introducing a requirement to reinspect non-compliant barriers until compliance is achieved?</i></b>		
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>
31	93%	7%

The vast majority of stakeholders supported an explicit requirement for reinspections. RLSSWA suggested its research shows that reinspections increase compliance from 64.9 per cent on first inspection to 92.3 per cent on third inspection.

<b><i>Should a timeframe, not exceeding 60 days (unless otherwise determined/agreed with the local government), be prescribed for reinspecting non-compliant barriers?</i></b>		
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>
31	93%	7%

The vast majority of stakeholders were in favour of prescribing a maximum timeframe between reinspections in the Building Regulations, however some suggested that 60 days was too long.

Those stakeholders who opposed a prescribed maximum timeframe suggested that:

- a timeframe was not critical;

- it should be left to the discretion of the local governments and swimming pool inspectors; and
- a time frame would be better suited to guidance rather than being prescribed in the Building Regulations.

***Should the Building Regulations include an express requirement for reinspection of non-compliant safety barriers and prescribe a timeframe not exceeding 60 days?***

No. submissions	Support	Not Support
31	86%	14%

Consistent with the responses to the preceding questions in the Consultation Paper, the vast majority of stakeholders support amending the Building Regulations.

Stakeholders who did not support amending the Building Regulations expressed concern that it would be too onerous on local governments.

***Should a separate fee be implemented for reinspection of non-compliant swimming pool barriers?***

No. submissions	Support	Not Support
29	83%	17%

The vast majority of stakeholders supported fees covering the cost of reinspection, rather than specifically supporting a separate fee. Stakeholders generally noted that the cost of non-compliance should be borne by those responsible for the non-compliance.

Those stakeholders who did not support a fee suggested it would be an abuse of process to charge for reinspection given there are other legislative tools for penalising non-compliance, such as infringements. Many submissions highlighted that a reinspection fee would be akin to “double dipping” in regard to penalising non-compliance.

***If you think a fee should be implemented for reinspection, how should it be charged? For each and every reinspection until compliance is achieved, or using some other methodology?***

No. submissions	Support (charge fee every time)	Support (option to charge a fee)	Support (flexible administration of fees)	Neutral
27	45%	15%	22%	18%

Less than half of stakeholders supported a separate charge for each reinspection. Stakeholders suggested that in the same manner as four-yearly inspection fees, the local government should be able to add the reinspection fees to the rates.

Other stakeholders suggested allowing the current swimming pool levy on the rates notice to cover the initial inspection and one or two re inspections, and then consider introducing a one off flat fee to cover all subsequently required re inspections to achieve compliance.

Stakeholders also suggested using the *Local Government Act 1995* to raise a fee for a service that cannot exceed the actual cost of undertaking that service, invoicing the fee as an infringement notice so that the debt is recoverable and charging fees for each subsequent reinspection via a reducing tiered pricing model.

## Decision

Research statistics provided by RLSSWA<sup>8</sup> indicate 64.9 per cent of safety barriers comply on first inspection, another 19.6 per cent comply on second inspection and a further 7.7 per cent comply on the final inspection. Therefore, it can be demonstrated that reinspections significantly improve compliance from 64.9 per cent to 92.3 per cent. Barriers that are non-compliant carry significantly more risk of a young child drowning than barriers that are compliant. Increasing barrier compliance creates a safer outcome for young children near pool areas.

The reinspection of non-compliant barriers should form part of the normal inspection program for private swimming pools. These inspections are designed to enforce compliance with the specified standards, with reinspections forming an essential part of the process. Given that the Ombudsman identified that not all local governments currently reinspect non-compliant barriers, amendments will be made to the Building Regulations to mandate the reinspection of all non-compliant safety barriers. This will be supported by guidance for local governments and pool barrier inspectors.

The Building Regulations will not be amended to prescribe a maximum period of time between reinspections of non-compliant barriers. While the 60-day maximum period was generally supported by stakeholders, the period for reinspection is considered to be more appropriate as guidance rather than being prescribed in the Building Regulations.

Guidance will be provided for local governments and pool barrier inspectors on reinspecting non-compliant pool barriers until compliance is achieved, and ensuring that a period of 60 days does not lapse between those inspections. This provides flexibility while also encouraging local governments to reinspect within a reasonable timeframe so as not to leave non-compliant barriers in the community for an extended period of time. It also acknowledges that there are circumstances where a local government simply cannot reinspect and/or where the circumstances dictate a different approach be taken. Local governments can apply a risk based approach.

If upon implementation and evaluation of this decision it is apparent that local governments are not re-inspecting in a timely fashion, regulatory change can be considered to mandate a maximum period of time to reinspect.

The Ombudsman's Report suggested that reinspections could be further encouraged and increased through implementing a reinspection fee that covers the cost of the service.

A key principle is that swimming pool owners who fail to maintain compliance with safety barrier requirements should directly bear the cost of reinspections as well as any other actions necessary to achieve compliance.

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<sup>8</sup> Home Swimming Pools Barrier 2000-2016 Report, Royal Life Saving Society Western Australia Inc.

While stakeholder feedback supported covering the cost of reinspections, a separate fee to reinspect was generally not supported.

Stakeholder feedback supports the view that a charge for reinspection could be construed as a penalty rather than as a fee for service. Specific concerns were identified that swimming pool owners could be “double hit” by reinspection charges as well as infringement notices.

Stakeholders also identified that a separate reinspection fee would pose an additional administrative burden on local governments to record the number of inspections per property and invoice for the reinspections. Local government stakeholders suggested that this burden might be significant. In addition, it was noted that most local governments include the annual inspection charge in their rates notices and that there was broad support for this to continue.

Some stakeholders considered that the current fee system allows local governments to factor in reinspections, meaning owners with compliant pool barriers effectively subsidise the reinspection of non-compliant barriers. It is appropriate that reinspections form part of normal compliance enforcement duties, and therefore the cost of reinspecting should be factored in to the charging model for four-yearly inspections. As such, the preferred approach is to amend the Building Regulations to clarify that the cost of reinspection can be factored into the annual charging model. However, the charge is not to exceed the estimated cost of carrying out inspections and reinspections in that year.

Further amendments discussed under Decision 6 of this Decision Paper will increase the maximum annual inspection fee to better reflect cost recovery of conducting inspections and reinspections.



### **Decision 3 – Reinspection of non-compliant barriers**

#### **Amend the Building Regulations to:**

- specifically require reinspection of non-compliant swimming pool safety barriers; and
- clarify that the inspection fee incorporates the reinspection of non-compliant barriers (refer to Decision 6).

#### **Provide guidance on good practices for:**

- arranging reinspections promptly in the event of non-compliance;
- reinspecting non-compliant barriers until compliance is achieved; and
- reinspecting non-compliant barriers within a 60-day maximum period, where possible and practicable.

## **Impact analysis**

No negative impact is anticipated from amending the Building Regulations. This change is specific to local government compliance procedures, will not impact industry and will have minimal impact on consumers.

This amendment is considered to be a clarification of the existing requirements to monitor and enforce compliance of safety barriers.

Those local governments that currently do not reinspect non-compliant barriers will now be required to do so, which may impact upon resourcing.

The impact on local government resourcing is expected to be reduced by clarifying that charges for reinspections can be included in the annual fee.

To implement recommendation 20 of the Ombudsman's Report, the Building Regulations will be amended to make clear that the reinspection cost is to be factored into the annual inspection charging model. While this does not align precisely with the wording of recommendation 20, Stage 1 and 2 of the review has highlighted the administrative burden associated with charging separately for reinspections and raised the concern that a reinspection charge could be viewed as a form of penalty.

These amendments to the Building Regulations will increase compliance with safety barrier requirements in those local governments that currently do not reinspect. Clarifying how to charge for reinspections will assist local governments in achieving cost recovery, and will ensure there is no double penalty created.



## Decision 4 - Compliance and enforcement strategy for barrier compliance



### Ombudsman's recommendation summary

- Develop an evidence-based enforcement strategy to improve compliance with legislative requirements. Determine if legislation amendments are required to support the effectiveness of the enforcement strategy.

## Background

The Ombudsman's Report acknowledged that there is an inconsistent approach to compliance and enforcement across local governments. While to some extent this inconsistent approach can be explained by the vast geographical and resourcing differences between local governments, it is also due to the lack of an agreed or standard process for regulating safety barrier compliance.

With respect to encouraging or achieving compliance with swimming pool safety barrier requirements, the Building Act provides for the use of infringement notices, building orders, and prosecution. Local governments informed the Ombudsman that they use the reinspection process effectively as a persuasive compliance method. Some local governments also advised the Ombudsman that the higher penalties associated with a building order under the Building Act makes it a more effective tool for achieving compliance than infringements and prosecutions.

Taking this into consideration, as well as the importance of appropriate funding and compliance powers, the Ombudsman recommended the development of an evidence-based enforcement strategy, including the use of sanctions (e.g. infringement notices, prosecutions), reinspections and building orders to achieve a common approach to compliance and enforcement across all local governments.

## Outcome of stakeholder consultation

### Stage 1 review

The Working Group considered practices around the use of enforcement tools under the Building Act and considered the development of a compliance and enforcement strategy. It was identified that each local government has a broader compliance and enforcement strategy that guides the use of sanctions across regulatory areas beyond swimming pools and safety barriers. These strategies are implemented as policies, procedures or practices and are dependent on the resources and size of the local government, the history of compliance issues, and the preference for using enforcement over other means.

Based on this, the Working Group determined that developing a standardised compliance and enforcement strategy for all local governments, in accordance with the Ombudsman's recommendation, is not appropriate.

## Stage 2 review

The Consultation Paper considered the development of a compliance and enforcement strategy for safety barrier compliance.

The tables below describe the responses to the specific questions posed in the Consultation Paper.

<i>Is there a need for guidance material on safety barrier compliance and enforcement? If so, what should be included?</i>		
No. submissions	Support	Not Support
30	93%	7%

The vast majority of stakeholders strongly supported guidance material to assist local governments develop evidence-based enforcement strategies where repeat inspections occur.

Stakeholders generally agreed that an outline of enforcement tools available under the Building Act should be provided, and guidance as to when and how best to use these. Examples were provided such as timeframes and the enforcement hierarchy – i.e. when and how in respect of reinspections, infringements, building orders, giving notice, entry warrants and the like.

Some stakeholders who did not support guidance material commented that current compliance and enforcement strategies work well, apart from the small minority of local governments that need extra motivation to make use of available sanctions such as infringements.

## Decision

Having considered concerns raised by stakeholders during stage 1 and 2 of the review, it is clear that the most effective way in which to implement recommendation 18 of the Ombudsman's Report and improve compliance with the building legislation is to develop detailed guidance material on compliance and enforcement, rather than amend the Building Regulations.

It is considered that, when taken in conjunction with the reinspection proposals in Decision 3 of this Decision Paper, guidance material can reasonably be expected to satisfy the Ombudsman's recommendation without compromising the enforcement strategy of individual local governments, and without preventing local governments from continuing to refer to their own broader compliance strategies.

Guidance on developing compliance and enforcement policies and processes will be developed to assist local governments on using available enforcement tools and sanctions under the Building Act

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#### **Decision 4 – Compliance and enforcement strategy**

**Provide guidance** on compliance and enforcement strategies, including the use of available enforcement tools and sanctions (e.g. infringement notices) under the Building Act to penalise non-compliance, in order to achieve higher levels of compliance and encourage a common approach.

### **Impact analysis**

This decision will have no additional cost impact upon consumers, industry or government.

## Decision 5 – Four-yearly inspections: Administering, record keeping and reporting



### Ombudsman's recommendations summary

- Monitor local government compliance with the requirement under the Building Regulations to undertake four-yearly inspections of safety barriers, and require local governments to report on compliance annually.
- Provide guidance to local governments on the manner and form/key elements of information/records management of swimming pools and safety barriers.
- Consider promotion to local governments of a quality assurance process for safety barrier inspections.
- Work with local governments and other stakeholders to develop a template safety barrier inspection checklist incorporating required elements to meet applicable building standards.

## Background

### Inspections

Under the Building Regulations, the local government for the district in which a swimming pool containing water that is more than 30cm deep is located must arrange for an authorised person to carry out an inspection of the safety barrier at intervals of no more than four years.

During the Ombudsman's investigation, his office randomly identified 500 swimming pools whose safety barriers were due for inspection between 1 July 2014 and 30 June 2015 and requested certain records about the inspection of those barriers. Those 500 pools were selected from five different local government areas (100 from each one). The review found that none of the five selected local governments recorded that they had inspected all swimming pool barriers at intervals of no more than four years. In fact, where records were available, four of the five selected local governments had only inspected between 12 and 54 per cent of swimming pool barriers due for inspection at intervals of no more than four years.

The Ombudsman also conducted a survey of all 139 local governments in WA in order to collect information about swimming inspections during that same July 2014 to June 2015 period. 59 local governments (43 per cent) were identified as collectively having a total of 8,639 private swimming pools (out of a total 144,899 pools) overdue for inspection as at 30 June 2015.

Based on those results, the Ombudsman recommended that Building and Energy monitor local governments' compliance with the Building Regulations, including by requiring a report on compliance be tabled in the Parliament each year.

### Record keeping

The Ombudsman's Report also highlighted the importance of local governments' records management systems. Local governments need to maintain a records management system that will enable them to effectively schedule and monitor four-yearly safety barrier inspections.

The Ombudsman identified key elements required in a records management system relating to swimming pools and their barriers, and recommended guidance on those elements be provided to local governments.

The Ombudsman further identified that pool barrier inspectors are largely autonomous in their role and that monitoring their effectiveness is difficult. It was therefore recommended that local governments adopt quality assurance processes to ensure inspections are carried out in a consistent manner. The Ombudsman also recommended the development of a template inspection check list that incorporates all the required elements to meet the applicable building standards.

## **Monitoring and reporting**

In response to the Ombudsman's Report, Building and Energy commenced monitoring local government's compliance with the Building Regulations in early 2018.

In March 2018, the then Building Commissioner advised local governments that he would be requesting they provide information on their pool inspection program for the 2017/18 period. This was followed by a formal request in June 2018.

On 12 September 2018, the inaugural progress report 'Local government's four-yearly inspections of private swimming pool safety barriers 2017/18' (annual report) was tabled in Parliament. The report identified that as at 30 June 2018, 3,632 swimming pools out of a total of 159,183 were overdue for inspection. This demonstrated a significant overall reduction in the number of overdue pool inspections, compared to that identified by the Ombudsman over the 2014/15 period.

A similar process was conducted in 2019 and an annual report was tabled in Parliament on the 15 October 2019. This annual report indicated further reduction in the number of overdue inspections, down to 2,545 as at 30 June 2019. While there is still room for improvement, these figures indicate that formal monitoring and reporting to Parliament has significantly increased local government compliance with the requirement to inspect safety barriers at four-yearly intervals.

## **Outcome of stakeholder consultation**

### **Stage 1 review**

The Working Group considered record keeping practices and requirements; minimum information for the swimming pool register; best practices when carrying out an inspection; and quality assurance processes.

Incorporating key elements identified by the Ombudsman, the Working Group proposed minimum information for the swimming pool register and also determined minimum information for an inspection template. Further detail about the Minimum Standard of information for the swimming pool register and the inspection template is at Appendix 2.

The Working Group was of the view that it would be problematic to standardise a quality assurance process as local governments' needs and resources vary considerably. It was considered that elements of the Minimum Standard may assist local governments in managing quality assurance.

## Stage 2 review

The Consultation Paper proposed that the Building Regulations be amended to require annual reporting by local governments on the progress of their four-yearly inspection program, and sought feedback on elements of the Minimum Standard in relation to the swimming pool register, inspection template, inspection records, photographs, and quality assurance.

The tables below describe the responses to the specific questions posed in the Consultation Paper.

<b><i>Do you agree with the Minimum Standard of information proposed for the swimming pool register?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
31	90%	7%	3%

The vast majority of stakeholders supported the Minimum Standard, commenting that the information would provide a filed checklist, ensuring previous inspection information is readily available and the inspector is well informed.

Stakeholders that did not support the Minimum Standard noted:

- the range of variance between capabilities of local government systems;
- the methods of recording swimming pools; and
- how inspection programs are managed, which makes it difficult to standardise swimming pool registers.

<b><i>Is there benefit in requiring a minimum set of fields for an inspection template? If so, do you have any suggestions for information that should be included?</i></b>		
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>
31	90%	10%

The majority of stakeholders noted that an inspection template should provide a checklist of all requirements. A minimum set of fields will provide a benchmark, while allowing for edits and additions. Stakeholders did not provide any suggestions on the types of information to be included.

<b><i>Would you support the development of a template inspection form or would you prefer to use your own and where necessary adjust this to align with required minimum fields?</i></b>		
<b>No. submissions</b>	<b>Support (new form)</b>	<b>Support (own form)</b>
31	74%	26%

Stakeholders who supported a new template form stated that it should be prescribed in the Building Regulations.

Stakeholders who supported the use of existing forms noted it would be better for all local governments to be required to use a minimum set of fields, adjusting their own forms where need to accommodate the minimum fields.

<b><i>Do you support the Minimum Standard outlined for inspection records?</i></b>		
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>
31	93%	7%

The vast majority of stakeholders supported the Minimum Standard for inspection records. Those stakeholders who did not argued it could be onerous for small rural local governments.

<b><i>Do you agree with the Minimum Standard outlined for photographs?</i></b>		
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>
31	61%	39%

The majority of stakeholders who supported the Minimum Standard noted the benefits in terms of investigations and enforcement activities. Those stakeholders that did not support the Minimum Standard flagged privacy concerns and difficulties with the inbuilt date and time stamps.

<b><i>Should the inspection template and Minimum Standards for inspection records and photographs be prescribed in the Building Regulations?</i></b>		
<b>No. submissions</b>	<b>Support (aggregated)</b>	<b>Not Support (aggregated)</b>
31	49%	51%

Stakeholders were divided on prescribing the inspection template and Minimum Standards in the Building Regulations, with the slim majority not supportive. These stakeholders argued the requirements would suit implementation through guidance, rather than amending the Building Regulations.

<b><i>Should quality assurance form part of the Minimum Standard?</i></b>		
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>
29	41%	59%

Stakeholders who supported quality assurance as part of the Minimum Standard did so on the basis of creating consistency. Those stakeholders who did not support the inclusion noted that quality assurance is a matter for individual local governments and their own internal processes and procedures. Guidance was suggested as a more appropriate measure.

## Decision

The information that has been voluntarily provided by local governments over the past two years demonstrates a significant reduction in the number of swimming pools overdue for inspection. This suggests that formal monitoring and regular reporting on progress has had a positive effect on local government compliance with the requirement to inspect safety barriers.

To increase compliance, and implement the recommendation in the Ombudsman's Report, the Building Regulations will be amended to include a mandatory requirement for local governments to annually report data on the progress of their swimming pool inspection program to the Building Commissioner.

The information required to be reported includes:

- the total number of private swimming pools in the district that are subject to Part 8 Division 2 of the Building Regulations;
- of those private swimming pools, the number that had their safety barriers inspected\* within the previous financial year; and
- the number that had not been inspected\* within the last four years (are overdue).

*\* 'inspected' means a local government authorised person has physically attended the property and has completed an inspection of the pool safety barrier to ascertain whether the barrier is compliant with the Regulations.*

To implement recommendation 8 in the Ombudsman's Report, and avoid any unnecessary regulatory burden for small local governments, guidance material will be developed on records management. The intent is to assist local governments to maintain records that will enable them to effectively schedule and monitor four-yearly barrier inspections. Guidance will be provided on the minimum information that should be recorded in the local government swimming pool register.

To assist in ensuring inspections are both consistent and effective, guidance will also be provided on best practice processes for arranging and carrying out inspections as well as accessing properties. This will specifically include the development of a template inspection checklist incorporating all of the elements required to meet the applicable building standards. The template, in conjunction with the proposals set out in Decision 12 of this Decision Paper, will implement recommendation 16 of the Ombudsman's Report.

Guidance material on carrying out an inspection will include barrier access point considerations, giving direction on what to do when no gate is identified in the safety barrier, and will guide inspectors on taking photographs for records.

This guidance will form part of the training manual for swimming pool inspectors, as well as the annual training sessions run by Building and Energy (see Decision 12).

It is anticipated that this guidance material will also assist local governments in their quality assurance procedures, thereby promoting quality assurance for the inspection program, in line with recommendation 15 of the Ombudsman's Report. Best practice examples will be provided.





## **Decision 5 – Four-yearly inspections: administering, record keeping & reporting**

**Amend the Building Regulations** to require local governments to report annually to the Building Commissioner, providing sufficient data (as published by the Building Commissioner) to demonstrate progress with the four-yearly inspection program.

**Provide guidance** on:

- organising inspections, accessing properties (including difficulty arranging/gaining access), and carrying out an inspection (including a checklist of all elements to be inspected, barrier access point considerations, and taking photographs);
- record management practices appropriate to swimming pool barrier inspections; and
- pool register minimum information.

### **Impact analysis**

Most local governments voluntarily provided the required pool inspection information to Building and Energy for inclusion in the two annual reports tabled in Parliament. For the 2017/18 period 119 of the 139 local governments (86 per cent) provided the data voluntarily, and for 2018/19 period this increased to 122 (88 per cent).

Almost all local governments indicated that collation and provision of this information did not impose significant cost or pressure on resources.

Amendments to the Building Regulations to mandate the provision of this same information is therefore not expected to have any significant adverse impact, financial or otherwise, on local governments. As this regulatory change is specific to local government service and processes, it is not expected to adversely impact consumers or industry.

## Decision 6 – Swimming pool barrier inspection charge



### Ombudsman's recommendations summary

- Clarify with local governments the charges that can be imposed for inspections of swimming pools/barriers.
- Consult with local governments regarding the adequacy of inspection charges – amend the Building Regulations where appropriate.

## Background

Under the Building Regulations local governments are required to arrange for an authorised person to inspect the safety barrier to a swimming pool containing more than 30cm of water at intervals not exceeding four years. The Building Regulations enable the local government to charge the pool owner for these inspections.

The inspection charge is discretionary. However where a local government does charge a fee, it must not exceed the estimated average cost of carrying out inspections in that year, and, in any event, must not exceed the maximum prescribed charge of \$58.45 per year (or \$233.80 per inspection) in the Building Regulations.

The amount that is charged to pool owners varies considerably between local governments due to local differences in administering the pool inspection program.

## Statement of the issue

The current maximum annual charge is, in some local governments, insufficient to fund an effective inspection program and achieve cost recovery for delivering the service. This is understood to be the case mostly in rural, remote, and other smaller local government authorities.

A number of smaller local governments reported to the Ombudsman that the current maximum charge does not cover the actual costs of administering the inspections process and the inspection itself. The Ombudsman reported that some local governments that did not directly charge swimming pool owners were instead subsidising the inspection process through general rates charging across all ratepayers.

The Ombudsman's Report observed uncertainty among local governments about the charges they impose for swimming pool barrier inspections, particularly about when they can be charged. It found that different charges often reflected different interpretations of the Building Regulations.

The Ombudsman's Report recommended that:

- clarification be provided to local governments about the charges they can impose for inspections of swimming pool barriers, and specifically whether or not they can be charged only in the year of the actual inspection or each year; and

- consultation be undertaken with local government in order to determine the adequacy of current charges in meeting the cost of safety barrier inspections and, if appropriate, seek amendments to the Building Regulations so that the charge is able to reflect this cost.

Separately, Building and Energy is aware of inconsistent interpretations and general lack of clarity arising from the current wording used in the Building Regulations on the charging of fees. Some local governments consider that the regulatory requirement does not require a local government to actually carry out an inspection, and that use of the term 'arrange' in regulation 53(1) means that all they have to do is organise an inspection.

## Outcome of stakeholder consultation

Stakeholder feedback on fees for safety barrier inspections did not specifically form part of Stage 1 and 2 of the review. However, feedback on the adequacy of the maximum prescribed charge was sought from WALGA and some local governments.

Further, some comments were received from stakeholders as part of Stage 2 of the review, in considering the costs of reinspections.

### WALGA feedback

WALGA's overarching position with respect to fees and charges that local government is responsible for is *"that a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services"*.

WALGA also commented that:

*'Fees determined by State Government legislation are of particular concern to Local Governments and represent significant revenue leakage because of:*

- *lack of indexation;*
- *lack of regular review (fees may remain at the same nominal levels for decades), and*
- *lack of transparent methodology in setting the fees (fees do not appear to be set with regard to appropriate cost recovery levels)'.*

WALGA's position is that local governments should determine their own charge, but not exceed their estimated annual costs.

### Stage 2 review (limited)

While the Consultation Paper did not specifically seek comments on the existing swimming pool/safety barrier inspection charge, some respondents did provide feedback.

The majority of stakeholder comments received included consideration of reinspections in the charging model. Some stakeholders suggested that local governments should make use of infringement notices in order to cover the cost of multiple reinspections and encourage compliant safety barriers, rather than try to factor in the cost of all possible reinspections.

Other stakeholders highlighted the difficulty of factoring in reinspection costs as non-compliance rates continually change, and specifically raised objections to the idea of a separate reinspection charge.

A number of stakeholders noted that the current maximum charge is well below what it costs to cover all required inspections and the ongoing enforcement of non-compliant aspects.

## Other jurisdictions

A review of fees in other Australian states and territories has been undertaken for comparison purposes and to inform decision making.

The table below provides an overview of the review:

	Requirements
<b>Queensland</b>	<ul style="list-style-type: none"> <li>Private inspectors can be engaged to consult or to carry out a full inspection and issue a certificate or non-conformity notice, at market rates which appear to be in the vicinity of \$80 - \$150 per inspection.</li> <li>A pool safety certificate is an additional cost and is prescribed as \$41.05.</li> </ul>
<b>NSW</b>	<ul style="list-style-type: none"> <li>Local councils may charge a maximum of \$150 for an initial inspection.</li> <li>If a further inspection is required, a fee of no more than \$100 may be charged.</li> <li>Private certifiers set their own schedule of fees, ranging anywhere from \$280 up to \$500 per inspection.</li> </ul>
<b>Victoria</b>	<ul style="list-style-type: none"> <li>Registration of pools and spas became mandatory on 1 December 2019. Inspections are required by the due date set by the local government and every four years thereafter. No maximum fee set by legislation.</li> </ul>
<b>South Australia</b>	<ul style="list-style-type: none"> <li>Only council officers have the legislative authority to enforce requirements for swimming pool and spa pool safety.</li> <li>A lodgement fee of \$190 applies for development applications. This fee has been established to compensate councils for the cost of inspecting new swimming pools.</li> </ul>
<b>Northern Territory</b>	<ul style="list-style-type: none"> <li>There are no charges applied to application, inspection or issue of compliance certificates for swimming pools.</li> </ul>
<b>ACT</b>	<ul style="list-style-type: none"> <li>No requirement for inspections – no fees.</li> </ul>

## Decision

### Building Regulations – r.53(1)

To implement recommendation 10 of the Ombudsman’s Report and address the uncertainty that exists around the charges that local governments can charge for inspections, specific guidance will be provided on the application of regulation 53(1) of the Building Regulations.

This guidance will:

- explain that while the charge for four-yearly maintenance inspections needs to cover the entirety of the local government’s cost, the amount can be spread over the four years and be charged annually. This annual charge would be expected to be a quarter of the local government’s four-yearly inspection charge;

- clarify that this charge must also incorporate reinspections (as per Decision 3 of this Decision Paper), as well as the monitoring of pools with less than 30cm of water (as per Decision 7 of this Decision Paper). Information on how this could be determined will be set out in the guidance document; and
- clarify that the intent of the word “arrange” in regulation 53(1) of the Building Regulations is to require the local government to actually carry out the inspection. There will however be tolerance for extraordinary circumstances where it is not reasonably practicable for the physical inspection to actually be carried out

### **Maximum charge for inspections**

Consultation with local governments identified that the cost of carrying out swimming pool/safety barrier inspection programs varies greatly. With 139 local governments across WA of different shapes, sizes and with varying numbers of swimming pools, a standard charge applicable to all is not suitable. While the current maximum inspection annual charge of \$58.45 appears to be suitable for almost all metropolitan local governments, for regional areas it is understood to be too low. The majority of local governments unable to achieve cost recovery for providing this service are located in regional and remote areas.

Further, it is imperative to take into account Decision 3 of this Decision Paper to implement a mandatory requirement for reinspections of non-compliant safety barriers but not prescribe a specific fee for those reinspections. This means that when determining whether or not to increase the maximum charge, and by how much, the cost of carrying out the required reinspections must also be considered, as well as the fact that some local governments are already charging an additional fee to reinspect non-compliant safety barriers.

In light of these issues, Building and Energy will develop guidance for local government to clarify that the maximum charge will need to cover the cost of reinspections in addition to the normal four-yearly inspection.

Account must also be taken of Decision 7 of this Decision Paper to require the monitoring of pools with less than 30cm of water. As with reinspections, it is not proposed to prescribe a separate fee for this, so the cost of monitoring also needs to be included in the four-yearly inspection fee.

WALGA's preferred position, to remove maximum charges from the Building Regulations and allow local governments to set their own fees and charges based on cost recovery, has been considered.

However, such a change risks creating undesirable outcomes for owners and general rate payers, either in the form of inconsistent fees being charged by local governments (particularly between adjacent local government areas or those within the metropolitan area), or the actual costs of inspections being subsidised through the general rates and charges collected.

A more pragmatic, and therefore preferred approach, is to increase the maximum charge to ensure it better reflects the costs of inspections and is subject to the same regular indexation applied to other fees and charges under the Building Act.



## **Decision 6 – Swimming pool barrier inspection charge**

### **Amend the Building Regulations to:**

- increase the prescribed annual maximum charge for swimming pool barrier inspections to \$78 to enable local governments to achieve cost recovery for carrying out the inspection service; and
- clarify that this charge includes reinspections of non-compliant barriers.

### **Provide guidance** to local government to clarify:

- the intent that the new annual maximum charge will improve the ability for local governments to achieve cost recovery, and that it incorporates the four-yearly safety barrier inspections, reinspections of non-compliant barriers, and the monitoring/inspection of pools with a depth of water 30cm or less; and
- the requirement to actually conduct (not simply arrange) an inspection at intervals not exceeding four years.

## **Impact analysis**

The decision to increase the maximum charge is not expected to impact significantly on owners of swimming pools (consumers).

The decision has been made having regard to: only minimal CPI increases over 30 years; charges associated with safety barrier inspections in other jurisdictions; local government costs; the inclusion of reinspections of non-compliant barriers; and the inclusion of monitoring/inspection of pools with a depth of water 30cm or less.

The decision to charge is discretionary, meaning the impact will depend solely on individual local governments and their charging models and decisions. The annual charge is also a maximum fee, subject to the local government not charging more than it costs to deliver the inspection service.

Analysis was undertaken by Building and Energy to determine exactly how much the maximum fee should be increased, having regard to the different geographic boundaries between local governments, current charges and changes to WA's economic circumstances.

Firstly the schedule of fees charged by 30 local governments was analysed. From this, 12 local governments (with a mix of regional and metropolitan) were selected for further analysis.

These local governments were selected as their schedule of fees and charges indicated they were charging some of the highest amounts in WA, either the maximum or close to the maximum allowable fee of \$58.45. The selection was made on the basis that these were the local governments most likely to be having difficulty achieving cost recovery for delivering the four yearly inspection service, whereas those charging under the maximum fee were considered to be more likely to be achieving cost recovery. The selection also reflected a good variety of local governments in terms of size and location.

Based on analysis of the costs per inspection of these local governments, a maximum charge of \$78 per annum was determined to meet the cost recovery requirements for the inspection program.

## Decision 7 – Inspection of pools with a depth of water 30cm or less



### Ombudsman’s recommendation summary

- Promote to local government the good practice of conducting random inspections of decommissioned swimming pools to ensure they are not in use and requiring a barrier.

## Background

For a variety of reasons owners may from time-to-time empty their swimming pools.

Swimming pools that have a depth of water 30cm or less, including those that are empty, do not have the same safety barrier requirements under the Building Regulations as those which contain water with a depth of more than 30cm.

The definition of ‘private swimming pool’ within the Building Regulations hinges on the swimming pool being capable of containing water of a depth of more than 30cm. Once a swimming pool has water in it with a depth of more than 30cm the Building Regulations require safety barriers, such as an isolation fence, to be installed. However, if a swimming pool has a depth of water 30cm or less, safety barriers are not required.

The Building Regulations require local governments to inspect the safety barriers of private swimming pools that contain a depth of water more than 30cm. The associated inspection charge is also only relevant to swimming pools that contain more than 30cm of water. This is summarised in the following table.

Private swimming pools	
With depth of water more than 30cm	With a depth of water 30cm or less
Safety barriers required	No safety barriers required
Safety barrier inspections required	No safety barrier inspections required
Safety barrier inspection charge applies	No safety barrier inspection charge applies

## Statement of the issue

There is a risk that emptied swimming pools may be refilled with water relatively quickly and easily without the local government’s knowledge. This could lead to pools being excluded from local government safety barrier inspections and, in turn, an increased chance of non-compliant safety barriers posing a risk to young children.

The Ombudsman recommended that Building and Energy promote to local government the good practice of maintaining a record of empty pools and conducting random inspections to ensure that these swimming pools have either remained empty or, if they have been refilled, that they have a compliant safety barrier installed.

The inspection of pools with less than 30cm of water raises several concerns, including that:

- the requirement in the Building Regulations for a safety barrier is only applicable to swimming pools with a depth of water more than 30cm;
- the requirements for local government inspections of safety barriers are only applicable to swimming pools with a depth of water more than 30cm;
- current inspection charges are only applicable to swimming pools with a depth of water more than 30cm;
- the ability for inspectors to access a property to inspect is only applicable to swimming pools with a depth of water more than 30cm; and
- inspecting a swimming pool to ensure it has a depth of water 30cm or less is far less intensive than inspecting the compliance of pool safety barrier.

## Outcome of stakeholder consultation

### Stage 1 review

The Working Group considered the problems associated with of pools with a depth of water 30cm or less.

The Working Group determined that random inspections:

- would be difficult to manage;
- would create an administrative burden; and
- may not deliver the best outcome.

The Working Group generally agreed that these swimming pools would be better dealt with as part of the normal four-yearly inspection program, so that a period of four years does not lapse between inspections. This has been included in the Minimum Standard.

### Stage 2 review

The Consultation Paper sought stakeholder feedback on including swimming pools with less than 30cm of water in the inspection program.

Stakeholders were generally supportive of introducing a requirement to inspect these swimming pools. In addition, comments were received that highlighted the need to define when a swimming pool is considered to be decommissioned. However stakeholders did not generally support the implementation of a separate fee for inspecting empty swimming pools, with some suggesting the normal charge should apply until it can be determined the swimming pool is no longer capable of holding water more than 30cm deep.

Other stakeholders queried whether an inspection was required, saying that reliance could instead be placed on the owner to submit a declaration with a date-stamped photograph as evidence that the swimming pool contains a depth of water 30cm or less, and that this could be submitted annually or at the time of the normal four-yearly inspection. This could include a reminder that should the owner wish to reinstate the swimming pool and fill it with more than 30cm of water they would be required to contact the local government and have an inspection of the safety barrier to ensure its compliance with the applicable standards.



The tables below describe the responses to the specific questions posed in the Consultation Paper.

<b><i>Do you agree with the proposed Minimum Standard that empty swimming pools continue to be inspected to ensure they are not refilled without a compliant barrier in place?</i></b>		
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>
30	87%	13%

A number of stakeholders noted that as long as a swimming pool is capable of holding 30cm of water it still poses a risk and should remain on the register and continue to be inspected.

Some stakeholders suggested writing to the owners of pools with less than 30cm of water to advise that the pool still poses a risk and will remain on the register and be charged accordingly, and conducting inspections either four-yearly or at some other interval as determined by the local government to monitor whether or not the pool has been refilled.

Those stakeholders who did not support inspecting empty swimming pools mostly cited the inability under the Building Regulations to charge for this activity.

<b><i>Is there a need to establish a separate inspection charge for empty pools?</i></b>		
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>
29	41%	59%

Stakeholders indicated that if any charge was to be levied, it should be the application of the normal inspection charge, up until it can be determined the empty swimming pool can no longer be resurrected to meet the definition of such in the Building Regulations

Others stakeholders suggested a minimum charge be implemented for monitoring empty pools.

Comments from those stakeholders who did not support the introduction of a separate charge, suggested that the reinspection charge should cover any subsequent inspections, or that current inspection charges should apply until a pool is determined as decommissioned.

<b><i>Is there a need to define when a swimming pool is considered to be decommissioned and therefore no longer able to be refilled with water and impose a drowning risk? If so, what aspects should be considered?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
32	75%	16%	9%

Stakeholders suggested that a definition of decommissioned swimming pool is required in order to define when the pool is no longer able to be used i.e. removed, converted, damaged so that it can't hold water etc.

Suggestions for defining decommissioning included removing aspects that make a structure a swimming pool – either complete removal of the entire structure, or removing its ability to hold more than 30cm of water.

Other stakeholders suggested that if an empty swimming pool is not intended to be either re-used or removed fully that, in order to remove the potential drowning risk, plank and mesh covers should be used or it should be filled in.

## Decision

Where an owner empties a swimming pool and decides not to maintain the pool safety barrier, they take the responsibility for ensuring that the pool remains empty or with a depth of water of 30cm or less. Such decisions must be made on the understanding that swimming pools containing water of a depth of more than 30cm present a significant risk to young children and are required to have compliant safety barriers in place to restrict young children's access the pool area.

There is a need to continue monitoring swimming pools with a depth of water 30cm or less to ensure that if they are refilled they have compliant safety barriers installed. Empty pools can be easily refilled and quickly create a risk to young children.

In line with the recommendation in the Ombudsman's Report, Building and Energy will promote to local governments the good practice of monitoring pools that have a depth of water 30cm or less to ensure they have not been refilled with water without a compliant safety barrier in place. However the Building Regulations will not be amended to mandate that such inspections take place. This issue is best managed by individual local governments in consultation with owners.

Guidance will be produced for local governments on managing the risks associated with swimming pools with a depth of water 30cm or less, and on the importance of including these swimming pools as part of the four-yearly inspection program, leaving it to local governments to determine the best option for their locality, taking into account their resourcing and other needs.

The guidance will highlight the importance of retaining these pools on the register, identifying them as 'empty' or '≤30cm water' but still requiring monitoring at intervals not exceeding four years. In addition, the guidance will include information about what the monitoring should entail and what to do if the swimming pool has been refilled with water.

Guidance for owners will also be developed.

Local governments should include the estimated cost of inspecting swimming pools with a depth of water 30cm or less into their estimated cost for running their normal four-yearly safety barrier inspection program. This charge should cover the entirety of the local government's cost in conducting the four-yearly inspections, and incorporate safety barrier inspections, reinspections of non-compliant barriers and monitoring swimming pools with a depth of water of 30cm or less. Where inspections of swimming pools with a depth of water of 30cm or less are conducted, this will not involve the same intensity as a safety barrier compliance inspection because it will be limited to checking the depth of water.

Importantly, the proportional amount of the charge must not exceed the estimated cost of monitoring the status of swimming pools with a depth of water of 30cm or less.

To assist with managing the risk associated with empty pools, Building and Energy will provide guidance to local government on decommissioning swimming pools. This will include

promoting the monitoring of empty swimming pools up until the pool is decommissioned and no longer able to be refilled with water. Local governments will be guided in determining when a pool can be considered to be decommissioned and therefore able to be excluded from inspections and monitoring. This guidance will also include information on changing the use of a swimming pool, for example to a fish pond.



### **Decision 7 – Inspection of pools with a depth of water 30cm or less**

**Provide guidance** to local governments on:

- the good practice of monitoring the status of private swimming pools with a depth of water 30cm or less for the purpose of ensuring they are not refilled with a depth of more than 30cm of water without a compliant safety barrier in place; and
- including the estimated cost of inspecting pools with a depth of water 30cm or less into their estimated cost for the running of their normal four-yearly pool barrier inspection program.

**Provide guidance** to pool owners:

- of their obligation to ensure the depth of water in their pool remains at 30cm or less;
- on the need to notify the local government if their pool is refilled with water;
- that the pool will remain on the local government's pool register;
- that the pool will continue to be monitored until decommissioned or removed;
- the importance of installing a compliant safety barrier prior to refilling the pool with water, and the applicable penalties for failing to do so; and
- on decommissioning private swimming pools, conversions (e.g. fish ponds), etc.

## **Impact analysis**

This decision is expected to have only a very small impact on consumers, industry or local government. It is understood from comments and feedback from local government that inspections of swimming pools with a depth of water of 30cm or less already occur in some local government areas.

The cost of monitoring these pools to ensure they are not refilled with water without a compliant safety barrier in place should be included in the consideration of the normal four-yearly safety barrier inspection program charge by the local government.

This charge is intended to cover the local government's cost in conducting the four-yearly inspections, incorporating safety barrier inspections, reinspections of non-compliant safety barriers and also monitoring those swimming pools with a depth of water of 30cm or less.

Although this is effectively an additional cost, it is not expected to significantly impact on swimming pool owners. This is largely due to the fact that the number of pools with a depth of water of 30cm or less is very low in comparison to the number of pools with a depth of water of more than 30cm.

Further, the inspection of a pool with less than 30cm of water will involve significantly less work when compared to an inspection of a safety barrier.

For the purposes of placing some estimate on these costs, it is assumed that the cost to the local government of carrying out such an inspection is in the order of a quarter of the normal full inspection charge of \$233.80, being \$58.45.

In December 2019, the City of Joondalup (one of the larger metropolitan local governments) advised it had 182 empty swimming pools out of a total of 22,441 pools, being 0.8 per cent. Assuming this percentage is indicative and can be extrapolated across the approximately 162,000 swimming pools in WA, it can be estimated that there are approximately 1,300 swimming pools with a depth of water less than 30cm.

This means the total annual cost, based on the current maximum charge, of inspecting empty pools in WA could equate to \$75,985 (1,300 x \$58.45). When this cost is spread across all swimming pool owners, the cost increase in the annual charge to pool owners is approximately 47 cents (\$75,985 divided by 162,000) each.

## Decision 8 – Barrier inspections at sale/rent of property



### Ombudsman's recommendations summary

- Develop and implement further strategies to ensure appropriate responses to rental properties with non-compliant swimming pool barriers.
- Consider the introduction of requirements to provide a copy of the most recent swimming pool safety barrier inspection form for rental properties.

## Background

Building legislation in New South Wales, Northern Territory, Queensland and South Australia have varying requirements including provisions requiring safety barriers for swimming pools to be inspected or self-assessed, and/or upgraded, prior to, or upon, the sale or rent of a property.

This ensures safety barriers are either compliant prior to sale or rent, or that the purchaser has the opportunity to provide a compliant safety barrier to their liking within a specified period of time. It also assists in identifying whether a swimming pool is not on the relevant local government's swimming pool register, and safety barriers can subsequently be inspected to ensure and compliance.

Apart from Western Australia (and more recently Victoria), no other jurisdiction has requirements for ongoing inspections of existing swimming pools at prescribed intervals. The requirements in other jurisdictions that apply at sale or rent of a property are used as a means of managing safety barrier compliance in lieu of regular inspections.

For this reason there is no requirement in WA's Building Regulations for a specific inspection of a swimming pool safety barrier to occur at the point of a property being sold or leased. However many local governments do provide a service, subject to a fee, where an inspection can be carried out on the request of owners or purchasers of a property.

## Statement of the issue

The Ombudsman's Report noted that several local governments suggested that a requirement to provide a certificate of compliance for safety barriers when selling or leasing a property with a private swimming pool could assist in protecting the safety of young children.

The Ombudsman recommended implementing strategies to ensure real estate agents, property managers and private landlords respond appropriately to non-compliant safety barriers.

It was further recommended that consideration be given to implementing a requirement to provide a copy of the most recent inspection record when a property with a swimming pool is sold or rented. This recommendation is currently being considered by the WA Commissioner for Consumer Protection, and is outside the scope of this Decision Paper. However, this matter was discussed with the Working Group as outlined below.

## Outcome of stakeholder consultation

### Stage 1 review

The Working Group discussed and agreed with the provision of inspection records at the request of property owners and authorised managers at the point of sale or rent of a property with a swimming pool. This may be subject to a minimal fee for service.

### Stage 2 review

The Consultation Paper sought stakeholder feedback on a general requirement for safety barrier inspections at sale/rent of a property with a swimming pool. Some stakeholders were supportive of introducing such a requirement, however concerns were raised about costs, responsibility and enforcement.

The table below describes the responses to the specific question posed in the Consultation Paper.

<i>Is there merit in requiring a swimming pool safety barrier inspection on sale or rent of the property?</i>			
No. submissions	Support	Not Support	Neutral
32	87%	10%	3%

Stakeholders supported safety barrier inspections at the point of sale or rent of the property, but noted the service is currently voluntary and available on request for a fee. Stakeholders that did not support a new requirement contended that:

- no evidence exists of a problem; and
- there is already a four-yearly inspection program and an ability to request an additional safety barrier inspection at the point of sale or rent of the property.

## Decision

While several other Australian states and territories require inspections of safety barriers upon the sale or rent of a property, WA does not. The mandatory inspection of safety barriers by local governments at maximum four-yearly intervals has been very effective in WA and appears far more cost efficient.

Consideration has been given to supplementing or replacing the four-yearly inspection program with an 'on sale/rent' model. However, neither option demonstrates a net-benefit over the existing four-yearly inspection program.

Currently, local governments are able to carry out safety barrier inspections in batches, area by area, with resultant cost and effort efficiencies, as more inspections can be completed per day, due to the reduction in travel distance. Inspections on sale/rent would be on an on-demand basis, with problematic peaks and troughs of demand making them less efficient than area-by-area four-yearly inspections.

Four-yearly routine safety barrier inspections mean local governments are able to effectively plan, budget and manage the inspections of a predetermined number of pools. Under a sale or rent process, this is far more difficult as the numbers vary year to year.

In addition, consideration of the sale/rent model as a supplementary inspection model may reduce the efficiency of the four-yearly inspection model.

In WA, statistics show the average occupancy period for a house is 11 years<sup>9</sup>, meaning that if barriers were only inspected upon sale of the house, the average period between inspections would be 11 years. However, some houses sell more frequently and others less frequently, which could leave some properties with significantly longer periods of time between inspections.

While there is merit in conducting inspections upon sale or rent of a property, the benefit over the existing four-yearly inspection process was unable to be demonstrated. The reduction in efficiency and potentially significant reduction in the frequency of inspections are considered unacceptable when compared with the current four-yearly inspection program.

Many local governments currently offer an optional 'on-demand' safety barrier inspection. In addition, private building surveyors and other building professionals offer on-demand inspections of safety barriers. Consumers have the option of using these services to assist in ensuring newly purchased or rented properties with swimming pools have compliant safety barriers. Leaving this type of on-demand inspection as optional is preferred. Purchasers/tenants with young children especially may find value in this type of service.

With respect to recommendation 4 of the Ombudsman's Report, the WA Commissioner for Consumer Protection is considering appropriate amendments to the State's residential tenancy laws to require the most recent safety barrier inspection certificate to be provided for all rental properties with swimming pools<sup>10</sup>. Consideration is also being given to implementing strategies to ensure appropriate remedial action is taken in cases where rental properties are found not to have compliant pool safety barriers. Building and Energy will develop guidance for local governments in relation to supplying the most recent safety barrier inspection report to property managers and landlords on request.



### **Decision 8 – Barrier inspections at sale/rent of property**

**Not to amend** the Building Regulations to require swimming pool safety barrier inspections at sale or rent of a property.

**Provide guidance** on:

- voluntary barrier inspection service available on request to anyone, including potential buyers/sellers/agents;
- barrier inspection records/reports being made available on request to potential buyers/sellers/agents; and
- barrier inspection records/reports being made available on request to owners and authorised property managers for rental purposes.

## **Impact analysis**

This decision will have no additional cost impact upon consumers, industry or government.

<sup>9</sup> <https://www.corelogic.com.au/news/length-home-ownership-continues-rise>

<sup>10</sup> <https://www.commerce.wa.gov.au/consumer-protection/residential-tenancies-act-review-2019>

## Decision 9 – Excluded areas of the State



### Ombudsman's recommendation summary

- Consider amending the Building Regulations to extend requirements for swimming pool barriers across the State. If such amendment is not considered desirable, work with local governments in the excluded areas to provide advice on the need to provide barriers for new swimming pools in line with the applicable building standards.

## Background

The requirements for building permits, pool safety barriers, and pool safety barrier inspections are not the same in every area of every district across WA, as outlined below.

### New swimming pools and safety barriers

In accordance with Part 3 of the Building Act and Part 4 of the Building Regulations, all new swimming pools, regardless of location within WA, are required to have compliant safety barriers at the time of completion of the building work (i.e. building of the swimming pool) irrespective of whether or not a building permit is required. The Building Act requires swimming pools to comply with the applicable building standards, which includes the requirement for a compliant pool safety barrier. There are no exemptions from this requirement.

### Existing swimming pools and safety barriers

Part 8 Division 2 of the Building Regulations details the requirements related to existing swimming pools and their safety barriers, applicable after completion of the swimming pool building work. These include the requirement for the owner/occupier to provide and maintain a compliant safety barrier and the requirement for local governments to inspect those safety barriers, within their districts, at intervals not exceeding four years.

### Areas excluded from the requirements for existing swimming pools and safety barriers

Schedule 5 of the Building Regulations limits the application of Part 8 Division 2 to only those existing swimming pools and safety barriers located in particular areas of local government districts. Those areas not listed are excluded from the requirements, including the requirement for a safety barrier and four-yearly inspections of that barrier.

Areas subject to these exclusions are typically in regional and remote areas. Of the 139 local governments in WA, 71 have areas that are excluded from the need to provide safety barriers and have four-yearly local government inspections.

Schedule 4 of the Building Regulations lists areas of the State where building permits are not required for certain building work. 43 of the 71 local governments in WA that are excluded from the existing swimming pool and safety barrier requirements (i.e. not listed in Schedule 5) also have areas within their districts that are excluded from the requirement for a building permit (listed in Schedule 4). These local governments typically have no record, and are generally unaware, of the number and location of swimming pools within those areas.

It should be noted that even if a swimming pool is excluded from the regulatory requirements, a local government may consider it to be in a dangerous state if it does not have a compliant



safety barrier in place. In these circumstances the local government is not required to regularly inspect safety barrier compliance, although general enforcement powers still apply where a pool safety barrier or lack thereof is reported as being unsafe. In such cases, a building order may be issued under the Building Act that requires, for example, the installation, renovation or repair of a safety barrier.

## Statement of the issue

The inconsistent application of regulatory requirements for swimming pool safety barriers in WA creates confusion. This confusion exists between the requirements for the construction of new swimming pools and the requirements for completed or existing swimming pools and their safety barriers.

Prior to 2012, new swimming pools located in certain areas of WA did not require safety barriers. This changed in April 2012 with the implementation of the Building Act and Building Regulations, which required all new private swimming pools in all areas of WA to have compliant safety barriers. However, regardless of age, completed swimming pools in certain areas of WA continue to be excluded from providing and maintaining safety barriers.

The Ombudsman's Report highlighted the potential increased risk of young children drowning in swimming pools in those areas of WA excluded from the safety barrier requirements. The Ombudsman's Report also identified the provision of inaccurate information and advice by some local governments affected by excluded areas in either Schedule 4 or 5 of the Building Regulations, specifically that a safety barrier is not required for new swimming pools constructed in those excluded areas, with the possible incorrect application of Schedule 5 to new swimming pools.

The Ombudsman recommended the Building Commissioner consider the removal of the exclusions for the provision of safety barriers for existing swimming pools located within those areas so that the requirement for a safety barrier applies to all areas of WA. Alternatively, if the removal of excluded areas is not considered appropriate, it was recommended by the Ombudsman that the Building Commissioner work with local governments that have excluded areas to clarify and provide guidance on the requirement for safety barriers on all new swimming pools.

The Ombudsman's recommendation did not extend to removing exclusions with respect to the whole of Part 8 Division 2, only the specific requirement for owners to install a safety barrier. This means, for example, that the four-yearly local government inspections of safety barriers would continue to only apply to those areas listed in Schedule 5, and not affect those excluded areas.

## Outcome of stakeholder consultation

### Stage 1 review

A proposal to remove the exclusion of specific areas was not considered in Stage 1 of the review.

### Stage 2 review

The issue of excluded areas was included as part of the Consultation Paper. A number of submissions were received on this proposal from local governments, however only eight local governments that currently have excluded areas provided a submission.

Following further consultation, 12 of the 71 affected local governments provided a submission. Initial analysis of responses to the proposed requirement for safety barriers in excluded areas of WA indicated approximately half in support and half opposed. However, when stakeholder comments were considered in greater detail, it became clear that the vast majority of stakeholders supported the requirements for safety barriers, but did not support the requirement for inspection of those barriers.

The tables below describe the responses to the specific question posed in the Consultation Paper.

<b><i>Should the requirement of regulation 50(1) in the Building Regulations for the owner and occupier to provide safety barriers be made applicable to those areas of WA that are currently excluded?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
26	69%	12%	19%

Many stakeholders supported extending the requirements in regulation 50(1) of the Building Regulations. However, submissions from the local governments that have excluded areas contended that safety barriers should be required but not the inspections. This would improve safety, provide consistency across the State and reduce confusion over the requirements, but does rely heavily upon the property owner. Extremely remote areas may warrant some concessions.

Stakeholders who did not support extending the requirements to excluded areas:

- contended swimming pools in areas outside of town sites present a lower risk;
- noted that these areas generally contain a high number of other water hazards such as dams, creeks, rivers, cut off drains and the like; and
- pointed out that where no building permit is required there is no record of a pool existing, and hence enforcing the requirement to install a safety barrier would be very difficult.

<b><i>Should the regulations also be amended to require four-yearly local government inspections of pool safety barriers in those areas of the State that are currently excluded?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
26	62%	19%	19%

Stakeholders who supported four-yearly inspections suggested that some sort of self-regulation and/or reporting would be beneficial. Specifically, the completion of a statutory declaration by the owner every four years, initiated by the local government, was considered to be able to provide the improvement in safety barrier compliance that the Ombudsman recommended.

RLSSWA suggested remote areas of WA could utilise video/pictorial evidence in lieu of an inspection.

SPASAWA does not support four-yearly inspections of pools currently located in excluded areas.

One local government stakeholder provided specific information about its experience in extending pool barrier requirements and commencing inspection of 100 previously exempt swimming pools/safety barriers. It reported that this work has been extremely labour intensive with significant problems being experienced, including

- long driving distances to some areas before inspections can commence with long distances between sites;
- booking of inspections being very time consuming;
- high non-compliance rates;
- many unprotected spas under verandahs and patios;
- remote sites with large dogs and aggressive people; and
- owners simply refusing to install a barrier and/or refusing entry to the property via various tactics.

<b><i>Instead of four-yearly inspections should the regulations seek a statutory declaration from owners of pools in areas outside of Schedule 5, confirming safety barriers are in place?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
23	30%	57%	13%

Stakeholders who supported the use of a statutory declaration provided only limited reasoning. Both RLSSWA and SPASAWA supported the use of statutory declarations.

Stakeholders who did not support statutory declarations contended many local governments do not know where the swimming pools are, and that owners are unlikely to have the necessary expertise to determine compliance.

## **Decision**

Data provided by RLSSWA on toddler drowning deaths in swimming pools between 2008/09 and 2017/18 in WA, shows that the highest proportion of recorded drownings occurred in metropolitan regions in WA. However, the proportion of toddler drowning deaths in metropolitan and regional areas was consistent with the proportion of pools in those areas.

Notwithstanding the small sample size, it appears that a toddler is not more likely to drown in a pool in a regional area than a metropolitan area. This data is summarised in the table below.

	<b>Toddler drowning deaths, swimming pools, 2008/09 to 2017/18, WA</b>	<b>Population</b>	<b>Number of pools</b>
	<b>% of total</b>	<b>% of total</b>	<b>% of total</b>
Metropolitan	84.2	78.5	84
Regional	15.8	21.5	16

RLSSWA advised that the drowning deaths in regional areas occurred in Narrogin, Kalgoorlie, and Australind. These drownings occurred in properties located within town-sites, not in areas currently excluded from the safety barrier requirements.

Due to low population densities and likely low numbers of swimming pools in excluded areas of WA, finding comparative statistics on drowning deaths in excluded areas is not possible. However, this lack of data should not be seen as an indication that there is no risk. Rather, the inability to identify drowning deaths is likely due to proportionality because, regardless of location, the number of young children who die by drowning in swimming pools is relatively low, although sufficiently high to require stronger regulatory controls.

The safety of young children in and around swimming pool areas is about more than just fencing. Fencing forms part of a broader strategy that incorporates supervision as its primary element, and includes other elements such as public education, CPR, water familiarisation and the like.

Further, it is unlikely that all of the swimming pools located in excluded areas of WA don't have safety barriers. Many, if not most, will have barriers varying in their levels of compliance.

Stakeholders generally supported the requirement for the provision, installation and maintenance of safety barriers across WA for existing swimming pools. However, there was little support for extending the requirement for an inspection regime. This is due to a number of factors, including:

- the significant expense in conducting the inspections in regional areas;
- small, resource-limited local governments with extensive distances to cover;
- the lack of a building permit and inability to identify properties with pools;
- a perceived low risk in regional and remote areas;
- the incongruity of fencing a pool next to a dam or other body of water;
- enforcement challenges in rural and remote areas;
- inspection occupational safety and health issues; and
- local communities have opposed inspections in the past.

In accordance with the Ombudsman's recommendation and the general desire for regulatory consistency and reduced risk of child drownings, regulatory change may be desirable to require compliant safety barriers for all swimming pools across all areas of WA. In light of the considerable administrative difficulties and resourcing burden placed on regional and remote

local governments to identify existing swimming pools and carry out inspections, the desired approach is to only extend these requirements where requested by individual local governments following their own consultations and risk assessments.

No blanket amendment will be made to the Building Regulations to extend safety barrier requirements across all areas of WA. Instead Schedule 5 will be amended on a case-by-case basis, as initiated by individual local governments.

The provision of safety barriers to previously excluded swimming pools will be expensive and complex. Depending on circumstances, retrospective application of safety barrier requirements can change how the affected area is used and be of significant expense. Importantly, owners in previously exempt areas of WA will need to be identified and fully consulted on the proposed changes prior to implementation. Local government is best placed to undertake such consultation.

Building and Energy will therefore implement the extension of requirements to currently excluded areas at the request of individual local governments. This will involve each of the 71 affected local governments, at its discretion:

- consulting with its ratepayers in order to identify the number of affected swimming pools, the likely cost impact, and the views of the affected owners;
- obtaining full council resolution that details sufficient consultation with affected property owners has occurred, extension of safety barrier requirements is sought, and making a formal request to Building and Energy.

Once the above conditions have been satisfied, amendments will be made to Schedule 5 of the Building Regulations to include those excluded areas, thereby applying safety barrier requirements in previously exempt areas.

Building and Energy will actively encourage local governments to seek the removal of those currently excluded areas within WA. Guidance will be prepared for local government on this process.

Consistent with the Ombudsman's recommendation, Building and Energy will work with local government to provide guidance and educate the public on the need to install compliant safety barriers for all new swimming pools in all areas of WA, regardless of whether or not a building permit is required.

This is intended to eliminate confusion in those areas where a building permit is not required for a new swimming pool, by clarifying that the installation of a compliant safety barrier is required at all times.

It should be noted that this decision has not included consideration of extending building permit requirements across all areas of WA. Those areas currently excluded from building permit requirements by Schedule 4 of the Building Regulations will continue to be excluded.



## **Decision 9 – Excluded areas of the State**

**Amend the Building Regulations on formal request** by affected local governments to require safety barriers for all private swimming pools in all areas of their geographic district.

**Actively engage** with affected local governments to remove excluded areas from their district.

**Provide guidance** to affected local governments on:

- the processes required to remove the regulatory exclusion and satisfy the Government's commitment to best practice regulation; and
- the existing requirement for all new swimming pools in all areas of the State, regardless of excluded areas, to have compliant safety barriers at the time of completion of building work, regardless of whether or not a building permit is required.

**Provide guidance** to owners on the merit of voluntary pool barriers for those pools located in excluded areas of WA.

## **Impact analysis**

This decision will have no additional cost impact upon consumers, industry or government.

However, where a local government requests that Schedule 5 of the Building Regulations be amended to capture a currently excluded area, this will have additional cost implications for consumers or owners.

As part of the process to amend the Building Regulations, the local government will need to identify an estimated number of affected swimming pools. Without this information it will not be possible to meaningfully estimate the increased costs for consumers (owners), and by extension, the local government's inspection costs, where inspections apply. Further, it is likely many swimming pools within currently excluded areas of WA will have safety barriers, but the degree of compliance with applicable standards may differ.

Notwithstanding, Building and Energy has sought to estimate an indicative cost to consumers complying with the safety barrier requirements in a presently excluded area of WA. Based on the assumptions set out in the table below, it is estimated that the average cost of installing a new compliant safety barrier is \$10,000 per swimming pool.

This estimate does not consider changes to an existing safety barrier to make it compliant with the applicable standards, but as a general rule the cost is expected to be less than installing a new safety barrier.

Costs to local governments in terms of inspections will vary, depending on their individual circumstances. Some may have building permits for swimming pools, or access to aerial photography or another mechanism for identifying swimming pools in their district.

It is likely that most affected local governments will only have a handful of swimming pools in currently excluded areas, meaning the cost of enforcing the new requirements will be relatively low. Local governments considering implementing a change should factor in these costs and develop implementation strategies.



## Cost estimate: installation of a new compliant safety barrier in a currently excluded area in WA

### Assumptions

- Average size of a regional swimming pool, outside of a town site is 3.5m wide by 9m long, equating to a perimeter of 25m. This average size is based on the assumption that swimming pools in regional areas, outside of town sites, will be larger than pools in the metropolitan area due to significantly larger block sizes.
- An isolation fence is expected to be at least an additional 2m in each direction (to allow a 2m apron around the pool). This equates to a perimeter of 37m, as the expected minimum length of fencing for an average affected pool. **(A)**
- Costs of 1.2m high fencing range between \$150/m-\$250/m supplied and installed depending on whether it is aluminium or semi-framed glass fencing. Cost basis drawn from prices provided by a stakeholder in the pool fence industry. **(B)**
- Travel and transportation costs for materials and installers in regional areas estimated to be between 30-40 percent on-top of the base costs of the fence **(C)**

### Calculation of estimated cost:

Using formula = A x B x C, where:

$$A = 37\text{m}$$

$$B = (\$150 + \$250) / 2 = \$200$$

$$C = (30\% + 40\%) / 2 = 35\%$$

$$37\text{m} \times (\$150 + \$250 / 2) \times 1.35 = \$9,990 \text{ or } \approx \$10,000$$

## Decision 10 – Concessions for pre-November 2001 swimming pools



### Ombudsman's recommendation summary

- Review the concessions provided for pre-November 2001 swimming pools.

### Background

The Building Regulations provide concessions from certain requirements for swimming pools constructed prior to 5 November 2001. All swimming pools constructed prior to this date may include a wall that contains a child-resistant door-set complying with AS 1926.1-1993 incorporating amendment No. 1, permitting access through a building. A child-resistant door-set is typically a hinged or sliding door with a latch release height of 1500mm and no climbable members in the lower section of the door. It is also self-closing and self-latching. Commonly these are security screen doors.

### History of the concession

In 1992, WA introduced requirements for safety barriers to restrict the access of young children (under the age of five) to the pool from the house. These requirements were for the most part isolation fencing, however local governments had the legislative authority to approve the use of child-resistant door-sets where isolation fencing was inappropriate. Local governments generally did not permit the use of child-resistant door-sets and, as such, in late 1993 the requirements were loosened permitting the use of child-resistant door-sets outright for post-July 1992 swimming pools.

On 5 November 2001, new legislation came into effect and again mandated isolation fencing. The use of child-resistant door-sets was again only able to be approved by local government in prescribed circumstances. As this legislation was not retrospective, pre-November 2001 swimming pools were permitted to continue to utilise child-resistant door-sets.

On 18 March 2002, further new legislation came into effect, which required pre-July 1992 swimming pools (which had previously only needed to restrict access from the neighbouring properties and the street) to restrict access from the house by: installing an isolation fence; installing child-resistant door-sets; installing child-resistant windows; or any combination thereof, effectively mirroring the pre-November 2001 requirements. These pools were required to comply with the new requirements by 17 December 2006, or within three months of the sale of the property, whichever came first.

### Use of child resistant door-sets

Currently the use of child-resistant door-sets as a safety barrier to a swimming pool is heavily restricted unless that pool is a pre-November 2001 pool or an indoor pool. Otherwise, in order to use a child-resistant door-set, specific approval must be obtained from the local government. The following summarises when a child-resistant door-set can be considered by a local government:



## 1. November 2001 – April 2016 swimming pools, where:

- the applicant can demonstrate compliance with the BCA performance requirements via a performance solution;
- the local government considers a proposal for alternative requirements will restrict access by young children to the private swimming pool as effectively as if there was compliance with AS 1926.1-1993. In addition, the local government must have regard as to whether or not a young child resides at the property; or
- the child-resistant door-set is compliant with AS 1926.1-1993 and;
  - the local government is of the opinion that a barrier between the building and pool would cause a significant problem of a structural nature;
  - the local government is of the opinion that a barrier between the building and pool would cause a significant problem of any other nature, the cause of which is not within the control of the owner or occupier;
  - the pool is totally enclosed by a building (an indoor pool); or
  - the local government is of the opinion that a barrier between the building and the pool would cause a significant problem for a person with a disability who is a resident at the property; and
  - in addition the local government must have regard to whether or not a young child resides at the property.
- **For post-May 2016 swimming pools**, where the applicant can demonstrate compliance with the BCA performance requirements via a performance solution.

The Ombudsman recommended that the concession for pre-November 2001 swimming pools be reviewed in consultation with local governments and other stakeholders to determine whether it should be removed.

## Deaths of young children by drowning in swimming pools – Ombudsman’s Report

The Ombudsman identified that during its six-year investigation period (July 2009 – June 2015) 13 children under the age of five fatally drowned in a swimming pool, representing 54 per cent of the 24 children under the age of five who fatally drowned overall. Of these 13 children, the Ombudsman reported that three died where the permanent barrier gate latch or the door latch did not close, either because the latch was defective or it had been disabled. The Ombudsman did not distinguish between the door and the gate, which means that the door latch issue was present in either one or two of the three deaths.

In some instances, the Ombudsman’s Report also included statistics for children over the age of five, mixing data for the under-five category and the over-five category. As an example, the Ombudsman identified that three-sided barriers (child-resistant door-sets) were present in six of the 16 incidents of children drowning in private swimming pools, however did not clearly distinguish the proportion of those under the age of five (being the age that is the focus of the Standard applicable to swimming pool barriers).

Analysis indicates that child-resistant door-sets were present in either one or two deaths of children under the age of five, which equates to 8 or 15 per cent of the total number of fatal drownings in private swimming pools. Excluding deaths where barriers were not present, the

resulting statistics identify that child-resistant door-sets were present in either 11 or 22 per cent of the adjusted figures.

The Ombudsman analysed the records of 500 randomly selected pools from five local governments (100 each) that were due for inspection between July 2014 and June 2015. The Ombudsman found that of 485 swimming pool barrier inspections and visits conducted, 159 (33 per cent) swimming pool barriers were found not to comply with the Building Regulations. Of the 315 reasons recorded for the non-compliance, 61 (19 per cent) were related to child-resistant door-sets.

The Ombudsman did not identify the proportion or distribution of child-resistant door-sets throughout WA. Therefore, it cannot be determined whether the drowning deaths associated with child-resistant door-sets were disproportionate to the drowning deaths associated with isolation fencing.

## Outcome of stakeholder consultation

### Stage 1 review

Proposals on pre-November 2001 concessions were not considered in Stage 1 of the review.

### Stage 2 review

Proposals to remove the pre-November 2001 concession were included in the Consultation Paper. The following tables represent the responses received to the specific questions posed to stakeholders.

<b><i>Would you support the removal of the concession for pre-November 2001 swimming pools, and what would be the consequences?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
31	42%	45%	13%

There was no clear consensus among stakeholder on this proposal. Stakeholders:

- noted the increased costs likely to be placed on owners;
- problems with small backyards; and
- the need for transition periods.

However, some stakeholders did consider that removing the concession would provide better outcomes in terms of compliance, and, by extension, better outcomes for owners. A number of stakeholders supported conducting a full study on the number of safety barriers subject to the concession to better determine the impact on owners.

<b><i>Should consideration be given to requiring all pool safety barriers to comply with current day standards at the point of sale or rent of the property?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
31	39%	48%	13%

Again, stakeholder feedback on this proposal was mixed, with no clear consensus.

RLSSWA supported using the sale of the property as a mechanism to up-grade and remove concessions.

SPASAWA advised that it does not support a requirement that all pool safety barriers comply with current day standards at the sale or rental of the property. Although not relevant to upgrading requirements, SPASAWA advised it supports ensuring compliance with the standards applicable at the time of installation on sale or rent of a property.

## Other jurisdictions

A review of requirements in other Australian states and territories has been undertaken for comparison purposes to inform decision making. The tables below provides an overview of the review:

	Requirements
<b>Queensland</b>	<ul style="list-style-type: none"> <li>• Previously, child-resistant door-sets were permitted for new pools installed pre-February 1991.</li> <li>• All pools were required to upgrade to the new standard by 30 November 2015 (5-year transition) or upon sale/lease.</li> <li>• Currently only indoor pools are permitted to have child-resistant door-sets.</li> </ul>
<b>NSW</b>	<ul style="list-style-type: none"> <li>• Pre-September 2008 pools continue to be permitted to use child-resistant door-sets.</li> <li>• Post-September 2008 pools are only permitted to use child-resistant door-sets for indoor pools.</li> <li>• Pre-July 2010 pools located on small, large, waterfront properties are permitted to use child-resistant doorsets.</li> </ul>
<b>Victoria</b>	<ul style="list-style-type: none"> <li>• Pre-May 2010 pools continue to be permitted to use child-resistant door-sets.</li> <li>• Post-May 2010 pools are only permitted to use child-resistant door-sets for indoor pools, or on the indoor portion of an indoor/outdoor pool.</li> </ul>
<b>Northern Territory</b>	<ul style="list-style-type: none"> <li>• New and existing pools are permitted to use child-resistant door-sets.</li> </ul>
<b>South Australia</b>	<ul style="list-style-type: none"> <li>• Pre-July 1993 pools: <ul style="list-style-type: none"> <li>○ If the property is sold after 1 October 2008, the child-safety barriers must comply with a Minister's Specification before settlement. This means that barriers must be installed to separate the pool area from the house where ever possible. <ul style="list-style-type: none"> <li>▪ child-resistant doors can only be used in: <ul style="list-style-type: none"> <li>• indoor pools;</li> <li>• outdoor in-ground swimming pool if the distance from the nearest part of the swimming pool to the door is less than 1.8 metres; and</li> <li>• outdoor above-ground swimming pool if the distance from the nearest part of the swimming pool to the door, after the swimming pool has been positioned as far as possible away from the door, is less than 1.8 metres.</li> </ul> </li> </ul> </li> <li>○ Otherwise child-resistant door-sets are permitted.</li> </ul> </li> <li>• Post-July 1993 pools are only permitted to use child-resistant door-sets for indoor pools.</li> </ul>

## Decision

Where a comparison is made between the percentage of children who have drowned in a swimming pool that has a child-resistant door-set and those who have drowned in a swimming pool that has an isolation fence, it is necessary to consider numerous factors in order to ascertain the comparative effectiveness of the different safety barrier types.

These factors include:

- a comparable proportion of those safety barrier types in their distribution across the subject area;
- an understanding of the safety barrier requirements, and exclusions, that were in effect during the investigation period for that subject area;
- an understanding of the compliance rates of the safety barrier types, with consideration of the reasons why, and the effectiveness of inspections and a public education program (the deliberate propping open of gates and lack of maintenance on latching and self-closing devices is a significant part of this issue); and
- an understanding of how the child breached the barrier (a number of reports identified an adult, parent or sibling facilitating access in a significant number of cases).

Although the information analysed does indicate some benefit in removing the concession that permits the use of child-resistant door-sets for pre-November 2001 pools, this information is insufficient to conclusively quantify the extent of the benefit.

## Literature review

In consideration of this issue, a literature review was undertaken, but did not result in conclusive evidence that isolation fences are safer than child-resistant door-sets.

It should be noted that research generally suggests that isolation fences are safer. While it was unable to be determined how much safer isolation fences are compared with child-resistant door-sets, the review did identify that in WA:

- over a three-year period, isolation fences were found to be compliant more often than child-resistant door-sets (per the RLSSWA Home Swimming Pools Barrier Report 2008-2011<sup>11</sup>); and
- over a four-year period, during which 10 deaths of young children in swimming pools occurred, child-resistant door-sets were not found to be proportionally (from 1,163 inspections) more likely to be attributed to a death of a young child in a swimming pool than isolation fencing (per the RLSSWA Home Swimming Pool Barrier Evaluation Report 2000-2004<sup>12</sup>).

The literature review identified many instances of:

- small sample sizes;

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<sup>11</sup> Leaversuch, P. & Mosel, A. (2012). Home Swimming Pools Barrier Report 2008 – 2011, Royal Life Saving Society Western Australia Inc.

<sup>12</sup> Peck, C., Leaversuch, P. & Hazell, F. (2006). Home Swimming Pools Barrier Report 2000 – 2004), Royal Life Saving Society Australia, Perth, Western Australia.

- little or no data on the proportionality and distribution of the different types of safety barriers in the population analysed;
- insufficient consideration of the legislation in effect at the time. This included the distinction between three-sided barriers that utilised AS 1926.1 child-resistant door-sets and three-sided barriers that utilised unrestricted door-sets; and
- insufficient consideration of the effect of not having a mandatory inspection, compliance and enforcement regime in place.

The outcome of this literature review was inconclusive with regard to supporting the removal of the current concession.

### **The objective of AS 1926.1-2012**

The objective of AS 1926.1-2012 is to assist swimming pool owners in avoiding pool-related drowning by providing information about the design, construction and performance of various safety barrier options that are aimed at restricting entry to the swimming pool area by young children.

Statistics show that the majority of drowning deaths in swimming pools involve children under five years of age. This is why the requirements established by the Standard aim to achieve a safety barrier that will make it difficult for a young child to gain access to a swimming pool area, either under, over or through the barrier.

*‘It should be noted that the provisions of this Standard relate to barriers that are intended to be child resistant but not childproof, as effectiveness of the barrier is very much dependent on its location, installation and maintenance. The requirements are established with the intention of leaving a high degree of flexibility to the consumer in the choice of barrier, desirable aesthetics and cost.’*

The phrase ‘child-resistant, but not childproof’ has bearing in the consideration of isolation fencing versus child-resistant door-sets, to the extent that the effectiveness of the safety barriers should be considered in the broader context that barriers form part of an overall strategy to combat drowning incidents of young children in private swimming pools.

Supervision, public education, cardio-pulmonary resuscitation (CPR), water familiarisation, all form part of this strategy (Australian Water Safety Strategy 2016-2020<sup>13</sup>).

It is also important to state that direct adult supervision is far more effective at preventing young children from drowning in private swimming pools than barriers.

### **Potential cost implications on owners**

Removing the pre-November 2001 concession is likely to impose a material impact on owners, with many likely to face significant difficulties and costs in upgrading to satisfy current day standards.

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<sup>13</sup> Australian Water Safety Council (2016) Australian Water Safety Strategy Consultation Draft 2016-20. Australian Water Safety Council, Sydney.

Consideration also has to be given to the fact that other retrospective upgrades have occurred over the past two decades and some of those owners would be required to upgrade for a second time.

The cost of upgrading from a barrier using child-resistant doors to an isolation fence is variable and will largely depend on the specific property, house and pool layout.

Preliminary analysis was undertaken to determine the likely costs on owners. Costing data was sourced from a business that operates in the swimming pool fencing industry in WA.

From this preliminary analysis, the average cost could be approximately \$3,000 to install isolation fencing to a pre-November 2001 swimming pool. The assumptions for this estimation are set out in the table below.

	<b>Cost estimate: installation of isolation fencing to a pre-November 2001 swimming pool</b>
	<b>Assumptions</b>
	<ul style="list-style-type: none"><li>• Average length of isolation fencing required estimated to be 15m <b>(A)</b> based on the remaining section of barrier utilising existing boundary fences and walls of dwellings.</li><li>• Retail cost cheapest compliant isolation fencing supplied and installed is \$150 per meter</li><li>• Retail cost of high-end compliant isolation fencing supplied and installed is \$250 per meter. <b>(B)</b></li></ul>
	<b>Calculation of estimated cost:</b>
	Using formula = A x B, where:
	A = 15m
	B= \$150+250/2 = \$200
	<b>15m x \$200 = \$3,000</b>

### No clear net benefit

The effectiveness of child-resistant door-sets needs to be weighed against the effectiveness of isolation fencing in order to assess whether or not there is sufficient benefit to justify imposing a retrospective change on pre-November 2001 pool owners.

A large part of quantifying the issue involves determining the proportion of pools in WA that rely upon child-resistant door-sets versus those that rely upon isolation fencing, in comparison to the number of drowning deaths of young children attributed to a child-resistant door-set or isolation fence.

Unfortunately, there is no conclusive evidence for a determination either-way.

Retrospectively changing pool barriers so as not to permit child-resistant door-sets would place a significant burden on those who already rely upon them. The cost imposed, the inconvenience of having the work done, the design implications, and the corresponding benefits all need to be fully ascertained in order to support a case for regulatory change.

Consequently, a regulatory change to remove the concession is not considered appropriate at this time. Rather, non-regulatory measures such as greater information and education will be progressed to assist owners make informed choices about safety barriers for pre-November 2001 pools. Building and Energy will develop guidance material on this topic.

As the Ombudsman's findings and research literature all indicate that isolation barriers are more effective, this guidance material will highlight the benefits of isolation fencing over child-resistant door-sets and is likely to include an amendment to the Rules for Pools booklet and the creation of a brochure that local government pool inspectors can hand out when they identify child-resistant door-sets being used.



#### **Decision 10 – Concessions for pre-November 2001 swimming pools**

**Not to amend** the Building Regulations to remove the concession provided for swimming pools constructed prior to 5 November 2001.

**Provide guidance** to owners on the benefits of isolation fences versus child-resistant door-sets.

### **Impact analysis**

This decision will have no additional cost impact upon consumers, industry or government.

## Decision 11 – Boundary fences

### Background

Safety barriers for swimming pools can consist of numerous elements and materials. With the trend towards smaller block sizes, more and more pool owners utilise their boundary fence to form part of their pool safety barrier. However the use of a boundary fence as a safety barrier has challenges.

An effective safety barrier is typically visually permeable to encourage supervision, with the barrier itself having particular elements (height, non-climbable zones, self-closing gates, etc.) to make it difficult for a young child to gain access. These elements should be within the control of the owner to ensure the safety barrier is not compromised.

A typical boundary fence does not have the same safety features. The primary function of a boundary fence is the provision of privacy, and they are specifically designed to prevent visual monitoring of activities on the other side. Boundary fences are also of shared ownership, meaning they generally cannot be modified or replaced without agreement by both owners.

While active supervision is the most effective tool in preventing the drowning incidents of young children in swimming pools, supervision by a pool owner is unlikely to extend to children in neighbouring properties. A family residing in a neighbouring property to a swimming pool will typically allow their young children to play in their own backyard unsupervised, without considering the risk that they could climb the boundary fence and access the neighbouring pool.

### Pre-May 2016 boundary fence requirements

Swimming pools built prior to May-2016 pools are generally required to have safety barriers that meet the requirements of AS1926.1-1993.

AS1926.1-1993 includes requirements for safety barriers, but does not have specific requirements for boundary fences. Instead, boundary fences that form part of the safety barrier are required to comply with the same set of requirements as any other pool fence.

AS1926.1-1993 requires a fence with a minimum height of 1200mm with no climbable objects within a 1200mm span, measured as a quadrant, from the top of the fence on the outside of the fence. When AS1926.1-1993 first came into effect in WA in 1993, this was somewhat problematic as the side of the boundary fence requiring compliance was that of the neighbouring property, over which the pool owner has no control.

In November 1993, amendments to the now repealed *Building Regulations 1989* were introduced. To alleviate the problem in AS1926.1-1993, the amendments included a regulation that enabled either side of the boundary fence to comply with the requirements of AS1926.1-1993 with respect to fence height, outside surface and horizontal climbable elements. This meant that where the outside of the boundary fence (neighbour's side) did not satisfy the requirements of AS1926.1-1993, the pool owner could use their own side to achieve compliance.

This requirement continues to exist today in the Building Regulations for swimming pools built prior to May 2016. There are an estimated 149,000 pre-May 2016 swimming pools (as at 30 April 2016) in WA, out of 161,960 total pools (as at 30 June 2019).

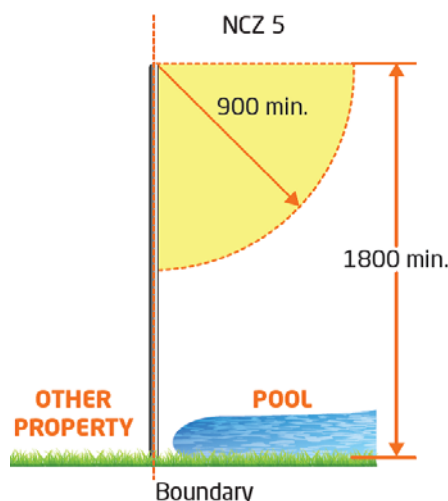


## Post-May 2016 boundary fence requirements

Swimming pools built post-May 2016 are required under the Building Regulations to have safety barriers that satisfy the BCA, which has performance requirements in relation to safety barriers. Owners have the option of complying with a prescriptive deemed-to-satisfy solution or alternatively may develop a performance solution, with building surveyor engagement, for the consideration and final approval of the local government. The deemed-to-satisfy solution relies on compliance with AS1926.1-2012 and AS1926.2-2007.

AS1926.1-2012 has specific requirements for boundary fences that form part of the safety barrier. Boundary fences are required to be at least 1800mm high on the swimming pool side (as measured from the finished ground level), and have a 900mm non-climbable zone (referred to as NCZ 5) on the swimming pool side, measured as a quadrant located between 3 o'clock and 6 o'clock at the top of the boundary fence.

NCZ 5 is to be free of handholds, footholds, objects or plants that will facilitate climbing. However, AS1926.1-2012 specifies no requirements for the non-swimming pool side of the boundary barrier because the pool owner has little or no control over what happens on that side. The figure above illustrates these requirements.



## Statement of the issue

Unfortunately, the boundary barrier requirements in AS1926.1-2012, which applies to post-May 2016 swimming pools in WA, is unclear in one key aspect, which has led to some inconsistency in interpretation and subsequent application.

Specifically, the standard is defective in detailing how the height of a boundary fence is to be measured when objects are located within the area under NCZ 5.

Currently, clause 2.3.1 of AS1926.1-2012 states:

*"In addition to the provisions of Clause 2.2, steps, retaining walls, objects or level changes that would otherwise reduce the height of a barrier within a property shall not be located within 500mm of the barrier..."*

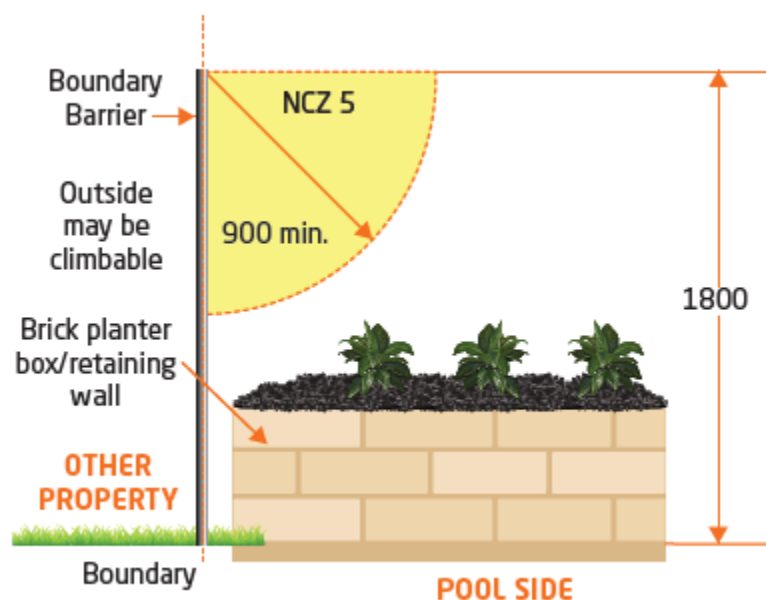
As drafted, it is not clear whether the requirement in clause 2.3.1 is applicable to boundary fences. The definition given to *within the property* in clause 1.3.24 of AS1926.1-2012, suggests it does not apply. However accepting this to be the case means it becomes difficult then to

know how to properly apply and measure if the fence meets the 1800mm height required by clause 2.2.4.

Clause 2.2.4 of AS1926.1-2012 does not expressly define how the height of the fence should be measured, except to say in a supporting figure that it is measured from 'finished ground level' or FGL. This term is further defined in clause 1.3.6 of AS1926.1-2012 to be the "ground level or other permanent stable surface."

If the 500mm mentioned in clause 2.3.1 does not apply to boundary fences, and consequently objects, retaining walls and level changes can exist under the NCZ 5, it becomes difficult to reconcile how to measure the height of the fence to the finished ground if the very object (or similar) provides a landing pad for a child trying to access the pool area. If there is an object that provides a stable surface that is, say, 50 millimetres away from, but not abutting, the boundary fence, measuring the height of the fence from the ground level instead of that stable surface arguably undermines the purpose of having the 1800mm height requirement in clause 2.2.4 of AS1926.1-2012.

The diagram below illustrates this problem using the example of a brick planter box.



This defect is known to the Standards Australia committee responsible for AS 1926.1, the swimming pool industry and local governments. Standards Australia has committed to addressing it in their next set of amendments.

In the interim, only one other Australian jurisdiction has sought to clarify this defect by issuing a position statement. In February 2016, the NSW Building Professionals Board publicly adopted a 'best practice' position that clause 2.3.1 of AS1926.1-2012 applies to boundary fences; meaning in NSW, objects, retaining walls and level changes should not be within 500mm of the fence if it is to form part of the safety barrier.

## Outcome of stakeholder consultation

In 2017, prior to the commencement of this review, Building and Energy formed an Advisory Group comprising key stakeholders from industry, local government and state government to identify solutions to the defects in AS1926.1-2012. The Advisory Group agreed that as drafted clause 2.3.1 of AS1926.1-2012 did not apply to boundary fences.

### Stage 1 review

Proposals to address the issues with boundary fences were not considered in Stage 1 of the review.

### Stage 2 reviews

To address this issue, the Consultation Paper included two options for reform based on the feedback received from the Advisory Group in 2017. Specifically:

- **Option 1** Amend the Building Regulations, or issue a position statement similar to NSW, that requires the application of a 500mm clear area on the swimming pool side of the boundary fence; or
- **Option 2:** Amend the Building Regulations to provide that compliance with AS 1926.1-2012 can be achieved on either side of the boundary fence (that is, on the swimming pool side or the neighbouring property side).

The table below describe the responses to the specific question posed to stakeholders.

<b>Which reform option do you support?</b>				
<b>No. submissions</b>	<b>Option 1</b>	<b>Option 2</b>	<b>Neither Options</b>	<b>Neutral</b>
29	50%	14%	28%	8%

Stakeholders expressed mixed positions on the proposals. Although the majority of stakeholders supported a requirement for the application of a 500mm clear area on the swimming pool side of the boundary fence matching the NSW policy position, many stakeholders did not expressly support such a requirement.

It should be noted that some stakeholders simply picked their preferred option, rather than provide general comment on the issue itself or reasons for their preference.

Below is a sample of the comments received from stakeholders:

- *'...happy with the non-climbable zone 5, but under that, there should be no requirement to keep clear – this is something that is not a significant risk to child drownings and has a lot of people unhappy...'*
- *'...obtained legal advice on the current standards which are ambiguous'*
- *'Post May 2016 should be amended to match the Pre May 2016 requirements for boundary fences, get rid of the 1.8 on the pool side and leave as 1.2m minimum'*

- *'I continue to be amazed that regulators and the Australian Standard Committee CS- 034 continue to make changes to this barrier without evidence of a problem and when all available evidence supports that this barrier is already so much safer than the internal barrier, to the extent that the punitive changes in AS1926.1 – 2012 should be removed. There is simply no doubt that the outside of this barrier is the effective barrier even though the Standard says otherwise'.*
- *'If the neighbour sells and moves the new owner may not accept having a 500mm clearance. And who would be held liable if the neighbour removed the 500mm clearance. Pool compliance should always apply within the lot that the pool is located. Maybe letters of advice to neighbours could be issued advising of the risks and recommending leaving 500mm clearance', and;*
- *'The 1.8m boundary fence requirement continues to be an issue and is now causing different interpretations with the NCZ5, as detailed in the report'.*

## Other jurisdictions

All Australian states and territories adopt the requirements of the NCC, including the BCA, through their legislation. This ensures building standards are consistent across Australia.

The ABCB is the body responsible for the development of the NCC, and is established via an Intergovernmental Agreement (IGA) between the Commonwealth and all states and territories (including WA). One of the requirements of the IGA is that signatories do not vary the BCA in their jurisdiction unless there is a demonstrable net benefit.

AS 1926.1-2012 applies in all Australian States and territories except the Northern Territory and Queensland.

As previously mentioned, in NSW, the Building Professionals Board adopted a 'best practice' position that clause 2.3.1 of AS1926.1-2012 applies to boundary fences. This has not expressly varied the standard, but rather sought to influence the way in which compliance with its requirements are assessed.

Conversely, Queensland does not adopt the same edition of AS1926, but uses the Queensland Development Code (QDC) Mandatory Part (MP) 3.4 and AS 1926.1-2007 as modified by the QDC<sup>14</sup>. These laws apply across the whole of Queensland and were applied retrospectively in 2009-2015.

The QDC MP 3.4 permits a boundary fence that forms part of a swimming pool safety barrier to be effective on the pool side or the non-pool side, with differing requirements for each side. It provides for two options.

- Option 1: The non-swimming pool side must have a minimum effective height of at least 1200mm high and a NCZ applies. It also requires the inclusion of a 30cm wide 'additional clear area' that adjoins the lower NCZ quadrant; or
- Option 2: The swimming pool side must have a minimum effective height of at least 1800mm high, and the NCZ applies on the swimming pool side. The height of the fence is taken from the top of the barrier to the ground surface immediately inside the enclosure

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<sup>14</sup> The *Queensland Pool Safety Inspector Guideline*, October 2016, Queensland Government Department of Housing and Public Works

The 'additional clear area' requirement in QDC MP 3.4 is intended to ensure that stable, large, flat objects, such as furniture, large rocks, decks or stairs, do not reduce the effective height of the barrier. Climbable fence rails may be within the 'additional clear area' but not within the non-climbable zone. The assessment of objects within the additional clear area are then determined on a case by case basis to determine if compliance is achieved. The relevant considerations include:

- the size of the surface
- the space between the barrier and the object
- whether the surface is flat or uneven
- the drop between the top of the safety barrier and the top of the object
- whether the height of the safety barrier is a full 1800mm on the outside of the enclosure (for example the ground surface on the outside of the barrier may be much higher than the ground surface on the inside, thereby compromising the other aspect of the barrier that contributes to safety).<sup>15</sup>

The Northern Territory has two sets of applicable requirements for boundary fences, depending on the age of the pool.

Pools installed after 1 January 2003 must comply with a modified version of the older AS 1926.1, 1993 edition. Boundary fences must be at least 1200mm high, have no climbable objects within a 1200mm span, measured as a quadrant from the top of the fence, have at least 900mm between the highest lower foothold and the lowest higher handhold, and have at least 1100mm between the highest lower foothold and the top of the fence. These all apply to the pool side of the fence only. The outside of the boundary fence is not used for compliance purposes. If the boundary fence is a chainmesh fence, with apertures between 13mm and 100mm, the fence must be at least 1700mm high, again measured on the pool side.

Pools installed before 1 January 2003 must comply with the Community Safety Standard. Boundary fence heights are similar to that above however allow some flexibility by referring to the measurement being approximate.

## Decision

The present drafting of AS1926.1-2012 has caused uncertainty for local government, industry, and owners.

It is clear through the feedback in Stage 2 of the review and the earlier work of the Advisory Group that divergent opinions exist between stakeholders on how the requirements in respect of boundary fences that form part of the safety barrier are to be assessed.

Some local governments have sought legal advice to inform their decision-making, and consequently do not apply the 500mm clear area to boundary fences. Amending the Building Regulations to require the application of a 500mm clear area on the swimming pool side of the boundary fence would be problematic for owners, many of whom would then be required to retrospectively modify their swimming pool area to achieve compliance.

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<sup>15</sup> *Newsplash Issue 5, December 2012, Queensland Department of Local Government and Planning*

Statistically the boundary fence barrier is one of the safest barriers. The net benefit of expressly varying from the BCA to apply the 500mm clear area is not demonstrated.

The preferred approach is to pursue Option 2 proposed in the Consultation Paper, which is to amend the Building Regulations to provide that compliance with AS 1926.1-2012 can be achieved on either side of the boundary fence (i.e. on the swimming pool side or the neighbouring property side). This accords closely with the position adopted with respect to compliance with AS1926.1-1993 for swimming pools built prior to May 2016, and will provide an alternative pathway for compliance.

Building and Energy will provide guidance on the amendment to the Building Regulations and the application of the standard to boundary barriers.



### **Decision 11 – Boundary fences**

**Amend the Building Regulations** to provide an additional option for boundary barrier compliance. This option will permit the use of the non-pool side of a boundary barrier where it is at least 1200mm in height and complies with NCZ 1, 2, 3, and where relevant NCZ 4, in addition to other relevant parts of AS1926.1-2012.

**Not to amend** the Building Regulations to prescribe the application of a 500mm clear area on the pool side of the boundary fence.

**Provide guidance** on:

- the additional option for boundary barrier compliance (once enacted); and
- the application of AS1926.1-2012 to boundary fences.

## **Impact analysis**

The amendment will provide an alternative path for demonstrating compliance for owners. Unlike Option 1 presented in the Consultation Paper, this will not have a negative impact on existing post-May 2016 swimming pool owners as there is no retrospective physical consequence.

Amending the Building Regulations will have no material impact upon owners, industry or government.

## Decision 12 – Training for swimming pool inspectors



### Ombudsman's recommendations summary

- Consider the appropriateness of coordinating the development and provision of a training program for swimming pool barrier inspectors.
- Consider improvements to training in compliance promotion and conflict resolution.
- Consult with local governments and other stakeholders to consider development and provision of a program of CPD for swimming pool inspectors.
- Consider promotion to local governments of a quality assurance process for safety barrier inspections.
- Work with local governments to ensure training is provided on the template swimming pool barrier inspection checklist so that forms are consistently completed.

## Background

The Building Regulations require local governments to arrange for an authorised person to inspect the safety barriers of swimming pools at intervals of no more than four years.

In authorising a person to inspect safety barriers (inspector), the local government must ensure the person has appropriate experience or qualifications. However, there are no legislated requirements for specific qualifications or experience for inspectors and there are currently no training courses available in WA for inspectors. Local governments informed the Ombudsman that the lack of specific qualifications for swimming pool barrier inspectors makes it difficult to recruit inspectors with appropriate skills and experience.

There are 139 local governments in WA, almost all of which inspect the safety barriers of swimming pools. The variation between local governments, including how they inspect safety barriers, is significant and includes differences in matters such as:

- the size and scale of the district (1 sq. km to over 370,000 sq. km);
- the number and employment status of inspectors (full-time/part-time/contractor);
- the inspector's primary role (pool inspector/shared role/building surveyor/environmental health officer); and
- the number of pools.

Notwithstanding the differences between local governments, the role of the inspector is the same in each. An inspector in a regional area, who may only carry out inspections for one month each year, has the same responsibility and carries out the same function as an inspector in the metropolitan area, who might inspect numerous pool barriers every day, all year round. However, the differing levels of experience between these two groups can be significant.

## Statement of the issue

The Ombudsman's Report observed that there are currently no requirements for training or continuing professional development (CPD) for inspectors in WA, and consequently recommended that consideration be given to the development and delivery of a training program and CPD for inspectors to ensure they have, and continue to maintain, appropriate skills for their role, and that consideration should be given to:

- the cost of the program;
- any unintended consequences; and
- whether the training program should be linked to a national training system.

The Ombudsman's Report also recommended that any training program includes compliance promotion, conflict resolution, and the use of an inspection template.

## Outcome of stakeholder consultation

### Stage 1 review

Inspector training was not specifically considered by the Working Group. Instead, consultation was undertaken with SPASAWA, WALGA, and RLSSWA.

WALGA and local governments confirmed that adequate training already exists for conflict resolution and identified WALGA's 'Dealing with Difficult People' course as evidence.

It was recognised that any training developed and provided will need to suit the varying circumstances of metropolitan and regional local governments and must take into account:

- the large number and varying sizes, locations, resources, and needs of local governments;
- the number of inspectors available;
- an anecdotally low inspector turnover rate;
- both initial and ongoing demand;
- that many inspectors are already highly experienced; and
- that local governments with low numbers of swimming pools may utilise existing staff to fulfil their inspecting obligations. These staff may carry out inspections rarely, as only a small part of their employment.

Options for providing training vary considerably, ranging from nationally recognised and accredited courses to simpler and more accessible online training courses or handbooks. Outcomes of undertaking training also vary and include obtaining a qualification, accreditation, or a completion certificate. Qualification or accreditation processes are more rigorous and costly. Given the likely fluctuation in demand these were not considered viable options, and training providers may also be difficult to source.

Options for maintaining the required skills and knowledge of pool inspectors are also varied and are mostly dependent on the decision taken relating to training courses.



Formally required CPD is generally linked to the practitioner’s registration or accreditation, however informal CPD can deliver similar benefits without an associated regulatory burden.

## Stage 2 review

Proposals on inspector training were included in the Consultation Paper. The tables and commentary below summarise the responses to the specific questions posed to stakeholders.

<b><i>What sort of information should be covered in a training course for pool inspectors?</i></b>
<b>No. submissions:</b> 32

Stakeholders strongly supported inspector training, suggesting that it should cover every aspect of an inspection process, including the forms to be completed, booking an inspection, recording inspection results, checking relevant safety items such as gates, latches, windows etc., enforcement and compliance and how to deal with difficult people and situations.

Other stakeholders suggested training should be provided on the regulatory requirements, and clarification given on: boundary fences; processes for correct entry to properties; and the interpretation of the Australian Standards.

<b><i>What do you consider to be the most appropriate delivery method for training – online or in-person?</i></b>				
<b>No. submissions</b>	<b>Support: Online</b>	<b>Support: face-to-face</b>	<b>Support: Both</b>	<b>Neutral</b>
29	7%	28%	55%	10%

Stakeholders identified a combination of online and face-to-face training as the most preferred approach to any training program.

<b><i>Should Building and Energy organise ongoing workshops to maintain the required skills and knowledge of pool inspectors? How should this be delivered, given travel distances and other factors?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
29	100%	-	-

To maintain the required skills and knowledge of inspectors, stakeholders emphatically supported Building and Energy organising workshops at set intervals to provide updates and information on regulatory changes and topical issues.

Such workshops could serve as informal CPD sessions for inspectors.

## Other jurisdictions

A review of the training requirements in other Australian states and territories has been undertaken for comparison purposes and to inform decision making. The table below provides an overview of the review:

	Requirements
<b>Queensland</b>	<ul style="list-style-type: none"> <li>Inspectors are required to have a pool safety inspector licence from the Queensland Building and Construction Commission. Unless the person is already a licenced building certifier, this involves obtaining a Certificate of competency in an approved training course, currently a Statement of Attainment in Swimming Pool Safety Inspections (course code 10660NAT), issued by the Australian Skills Quality Authority. The applicant must provide evidence of passing the pool safety inspector test, professional indemnity insurance, prescribed fees, and evidence of the applicant's identity.</li> <li>Inspectors are required to undertake CPD to continue to update their knowledge of pool safety legislation, regulations, practices and standards. Pool safety inspectors (excluding licensed building certifiers), annually require 6 CPD points, and building certifiers 4 CPD points.</li> </ul>
<b>NSW</b>	<ul style="list-style-type: none"> <li>Local government officers, and private certifiers accredited by the NSW Fair Trading, can carry out inspections of safety barriers for swimming pools.</li> <li>The NSW Fair Trading has developed a swimming pool inspector category and a training course structure and criteria have been established. The training course includes an exam.</li> <li>Both private certifiers and local government officers who undertake a pool inspection role can issue pool certificates.</li> <li>Private swimming pool certifiers are required to undertake annual CPD, but not local government appointed inspectors).</li> </ul>
<b>Victoria</b>	<ul style="list-style-type: none"> <li>A pool inspector course is currently under development by the Victoria Building Authority.</li> </ul>
<b>South Australia</b>	<ul style="list-style-type: none"> <li>No specific training courses for inspectors are offered.</li> </ul>
<b>Northern Territory</b>	<ul style="list-style-type: none"> <li>No specific training courses for inspectors are offered. All inspections are undertaken by Northern Territory Government Pool Safety Advisers.</li> </ul>
<b>ACT</b>	<ul style="list-style-type: none"> <li>No specific training courses for inspectors are offered.</li> </ul>

## Decision and impact analysis

Determining the precise number of people who conduct inspections of safety barriers for swimming pools in WA is difficult, yet this is an important factor when considering a training system for those people. While there are 139 local governments in WA, the number of swimming pools located within each local area varies significantly, as do staffing and financial capabilities.

For example, the City of Joondalup has five full-time inspectors whereas the Shire of York uses a part-time environmental health officer to inspect the district's pools once every fourth

year. Some local government's contract out pool inspection responsibilities to organisations such as RLSSWA, and others don't have any private swimming pools within their district, as illustrated below:

- 14 local governments have over 3,000 private swimming pools.
- 55 local governments have less than 50 private swimming pools.
- 9 local governments have 0 private swimming pools.<sup>16</sup>

Local governments with more than 3,000 private swimming pools likely require a full-time inspector, depending on compliance rates, travel distances, and the like. For those local governments with fewer swimming pools, it is likely that many utilise part-time staff, existing staff (shared roles, such as building surveyors, environmental health officers, etc.), or contractors.

The consideration of an appropriate training package needs to take into account a number of different factors, with the following identified as being particularly valid in WA and of most significance to this decision:

- As inspectors are employees or contractors of local governments, a greater level of control already exists when compared to a private inspector, such as those in the other Australian states and territories.
- Anecdotally, local governments tend to have a low staff turn-over rate for inspectors.
- Inspectors in WA already have a significant amount of experience as the requirement for local government pool inspections has been in place since 1991.
- Inspectors are spread all over WA.
- Inspectors may have primary roles other than inspecting pools, with the inspecting of swimming pools potentially forming a very minor portion of their workload

For example, a local government situated in rural WA with just three swimming pools within its locality, may have to consider whether there is any real benefit in paying to fly a staff member to Perth, arrange and cover the costs of accommodation, food and time away from the office for the duration of training, along with the actual cost of the course. Similar commercial issues will be faced by the training providers. It may be more efficient and cost effective to offer an online training service or training handbook.

In April and May 2016, Building and Energy (then the Building Commission) held information sessions on the new requirements for post-May 2016 swimming pools. Seven sessions were held in Cannington and one in Bunbury. 175 people attended the Cannington sessions and approximately 20 attended the session in Bunbury. While a number of attendees were building surveyors who may have needed this information for building certification work rather than inspections of pool barriers, this is indicative of the numbers of people who may require pool inspector training. Local government pool inspectors generally have a low turn-over rate and once staff have been trained the future demand for the course is likely to be low, making a face-to-face training course commercially difficult to sustain.

Maintaining swimming pool inspectors' knowledge and skills is vital for them to be able to carry out their regulatory functions effectively. However, the difficulties in accommodating the needs

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<sup>16</sup> Local government's four yearly inspections of private swimming pool safety barriers 2018/19.

of all 139 local governments, and the likely fluctuations in demand for a formal training course, means it is not appropriate to amend the Building Regulations to prescribe any particular training course. In response to the Ombudsman's recommendations, it is proposed to implement other non-regulatory measures to address this issue. These are detailed under separate headings below.

### **Development and delivery of training to pool inspectors**

Building and Energy is not a Registered Training Organisation (RTO) and does not have the expertise or resources to develop and maintain a training package. However, there is nothing to preclude any external RTO from developing a course. Such a course would be expected to cover the basics of the role of pool inspectors, but not clarify interpretive areas of the Australian Standards.

Building and Energy could assist in encouraging local governments to ensure their pool inspectors attend such training and will further explore these possibilities. There is no plan to register and/or accredit pool inspectors.

### **Pool inspector role – manual**

Building and Energy will develop a guide on how to carry out the role and functions of an inspector. This will be incorporated into the Pool Inspector Guidelines and will cover the basic elements of arranging and carrying out inspections and accessing properties. It will also include an inspection template covering all aspects of the inspection process, including records (photographic and written), compliance promotion, enforcement tools and the like. This information will be packaged into a single document that can be provided on an as-needs basis to those undertaking the role of pool inspector.

### **Continuing Professional Development (CPD)**

Building and Energy will develop and deliver annual information sessions and workshops in order to maintain the skills of pool inspectors. This will serve as informal CPD, will be provided free of charge and will be made available by video for distribution to regional areas. The CPD will be fluid and will vary from year to year to provide the most up to date and topical information. This training will specifically include the use of a safety barrier inspection checklist, as recommended by the Ombudsman.

Guest presenters from local government, RLSSWA, and other relevant bodies would be invited to co-present these sessions with Building and Energy.

### **Compliance promotion**

Building and Energy will prepare guidance material on compliance promotion for inclusion in the Pool Inspector Guidelines. Compliance promotion has strong links to enforcement strategy. It is not proposed that formal training will be provided with regard to compliance promotion.

### **Conflict resolution**

WALGA's *Dealing with difficult people* course is considered to adequately address conflict resolution. It is also recognised that there are other, widely available, conflict resolution courses that pool inspectors could attend on an as-needs basis. Building and Energy will not create a course dealing with conflict resolution specific to inspectors.

## Quality assurance

Guidance material will include information on quality assurance processes.



### **Decision 12 – Training for swimming pool inspectors**

**Not to amend** the Building Regulations to require the training of pool inspectors.

**Support** the development of a voluntary external training course.

**Provide guidance** in the form of a training manual to form part of the Pool Inspector Guidelines.

**Provide** annual workshops to maintain knowledge and skills of swimming pool inspectors

**Promote** to local governments:

- the voluntary external training course, encouraging completion by their pool inspectors;
- the annual workshops, encouraging attendance by their pool inspectors.

## Impact analysis

This decision will have no additional cost impact upon consumers, industry or government.

Supporting the development of an external training course will encourage the provision of a course specific to swimming pool inspectors, while allowing local governments to determine their own requirements for accessing such a course for their pool inspectors.

## Decision 13 – Display of CPR charts

### Background

Statistical data on non-fatal drownings is considerable. The difference between a fatal and non-fatal drowning often comes down to knowledge of cardio pulmonary resuscitation (CPR). In Australia, the number of people who are trained in CPR is very low – Red Cross Australia advises that less than five per cent of the population is trained in first aid.

Knowledge of first aid and CPR can make a significant difference to the chances of survival of someone whose heart has stopped. When a person's heart has stopped they have an 80 per cent chance of surviving if CPR is started in the first minute. This rate drops to less than five per cent if CPR is not started within 10 minutes. With time being a critical factor and a low proportion of the population being adequately trained, the provision of a CPR chart near a swimming pool is a simple and cost-effective way to improve the chances of a child surviving a drowning incident.

### Statement of the issue

The Ombudsman's Report highlighted research literature which suggested that immediate resuscitation at the site of a drowning incident, even before the arrival of emergency medical professionals, is an important means of secondary prevention and is associated with significantly better outcomes for people with submersion injuries. Prevention measures can reduce the incidence of drowning, and immediate high quality CPR can improve survival rates.

As CPR is so effective in an emergency, the Australian Resuscitation Council emphasises that 'any attempt is better than no attempt'.

CPR signage, in the case of an emergency, is seen as facilitating instant access to vital skills knowledge and ultimately can assist educating and improving the awareness of owners. The display of a CPR sign also serves as a constant reminder to users of the swimming pool of the potential danger of drowning, which may encourage better supervision and safety barrier compliance.

Queensland, NSW and South Australia all require, through legislation, the display of a CPR sign on or around swimming pools. The ACT is currently considering implementing a requirement, while Victoria recommends the display of CPR signs. In WA, there is currently no requirement for the owner of a private swimming pool to display a CPR sign on or around their swimming pool safety barrier, however, some local governments provide CPR charts to pool owners free of charge.

Available literature suggests in most instances the person who finds a child in a swimming pool and not breathing is the child's parent. There are also accounts of adults who, although they had learnt CPR, were unable to recall and use those skills when faced with the situation of their own child needing resuscitation. The provision of CPR charts may assist parents in this circumstance.

The Kids Health website offers a free online training program, which teaches the steps to performing CPR on infants and children [www.kidshealth.schn.health.nsw.gov.au/cpr](http://www.kidshealth.schn.health.nsw.gov.au/cpr)

## Outcome of stakeholder consultation

### Stage 1 review

Proposals concerning CPR charts were not considered as part of Stage 1 of the review.

### Stage 2 review

The provision of CPR charts was raised in the Consultation Paper.

Feedback from stakeholders was overwhelmingly supportive with comments and advice being offered on sign locations and preventative measures such as including the emergency 000 number on the sign, using QR Codes to allow for language translation and requiring owners to obtain a CPR certificate.

The tables below describe the responses to the specific questions posed to stakeholders.

<b><i>Is there merit in requiring the display of CPR signage in close proximity to a private swimming pool?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
30	87%	13%	-

Stakeholders overwhelmingly supported the display of CPR charts in close proximity to swimming pools. However, the feedback suggested that the use of CPR charts should be optional rather than legislated, with several stakeholders commenting that CPR chart usage should be 'best practice', 'the homeowners' choice' and 'suggestion only'.

<b><i>Where should the CPR signage be located? Both sides of each gate into a pool area? Or simply in a prominent location easily seen from the area immediately surrounding the pool?</i></b>				
<b>No. submissions</b>	<b>Support: On gate</b>	<b>Support: Prominent area</b>	<b>Support: Both</b>	<b>Not support</b>
24	4%	71%	21%	4%

An overwhelming majority of stakeholders supported CPR signage being located in a prominent location easily seen from the area immediately surrounding the pool.

## Decision

As the first person at a drowning incident, being able to apply CPR can be the difference between life and death. CPR provides a drowning victim with a chance of survival they may not otherwise have.

The provision of a CPR chart in close proximity to a swimming pool will facilitate immediate access to vital skills knowledge, and has the potential to prevent a fatal drowning incident by assisting those who may temporarily forget their CPR knowledge, as well as those who have not been trained in CPR at all.

In this context, a non-regulatory measure is considered preferable to amending the Building Regulations. Guidance is expected to provide an effective outcome without any associated enforcement difficulties of making CPR charts a regulatory requirement.



### **Decision 13 – Display of CPR charts**

**Provide guidance** to owners on the benefits of learning CPR, and displaying CPR charts and their installation locations.

## **Impact analysis**

This decision will have no additional cost impact upon consumers, industry or government.



## Decision 14 – Portable swimming pools



### Ombudsman's recommendations summary

- Consider community education, and opportunities for retailers and suppliers to inform purchasers at the point of sale, of the risk of children drowning in portable pools and spas and the need to comply with building legislation requirements.
- Consider strategies to improve safety and compliance of portable pools and spas

## Background

Portable swimming pools come in various shapes and sizes, from very small paddling pools to large, deep swimming pools that come with a pump and filter. While some of these may be erected for an hour or two during use, others may remain in place for an entire summer or longer.

Between 1 July 2002 and 30 June 2018 (16 years), 20 children under the age of five died from accidental drowning in a portable swimming pool.

The majority of these children were male, aged between 12 and 23 months, and were located in areas classified as regional. Where the depth of the swimming pool at the time of the incident was known, the largest proportion of drowning incidents occurred in water depths of between 30cm and 50cm. Where specific details are known, in all cases the portable swimming pool was either not fenced or fencing was non-compliant. It is estimated that for every fatal drowning in a portable pool, there are nearly five non-fatal drownings<sup>17</sup>.

## Statement of the issue

Every Australian state and territory has some form of legislation in place to ensure that any portable swimming pool or spa containing water more than 30cm deep must have a safety barrier in place that restricts access to the pool by young children.

The Ombudsman's Report identified that it is very difficult for a local government to control portable swimming pools. Local governments are generally not made aware of their installation, and as such are unable to inspect and ensure compliant safety barriers are installed. The Ombudsman recommended that owners and occupiers should be made aware that any portable swimming pool or spa containing water more than 30cm deep must have a safety barrier in place that restricts access to the pool by young children.

It was also recommended that the Building Commissioner work with local governments in helping to identify when portable swimming pools and spas may require inspection, and that Building and Energy consider appropriate community education regarding the specific risks of children drowning in portable swimming pools and spas.

In WA, the safety barrier requirements in the Building Regulations apply to portable swimming pools.

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<sup>17</sup> Peden AE, Franklin RC, Pearn JH. *The prevention of child drowning: the causal factors and social determinant impacting fatalities in portable pools*. Health Promot J Austral. 2019; 00:1-8. <https://doi.org/10.1002/hpja.282>

If a portable swimming pool holds a depth of 30cm of water or more, safety barriers are required. Penalties of up to \$5,000 can apply for non-compliance, and local government inspectors are able to issue on-the-spot \$1,000 infringement notices where a safety barrier is not provided or is non-compliant. It doesn't matter the length of time the pool is in place, the safety barrier requirements still apply.

However, because most owners do not obtain building permits for portable swimming pools, local governments are generally unaware of the installation of these pools and enforcement of safety barrier requirements is challenging. Where the local government is made aware and attempts to conduct a compliance inspection, portable swimming pools can be easily emptied and removed prior to the inspector arriving.

## Outcome of stakeholder consultation

It is considered that further regulation of portable swimming pools can only be effectively addressed through additional consumer protection/point of sale legislation. For this reason, it was not considered as part of Stage 1 and 2 of the review process.

## Decision

### Consumers

It is considered that public education, rather than further regulation under the Building Regulations, is likely to be more effective in reducing the deaths of children by drowning in portable swimming pools.

Some work has already occurred in this space. For example, the Consumer Goods (Portable Swimming Pools) Safety Standard 2013 requires portable swimming pools to display a safety label warning of the potential of drowning and advising that children must be supervised by an adult at all times. The label also advises consumers to empty and store the pool safely after use. These labelling requirements apply to:

- an inflatable swimming pool, of any depth;
- a soft-sided swimming pool, of any depth; and
- a rigid-sided swimming pool that is not deeper than 30cm.

The mandatory standard to label portable swimming pools does not apply to spas, hot tubs or whirlpool tubs, unless they meet the definition above.

If the depth of the portable swimming pool is 30cm or more, or is capable of being filled to that depth, the warning label must include advice that safety barrier requirements apply, and that local governments should be consulted about fencing requirements.

Suppliers of portable pools including manufacturers, importers, distributors and retailers must ensure compliance with the consumer safety standard in regard to warning labels. More information on portable pool safety is available on the Product Safety Australia website [www.productsafety.gov.au/portablepools](http://www.productsafety.gov.au/portablepools).

Unfortunately, the majority of the public appears unaware that portable swimming pools holding more than 30cm of water require safety barriers.

In a survey of 142 parents with portable pools that were 30cm or deeper, only 26% reported that their pool was fenced, while 74% reported that their pool was unfenced<sup>18</sup>.

Some consumers may consider a portable swimming pool to be a more attractive option than an in-ground pool as they are cheaper to buy, are transient, do not take up as much space, are easy to maintain and may not need chemicals. However, they may not appreciate the potential danger or be aware that portable swimming pools require a safety barrier.

Installing an in-ground private swimming pool can be an expensive process, potentially in excess of \$20,000, depending on size, style and complexity of the project. On top of this price comes the installation of the safety barrier, subsequent landscaping and the additional costs of running pump and heating equipment, water usage and ongoing maintenance. Faced with these costs, a portable swimming pool can seem like a more practical solution to owning a pool without the financial burden.

The additional cost for the barrier can be expensive, with prices varying depending on size, duration, material, etc. and often after the initial cost of the swimming pool the owner is left unable to pay more.

Rental properties are also common places for portable swimming pools. Tenants may erect a small portable swimming pool during summer but are unlikely to install a permanent fence, and are generally unlikely to get approval from the landlord for the pool in the first place.

To improve consumer knowledge of the safety barrier requirements Building and Energy, in collaboration with Consumer Protection, has produced a brochure, titled 'Rules for Portable Pools'. The brochure is compact and informs consumers of their responsibilities for compliant safety barriers for portable swimming pools, making it ideal for point of sale distribution. It is understood that having relevant information available at the point of sale is likely to improve consumer understanding of their responsibilities.

Consumer Protection has also liaised with many retailers of portable swimming pools and these brochures are displayed and provided in many stores across WA, including Bunnings, Clark Rubber, and Kmart. In addition, Building and Energy posted copies of this brochure to every local government in WA and has a digital version available on its website.

Building and Energy has also collaborated with Consumer Protection on various media campaigns aimed at educating consumers, including 'Make it Safe', 'Don't Duck Out', and 'Safe Summer'.

Building and Energy will continue to provide guidance and support to local government on regulatory requirements. Collaboration with Consumer Protection in educating the public will also continue through initiatives such as media campaigns, brochures and flyers, identifying further options to distribute information through retailers and exploring other distribution possibilities such as product packaging.

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<sup>18</sup> Hamilton, K., Keech, J.J. & Peden A.E. (2019). *Understanding consumers' knowledge, beliefs, and attitudes toward portable pool compliance and safety behaviours*. Griffith University, Brisbane & Royal Life Saving Society – Australia. Doi:10.25904/5c6f9a0abfa38

## Further defining portable pools to apply more effective regulatory controls

Consideration has been given to amending the Building Regulations to include a definition for portable pools, focusing on whether the swimming pool has a filtration system, consistent with legislation in South Australia and Queensland.

However, no evidence can be found that differentiates drowning statistics based upon filtration systems being present. A survey of the market identified that filters are included in some types of portable swimming pools of various sizes. Evidence shows that the largest proportion of drowning incidents occurred in water between 30cm to 50cm deep. This size swimming pool may or may not have a filter, and is typically temporary and portable. The current regulatory framework already requires these pools to have compliant safety barriers.

Regulatory requirements on the provision of safety barriers for portable pools are largely ineffective, and it is considered unlikely that further regulatory measures would significantly improve levels of safety barriers for portable pools.

While local governments have the ability to issue fines for non-compliance, identifying the location of portable pools is problematic, making the option ineffective but for a few isolated cases.

### Temporary fencing

Temporary fencing may provide an option for those who are not willing or able to install a permanent safety barrier. Such fencing can be rented or purchased and installed at a much lower cost than having a permanent safety barrier constructed and installed. However, in most instances this will still be significantly more expensive than the portable swimming pool itself. Temporary fencing is generally not aesthetically pleasing, and is typically used for construction sites and the like. It is considered unlikely that consumers will utilise temporary fencing for portable pools.

It is unrealistic to expect owners of inexpensive portable swimming pools, mostly in place for a short time and often at rental properties, to install expensive safety barriers around those pools.

Supervision is the primary and most effective method of preventing the death of children by drowning in portable swimming pools. Safety barriers are secondary to supervision, with the nature and purpose of safety barriers being to restrict, not to prevent, access. Public education on the dangers of portable swimming pools is considered to be the most effective method to reduce risk.



#### **Decision 14 – Portable swimming pools**

**Not to amend** the Building Regulations to further regulate portable swimming pools.

**Improve public awareness** on child safety around portable swimming pools, via campaigns and publications.

## Impact analysis

This decision will have no additional cost impact upon consumers, industry or government.

## Decision 15 – Spa baths

### Background

Prior to May 2016, the Building Regulations defined a ‘private swimming pool’ as:

*Private swimming pool means a place or premises, including a spa-pool but not a spa-bath, provided for the purpose of swimming, wading or like activities —*

*(a) which the public are not entitled to use; and*

*(b) which has the capacity to contain water that is more than 300mm deep.*

In May 2016, the Building Regulations were amended to adopt the BCA as the applicable building standard for swimming pools and their safety barriers.

### Statement of the issue

The wording ‘but not a spa-bath’ was excluded from the new definition. This was an unintended amendment to the definition.

Typically a spa-**bath** is:

- only filled with water in preparation for and during its use;
- is primarily used for bathing and washing as opposed to swimming, and
- is drained after each use.

In contrast, a spa-**pool** is:

- not drained after each use, has water in it for long periods of time;
- has a pump and filter, uses chemicals for sanitation; and
- is used for entertainment and relaxation.

Therefore, a spa bath should not be subject to the swimming pool safety barrier requirements.

Extensive guidance has been published by Building and Energy to clarify that ‘spa baths that are normally emptied after each use’ are not required to comply with the safety barrier requirements. However, the current Regulations do apply to spa-baths.

The ACT, NSW, Victoria, South Australia and the Northern Territory all specifically exclude spa-baths in their relevant legislation. The Tasmanian Government on its website; Consumer, Building and Occupational Services, advises that ‘indoor spa-baths (emptied after each use) don’t require a barrier’.

In Queensland, spa baths are excluded where they are situated in a bathroom and are not continually filled with water to a depth greater than 30cm, or where they are not capable of being filled to a depth of 30cm and have a volume of no more than 2,000L and have no filtration system.

## Outcome of stakeholder consultation

As the inclusion of spa-baths was an unintended consequence of earlier amendments to the Building Regulations, further clarifying amendments were not considered during Stage 1 and 2 of the review process.

## Decision

The removal of the specific exclusion of spa baths from the definition of “private swimming pool” was unintended. It is proposed to amend the Building Regulations to reinstate the previous exclusion of spa-baths.



### **Decision 15 – Spa baths**

**Amend the Building Regulations** to specifically exclude “spa baths” from the definition of a “private swimming pool”.

## Impact analysis

This amendment to the Building Regulations will not have any adverse impacts on consumers, industry or government.

Without the express exclusion of spa-baths from the definition of a private swimming pool, the owner of a spa-bath is currently responsible for complying with the requirements in the Building Regulations. This includes safety barriers, four-yearly inspections and the associated charges.

## Decision 16 – Swimming pool covers and blankets

### Background

WA is the only Australian jurisdiction to have an addition in the BCA specific to water loss prevention. The associated acceptable construction practice requires outdoor swimming pools to be provided with a pool cover designed to reduce water evaporation.

Information from the pool industry suggests that the objective of the requirement is not being met.

### Outcome of stakeholder consultation

#### Stage 1 review

The issue of swimming pool covers was not considered in Stage 1 of the review process.

#### Stage 2 review

Swimming pool covers were raised in the Consultation Paper in order to gather further information on the claims, and to canvass views and other feedback. Feedback from stakeholders was mixed, with the majority supporting removal of the obligation from the BCA, and promoting the use of swimming pool covers as a voluntary option.

The tables below describe the responses to the specific questions posed to stakeholders.

<b><i>Are pool covers being used effectively to reduce evaporation?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
30	40%	33%	27%

The majority of stakeholders who supported the proposition were from the industry. Pool cover companies advised that the high number of repeat purchases indicates they are used regularly. Companies also commented that where pool covers are used, evaporation is virtually eliminated.

Stakeholders who did not support the proposition, claimed that pool covers are not used on the swimming pool in the hotter months where evaporation is highest. Reasons for this include:

- that owners don't want the water temperature to raise too high;
- swimming pools are often in constant use; and
- covers are used most often in cooler weather to keep the pool temperature warmer for comfortable swimming, meaning pool covers are not used effectively to reduce evaporation when it is most needed.

<b><i>Are there unintended consequences of using a pool cover, such as damage to the pool surface?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
26	31%	46%	23%

Stakeholders who agreed with this proposition cited the following unintended consequences:

- Risk if fallen in pool or through the pool cover and become tangled in or under it causing possible drowning (including pets and wildlife). One submission noted they had been made aware of incidents where family pets had drowned due to pool covers.
- Increased algal growth.
- Unmanaged debris out of sight.
- Chemical balance harder to maintain as water is at a higher temperature.
- More chemicals are needed for the water at the higher temperatures.
- The pool covers have a short life expectancy and break down.
- Pool covers can cause excessively high chlorine levels that, if left unadjusted, can be corrosive to pool plaster.

Stakeholders who did not agree with the proposition, contended that if pool covers are used correctly and chemical levels maintained, there are no adverse effects.

One stakeholder highlighted that incorrect water balance is the main contributing factor to accelerated failures to the swimming pool environment, including pool equipment and surface.

<b><i>Are the costs of providing and installing pool covers too high?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
26	15%	46%	39%

Stakeholders that supported the proposition, highlighted that water usage is an owners responsibility and other mechanisms, such as the Water Corporation charging extra for pool owners, would be considered more beneficial to achieve water savings.

Others asked for proof of the benefits such a requirement delivers.

All stakeholders who did not support the proposition highlighted that the cost reflects the value-add of pool covers, and that consumers have access to many different and affordable options when purchasing pool covers.

It was highlighted that the cost saving on evaporation over the life expectancy of a swimming pool outweighs the initial purchase and installation cost.

<b><i>Should the use of pool covers be voluntary?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
31	65%	26%	9%



The majority of stakeholders supported the proposition that pool covers should be voluntary, citing the position in all other Australian jurisdictions and consumer choice. Stakeholders who did not support the proposition, suggested that the cost of a pool cover is a small price to pay for the large benefits that can be achieved in water savings, thereby preserving a valuable natural resource.

<b><i>Do you support the removal of the WA additions which require the use of a pool cover from future editions of the BCA? Why?</i></b>			
<b>No. submissions</b>	<b>Support</b>	<b>Not Support</b>	<b>Neutral</b>
29	55%	31%	14%

Stakeholders who supported the removal of the WA addition noted that the benefits of national consistency would outweigh the disadvantages and that it should be left to consumer choice.

Stakeholders opposed to the removal of the WA addition, noted there is real value in such a water saving measure.

## Decision

In response to the consultation of the draft edition of this paper, the Department of Water and Environmental Regulation advised that the Water Corporation is currently analysing recent data that could help inform water savings and behaviours relating to pool cover use. In light of this development, a decision on requesting an amendment to the BCA will be deferred pending the outcome research.



### **Decision 16 – Swimming pool covers**

**Retain** the current WA variation in the BCA to require swimming pool covers, pending the outcome of research by the Water Corporation.

## 5 Implementation and Evaluation

Implementation of some of the decisions in the Decision Paper will require amendments to the Building Regulations. Building and Energy will coordinate the drafting of the amendments and provide support and advice to stakeholders, particularly local governments.

For the reforms that are to be implemented via amendments to the Building Regulations, Building and Energy will undertake an evaluation two-years after the commencement of the new provisions. However, some of the amendments may require additional time to evaluate the effectiveness of the changes.

The main aim of the evaluation will be to ensure the reforms are achieving their intended objectives and to identify any issues that have arisen following their commencement. The following decisions that amend the Building Regulations will be evaluated for their effectiveness.

Decision One	Initial safety barrier inspection requirements, new maximum fee, and exemption from requiring a building permit.
Decision Three	Reinspection of non-compliant barriers, and clarification on incorporating reinspections in the inspection fee.
Decision Five	Reporting annually to the Building Commissioner to demonstrate progress with the four-yearly inspection program.
Decision Six	Annual maximum charge increase and clarification of including reinspections and empty pools.
Decision Nine	Excluded areas of the State amended on a case-by-case basis by formal request from local governments.
Decision Eleven	Inclusion of an additional option to comply with the boundary barrier requirements.
Decision Fifteen	Excluding “spa baths” from the definition of a “private swimming pool”.

Where appropriate, the preparation and release of guidance to local governments, industry and owners may be progressed in advance of amendments to the Building Regulations. In some cases, this will include an education campaign to draw awareness to the guidance material prepared.

# Appendix 1: Ombudsman's recommendations

## Ombudsman WA – Investigation into ways to prevent or reduce deaths of children by drowning

Recommendation 1: The Department of Mines, Industry Regulation and Safety continues to develop and implement strategies for educating parents and caregivers regarding the importance of maintaining active supervision of children who are placed in bath seats and of avoiding altogether the use of floor seats in the bath or shower.

Recommendation 2: The Department of Mines, Industry Regulation and Safety continues to monitor data specifically regarding fatal and non-fatal drowning incidents that occur in the bath and, if warranted, pursue the development of further regulation applicable to the products associated with these incidents.

Recommendation 3: Taking into account the findings of the Investigation, and the findings and recommendations of the Coroner regarding private swimming pools at rental properties, the Department of Mines, Industry Regulation and Safety develops and implements further strategies designed to ensure that real estate agents, including property managers, and private landlords, respond appropriately to information regarding swimming pool barriers that do not comply with the Building Act 2011 and the Building Regulations 2012.

Recommendation 4: The Department of Mines, Industry Regulation and Safety considers the introduction of requirements for property managers and private landlords to provide, in the most cost-effective way and resulting in the least regulatory burden, a copy of the most recent inspection form confirming that the swimming pool barrier was found to be compliant, to the potential tenant at the time of entering into a lease agreement.

Recommendation 5: The Building Commissioner reviews the operation of section 33 of the Building Act 2011 in order to determine the level of compliance of permit holders (including owners, registered and unregistered builders and swimming pool barrier installers) with requirements to submit notices of completion for private swimming pools and their barriers in accordance with section 33.

Recommendation 6: In undertaking the review of the operation of section 33 of the Building Act 2011, the Building Commissioner works cooperatively and collaboratively with local governments to increase compliance by permit holders (including owners, registered and unregistered builders and swimming pool barrier installers) with section 33 of the Building Act 2011 through a series of the most complementary strategies utilising the expertise and experience of the Building Commissioner and ensuring that such strategies are the most cost-effective and result in the least regulatory burden. At a minimum, consideration should be given to:

- (i) the provision (by either local governments, the Building Commissioner or both) of advice, information, education and training for permit holders regarding the requirements and importance of section 33 of the Building Act 2011;
- (ii) the Building Commissioner undertaking risk-based compliance audits of the work and conduct of registered builders of swimming pools;
- (iii) measures which specifically target increased compliance by builders and installers of swimming pool barriers who are not registered builders; and

(iv) where appropriate in all of the circumstances, use of sanctions by local governments, as provided for by the Building Act 2011.

Recommendation 7: The Building Commissioner monitors local governments' compliance with regulation 53(1) of the Building Regulations 2012, including by requiring that local governments report on compliance with regulation 53(1) each year, and that the Building Commission reports this information to Parliament in its annual report.

Recommendation 8: The Building Commissioner provides guidance to local governments regarding the manner and form in which the information relating to swimming pools and their barriers should be kept including the key elements of any associated record management system, bearing in mind the need to avoid any inappropriate regulatory burden particularly for small local governments and local governments with few recorded swimming pools in their districts.

Recommendation 9: Taking into account the findings of the Investigation, the Building Commissioner, subject to consultation, and in development with local governments and industry stakeholders, reviews the concessions for pre-November 2001 swimming pools provided for in regulation 52 of the Building Regulations 2012, with a view to considering whether an amendment to the Building Regulations 2012 ought to be made to remove these concessions. If regulatory changes are made, any such regulatory change should consider an appropriate extended phase-in period to take into account regulatory (sovereign) risk and costs imposed upon existing property owners.

Recommendation 10: The Building Commissioner clarifies with local governments the charges that local governments are able to impose for inspections of swimming pool barriers, including whether these charges may be imposed only in the year of an inspection, or each year.

Recommendation 11: The Building Commissioner consults with local governments regarding the adequacy of charges to meet the cost of swimming pool barrier inspections, including:

- (i) establishing the actual cost of the efficient delivery of swimming pool barrier inspection practices;
- (ii) if appropriate, seeking an amendment to the Building Regulations 2012 so that the allowed charge reflects this efficient cost; and
- (iii) informing local governments of the efficient cost so that such cost is transparent and borne by the users of the system (that is, ratepayers who have a swimming pool and not cross-subsidised by non-swimming pool owners).

Recommendations 12: The Building Commissioner, in consultation with local governments and other stakeholders, considers whether it would be appropriate to co-ordinate the development and provision of a training program (including curriculum, scheduling arrangements, modes of delivery and assessment methods) specifically for inspectors of swimming pool barriers. In doing so, the Building Commissioner can take into account matters relevant to the expertise and experience of the Building Commissioner, but should at a minimum consider:

- (i) the cost of the program including developing and delivering the program at least cost to taxpayers. For example, the Building Commission could consider funding such training from the Department of Mines, Industry Regulation and Safety's internal training fund.

- Such funding would not require new funding and potentially represents a cost-beneficial way of contributing to enhanced inspection standards and enhanced protection for Western Australian children and ultimately the reduction of risk of child death by drowning;
- (ii) any unintended consequences of establishing the training program, including if establishing the program could act to restrict the supply of inspectors and thus exacerbate the difficulties in recruiting inspectors; and
  - (iii) if the training program can and should be linked to the national training system.

Recommendation 13: The Building Commissioner, in consultation with local governments and other stakeholders, considers improvements to training in compliance promotion and conflict resolution. This could be included as part of the training program developed specifically for inspectors of swimming pool barriers, discussed at Recommendation 12.

Recommendation 14: The Building Commissioner, in consultation with local governments and other stakeholders, considers the development and provision of a systematic program of cost-effective continuous professional development for inspectors of swimming pool barriers to support inspectors to remain up-to-date with changes in the legislation, regulations and standards.

Recommendation 15: The Building Commissioner considers the promotion of a quality assurance process (for which there is currently a good practice example) for swimming pool barrier inspections to local governments. This quality assurance process could include reviewing a sample of inspections undertaken by each inspector at appropriate intervals throughout the inspection program, with additional information on this process included in the Inspector Guidelines.

Recommendation 16: The Building Commissioner works with local governments and other stakeholders to develop a template swimming pool barrier inspection checklist template, which incorporates all of the required elements to meet the applicable standards, and is as efficient to complete as possible for inspectors, for use across local governments.

Recommendation 17: In implementing Recommendation 12, the Building Commissioner works with local governments to (at least cost to taxpayers and ratepayers):

- (i) ensure that the training program for inspectors of swimming pool barriers includes specific training on the template swimming pool barrier inspection form and the requirement to complete all elements of the form; and
- (ii) to develop a quality assurance process for ensuring that all elements of swimming pool barrier inspection forms are consistently completed.

Recommendation 18: Taking into account the findings of the Investigation, the Building Commissioner, in consultation with local governments and other stakeholders:

- (i) develops an evidence-based enforcement strategy to improve compliance with the Building Act 2011 and the Building Regulations 2012 for use across local governments, taking into account:
  - a. the resourcing available to local governments to implement the enforcement strategy;
  - b. that any regulatory compliance model is done, as a matter of principle, in a cost-beneficial way, that is, at least cost to local governments (and, by extension, to ratepayers); and

- c. that costs for inspections represent benchmarked efficient costing that is transparently passed on to pool-owning ratepayers who cause these costs to be incurred rather than subsidised by ratepayers who do not own a swimming pool; and
- (ii) determines whether legislative amendments are required to support the effectiveness of the enforcement strategy and, if so, seeks these amendments.

Recommendations 19: The Building Commissioner, in consultation with local governments and other stakeholders:

- (i) includes the use of re-inspection of barriers to swimming pools that do not initially comply with the Building Regulations 2012, as part of an evidence-based enforcement strategy to improve compliance with the Building Act 2011 and the Building Regulations 2012 for use across local governments; and
- (ii) if necessary, seeks an amendment to the Building Regulations 2012 to provide a specific basis for these re-inspections.

Recommendations 20: The Building Commissioner, in consultation with local governments and other stakeholders:

- (i) considers a charge for re-inspection of barriers to swimming pools that do not initially comply with the Building Regulations 2012, in an evidence-based enforcement strategy to improve compliance with the Building Act 2011 and the Building Regulations 2012 for use across local governments; and
- (ii) if necessary, seeks an amendment to the Building Regulations 2012 to provide the basis for these charges.

Recommendation 21: The Building Commissioner reviews the requirements that are in force in other jurisdictions for temporary barriers, and, informed by cost benefit analysis, explores whether any such requirements should be considered in Western Australia, including those that relate to:

- (i) time limits on temporary barriers; and
- (ii) the need for temporary barriers to be inspected and approved by a building certifier (or equivalent).

Recommendation 22: The Building Commissioner collaborates with relevant state government agencies, local governments and other stakeholders, through a senior working group or other appropriate mechanism, to develop strategies for ensuring compliance by owners of portable swimming pools and spas with the requirements of the Building Regulations 2012, including strategies to:

- (i) ensure owners and occupiers are aware of the requirements of regulation 50(1) of the Building Regulations 2012, and how these requirements apply to portable swimming pools and spas; and
- (ii) assist local governments to identify when portable swimming pools and spas may require inspection.

Recommendation 23: The Department of Mines, Industry Regulation and Safety considers appropriate community education regarding the specific risks of children drowning in portable pools and spas and the need for these portable pools and spas to comply with the Building Regulations 2012, including exploring, subject to appropriate consideration of seeking to limit as far as possible costs imposed on business by regulation, opportunities for retailers and suppliers to inform purchasers at the point of sale of the risks of children drowning in portable pools and spas and the need to comply with legislative requirements.

Recommendation 24: The Building Commissioner promotes to local governments the good practice of conducting random inspections of swimming pools that have been recorded as decommissioned to ensure that these swimming pools have not been recommissioned, and therefore require a swimming pool barrier pursuant to regulation 50(1) of the Building Regulations 2012.

Recommendation 25: The Building Commissioner considers an amendment to the Building Regulations 2012 to remove excluded areas so that regulation 50(1) of the Building Regulations 2012 applies to all owners and occupiers of premises throughout Western Australia. Alternatively, if such an amendment is not considered appropriate, the Building Commissioner works with relevant local governments in excluded areas to provide accurate advice regarding the need to provide swimming pool barriers as part of the relevant building permit.

## Appendix 2: Minimum Standard Process – Pool barrier compliance

In summary, the following is proposed with respect to the various elements of the Minimum Standard Process outlined below:

**To amend** the Building Regulations to:

- Specifically require reinspection of non-compliant swimming pool safety barriers, and clarify the inspection charge can be applied to reinspection of non-compliant barriers (refer to decisions 3 and 6).

**To provide guidance** on:

- Building permit documentation for swimming pools (refer to decision 1);
- Pool register information (refer to decision 5);
- Organising inspections (refer to decision 5);
- Accessing properties (refer to decision 5);
- Carrying out an inspection (refer to decisions 5 and 6);
- Inspection of empty pools and applying the annual charge (refer to decisions 6 and 7);
- Construction and other short term barriers (refer to decision 2)
- Inspection template (refer to decision 5 )
- Photographs (refer to decision 5)
- Inspection record (refer to decision 5 )
- Inspection reports (refer to decision 5 )
- Barrier non-compliance practices (refer to decisions 3 and 4)



## **Building permit**

Minimum Standard of documentation to accompany a building permit application:

- Site plan including location of pool and barrier;
- Details of windows and doors (where they form part of the barrier);
- Boundary fence heights, existing and proposed; and
- Wording 'Compliant to <relevant applicable building standard>'

## **Pool register**

Minimum Standard of information required in the pool register:

- Name of owner;
- Address of swimming pool;
- Date swimming pool was submitted for approval and approved for construction, where known;
- Associated building permit number, where applicable;
- Categorisation of the pool (Pre Nov 2001, Pre May 2016, Post May 2016);
- Status of pool (functioning/empty/decommissioned/removed/fishpond);
- Dates and outcome of any previous inspections, including the initial compliance inspection;
- Date next inspection due;
- If a Performance Solution applies to the pool barrier;
- Previous inspection reports and data; and
- A maintained procedure/instruction manual and process map to ensure data integrity and consistent use.

## **Organise inspection**

Minimum Standard for organising access requirements:

- Send a first letter requesting the owner/occupier contact the local government to organise an inspection.
- The letter should be sent before the four-yearly inspection is due, allowing sufficient time to arrange and conduct the inspection within the four year timeframe. This will vary between local governments and may depend on resources.
- Include a basic checklist for pool owners with the first letter; this may improve compliance rates for minor non-compliances such as maintenance of gate latches and hinges.

## **Accessing the pool area**

Minimum Standard for access:

- Where an appointment has been made, but no one is home on arrival during the agreed time period:
  1. phone owner while on site;
  2. leave notification that inspector was there at appointed time; and
  3. reorganise the inspection.
- The inspectors ID card must be on display.

## **Carrying out an inspection**

Local governments must actually conduct an inspection of the safety barrier of private swimming pools. Although regulation 53(1) requires the local government to 'arrange an inspection', arranging and not inspecting is insufficient.

Minimum Standard of information and items required:

- Measuring device
- ID card
- Standards
- Building Regulations 2012, Part 8 Division 2
- Schedule
- Appointment times
- Age of pool to be inspected
- Address
- Owners/occupiers name
- Phone number

Minimum Standard for conducting an inspection:

- Inspectors must use a checklist (or equivalent) to record the results of their inspection.
- Every element of the safety barrier should be inspected.
- Every gate should be checked for correct operation, including self-closing and self-latching when released from a fully open position through to resting on the latch, in every instance. Gates are known to be a high risk area.
- Produce and issue inspection report within seven (7) working days of inspecting the safety barrier.

### **Empty pools**

- Empty pools shall be inspected so that a period of four years does not elapse between inspections.

### **Short term/temporary barriers**

- Short term barriers to be inspected at intervals not exceeding three (3) months unless otherwise arranged (such as an extension of time).

### **Inspection template**

- Inspection forms must include the minimum fields identified in the DMIRS template.
- Must identify the category of pool (Pre Nov 2001; Pre May 2016; Post May 2016).

### **Photographs**

- At least one (1) photo is to be taken of overall complaint pool/barrier area at each inspection.
- Photos are to be taken that incorporate all areas of non-compliance.
- All photos should be time and date stamped.

### **Inspection record**

- Records of inspection, including reports and photographs, are to be kept as per Local Government record keeping plan/policy.
- A copy of the most recent inspection report is to be made available to owners and authorised property managers upon request.
- Inspection reports are to be completed in their entirety in every instance.

### **Barrier complies**

- A copy of the compliance report is to be issued to the landowner.

### **Barrier non-compliance**

- In the event of non-compliance, an appointment for reinspection should be arranged with the homeowner/tenant at the time of inspection where possible.
- Non-compliant pool barriers are to be reinspected until compliance is achieved.
- Barriers are to be reinspected within a maximum period of 60 days unless otherwise determined by the local government.

## Appendix 3: List of stakeholder submissions to Stage 2 of the review

Organisation	Area of Occupation
Shire of Bruce Rock	Regional Local Government
City of Busselton	Regional Local Government
City of Swan	Metro Local Government
City of Wanneroo	Metro Local Government
City of Wanneroo	Metro Local Government
City of Joondalup	Metro Local Government
JMG Building Surveyors	Building Surveyor
City of Bunbury	Regional Local Government
Shire of Dardanup	Regional Local Government
JG Design	Building Surveyor
Daisy Pool Covers & Rollers	Industry
Town of Victoria Park	Metro Local Government
Pool Industry Consultant	Industry
City of Rockingham	Metro Local Government
PASCAA	Industry
Elite Pool Covers	Industry
Shire of Leonora	Regional Local Government
City of Fremantle	Metro Local Government
City of Perth	Metro Local Government
City of Mandurah	Metro Local Government
Building Surveyor	Building Surveyor
Building Surveyor	Building Surveyor
City of Kalamunda	Metro Local Government
RLSWWA	Industry
Shire of Broome	Regional Local Government
City of Greater Geraldton	Regional Local Government

City of Kwinana	Metro Local Government
CF Building Approvals	Building Surveyor
Core Building Surveyors	Building Surveyor
Shire of Serpentine Jarrahdale	Regional Local Government
Sutherland Shire Council NSW	Industry
City of Stirling	Metro Local Government
SPASWA	Industry
Shire of Wyndham	Regional Local Government
WALGA	Industry
SPASA Australia	Industry
Australian Institute of Building Surveyors (AIBS)	Industry
City of Subiaco	Metro Local Government
City of Canning	Metro Local Government
Aquatic Leisure Technologies Pty Ltd	Industry
City of Armadale	Metro Local Government
City of Swan	Metro Local Government
City of Gosnells	Metro Local Government

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