



nsw commission for
children & young people

Mr Ross Woodward
Acting Director-General
Swimming Pools Act Review
Department of Local Government
Locked Bag 3015
NOWRA NSW 2541

Ross
Dear Mr Woodward

I am writing regarding the Review of the *Swimming Pools Act 1992*.

Thank you for taking the time to meet with me on 20 April to discuss the Review of the Act and progress on the Child Death Review Team (CDRT) recommendation.

As you are aware, the Commission made a submission to the Review in January 2007 which was informed by the findings from the work of the CDRT. These findings helped the Commission to outline the most effective action that needs to be taken to reduce risk to children and young people from swimming pools.

The Commission believes that strengthening legislation and compliance so that fencing around all swimming pools are maintained and up to standard, together with active adult supervision is the most effective way to reduce risk of drowning in swimming pools.

I enclose a completed Options Paper Feedback Form for your consideration. Also enclosed is a copy of the Commission's Submission to the Review of the *Swimming Pools Act 1992* from January 2007 for your reference.

With your approval, I will be placing a copy of the submission on the Commission's website. Making work such as this publicly available is one mechanism I use to be accountable to children, young people and the Parliament of New South Wales.

Should you require any further information, please contact Stephen Robertson, Director, Influencing on 9286 7270 or at stephen.robertson@kids.nsw.gov.au.

Yours sincerely

Gillian Calvert
Commissioner

9 June 2009

SWIMMING POOLS ACT 1992 REVIEW OPTIONS PAPER FEEDBACK FORM

This form should be completed in conjunction with the Options Paper.

Name of Organisation: NSW Commission for Children and Young People

If you are submitting this form as an individual please write "individual"

Section 1 Removal of existing exemptions

Do you think any of the following exemptions should be removed? (Please tick all boxes where you think the exemption should be removed.)

- 1 For pools constructed prior to 1990
- 2 Pools on very small properties
- 3 Pools on large properties
- 4 Pools on waterfront properties
- 5 Spa pools
- 6 If you ticked any of the boxes above, should the removal of the exemption apply to the following? (Please tick all boxes that apply.) If you did not tick any of the boxes above, go to Q11.

Existing exempt pools

New pools If you ticked this box only, go to Q9.

- 7 For existing exempt pools, when should pool owners be required to comply with the legislation? (Please tick one box.)

By a given date What should this date be? (for example: by 1 January 2013)

12 months after amendments commence, or at sale or lease of property, or when renovations are undertaken; whichever option first occurs.

Go to Q9

At time of sale or lease of property Go to Q9

When related building renovations are undertaken Go to Q8

- 8 How will this be determined? (Please tick one box.)

Substantial renovation to the property

Certain percentage of total renovated property area

Please specify what this percentage should be

%

Renovation cost above certain value

Please specify what this value should be

\$

9 If you ticked the box for Q5, go to Q11. If you did not tick the box for Q5, do you think the definition of spa pool should be amended to refer to free standing transportable structures with a minimum vertical wall height above finished floor level? This means that if this definition is not met, the spa pool will need to be fenced. (Please tick one box.)

Yes Go to Q10

No Go to Q11

10 What do think the minimum wall height should be in metres?

metres

11 Please write down any comments regarding the removal of existing exemptions.

The Commission supports the removal of the exemptions for pools on waterfront properties, large properties, small properties, properties existing before 1990 and spas.

Regardless of the size or location of the property, fences help to reduce risk. It is no longer enough to claim that because an area contains many risks, there is no point in eliminating one. The purpose of the Act is to promote and maintain water safety by *reducing* risk.

As raised by earlier submissions to the discussion paper, the swimming pool may be quite remote from the water body (such as harbour or dam) or in close proximity to the house. In this case fencing would dramatically reduce the risk of a drowning fatality. This is especially true for children in the one to four age group (who are statistically most likely to drown) who are less likely to wander further from home, and more likely to step out of the house and towards something more familiar like an adjacent swimming pool or spa.

Section 2 Swimming pool register

12 Should the Act be amended to require each council to establish and maintain a standardised register of all backyard swimming pools in its area? (Please tick one box.)

Yes Go to Q13

No Go to Q15

13 What information should be included in the register? (Please tick all boxes that apply)

Address of the pool

Name/s of the owner/s

Date of construction, or purchase date in the case of a transportable pool

Type of pool, for example, in-ground, above-ground or transportable structure

Date / outcome of compliance inspections

Date of valid compliance certificate (see Section 3)

Other Please specify below

- Occupants with CPR Training
- Whether owners are occupants also.

- If owners are not occupants, then also include name of occupants
- Name of local council
- Name of inspector
- Inspection record
- Exemptions requested
- Grounds of approval or rejection of exemption

14 How should the register be compiled? (Please tick one box.)

- A council survey within in its own resources using GIS technology and/or other means
- Each pool owner to register their pool with the local council at no cost
- Each pool owner to register their pool with the local council with a fee

15 Please write down any comments regarding the establishment of a swimming pool register by councils.

The Commission supports the development of a generic electronic database system that could be used by all councils as an invaluable tool for effective regulation. A centralised system that could be used by all councils would promote a united approach to water safety issues. Information could be collected as part of the council approval process then used in the register to monitor maintenance.

Those that did not participate in the council approval process could be identified through a survey by the NSW Water Safety Council and the Department of Arts, Sport and Recreation. A collaborative approach by both organisations and the Department of Local Government would achieve comprehensive data collection and perhaps lessen the burden of cost on local government. Standardising storage systems and data collection across councils would also enable analysis at the state or regional levels.

The Commission also supports GIS technology to enhance compiling database information and the assessment of compliance.

Section 3 Mandatory inspection of pool fencing

16 Should the Act be amended to require pool fencing to be inspected? (Please tick one box.)

- Yes Go to Q17
 No Go to Q26

17 How should this be implemented? (Please tick one box.)

Each council be required to inspect all pools with the cost to be met by council Go to Q19

Each council be required to inspect all pools with the cost to be met by the pool owner Go to Q19

Property owners be required to obtain a compliance certificate and submit it to the council at certain times only with the cost to be met by the pool owner Go to Q18

18 What should these times be? (Please tick all boxes that apply.)

Prior to leasing and renewing a lease on a property that has a pool Go to Q21

At time of sale of property Go to Q21

Other Please specify below then go to Q21.

19 How should the cost of inspections be determined? (Please tick one box.)

Set by Government Go to Q20

Determined by the organisation conducting the inspection Go to Q21

20 What should the cost be?

Go to Q25

21 How should the cost of obtaining a compliance certificate be determined? (Please tick one box.)

Set by Government Go to Q22

Determined by the organisation issuing the certificate Go to Q23a

22 What should the cost be?

23a Who should be able to issue a compliance certificate? (Please tick all boxes that apply.)

Local council Go to Q24a

Private certifier Go to Q24a

Other organisation(s) Go to Q23b

23b Should other organisations who can issue compliance certificates be restricted to certain organisations? (Please tick one box.)

Yes Please specify which organisations or types of organisations

The Department of Arts, Sport and Recreation and the NSW Water Safety Council

No

24a Should pool owners be fined if they do not have a valid compliance certificate?
(Please tick one box.)

Yes Go to Q24b
No Go to Q25

24b How much should they be fined? (Please tick one box.)

\$110
\$220
Other Please specify amount

\$ (see response to question 28)

25 How often should pool fencing be inspected? (Please tick one box then go to Q27.)

Set by Government Please specify number of years

years

Set by each council with a minimum frequency set by Government
Please specify minimum number of years

4 years

Set by each council

26 If mandatory pool inspections are not supported, should additional community education initiatives to make pool owners aware of the legislative requirements in relation to pool fencing and the need to adequately maintain pool fencing be implemented instead? (Please tick one box.)

Yes
No

27 Should councils be required to investigate complaints about possible non-complying pools? (Please tick one box.)

Yes
No

28 Please write down any comments regarding mandatory pool fence inspections.

The Commission supports the strengthening of Section 5 of the Act to require local councils to conduct regular inspections and audits of swimming pools. In this way, the council's continuing presence will not only demonstrate the seriousness with which the local government considers water safety but, will set a standard for fence maintenance within the wider community.

The Commission supports a more outcomes focused approach to the legislation. A more specific statement of duties will result in a more uniform approach across councils. This approach would be beneficial for councils in supporting each other, and would make clear what was expected from the general public.

To effectively regulate pool compliance, the Commission supports mandatory compliance certificates. To avoid excessive cost and workloads for local councils, compliance certificates could be issued by accredited third party certifiers who would conduct these

inspections.

The third party could consist of members from local council, the Department of Arts, Sport and Recreation and the NSW Water Safety Council in an effort to retain the council's power and knowledge of pool compliance within their areas.

To further the cost effectiveness of compliance checks, the Commission proposes a \$50 charge as a reasonable expenditure for pool owners to be certified through inspection.

With regard to infringements, a meaningful penalty should be issued to encourage pool owners to abide by the legislation.

In Victoria, the *Building Act 1993* contains penalties of up to \$10 000 for pool owners who install a pool or spa and fail to carry out work in accordance with the building permit for the construction for that pool or spa. The Queensland *Building Act 1975* includes penalties of up to \$16 500 for failure to owner to ensure that compliant fence is in place and maintained.

The NSW Act should also have significant penalties. A \$200 penalty, for example, may not be significant enough for some owners to comply with the legislation. Larger penalties should be enforced so that pool owners, to whom smaller penalties are not a deterrent, are more willing to comply.

The NSW Act should also have scope to appropriately penalise owners who fail to comply with the legislation to various degrees. A range of penalties is needed to recognise the intent and extent of non-compliance. For example, different penalties for an owner who may have genuinely attempted to build and maintain appropriate fencing but still may not comply with standards and an owner who has no legitimate reason for not having a fence or who has had previous notification to comply.

Furthermore the Commission supports the retainment of stand-alone swimming pool legislation as it serves as a reminder of the seriousness of pool safety. This legislation also allows scope for the involvement of other organisations in implementing the legislation.

Section 4 Council powers to undertake remedial work

29 Should the Act be amended to allow a council to undertake remedial work on unsafe pool barriers at the pool owner's expense, where there is an immediate hazard and the owner is unwilling or unable to undertake the works, subject to appropriate controls such as a court order? (Please tick one box.)

Yes

No

30 Please write down any comments regarding council powers to undertake remedial work.

The Commission supports initiatives taken to ensure that all pools are fenced appropriately to reduce the risks of drowning by children. The Commission supports provisions for reimbursement by the pool owner to the Council as well as a penalty to the pool owner for non-compliance.

Section 5 Penalties

31 Should the Act be amended to increase the penalty from 2 to 5 penalty units (ie, from \$220 to \$550) with a corresponding increase for penalties where matters go to court? (Please tick one box.)

Yes

No

32 Please write down any comments regarding penalties.

Please refer to comments at Questions 28 in regard to appropriate penalties.

Section 6 Compulsory CPR Training

33 Should the Act be amended to make CPR training compulsory? (Please tick one box.)

- Yes Go to Q34
No (Comments at question 39)

34 How often should training occur? (Please tick one box.)

- Annually
Every 2 years
Every 3 years
Other Please specify number of years

35 Who should be trained? (Please tick one box.)

- At least one occupier of the property on which the pool is located
All occupiers of the property on which the pool is located over the age of 18 years
Other Please specify

36 Who should provide training? (Please tick one box.)

- Registered training organisations only
Any organisation

37 How should compulsory training be enforced? (Please tick one box.)

- Valid certificate to be produced at time of any inspection
Other Please specify

38a Should property occupiers be fined for not having a valid training certificate? (Please tick one box.)

- Yes Go to Q38b
No Go to Q39

38b How much should they be fined? (Please tick one box.)

- \$110
\$220
Other Please specify amount

39 Please write down any comments regarding compulsory CPR training.

The Commission supports a formal letter, advising new owners of a pool or new tenants in a home of their statutory obligations should be sent by the local council. In this way councils may promote owner awareness and establish an understanding of their expectations. This letter could also encourage at least one member of the household to voluntarily undertake resuscitation training.

Training and swimming pool owner awareness could be facilitated and subsidised by a

third party that comprises representative from local council, the Department of Arts Sport and Recreation and the NSW Water Safety Council. All groups have a role to play in encouraging swimming pool owner awareness.

Section 7 Other comments

40 Please write down any further comments you would like to make about backyard swimming pool safety.

As the Department of Local Government has recognised, reducing risk surrounding swimming pools and spas is an important issue for the safety of children and young people.

The Child Death Review Team ten-year study *Trends in Child Deaths in New South Wales 1996-2005* identified drowning as one of the most common underlying external causes of death for one to 17 year olds. During the study period, 73 children and young people whose deaths were registered in NSW died as a result of drowning in private swimming pools or spas. 58 children of these children were aged between one and four and at least 21 of these deaths occurred where a pool gate or latch was in a state of disrepair. Drownings in private swimming pools or spas are among the deaths which are most straightforward to prevent.

This submission builds on our comments made in the Commission's January 2007 submission to the Department of Local Government Review of the *Swimming Pools Act 1992* which was informed by findings of the Child Death Review Team. The January 2007 submission is attached for the Department's reference.

The Commission would be pleased to discuss any of the issues explored in this Options Paper and work together to reduce the risks for children and young people around swimming pools.

Thank you for allowing the Commission to provide comment on the Options Paper.

Thank you for completing this feedback form.

Email to: swimmingpools@dlg.nsw.gov.au.

Or by mail to: Swimming Pools Act Review
Department of Local Government
Locked Bag 3015
NOWRA NSW 2541

Or by fax to: 02 4428 4199

Closing date: **12 June 2009**