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Swimming Pools Act and Regulation Review  
Department of Local Government  
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Dear Mr Hely,

Thankyou for advising us of the upcoming review of the NSW Swimming Pools Act 1992 and the opportunity to lodge a submission for consideration.

In September 2003, Healthy Cities Illawarra completed a local study, funded by the NSW Water Safety Taskforce, which documented the ways in which three Illawarra local government authorities managed the issue of compliance of residential swimming pools with the NSW Swimming Pools Act 1992. Based on the direct experience of Council officers and inspectors, this study revealed a range of difficulties faced by local government authorities in dealing with this particular legislation.

Some of the recommendations arising from our study have been incorporated into the NSW Water Safety Taskforce report regarding the need for amendments to the current legislation, however we wish to highlight sections of our study's final report which give more context to difficulties encountered with the legislation.

Our submission consists of excerpts taken from the report "**Management of domestic swimming pools and compliance levels – a comparison of approaches in three local government areas**" which we have attached as background documentation. Where possible we will relate our comments to specific sections of the current Act.

Yours sincerely

Frank Wallner  
MANAGER

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# **SUBMISSION TO THE REVIEW OF THE SWIMMING POOLS ACT 1992**

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August 2005**

## **INTRODUCTION**

In its current form, the NSW Swimming Pools Act 1992 is not considered adequate to ensure the safety of residential swimming pools and does not clearly define or direct local government authorities in their responsibilities regarding domestic swimming pool safety and compliance. Whilst it was not in the brief of the Illawarra study to analyse the strengths and weaknesses of the current Act, feedback from local government representatives taking part in the study consistently identified weaknesses in the Act that they believe negatively impact on councils' management of domestic swimming pool safety and compliance.

## **SWIMMING POOLS ACT 1992 Section 5**

*“What general duties does a local government authority have concerning swimming pools?*

*Each local authority is required:*

- (a) to take such steps as are appropriate to ensure that it is notified of the existence of all swimming pools to which this Act applies that are within its area, and*
- (b) to promote awareness within its area of the requirements of this Act in relation to swimming pools”*

### **Section 5 (a)**

This statement is both ambiguous and ineffective as it does not define either the nature or purpose of the “steps” to be taken by Councils or their “appropriateness”. All Councils are initially notified of the existence of new pools via the Development Application process. This alone however, does not guarantee that a specific register of pools is maintained by Councils. Further, if being asked to develop a register of pools, the purpose of this register should be defined, since simply having a register of pools will not ensure that pools are inspected regularly or comply with safety requirements of the Act.

The presence or absence of an efficient electronic register of swimming pools was identified as a critical factor in the effective management of safety compliance in domestic pools in the Illawarra study. However, it was also apparent that there is little value in having a register if pools are not being inspected regularly. In one Illawarra council, which also demonstrated the highest rates of compliance, the electronic pool register is the cornerstone of its management system and represents a key factor in this Council streamlining its management process for domestic swimming pool safety.

For many councils who have not conducted an inspection program for some time, the establishment of a database of all the pools in their area, prior to implementing an inspection program, would be a major task involving significant cost, especially in larger council areas where domestic swimming pools may number in the tens of thousands. In a climate where local government authorities are

increasingly stretched to do more with little extra funds, the costs of establishing a register would negate the incentive to do so, especially when the Act does not clearly compel councils to do so.

### **Section 5 (b)**

Under the current Act, Councils' responsibilities are ill-defined. Councils are not compelled to inspect domestic swimming pools, but can if they wish. Their only obligation under the Act is to make pool owners "aware" of the requirements of the Act. This gives Councils the option of not having to inspect at all, and, by lack of definition, is open to interpretation as to what constitutes a minimum level and most effective means of promoting awareness of the requirements of the Act. The question to be asked is whether "promotion of awareness" is an appropriate substitute for "enforcement" of the requirements of the Act.

Inspectors across each of the three councils in this study observed that pool owners' general awareness of their responsibilities under the NSW Swimming Pools Act was poor. Compliance rates of consistently less than 50%, as documented in this and other studies, would support this observation and suggest that during the last ten years, local authorities' attempts to promote awareness have been limited or non-existent, and/or that raising pool owners' awareness of the requirements of the Act, in isolation, does not result in satisfactory compliance levels. The authors of this study would suggest that regular inspections, where pool owners are present, is the most effective strategy for increasing pool owners awareness of the requirements of the Act and generating compliance. This does not exclude the development of other complementary promotional strategies for raising general community and pool owner awareness of domestic swimming pool safety.

It is quite unreasonable to expect that pool owners should carry sole responsibility for conforming with the complexities of a piece of legislation which they may never have sighted or even known exists (a common scenario when a property with an existing pool changes ownership) when there is no compulsion under the current Act for councils to ensure pool owners are aware of the requirements of the Act, or carry any responsibility for assisting pool owners to comply. The Act should clearly state the responsibilities of both the pool owner, and councils, in regard to achieving and maintaining compliance with the requirements of the Act.

### **SWIMMING POOLS ACT 1992 - Sections 8,9,10**

The fencing exemptions available under the current Act for larger, very small and waterfront properties are also viewed as problematic, unjustified and contradictory to the basic premise of the Act which requires fencing for all other pools. The indisputable fact is that the drowning potential of a swimming pool is not lessened when located on a large, very small or waterfront allotment, and child resistant devices on doors and windows of residences with direct access to the pool do not have the same proven protective effect as four sided pool fencing. These exemptions should be removed from the Act and the fencing requirements for all pools should be made consistent, ideally with the newly revised Australian Standard for pool fencing.

### **SWIMMING POOLS ACT 1992 - Section 13**

Another problematic feature of the Act is that it is not fully retrospective, resulting in local government authorities having to deal with two significantly different sets of requirements for pools

installed pre versus post August 1990. There should be one set of legislation which applies to all pools, regardless of their age.

### **SWIMMING POOLS ACT 1992 - Section 19**

Four sided isolation fencing should be required for all pools and the use of residential walls and boundary fences as part of the pool barrier, as currently allowed under the Act and Regulations 1998 should be revised.

### **SWIMMING POOLS ACT 1992 - Section 22**

#### ***“Multiple swimming pools in close proximity***

*For the purposes of this Part, 2 or more swimming pools that are situated on the same premises and in close proximity to each other are taken to be one swimming pool.”*

This section of the Act is of concern, particularly where there may be a shallow “toddlers” type pool included within the same boundary as a deeper “adult” sized pool. The two pools should be separated by a child-proof barrier to prevent access by younger children to any larger, deeper pool. By way of example, a drowning death occurred several years ago in a private caravan park facility in the Illawarra, where a small child drowned in a larger deep pool which was located next to a small shallow “toddlers” pool. There was a fence around the combined pool area, but no barrier separating the toddlers’ pool from the larger pool, which could have prevented the child from wandering away from its carer and drowning in the larger pool.

### **SWIMMING POOLS ACT 1992 - Section 31**

This section refers to the Pool Fencing Advisory Committee. The achievements of this committee during the past 13 years should be formally reviewed and evaluated. If the need for this committee is to remain a recognized part of any future revised Act, then its specific purpose and role should be carefully considered and clearly defined.

### **SWIMMING POOLS ACT 1992 - Section 38**

Whilst the current Act and Regulations 1998 prescribe specific details for things such as the function of inspectors, fees chargeable for the provision of compliance certificates and penalties applicable for breaches of the Act, it does not prescribe options for councils to charge fees for regular safety inspections (ie; those occurring at regular intervals in the years after installation of the pool). The political pressures of imposing fees and charges on local residents are always significant, however, it was felt that if pool inspection fees were endorsed under the NSW Act, pressure on councils would be reduced. The option to charge inspection fees would also be consistent with other inspection functions performed by councils for which fees are charged eg; food and other retail premises, building site inspections, etc. Currently in councils where pool inspections are conducted, all residents contribute to the costs of pool inspections and this inequity would be addressed if pool owners could be charged for inspections. A fee option would assist councils with part or full cost recovery for this service and would also provide more incentive as well as a sustainable financial solution to address the current lack of commitment in many councils to ongoing swimming pool inspections.

## **Other Comments**

The Act does not prescribe any specific qualifications or minimum training requirements for local government or private sector pool inspectors in NSW, which would be very important for the consistent interpretation and implementation of the Act if regular pool inspections were to become mandatory.

There does not appear to be a standard checklist currently available to inspectors in local government for use during pool inspections. In the course of the Illawarra study, two councils had checklists which varied significantly in quality and content, whilst one of these also included questions regarding water quality. The development of a standardised inspection tool, based on the requirements of the Act, to be used by local government inspectors and private certifiers, would help address issues of inconsistency in inspection procedures and common misinterpretation of the requirements of the Act.