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**RE: ACT Planning & Land Authority Swimming Pool Fencing**

The Swimming Pool & Spa Association of NSW (SPASA NSW) would like to thank you for the opportunity to comment on the ACT Planning & Land Authority **Swimming Pool Fencing - Discussion Paper**.

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

Accordingly, SPASA NSW is well positioned to comment on the **Swimming Pool Fencing - Discussion Paper** and has provided the following comments and feedback below:

**BACKGROUND**

Swimming Pools Laws in NSW and the entire country have been designed with the view of enhancing safety in and around swimming pools by restricting access to swimming pools by small children. All States and Territories in Australia have enacted legislation in relation to restricting access to swimming pools; however, the legislation differs significantly across the States and Territories.

Over 300 people drown each year in Australia, with one-third of these in NSW.

Evidence shows that there has been an increase in the number of drownings in Australia over the last 10 years despite a number of tougher legislative attempts to improve fencing requirements over the same period.

## **SWIMMING POOL LAWS IN NSW**

The requirements for child-resistant barriers on premises where there is a residential building vary in NSW according to when the pool was constructed and where the pool is located:

### **For pools built before 1 August 1990**

*The means of access from the residential building to the pool must be restricted at all times. The standard for restriction, eg, by complying windows and doors, is set out in the Regulation.*

### **For pools built after 1 August 1990 but before 1 July 2010**

*The pool must be surrounded by a child-resistant barrier that separates the pool from any residential building situated on the premises and from any place adjoining the premises. Automatic exemptions apply from the four-sided barrier for pools on very small properties (less than 230 square metres), large properties (2 hectares or over) and waterfront properties.*

The legislation in NSW comprises the Swimming Pools Act 1992 and the Swimming Pools Regulation 2008. In addition, the Regulation calls up the Australian Standard AS1926 Part 1 Safety Barrier for Swimming Pools. The Swimming Pools Act 1992 was reviewed and amended in July 2010 to further enhance the safety of children around private swimming pools in NSW.

The NSW review included consultation on reform options with a range of stakeholders. Sadly, very few recommendations seem to have been considered.

### **For pools built after 1 July 2010**

*The amended swimming Pools Act 1992 removes automatic exemptions from the four-sided barrier requirement for new pools on very small properties (less than 230 square metres), large properties (2 hectares or over) and waterfront properties.*

## **DROWNING REPORTS & STATISTICS**

The Royal Life Saving 2010 National Drowning Report highlights the following:

- 16.1 Children Aged 0 - 4 Drowned in a Swimming Pools
- 4 Children Aged 5 -9 Drowned in a Swimming Pools

*Excerpt from the RLSSA 2010 Report:*

*“There has been an increase on the number of people drowning on the 5 year average in all locations except beach which was down by 1%, river, creek and stream which was down by 4% and other unknown which was down by 44%.*

*The largest increases on the 5 year average were in the rock category up by 97%, and lake/dam and lagoon which were up by 79%. Drowning deaths in swimming pools was also up on the 5 year average by 35%”.*

What makes a pool ‘safe’ is complex and many parts make up the solution.

Statistics over the last 10 years indicate that legislative changes over this period have not produced the desired results. The statistics also highlight the fact that legislation cannot be the only part of the solution. Moreover the data that makes up the statistics emphasizes that the legislative component when compared to other complimentary solutions is not balanced.

There are many State and National bodies focused on water safety for all Australians. Whilst all have the principal desire to reduce or eliminate deaths associated with drowning there are many different objectives and deep seated beliefs in how the problem can be addressed.

### **WHAT NEEDS TO BE DONE**

SPASA NSW believes that governments and regulators can no longer simply rely on legislative reviews to address the risk of drowning to young children.

Further action needs to be addressed in the following areas:

#### **Legislation**

Government must appropriately consider stakeholder recommendations and provide a transparent and flexible review process throughout the development of any drafts.

Proposed amendments to Swimming Pool Legislation should be evaluated to determine their effectiveness in achieving the primary objective of enhancing the safety of very young children around private swimming pools in NSW and ACT.

In order for Legislation to be affective the Association believes the following areas need to be improved or addressed:

- Government does not have an accurate record of swimming pools within the boundaries of their jurisdiction
- There needs to be a systemic assessment of swimming pools for compliance within the relevant legislation if it is to have any effect
- There must be a consistent approach to the regulation of swimming pools between different local government authorities
- Government should consider established independent external parties such as licensed individuals or consultants to assist councils with the monitoring regime of swimming pool legislation

## **Supervision**

There is simply no alternative to "dedicated" supervision when children are in or near water.

Supervision of young children has always been recognised as being important and this is especially the case when they are in the vicinity of dangerous environments.

Given that supervision is such an important issue in the protection of younger children it would be prudent that a focused media campaign be conducted at regular intervals to remind the public of the dangers associated with swimming pools, beaches, lakes/dams/ponds and other such dangers.

## **Cardio Pulmonary Resuscitation (CPR)**

CPR Training opportunities should be made available in primary and secondary schooling, where children are able to both learn the skill whilst reinforcing safety around the pool.

CPR Training should be a government funded/subsidised initiative or a prerequisite of the pool ownership process.

## **Pool Awareness Education Programs**

As a community we are obliged to develop systems that will prevent the unnecessary loss of life, particularly of those who are most vulnerable.

Pool Awareness Programs that compliment swimming lessons, CPR, fence inspections and enforcement guidelines need to be made available to parents and carers at all stages of childhood development. This initiative should be a government funded/subsidised initiative.

## **Fencing Inspections**

Whilst fencing inspections are important they should not be relied upon as an absolute. Moreover, fencing Inspections only inform you of the compliancy of a fence only at the time of the inspection.

Estimating the actual cost of compliance with new laws is not always possible given that it is entirely dependent on the factual situation.

If the ACT and NSW were to follow Queensland's lead we would see the creation of a new swimming pool safety inspection industry. This new industry would involve appropriately qualified individuals (licensed pool safety inspectors) to inspect swimming pools and issue swimming pool safety certificates and/or recommendations, the cost of which should be regulated and not set by the market.

It is interesting to note that when the Queensland Government introduced mandatory pool fence inspections it stated, that the estimated average cost for pool owners to have their pool inspect would be between \$90 and \$130. The reality is that the costs are now upwards of \$300.00 per inspection.

SPASA NSW considers consultation with the association is critical if ACTPLA move down the Queensland path of mandatory fencing inspections. SPASA NSW has the expertise and membership to work with local government in either isolation or alongside council in undertaking inspections, provide compliance certificates as well as assist in the creation and maintenance of local government pool registers.

### **Temporary Fencing**

The installation of Temporary Fencing around a swimming pool is crucial during the construction phase. Any legislation should include or reference criteria surrounding the construction of a temporary fence.

### **Retrospectivity**

Many pools have been constructed prior to the introduction of new laws and may be located within a property which might make it unreasonable to comply under retrospective legislation.

If laws are made retrospective then pools without or noncompliant fencing that are deemed impractical or complex should have the opportunity to seek an "Alternative Solution". Such a solution may be obtained by an independent expert/s or safety consultant/s.

### **Register of Pools**

Local Government is responsible for policy development and implementation of land use planning as well as regulating a wide range of activities that may impact upon the community.

Local government also has a key role to play in translating the policies of Commonwealth and State Governments into on-ground projects.

Council must treat Swimming Pools in the same manner as any other developed structure within a property in their electorate. Councils cannot be an effective authority when it excludes registering and administering swimming vessels.

### **Infringements**

Pool owners should be given the opportunity to remedy any non-compliance rather than simply being fined. Pool owners may have relied on professional advice and/or installation of items and unbeknown to them, not be compliant with the relevant legislation. There is a real threat that by simply fining individuals, Councils will be seen as raising revenue rather than going through a proper notification process requiring the pool owner to have the non compliant item/s rectified.

The associations is of the strong view that any proceeds from penalties imposed on pool owners by a Council should be allocated towards Pool Awareness Programs as well as subsidised CPR and swimming lessons for the local community.

### **Signs**

Access to safety notices and resuscitation signs are a vital tool for families when faced with an emergency and their inclusion should form part of any legislative revision.

### **Inflatable & Above Ground Pools**

SPASA NSW considers that "Inflatable" and "Above Ground" swimming pools should be treated in the same way as a constructed pool.

Currently, consumers can simply purchase an inflatable swimming pool and then take it home to be installed.

It is the Associations strong view that a more responsible approach to the sale of inflatable and above ground swimming pools is to regulate their sale through appropriate outlets that can support such purchases with legislative advice and assistance.

### **Online & Department Store Pools & Spas**

Whilst some online retailers operate legitimate businesses that work within the regulatory and legal framework associated with their products and/or supplies there are many more online retailers who market and sell products that do not comply and/or may provide significant safety concerns to unsuspecting consumers.

Currently, consumers can simply purchase a swimming pool or spa online or at a department store and have it delivered to their door and set it up without a second thought to the many legislative instruments or potential warning hazards. This is in stark contrast to when consumers purchase swimming pools or spas through traditional store front pool retailers or pool builders where the consumer receives expert advice and learns a great deal through the entire process.

### **CONCLUSION**

Every time there is a terrible drowning accident involving a child, there are calls for more aggressive fencing around pools and the addition of fencing around dams, wharves and rivers or draconian new laws, no matter how impractical or ill thought out.

It is part of a cultural foundation in which any tragedy that we are faced with is not just the result of bad luck or carelessness or simple human error but is the fault of inadequate regulation. There is this fantasy that with enough government intervention we can create a safety utopia. The truth is that the solution is much more complicated.

Of course, many lives have been saved and injuries prevented by fencing, however, it is prudent that regulators do not remove the imperative of common sense skills needed by parents and carers to monitor and identify potential dangers.

Whilst SPASA NSW supports the fencing of all new swimming pools it does not support the view that fencing is the only answer.

A common sense outlook would be to invest in swimming pool safety with a holistic approach which includes some of the areas already covered within this paper rather than just rely on fencing legislation.

In the 2010 NSW Coronial Inquest of 8 Children under 5 years of age who had drowned between 2006 and 2009, Magistrate P.A. MacMahon (NSW Deputy State Coroner) concluded the following:

**Item 52**

***“The review of the circumstances of the eight deaths that were the subject of the inquest makes it clear that in each case the breakdown of supervision was a significant factor to the deaths. The extent of the breakdown in each case was different; however, more effective supervision of the child would have prevented each death.”***

Yours Sincerely

A handwritten signature in black ink, appearing to be 'Spiros Dassakis', enclosed within a hand-drawn oval border.

Spiros Dassakis  
Chief Executive Officer