



SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

**REPORT OF THE
STANDING COMMITTEE ON ENVIRONMENT
AND PUBLIC AFFAIRS
IN RELATION TO
SWIMMING POOL FENCING**

Presented by Hon Christine Sharp MLC (Chairman)

Report 6
December 2002

STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

Date first appointed: May 24 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“3. Environment and Public Affairs Committee

- 3.1 *An Environment and Public Affairs Committee* is established.
- 3.2 The Committee consists of 7 members.
- 3.3 The functions of the Committee are to inquire into and report on -
 - (a) any public or private policy, practice, scheme, arrangement, or project whose implementation, or intended implementation, within the limits of the State is affecting, or may affect, the environment;
 - (b) any bill referred by the House;
 - (c) petitions.
- 3.4 The Committee, where relevant and appropriate, is to assess the merit of matters or issues arising from an inquiry in accordance with the principles of ecological sustainable development and the minimisation of harm to the environment.
- 3.5 The Committee may refer a petition to another committee where the subject matter of the petition is within the competence of that committee.
- 3.6 In this order **“environment”** has the meaning assigned to it under section 3(1), (2) of the *Environmental Protection Act 1986*.”

Members as at the time of this inquiry:

Hon Christine Sharp MLC (Chairman)	Hon Bruce Donaldson MLC
Hon Kate Doust MLC (Deputy Chairman)	Hon Frank Hough MLC
Hon Robyn McSweeney MLC	Hon Louise Pratt MLC
Hon Jim Scott MLC	

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ISBN 0 7307 6483 4

Government Response

This Report is subject to Standing Order 337:

After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The Leader of the Government or the Minister (if a Member of the Council) shall report the Government's response within 4 months.

The four-month period commences on the date of tabling.

List of Definitions, Abbreviations and List of Organisations that Provided Submissions

Definitions

- Category 1 - isolation fencing. The pool has fencing 1.2 metres high isolating it from the remainder of the property, or it is a combination of fencing and building walls that do not have doors. Any windows must be protected, that is they must comply with Australian Standard (AS) 1926.1-1993 and 1926.2-1995.¹ In summary this means that they are constructed in such a manner that young children cannot gain access through them into the pool area. Gates must also comply with AS 1926.1 and .2, that is, they must open away from the pool and be self-closing and latching.
- Category 2 - barrier fencing. This is a combination of fencing and protected or self-closing and latching doors. It is the same as Category 1 - isolation fencing, but it also allows self-closing and latching doors that comply with AS 1926.1 and .2.
- Category 3 - perimeter fencing. The pool is fenced in a manner that restricts access to it from neighbouring properties and the street. Access can usually be gained to the pool through the house.

Abbreviations and List of Organisations that Provided Submissions

RLSSA	Royal Life Saving Society of Australia
SPASA	Swimming Pool and Spa Association of Western Australia
Kidsafe	Child Accident Prevention Foundation of Australia - Western Australian Division
WALGA	Western Australian Local Government Association
RACP	Royal Australasian College of Physicians and the Telethon Institute for Child Health

¹ Australian Standard, Swimming pool safety, Part 1: Fencing for swimming pools and Part 2: Location of fencing for private swimming pools.

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EXECUTIVE SUMMARY AND RECOMMENDATIONS FOR THE
REPORT OF THE STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS
IN RELATION TO
SWIMMING POOL FENCING

EXECUTIVE SUMMARY

- 1 The Environment and Public Affairs Committee's (the Committee) priority has been to ensure the greatest possible safety for young children in a swimming pool environment. The Committee believes that this can best be achieved through a consistent approach to swimming pool safety education and barrier regulations and compliance.
- 2 Stakeholders who provided submissions to the Committee supported the *Building Amendment Regulations (No. 2) 2001*, that came into operation on March 18 2002. These regulations require all pools built prior to 1992 (that is those with Category 3 perimeter fencing) to be upgraded by December 17 2006 to Category 2 - barrier fencing status (that is, fencing that includes self-closing and latching doors and protected windows).
- 3 Statistical evidence shows that the majority of deaths due to drowning in private swimming pools in Australia involve children under five years of age.²
- 4 Between 1988 and 1996, 44 children under five years of age drowned in private swimming pools in Western Australia. It was estimated that 99.5percent of the pools involved were constructed prior to 1992 when only Category 3 - perimeter fencing was required.³
- 5 From the evidence presented in submissions and at hearings, Category 1 and 2 fencing are both significantly more effective at reducing the incidence of young children drowning than Category 3 - perimeter fencing or no fencing.

² Australian Standard, Swimming pool safety, Part 1: Fencing for swimming pools and Part 2: Location of fencing for private swimming pools, p. 2.

³ Waters L. *A Descriptive Study of Childhood Drowning in Western Australia: 1987-1996*. Kidsafe WA, The Child Accident Prevention Foundation of Australia, September 1998, p. 13.

- 6 The Committee was not provided with any evidence to suggest that Category 1 - isolation fencing was more effective than Category 2 - barrier fencing at reducing the incidence of young children drowning. To the contrary the information indicated that Category 2 - barrier fencing was just as effective a safety barrier as Category 1 - isolation fencing.
- 7 Fifty children aged under five years of age drowned in private swimming pools in Western Australia between 1988 and 2000. Of these:
- 25 drowned in pools with Category 3 - perimeter fencing,
 - 15 drowned in pools with Category 1 - isolation fencing,
 - two drowned in pools with Category 2 - barrier fencing, and
 - eight deaths could not be assigned to any pool fencing category.⁴
- 8 Based on the information provided to the Committee it is of the view that the most important issue is to ensure that young children are constantly supervised in a swimming pool environment and that swimming pool barriers/fences are compliant at all times. The best way to achieve this is:
- through increased public education about swimming pool safety issues including barrier/fencing requirements, and
 - by regular inspections of all swimming pools (for example, every two years).
- 9 There is considerable scope for an improvement in swimming pool fencing inspection, enforcement and public education. Funding for public education campaigns is particularly important, as it has been shown to significantly reduce the incidence of young children drowning by 40 to 60percent.⁵
- 10 A swimming pool safety advisory group, that includes the main stakeholders, should be established along the lines proposed by the Royal Life Saving Society of Australia.
- 11 To reduce the significant economic impact the current regulations are having on the swimming pool industry, regulatory changes allowing the use of Category 2 - barrier fencing should be made as soon as possible.

⁴ Stevenson MR, Rimjova M, Edgecombe and D Vickery. *Research Project on the Adequacy of Inspections of Barriers to Private Swimming Pools*, 2001. Injury Research Centre Department of Public Health, University of Western Australia, 35 Stirling Highway, Crawley Western Australia 6009.

⁵ Swimming Pool and Spa Association of WA submission dated 21/10/2002, p. 8.

RECOMMENDATIONS

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Recommendation 1: The Committee recommends that Category 2 - barrier fencing, that allows the use of self-closing and latching doors and protected windows, which comply with Australian Standard 1926.1-1993 and 1926.2-1995, be made lawful for all pools, including those built after November 5 2001, and for new pools.

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Recommendation 2: The Committee recommends that the Minister for Local Government revise the regulations to this effect as soon as possible.

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Recommendation 3: The Committee recommends that the *Building Amendment Regulations (No. 2) 2001* that requires all swimming pools with Category 3 - perimeter fencing (that is, those pools built prior to July 1 1992) to be updated to Category 2 - barrier fencing by December 17 2006, remain in force.

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Recommendation 4: The Committee recommends that the Government establish a home swimming pool safety advisory group that includes major stakeholders, along the lines suggested by the RLSSA.

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Recommendation 5: The Committee recommends that the Government provide resources to the RLSSA so it can provide the executive support for any home swimming pool safety advisory group that is established.

Recommendation 6: The Committee recommends that the Government have the new home swimming pool advisory group initiate among other things:

- a) development of a user friendly guide to the regulations and the Australian Standards,**
- b) development of inspection guidelines,**
- c) development of inspector training,**
- d) development of enforcement protocols,**
- e) recommendations for changes to legislation,**
- f) public education campaigns,**
- g) recommendations regarding spas and ornamental ponds,**
- h) review requirements for swimming pools in regional areas, and**

address the other issues regarding current legislation affecting swimming pools raised in the WALGA, SPASA, Kidsafe WA and RLSSA submissions.

REPORT OF THE STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

IN RELATION TO

SWIMMING POOL FENCING

1 BACKGROUND TO THE SWIMMING POOL FENCING INQUIRY

History of Changes to Legislation and Acts and Regulations Referred to in the Report

- 1.1 Between the early 1970s and 1989, pools were required to be fenced from neighbouring properties. This was known as perimeter fencing, three sided fencing or Category 3 - perimeter fencing (*Local Government (Miscellaneous Provisions) Act 1960 and Building Regulations 1989*).
- 1.2 From July 28 1989 all pool gates on new pools were required to open away from the pool (*Building Regulations 1989*).
- 1.3 On July 1 1992 mandatory isolation fencing for all new pools was introduced for the first time. It was also known as four sided fencing, internal fencing or Category 1 - isolation fencing (*Building Amendment Regulations 1992*).
- 1.4 As of November 12 1993 the *Building Amendment Regulations 1993* allowed for the alternative use of protected doors and windows complying with AS 1926.1-1993 and AS 1926.2-1995 (known as Category 2 - barrier fencing), as well as Category 1 - isolation fencing. The amendments also allowed pools built between July 1 1992 and November 11 1993 to convert from Category 1 - isolation to Category 2 - barrier fencing if the owner so desired.
- 1.5 On November 5 2001 the *Building Amendment Regulations 2001* came into force and the alternative use of Category 2 - barrier fencing with protected doors, as per AS 1926.1, was withdrawn for all new pools and Category 1 - isolation fencing became mandatory. Protected windows were still permitted.
- 1.6 On March 18 2002 the *Building Amendment Regulations (No. 2) 2001* (retrospective regulations) were introduced to bring all pool fences/barriers installed prior to July 1 1992 up to the standard that applied between November 1993 and November 2001; that is, up to the standard of Category 2 - barrier fencing. Pool owners have been given until December 17 2006 to comply with the regulations.

- 1.7 Regulations amending swimming pool fencing laws were published in the *Government Gazette (Gazette)* on October 19 2001 (*Building Amendment Regulations 2001*) in fulfilment of the Government's pre-election commitment to improve safety around swimming pools, particularly with regard to small children.⁶ The *Building Amendment Regulations 2001* were tabled in the Legislative Council (Council) on October 23 2001.
- 1.8 On Thursday December 6 2001 Hon Frank Hough MLC gave notice of motion in the Council to disallow the *Building Amendment Regulations 2001*. Pursuant to Standing Order 152(b) the following motion was moved pro forma on Wednesday 12 December 2001 -

*That the Building Amendment Regulations 2001 published in the Gazette on 19 October 2001 and tabled in the Legislative Council on 23 October 2001 under the Local Government (Miscellaneous Provisions) Act 1960, be and are hereby disallowed.*⁷

- 1.9 The disallowance motion was debated and a vote was taken on Tuesday March 12 2002. When the question was put the disallowance motion was lost.

2 COMMITTEE PROCEDURE

Self Initiation of the Swimming Pool Fencing Inquiry

- 2.1 At a meeting held on Wednesday March 13 2002 the Environment and Public Affairs Committee (Committee) established an inquiry into private swimming pool safety and fencing with the following terms of reference:

The Committee initiate an inquiry to identify provisions of written laws that apply to private swimming pools and those requirements intended to prevent child drownings (sic) or serious accidents and that it report its findings and recommendations (if any) about the adequacy and appropriateness of the law, and the extent to which it should be applied in particular circumstances, as a means of ensuring the safety of children when present on private properties that have a swimming pool.

- 2.2 On July 12 2002 the Committee requested and subsequently received written submissions on the issues surrounding swimming pool fencing legislation and related swimming pool safety issues from the following:

⁶ Hon Tom Stevens MLC, Parliamentary Debates (Legislative Council) (Hansard) Thirty Sixth Parliament Second Session 2001, March 12 2002, p. 8054.

⁷ Parliamentary Debates (Legislative Council) (Hansard) Thirty Sixth Parliament Second Session 2001, March 12 2002, p. 8027.

-
- Royal Life Saving Society of Australia (RLSSA);
 - Child Accident Prevention Foundation of Australia (WA) (Kidsafe WA);
 - Swimming Pool and Spa Association of Western Australia (SPASA);
 - Western Australian Local Government Association (WALGA); and
 - Hon Tom Stephens MLC Minister for Housing and Works and Local Government.

2.3 The Royal Australasian College of Physicians and the Telethon Institute for Child Health (RACP) provided a submission on December 3 2002.

2.4 RLSSA, Kidsafe WA, SPASA and WALGA were invited to make presentations at a hearing held on Monday October 21 2002. The Committee specifically asked for the organisations' views on two of the sets of regulations that had operated with regard to swimming pool fencing:

- i) prior to November 5 2001 when Category 2 - barrier fencing (that is, barrier fencing with protective doors and windows complying with AS 1926.1) was allowed, and
- ii) post November 5 2001 when Category 1 - isolation fencing was made mandatory for all new pools.

2.5 The Committee also asked if the organisations could provide specific data that showed that Category 1 - isolation fencing was significantly better at preventing young children from drowning than Category 2 - barrier fencing, or any data that showed there was no difference between the two types of fencing.

2.6 SPASA, Kidsafe WA and RLSSA made presentations and gave evidence to the Committee. WALGA did not send a representative.

3 STATISTICS ON YOUNG CHILDREN DROWNING

3.1 Drowning is the most common cause of death by injury in children under five years of age. Eighty four toddlers have drowned in Western Australia (WA) in the last 10 years. Sixty eight percent (57) of the deaths have occurred in private swimming pools.⁸

3.2 There are estimated to be 120,000 swimming pools in WA of which 72,000 were built before July 1 1992, when only Category 3 - perimeter fencing was required. It is estimated that approximately 95 percent of children drown in swimming pools built

⁸ Mr Greg Tate of the Royal Life Saving Society Australia, transcript of evidence, 21/10/2002.

prior to July 1 1992 and the great majority of these pools have Category 3 - perimeter fencing.⁹

4 A SAFETY COMPARISON BETWEEN CATEGORY 1 AND CATEGORY 2 FENCING

- 4.1 No evidence was presented to the Committee that demonstrates that Category 1 - isolation fencing is more effective than Category 2 - barrier fencing in preventing the drowning of young children. Evidence suggested that both Category 1 and 2 fencing were significantly more effective than Category 3 - perimeter fencing or no fencing.¹⁰
- 4.2 The RLSSA stated in their submission that they had reviewed the majority of research relating to barriers that prevent access to young children entering a swimming pool. They were not aware of any research that showed that Category 1 – isolation fencing was any more effective than Category 2 - barrier fencing (which includes self-closing and latching doors) in achieving this aim.
- 4.3 RACP provided information in their submission,¹¹ which drew on three research reports.¹² RACP maintained that Category 1- isolation fencing was more effective than Category 2 - barrier fencing (which includes self-closing and latching doors) in reducing the number of young children that drown. However, the three reports that RACP referred to did not use data that compared Category 1 - isolation fencing to Category 2 - barrier fencing. In all three reports Category 1 - isolation fencing was compared to Category 3 - perimeter fencing, no fencing or a combination of Category 2 - barrier and 3 fencing. Therefore a direct comparison between the effectiveness of Category 1 - isolation fencing compared to Category 2 - barrier fencing could not be made.
- 4.4 However, in the most recent research Stevenson et al (2001) stated in their discussion the following regarding the drowning deaths of 50 children under the age of five that occurred between 1988 and 2000:

⁹ Swimming Pool and Spa Association of WA submission dated 21/10/2002.

¹⁰ Mr Greg Tate of the Royal Life Saving Society Australia, transcript of evidence, 21/10/2002, Royal Life Saving Society Australia Submission p 10, dated October 2002; Mr Cal Stanley of the Swimming Pool and Spa Association of WA, transcript of evidence, 21/10/2002; Hon Frank Hough MLC, Parliamentary Debates (Legislative Council) (Hansard) Thirty Sixth Parliament Second Session 2001, March 12 2002, pp 8028-29.

¹¹ Royal Australasian College of Physicians and the Telethon Institute for Child Health submission dated 03/12/2002

¹² Pitt R. *Toddler drowning in Queensland*. Injury Bulletin No. 62, November 2000;
Stevenson MR, Rimjova M, Edgecombe and D Vickery. *Research Project on the Adequacy of Inspections of Barriers to Private Swimming Pools* 2001. Injury Research Centre Department of Public Health, University of Western Australia, 35 Stirling Highway, Crawley Western Australia 6009; and
Thompson RC and FP Rivara. *Pool fencing for the preventing drowning in children (Cochrane Review)*. The Cochrane Library, Issue 4, 2002.

Lack of close supervision by the parent or primary caregiver (sic) was reported as a contributing factor in 96 percent of the drowning events. Certainly increased vigilance by adults of children around swimming pools and education programs to encourage it are essential.

Unintended access to the pool was a contributing factor in 86 percent of drownings (sic). The child was able to gain unintended access due to no barrier between the pool and the house (perimeter fencing [Category 3]) in 50 percent of all drownings (sic).¹³

- 4.5 Stevenson et al (2001) went on to make the following statement regarding Category 1 - isolation fencing.

Isolation [Category 1] fencing failed to prevent unintended access when the pool gate was propped open (20 percent of all drownings (sic) n=10) or the self-closing, self-locking gate was not maintained (10 percent of drownings (sic) n=5). Public education would be appropriate for reducing both these causes of drowning and inspections would be appropriate to prevent the latter cause.¹⁴

- 4.6 Stevenson et al (2001) also made the following statement regarding Category 2 - barrier fencing.

However, it is not sufficient to advocate for isolation [Category 1] fencing as this study was unable to estimate the risk from three-sided [Category 2 - barrier] fencing or perimeter [Category 3] fencing independently. Very few children drowned in a pool with three-sided [Category 2 - barrier] fencing (four percent, n=2). The risk could not be calculated in this study but other studies [8] indicate that the risk of drowning in a pool with isolation [Category 1] fencing is similar to the risk from pools with three-sided [Category 2 - barrier] fencing.¹⁵

- 4.7 The data on the 50 young child deaths presented by Stevenson et al (2001) showed that:

- 50 percent of the deaths (25) occurred in pools that could be clearly identified as having Category - 3 perimeter fencing,

¹³ Stevenson et al, op. cit., p30.

¹⁴ Ibid.

¹⁵ Stevenson et al, op. cit., p31. Reference [8] referred to in the quote is Pitt R (2000), op. cit., another of the reports referred to by RACP.

- 30 percent (15) of the deaths occurred in pools that could be clearly identified as having Category 1 - isolation fencing,
- four percent (two) of the deaths occurred in pools that could be clearly identified as having Category 2 - barrier fencing, and
- 16 percent (eight) of the deaths could not be allocated to any particular category of pool fencing.¹⁶

4.8 The Stevenson et al (2001) study was unable to determine how many of the remaining eight deaths were in pools with Category 2 - barrier compared to Category 3 - perimeter fencing. Stevenson et al (2001) also raised a second confounding aspect of the data in that the study could not ascertain with any real degree of accuracy the proportion of pools in WA with Category 1 - isolation fencing. Their estimates varied from 69 to 37 percent.¹⁷ They were also unable to make separate estimates of the proportion of pools in WA with Category 2 - barrier or Category 3 - perimeter fencing, except for an estimate that lumped both categories together (that is, Category 2 plus 3) as being between 31 and 63 percent (which was based on their estimates of the proportion of pools with Category 1 - isolation fencing).

4.9 Because Stevenson et al (2001) were unable to separately estimate the proportion of pools with Category 1, 2 and 3 fencing, they could not estimate the number of drowning deaths associated with each fencing category. That is, they could not estimate the number of drowning deaths per 1,000 pools for each fencing category. Young child deaths per 1,000 pools for each fencing category would have provided an accurate estimate and allowed a direct comparison of each pool fencing type's safety effectiveness.

4.10 A study by Waters (1998)¹⁸ provided the following information on 44 children under the age of five years that drowned in private swimming pools/spas in WA between 1988 and 1996.

- 37 of the deaths were examined in detail using coronial reports.
- In 75 percent of drowning deaths in private pools, gates were faulty or left open, fencing was defective, non existent or consisted of perimeter [Category 3] fencing only, which enabled direct access from the house to the pool area.

¹⁶ Stevenson et al, op. cit., pp. 30-31.

¹⁷ Stevenson et al, op. cit., p. 34.

¹⁸ Waters L, op cit.

- All swimming pools in the study, with the exception of one, were installed prior to 1992. Pre 1992 pools would have been expected to have Category 3 - perimeter fencing, which was the legal requirement at the time.
- 4.11 By comparing the above information from Waters (1998) with that from Stevenson et al (2001) it would appear to the Committee that a significant majority of the eight deaths that Stevenson et al (2001) could not allocate to pools with either Category 2 - barrier or Category 3 - perimeter fencing would probably have occurred in pools with Category 3 - perimeter fencing. If this is the case then in the period examined by Stevenson et al (2001), the smallest number of deaths probably occurred in pools with Category 2 - barrier fencing.
- 4.12 Stevenson et al (2001) made the following recommendation regarding barrier fencing for private swimming pools:

*That universal legislation is introduced that requires a barrier between the house and the pool for all private swimming pools.*¹⁹

and

*The findings from this study suggest that uniform legislation for barriers between the house and the pool is necessary. It is recommended that pre-1992 installed pools at least meet the AS 1926.1 requirement and have locks on windows and doors that permit access to the pool [that is, Category 2 - barrier fencing which includes self-closing and latching doors and protected windows].*²⁰

- 4.13 From the information provided and the recommendations made by Stevenson et al (2001) it is clear that their report does not support the statements made by RACP that Category 1 isolation fencing is more effective at reducing the number of young children drowning than Category 2 - barrier fencing.
- 4.14 The RACP also stated in their submission in regard to the situation in Queensland that:

*In addition, Queensland have already shown that the present system (category I and II) can and does work to prevent toddler drowning.*²¹

- 4.15 The authors of all three studies quoted in the RACP submission²² emphasised the importance of ensuring that:

¹⁹ Stevenson et al, op. cit., p. 34.

²⁰ Stevenson et al, op. cit., p. 31.

²¹ RACP submission, op. cit., p. 2.

- self-closing and latching gates and doors that provide access to the pool were not propped open and were kept in good working order,
- barriers/fences were kept compliant at all times, and
- that a main focus should be on education, inspection and enforcement to ensure pool fences, gates, doors and windows are compliant and well maintained and that there is a heightened awareness of swimming pool safety issues and barrier/fencing requirements in the community.

5 PROBLEMS WITH THE CURRENT REGULATIONS

- 5.1 The submissions identified inconsistencies, lack of clarity and confusion regarding the *Local Government (Miscellaneous Provisions) Act 1960*, *Building Regulations 1989*, *Building Amendment Regulations 2001* and *Building Amendment Regulations (No.2) 2001*.
- 5.2 The *Building Amendment Regulations (No.2) 2001* require all swimming pools constructed prior to July 1 1992 to be brought up to Category 2 - barrier fencing standards (in the vicinity of 72,000 pools). Under the *Building Amendment Regulations 2001* only pools constructed after November 5 2001 are required to have Category 1 - isolation fencing. Most pools built between November 1993 and November 2001 have Category 2 - barrier fencing. Therefore for many years into the future the majority of pools in WA will continue to have Category 2 - barrier fencing (that is, it will take many years before the number of pools with isolation fencing become the majority).
- 5.3 The RLSSA and WALGA submissions pointed out significant problems with interpretation, enforcement and implementation of Acts and Regulations relating to swimming pool fencing and pool safety generally.

Swimming Pool and Spa Association Submission

- 5.4 SPASA provided the following information in their submission.²³

Regulations relating to pools installed prior to 1992.

- 5.5 SPASA agrees with the *Building Amendment Regulations (No. 2) 2001* introduced on March 18 2002, which require all pool barriers/fences installed prior to July 1 1992 to be brought up to the standard that applied between November 1993 and November 2001 (that is, Category 2 - barrier fencing). SPASA believes this was an essential

²² Royal Australasian College of Physicians and the Telethon Institute for Child Health submission dated 03/12/2002.

²³ Swimming Pool and Spa Association of WA submission dated 21/10/2002.

move to reduce children drowning, as 95 percent of fatalities occurred in pools installed prior to 1992 (that is those with Category 3 - perimeter fencing).

Regulations relating to new pools installed after November 5 2001.

- 5.6 SPASA strongly disagrees with the *Building Amendment Regulations 2001* introduced on November 5 2001 that made Category 1 - isolation fencing mandatory.
- 5.7 In SPASA's view the application of the regulations do not give any flexibility to pool owners with small and difficult sites. The regulations purport to allow for alternative barriers to a pool fence but SPASA considers the wording to be so vague that local governments (and the industry) have no idea what is meant and thus refuse to exercise any discretion in applying them. Within days of the promulgation of the changes every local government advised SPASA categorically that they would not use the so-called 'discretion' allowed by the regulations. As of October 21 2002 SPASA understands that none have.
- 5.8 SPASA considers that the *Building Amendment Regulations 2001* and the *Building Amendment Regulations (No. 2) 2001* were written and disseminated in a confusing manner. Many local governments are still seeking clarification on the interpretation of these regulations. See examples in SPASA's submission in Appendix 1.
- 5.9 Pool fencing is often forced right onto the pool edge, particularly on small lots. It is a recommendation of AS 1926.2²⁴ that this should not happen as it encourages older children to climb the pool fence and jump or dive into the pool with all the inherent dangers of accidents. It also inhibits the access of adults in the pool area in their supervisory role or even worse, in their rescue efforts. It is dangerous and yet in many instances it is now forced on pool owners, in order to comply with the regulations.
- 5.10 The *Building Amendment Regulations 2001* allow the installation of a small enclosure with a gate therein immediately behind the rear door of a garage when, in the opinion of SPASA, a far safer option is to make the door comply with AS 1926.1, that is self-closing and latching. A toddler finds it more difficult to climb over a closed and latched door than a 1.2 metre high pool gate. SPASA stated '*When the Labor [Government] introduced isolation fencing regulations in 1992, it had the good sense to modify them to allow for the garage door, but this was overlooked in relation to the Building Amendment Regulations 2001.*'²⁵
- 5.11 Similarly, in SPASA's view, having to have a pool fence and gate immediately outside a double door leading from a master bedroom to an enclosed courtyard with a pool is not warranted.

²⁴ Australian Standard, Swimming pool safety, Part 2: Location of fencing for private swimming pools, Appendix A.

²⁵ Swimming Pool and Spa Association of WA submission dated 21/10/2002, p. 14.

- 5.12 SPASA submits that the *Building Amendment Regulations 2001* introduced on November 5 2001 are discriminatory particularly in light of the introduction of the *Building Amendment Regulations (No. 2) 2001* on March 18 2002, (which industry accepted and recommended). There are now two classes of pool owning citizens - 120,000 pool owners to whom one set of regulations apply (that is Category 2 - barrier fencing) and all future pool owners (as of March 18 2001) to whom a different set apply (that is Category 1 - isolation fencing).
- 5.13 SPASA's surveys have indicated that 97 percent of pool purchasers' who have children under five years of age, voluntarily fence their new pool in isolation (that is only three percent do not voluntarily install isolation fencing). Of the three percent who do not voluntarily choose isolation fencing, most choose Category 2 - barrier fencing due to their small lot sizes. Thus the *Building Amendment Regulations 2001* will have little impact on improving the uptake of isolation fencing by people with children under five years of age, but it does adversely impact many potential pool owners with small lots.

Royal Life Saving Society of Australia and Western Australian Local Government Association Submissions

- 5.14 In their submissions on swimming pool regulations RLSSA and WALGA highlighted a number of issues they believed need to be addressed.²⁶ A summary of the major issues is provided below and the details of the RLSSA and WALGA submissions on these issues are provided in Appendix 1.
- Clarification is required regarding the definition of a swimming pool and whether a spa is included in the definition.
 - Unregistered pools cannot be inspected.
 - Lack of safety barriers for pools that need to contain water while they are being constructed.
 - Local governments not enforcing the requirement for pool owners to provide an annual written statement that they have checked their pool safety barriers.
 - Inspection of pools every two years would produce a significantly higher level of compliance than the current four yearly inspection requirement.
 - Public education regarding the regulations is required.
 - Clarification of the local government's discretionary powers is required.

²⁶ Royal Life Saving Society Australia submission dated October 2002 and Local Government Association of Western Australia submission dated 23/08/2002.

-
- Exemptions for pools in rural areas needs to be reviewed.
 - Incentives should be provided to encourage pool owners to upgrade their pool safety barriers/fencing as soon as possible.
 - The three month timeframe for the new owners of a property with an existing pool to upgrade their safety barriers should be extended to six months.
 - Definition of 'young child' needs to take account of mental as well as physical age.
 - Real estate agents and settlement agents should be legally required to provide prospective purchasers with information pertaining to the current swimming pool compliance requirements associated with the property.
 - Appeal rights should be made clear in the regulations.
 - Appropriate enforcement and infringement powers should be afforded to local governments.
 - All aspects of potential liability should be investigated and addressed.

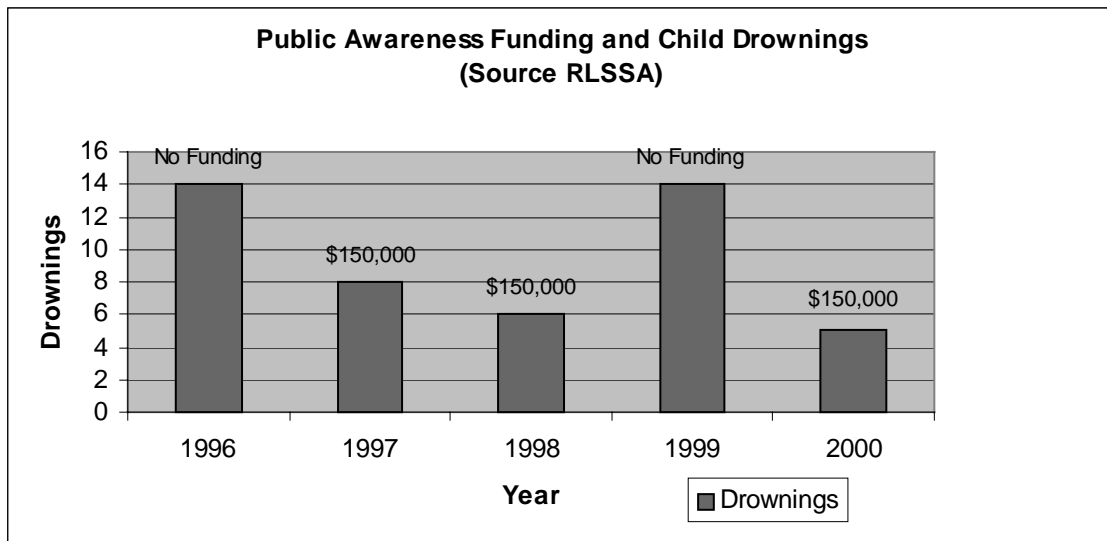
6 THE ROLE OF EDUCATION, INSPECTION AND ENFORCEMENT IN SAFETY COMPLIANCE

- 6.1 All the submissions strongly supported funding for public education programs and increased inspection and enforcement to heighten awareness of swimming pool safety, in particular, and water safety generally.

Swimming Pool and Spa Association Submission

- 6.2 SPASA provided the following information in their submission.²⁷
- 6.3 The incidence of children drowning was reduced by up to 60 percent in years when public awareness campaigns were run. The graph below shows the number of children that drowned in years when funding was made available for public awareness campaigns compared to years when there was no funding.

²⁷ Swimming Pool and Spa Association of WA submission dated 21/10/2002, p. 8.



6.4 SPASA believes that the use of advertising and publicity campaigns to improve education and awareness of swimming pool safety have in the past proved to be the single most effective tool in raising pool safety awareness. SPASA stated that the swimming pool industry would even consider a compulsory levy to support such a campaign.

Western Australian Local Government Association Submission

6.5 WALGA provided the following information in their submission.²⁸

6.6 WALGA noted that it was important that a full education and awareness campaign be conducted by the State Government to inform the community:

- about the new requirements;
- of the reasons for the changes;
- which sphere of government introduced the regulations;
- about local government's role in monitoring compliance; and
- of the consequences of non-compliance.

6.7 WALGA recommended that brochures and other materials be made available to local governments for distribution to community members as required.

²⁸ Local Government Association of Western Australia submission dated 23/08/2002, p. 3.

Royal Life Saving Society of Australia Submission

6.8 The RLSSA provided the following information in their submission.²⁹

Background to the RLSSA

6.9 The RLSSA is a not-for profit community organisation (registered charity). The aim of the RLSSA is to prevent the loss of life and to promote safe participation in water related pursuits.

6.10 Founded in England in 1891 by William Henry, the RLSSA began operation in Australia in 1894.

6.11 The RLSSA is best known for its Bronze Medallion award. This is accepted as the minimum standard for a qualified lifesaver. This accreditation is used by nearly all organisations in Australia to determine fitness to conduct and supervise aquatic activities.

6.12 Since 1978 the RLSSA has been involved more heavily in the instruction of swimming, survival and water safety, with accreditations now in excess of one million. The RLSSA's *Swim & Survive* program is accepted as the Australia-wide accreditation scheme for Learn-to-Swim.

6.13 In 1982 the RLSSA introduced a revised Award Scheme that included the Pool Lifeguard award in recognition of the need for specific skill development for people responsible for the supervision of others in an aquatic environment.

6.14 In 1991 the RLSSA produced *The Guidelines for Safe Pool Operation*. This publication provides recommendations to ensure the safety of an aquatic facility in the areas of First Aid, Facility Design, Learn-To-Swim Procedure, Recreational Swimming and Voluntary Management Systems. These guidelines are now recognised in the aquatics industry as the industry standard.

Keep Watch Program

6.15 Since 1997 the RLSSA has delivered a targeted education and awareness campaign to reduce the number of toddlers drowning in Western Australia.

6.16 The initial years of the program focused upon a media awareness campaign aimed at parents and carers of children under the age of five years. In developing the awareness program the RLSSA recognised the importance of establishing a community focus on infant drowning. The campaign slogan *Keep Watch* was

²⁹ Royal Life Saving Society Australia submission dated October 2002, pp 3-5.

specifically designed to cut through the confusion of existing messages and deliver a single, compelling proposition to the target market.

6.17 Post evaluation of the first campaign indicated that 59 percent of the target market were aware that drowning was the most common cause of death by injury in children under five years of age. By the third year of the campaign this figure had risen to 76 percent. The awareness level in recent years has been maintained at around 80 percent.

6.18 The RLSSA became critically aware that knowledge by itself was not sufficient to reduce the number of toddlers drowning. A large gap continued to exist between knowledge and safe behaviour. A detailed review of coronial and police reports along with evidence from previously published reports and articles indicated that there were factors or circumstances which were common to many toddlers drowning:

- absent or inadequate barrier or fence,
- a temporary lapse of close adult supervision (for example, answering the telephone and front door),
- uncertainty about which adult was caring for the child (for example, at parties and when friends are over), and
- an underestimation of a young child's curiosity.

6.19 In response to this information the RLSSA developed strategies to place the *Keep Watch* message in a context that was salient to the parent and real to their own, and their child's, lifestyle. The strategies needed to:

- provide an incentive for change,
- make the parent feel threatened by their current behaviour,
- make the parent feel the change will be beneficial and at an acceptable cost, and
- make the parent confident to implement the change.

6.20 New parents respect the opinions of childcare nurses and their family general practitioner when it comes to issues relating to their children. The *Keep Watch* message was much more effective when it was delivered through the medical fraternity.

6.21 RLSSA designed and delivered a Community Health Nurse In-servicing Program. This is a Statewide program based on the 'train the trainer' principle. Resources and training are designed to provide midwives and child health nurses with the

information and skills to deliver an educational session and/or advice relating to the prevention of drowning. The in-service course included:

- answering the question – “What is the campaign and why are we conducting it?”,
- background information about drowning and its effect on children aged zero to four years,
- how to prevent drowning,
- program resources, and
- provision of a feedback sheet for evaluation.

6.22 Reducing toddler drowning required the RLSSA to undertake programs and interventions that not only focused on parent behaviour, but also improved the home pool environment.

6.23 RLSSA has developed a comprehensive understanding of the issues by providing home pool inspections on behalf of 17 local governments over the last five years. This equates to the delivery of over 20,200 home pool assessments in both metropolitan and rural areas.

6.24 RLSSA found that significant improvement in the provision of home pool safety barriers could be achieved via formal inspector training and professional development coupled with targeted and relevant home pool safety information for owners/occupiers.

6.25 The RLSSA found that at the first inspection the compliance rate for maintaining an effective Category 1 isolation fencing barrier was significantly greater than for a Category 2 barrier (that is, 67 percent compared to 36 percent). The RLSSA has shown that more frequent inspections (for example, once every two years instead of every four years) significantly improves the compliance for both Category 1 - isolation and particularly Category 2 - barrier fencing.³⁰

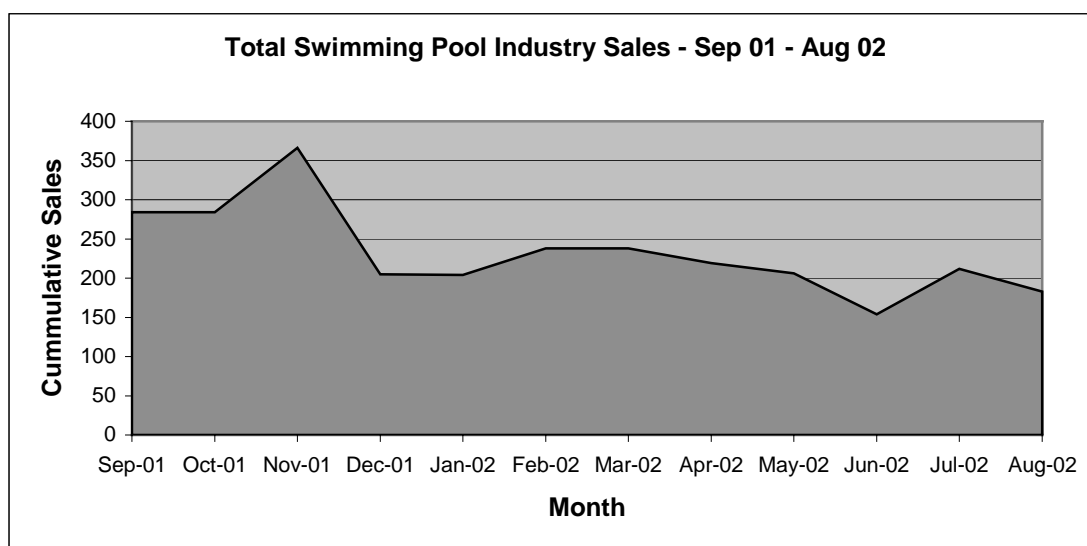
6.26 See also RLSSA comments on pool inspections provided in Appendix 1.

³⁰ Royal Life Saving Society Australia submission dated October 2002, p. 10.

7 IMPACT OF THE NEW REGULATIONS ON THE SWIMMING POOL INDUSTRY

Swimming Pool and Spa Association Submission

- 7.1 SPASA maintains that during the period July 1992 to November 1993 many pool construction companies lost 15 to 20 percent of their business due to the implementation of isolation fencing regulations (Category 1 fencing). The effect was immediate with many customers deciding not to purchase for cost and aesthetic reasons.
- 7.2 SPASA submits that the effect of the *Building Amendment Regulations 2001* introduced on November 5 2001 has been even more dramatic with the major companies showing a 25 to 30 percent reduction in income over the previous year. The graph below clearly shows the impact on sales, with a steep decline from November 2001. The industry has spent in excess of one million dollars on advertising and marketing over the last twelve months and is still experiencing a severe downturn in sales, as shown by the graph below.



Source: Construction Research of Australia – Top 50 Pool Builders Report.

- 7.3 SPASA also provided the following update on the impact of the regulations on the industry, in a letter to the Committee dated November 12 2002.³¹
- The swimming pool industry continues to suffer with sales down approximately 30 to 40 percent.
 - The industry is moving into a period in which employment would normally increase by 30 percent due to casual employment over the summer months.

³¹ Letter from the Swimming Pool and Spa Association to the Environment and Public Affairs Committee dated November 12 2002.

However, due to the decline in sales, businesses are not employing additional staff or replacing staff that leave.

- It is 12 months since the new regulations came into force and swimming pool businesses rely heavily on the profits of the summer months to manage the restricted cash flow that occurs over the winter. Due to the seasonal nature of the industry it is critical that it recover this summer, as many in the industry cannot afford the negative impact of the regulations on two successive summer seasons.
- SPASA recommends that the regulations be amended to allow the use of Category 2 - barrier fencing, before Parliament rises for the summer recess in December 2002.

7.4 The Committee notes that other factors may also have impacted upon the swimming pools sales. These include:

- reductions in the size of building blocks,
- changes in life styles generally, including more apartment living,
- water restrictions,
- increasing cost of water, and
- increased use of spas.

8 STAKEHOLDER ADVISORY GROUP

Royal Life Saving Society of Australia Submission

- 8.1 The RLSSA provided the following information in their submission:³²
- 8.2 The Department of Health administers the public swimming pool regulations. The scope of these regulations covers large public pools but what is often not known is that they also provide regulation for hotel pools and even home pools on strata titles where there are common use areas.
- 8.3 The public swimming pool regulations that are currently being updated will make reference to an industry code of practice, which includes elements of the RLSSA Guidelines for Safe Pool Operation. This has been developed by the RLSSA as the peak body in cooperation with an ongoing working group consisting of industry stakeholders. This group undertakes a continuous review of the standards as well as

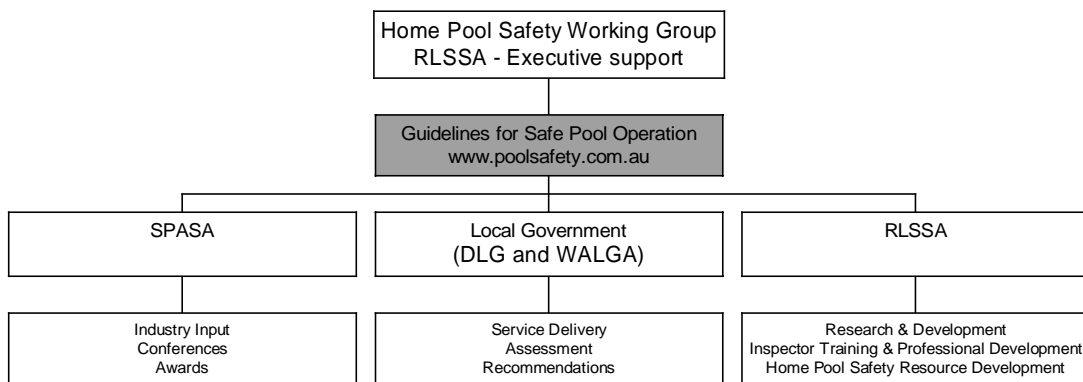
³² Royal Life Saving Society Australia submission dated October 2002, pp 11-12.

the identification of interventions that will improve compliance. It addresses issues such as up-skilling the labour force through to the introduction of education messages. Importantly the RLSSA plays a key coordinating role in the ongoing research and evaluation of safety in public swimming pools.

8.4 The RLSSA has established a significant level of infrastructure to service the public pool sector including:

- an interactive pool safety standards (fencing) website - www.poolsafety.com.au - that could be broadened in scope to detail all elements of home pool safety standards that contribute to water activity safety, rather than just barrier fencing,
- data collection systems and research tools,
- inspector checklists and performance measures to ensure ‘across-the-board’ consistency in inspections, and
- inspector training and professional development programs.

8.5 The RLSSA recommends that the WA Department of Local Government (DLG) takes advantage of these developments and creates a regulatory framework along the follows lines:



8.6 RLSSA believes the development of an industry driven code of practice that has the added element of enforcement via the *Building Regulations 1989* is consistent with contemporary practice in injury prevention. This model has been adopted by WorkSafe with its endorsement systems, the food handling industry, sanitary sumps in residential homes and shortly the public swimming pool industry.

8.7 RLSSA recommends the adoption of a system that is WA owned and driven and empowered by the DLG, which will create a mechanism for the swimming pool

industry to become actively involved in addressing safety issues. The process will continue to evolve, improve and importantly be responsive to the inevitable changes as the industry grows, methods of construction change and pool usage patterns vary.

8.8 The DLG has established a technical committee to address specific issues relative to the current fencing/barrier standard. RLSSA would like to see the following issues addressed:

- the use of electrically activated garage doors as part of a barrier, and
- the use of key locks as suitable devices to secure a window as part of a barrier.

8.9 RLSSA believes more resources need to be directed toward publishing and disseminating the outcomes of the technical committee's deliberations. The RLSSA considers its website - www.poolsafety.com.au - to be the perfect vehicle for this. RLSSA also believes that the technical committee is the ideal working group, which could meet two to four times per year to address compliance issues on an ongoing basis. The RLSSA believes it is the best placed organisation to take a leadership role in coordinating this forum.

8.10 To progress the incorporation of quality management principles in to the administration of swimming pool safety regulations the RLSSA recommends the following action be taken:

- confirm the role of the technical committee and increase its scope to address the broader issues of swimming pool safety,
- direct financial resources to the RLSSA to provide executive support and to coordinate the activities of the technical committee,
- direct the technical committee to develop an industry specific code of practice that will form the standard for home pool barrier construction and periodic inspection, and
- allocate financial resources to the technical committee to allow it to develop monitoring and research systems that will ensure future interventions to prevent drowning are targeted, as often the problem is not the pool barrier *per se*.

9 STAKEHOLDER CONCLUSIONS AND RECOMMENDATIONS

Royal Life Saving Society of Australia Submission

- 9.1 RLSSA provided the following information.³³
- 9.2 The RLSSA submission combines the extensive knowledge and background that has been developed over many years in providing education and drowning prevention programs to the broader community.
- 9.3 Fencing and or barriers alone will not prevent the continuing occurrence of toddler drowning. The following recommendations of the RLSSA are designed to provide a balance between safe participation and access to home swimming pools.
- The need for inspections to include public awareness and behavioural change strategies.
 - The need for inspectors to undertake vocational training.
 - All inspection reports to be standardised.
 - Home pool owners be provided with the option of installing either a Category 1 - isolation fence or Category 2, that complies with AS 1926.1 and 1926.2.
 - That the frequency of pool inspections is increased from every fourth to every second year.
 - That local governments conduct aerial photography every two years to coincide with inspections to identify unregistered pools.

Swimming Pool and Spa Association Submission

- 9.4 SPASA provided the following information in their submission.³⁴
- 9.5 SPASA agrees with, and indeed recommended the *Building Amendment Regulations (No.) 2001* (retrospective regulations) that were introduced on March 18 2002, to address the problems of pool fencing installed prior to July 1 1992 (that is Category 3 - perimeter fencing), because up to 95 percent of toddlers drown in these pools.
- 9.6 SPASA strongly disagrees with the *Building Amendment Regulations 2001* introduced on November 5 2001 that make it mandatory for new pool owners to install Category

³³ Royal Life Saving Society Australia submission dated October 2002, p 13.

³⁴ Swimming Pool and Spa Association of WA submission dated 21/10/2002, p. 16.

1 - isolation fencing. This regulation discriminates against new pool owners compared with existing pool owners.

- 9.7 SPASA recommends one set of regulations that will apply to all pool owners in WA. There should be a return to the pool safety regulations that applied prior to November 5 2001, that is Category 2 - barrier fencing which complied with the AS 1926.1 and .2. SPASA believes that the previous regulations that allowed Category 2 - barrier fencing were sensible, workable and gave the same protection to toddlers as the current Category 1 - isolation fencing regulations.

Kidsafe WA Submission

- 9.8 Kidsafe WA provided the following information in their submission.³⁵
- 9.9 In order to resolve some of the conflicting views on the effectiveness of pool fencing, Kidsafe WA would like to see some conclusive research carried out in the following areas:
- i) The effectiveness of self-closing, self-latching doors and gates and restricted/protected opening windows in preventing young children from leaving the house undetected. This research should include measures of frequency of intentional inoperativeness of these mechanisms and length of time for mechanical failures to be repaired.
 - ii) The effectiveness of pool covers and pool nets in preventing young children from gaining access to the water. This research should include, as a minimum;
 - a measure of the frequency of incomplete securing of the cover or netting after the pool has been used,
 - the length of time after pool use before cover or netting is replaced,
 - whether the cover or netting has adequate tension,
 - the dimensions of gaps in net covers as possible entrapment hazards for young children, and
 - the depth of water above the cover or netting when a child sits, stands or lies on the cover.

³⁵ Kidsafe WA submission dated 9/9/2002.

- 9.10 Kidsafe WA would also like to see a revision of AS1926.1 to increase the minimum height of pool fencing from 1.2 metres in order to prevent older children from scaling it.
- 9.11 Kidsafe WA would encourage public education and awareness programs that include the need to properly maintain and use barriers around private swimming pools, as well as to adequately supervise children. No safety equipment is effective if it is not used properly or maintained in good working order.
- 9.12 In addition to public education and awareness programs, Kidsafe believes there needs to be a greater frequency of swimming pool inspections and better enforcement when infringements are issued.
- 9.13 There is no one single strategy that will prevent all child deaths by drowning in private swimming pools or other domestic water hazards. There must be a combination of strategies that include passive environmental measures as well as strategies that promote safety conscious behaviour in individuals. As a minimum, legislation should require measures that will limit unintended access to the hazard by those who are most vulnerable.

Royal Australasian College of Physicians and the Telethon Institute for Child Health Research Submission

- 9.14 The Royal Australasian College of Physicians and the Telethon Institute for Child Health provided the following information in their submission.³⁶
- 9.15 RACP stated that they supported the existing pool fencing legislation requiring Category 1 - isolation fencing for pools built on or after November 5 2001 and a minimum of Category 2 - barrier fencing for all pre-existing pools³⁷. RACP preferred position would be for Category 1 - isolation fencing to be installed around all pools, but recognised that this is not realistic at this stage.
- 9.16 RACP referred to evidence in a report by Stevenson et al (2001)³⁸ regarding young children drowning in WA between the years 1988 and 2000. Stevenson et al (2001) found 50 children younger than age five drowned in private swimming pools. The researchers estimated that there was an almost two-fold increase in the risk of a child drowning in a swimming pool with Category 2 or 3 fencing versus a pool with a Category 1 - isolation fence, however they were unable to separate Category 2 and 3 due to low numbers.

³⁶ The Royal Australasian College of Physicians and the Telethon Institute for Child Health submission dated 03/12/2002.

³⁷ *Building Amendment Regulations 2001 and Building Amendment Regulations (No. 2) 2001*.

³⁸ Stevenson et al, op. cit.

- 9.17 Based on the information presented it is the Committee's view that no direct comparison could be made between the effectiveness of Category 1 - isolation fencing and Category 2 - barrier fencing.³⁹
- 9.18 RCPA maintained that the existing evidence strongly supported the retention of Category 1 - isolation fencing for all new pools and that they did not believe they had the evidence to support the use of Category 2 - barrier fencing as the equal of Category 1 - isolation fencing. Therefore Category 1 - isolation fencing should be retained as the requirement for pools built on or after November 5 2002.
- 9.19 The Committee is of the view that no data showing any difference in the effectiveness of Category 2 - barrier fencing compared to Category 1 - isolation fencing was put forward by RACP, nor was any presented in the three research documents⁴⁰ referred to by them. To the contrary, the research in one of the reports (Stevenson et al 2001) found that 15 children drowned in pools with Category 1 - isolation fencing and only two in pools with Category 2 - barrier fencing.
- 9.20 In addition Waters' (1998) research, which used a different set of data of drowning deaths for children under five between 1987 and 1996 showed that in all but one case, where pool age was known, they were installed prior to 1992, when only Category 3 - perimeter fencing was a requirement. Therefore the overwhelming majority of drowning deaths between 1987 and 1998 would have occurred in pools with Category 3 - perimeter fencing. For further details see commentary at paragraphs 4.6 to 4.14 of this report.
- 9.21 As previously mentioned Stevenson et al (2001) stated:

However, it is not sufficient to advocate for isolation [Category 1] fencing as this study was unable to estimate the risk from three-sided [Category 2 - barrier] fencing or perimeter [Category 3] fencing independently. Very few children drowned in a pool with three-sided [Category 2 - barrier] fencing (four percent, n=2). The risk could not be calculated in this study but other studies [8]⁴¹ indicate that the risk of drowning in a pool with isolation [Category 1] fencing is similar to the risk from pools with three-sided [Category 2 - barrier] fencing.⁴²

³⁹ Based on the data presented by RACP, Waters, op. cit. and Stevenson, op. cit.

⁴⁰ Pitt; op. cit., Stevenson et al, op. cit., and Thompson and Rimjore, op.cit.

⁴¹ The reference referred to in this quote from Stevenson et al (2001) is to Pitt 2000 op. cit., which is another of the three reports referred to by RACP.

⁴² Stevenson et al, op. cit., pp 30-31.

9.22 RCAP recognises that for any pool barriers/fences to be effective they must maintain compliance and the way to ensure compliance is through regular inspections and education. RCAP recommended that pool inspections be at least biannual.

10 SWIMMING POOL REGULATIONS AND RELATED ISSUES IN OTHER STATES OF AUSTRALIA

South Australia

10.1 Legislation in South Australia requires:

- Category 3 - perimeter fencing for pools built before July 1 1993, and
- Category 2 - barrier fencing that complies with AS 1926.1 and .2 (self-latching doors and protected windows) for pools built after July 1 1993.

10.2 Issues regarding spas and portable swimming pools are currently being considered.

Victoria

10.3 Legislation in Victoria:

- requires Category 3 - perimeter fencing for pools built prior to April 8 1991, with retrospective requirements that virtually bring them up to Category 2 - barrier fencing standard,
- requires Category 2 - barrier fencing that complies with AS 1926.1 and .2 (self-latching doors and protected windows) for pools built after April 8 1991, and
- covers spas by way of regulations.

Tasmania

10.4 Legislation in Tasmania requires Category 2 - barrier fencing that complies with AS 1926.1 and .2 (self-latching doors and protected windows) for all swimming pools built since November 1994.

Northern Territory

10.5 On September 19 2002, the Chief Minister of the Northern Territory (NT) announced the government's five point water safety plan to help prevent children drowning. The five point plan covers:

- i) the introduction of swimming pool fencing legislation to AS 1926.1 and .2 standard (Category 2 - barrier fencing),

-
- ii) an early swimming pool registration incentive scheme with a cash bonus for owners who upgrade their pool fencing to Category 2 - barrier,
 - iii) interest free five year loans to help fund pool fencing upgrades,
 - iv) a government subsidised water awareness program for children under five years of age, and
 - v) the establishment of a Water Safety Advisory Council to advise government on broader water safety issues.
- 10.6 As of January 1 2003 all swimming pools in the NT will have to be registered and Category 2 - barrier fencing that complies with AS 1926.1 and .2 (self-latching doors and protected windows) will be mandatory for all new swimming pools.
- 10.7 Financial incentives and assistance will also be given to owners who upgrade their pools to Category 2 - barrier fencing standards.

Queensland

- 10.8 Legislation in Queensland requires:
- Category 2 - barrier fencing that complies with AS 1926.1 and .2 (self-latching doors and protected windows) for all pools built prior to February 1991, and
 - Category 1 - isolation fencing for all pools built after February 1991.
- 10.9 Prior to February 1991 pool fencing requirements were set by local governments in Queensland. At that time 55 out of the 134 local governments did not have any pool fencing requirements.

New South Wales

- 10.10 Legislation in New South Wales (NSW) requires:
- Category 3 - perimeter fencing for all pools built prior to 1990. Doors and windows that provide access to the pool area from the house are required to be fitted with locks/latches in accordance with AS 1926.1, but do not have to be self-closing, and
 - Category 1 - isolation fencing (known in NSW as a child safe barrier) for all pools built after 1990.

Australian Capital Territory

- 10.11 Legislation in the Australian Capital Territory allows Category 2 - barrier fencing that complies with AS 1926.1 and .2 (self-latching doors and protected windows) for all swimming pools.

11 COMMITTEE'S CONCLUSIONS

- 11.1 The Committee's priority has been to ensure the greatest possible safety for young children in a swimming pool environment. The Committee believes that this can best be achieved through a combined approach to swimming pool safety, education and barrier regulations and compliance.
- 11.2 The *Building Amendment Regulations (No. 2) 2001* that require all pools built prior to 1992 (that is, those with Category 3 perimeter fencing) to be upgraded to Category 2 - barrier status by December 17 2006, were supported by all the stakeholders who provided submissions.
- 11.3 It was estimated by SPASA that 95 percent of deaths due to young children drowning occur in swimming pools built prior to 1992, which in the past have only been required to have Category 3 - perimeter fencing.⁴³
- 11.4 From the evidence presented, Category 1 and 2 fencing are significantly more effective than Category 3 - perimeter fencing at reducing the incidence of young children drowning.
- 11.5 The Committee was not provided with any evidence to suggest that Category 1 - isolation fencing was more effective than Category 2 - barrier fencing at reducing the incidence of young children drowning. To the contrary, the data referred to by RACP in Stevenson et al (2001) and research results provided by Waters (1998) indicated that Category 2 - barrier fencing is as effective as Category 1 - isolation fencing and that the great majority of drowning deaths between 1987 and 2000 occurred in pools with Category 3 - perimeter fencing.⁴⁴
- 11.6 Based on the information provided, the Committee is of the view that the most important issue is to ensure that young children are competently supervised in a swimming pool environment and that swimming pool barriers/fences are compliant at all times. The best way to achieve this is:
- through increased public education about swimming pool safety issues including barrier/fencing requirements, and

⁴³ Swimming Pool and Spa Association of WA submission dated 21/10/2002, p. 16.

⁴⁴ Stevenson, op. cit., p. 31. and Waters, op. cit.

- by regular inspections of all swimming pools (for example, every two years).
- 11.7 With increased compliance, both Category 1 and 2 fencing should provide the most effective safety barrier around a swimming pool that is currently available.
- 11.8 There is considerable scope for an improvement in swimming pool fencing inspection, enforcement and public education. Funding for public education campaigns is particularly important, as it has been shown to significantly reduce the incidence of young children drowning.⁴⁵
- 11.9 A swimming pool safety advisory group, that includes the main stakeholders, should be established along the lines proposed by the RLSSA.
- 11.10 To reduce the significant economic impact the current regulations are having on the swimming pool industry, regulatory changes allowing the use of Category 2 - barrier fencing should, if possible, be made prior to the Parliament rising for the summer recess in December 2002.
- 11.11 The Committee strongly encourages families with young children to bear in mind that there is no substitute for adult supervision of young children in and around swimming pools at all times.

12 RECOMMENDATIONS

Recommendation 1: The Committee recommends that Category 2 - barrier fencing, that allows the use of self-closing and latching doors and protected windows, which comply with Australian Standard 1926.1-1993 and 1926.2-1995, be made lawful for all pools, including those built after November 5 2001, and for new pools.

Recommendation 2: The Committee recommends that the Minister for Local Government revise the regulations to this effect as soon as possible.

Recommendation 3: The Committee recommends that the *Building Amendment Regulations (No. 2) 2001* that requires all swimming pools with Category 3 - perimeter fencing (that is, those pools built prior to July 1 1992) to be updated to Category 2 - barrier fencing by December 17 2006, remain in force.

⁴⁵

Swimming Pool and Spa Association of WA submission dated 21/10/2002, p. 8.

Recommendation 4: The Committee recommends that the Government establish a home swimming pool safety advisory group that includes major stakeholders, along the lines suggested by the RLSSA.

Recommendation 5: The Committee recommends that the Government provide resources to the RLSSA so it can provide the executive support for any home swimming pool safety advisory group that is established.

Recommendation 6: The Committee recommends that the Government have the new home swimming pool advisory group initiate among other things:

- a) development of a user friendly guide to the regulations and the Australian Standards,
- b) development of inspection guidelines,
- c) development of inspector training,
- d) development of enforcement protocols,
- e) recommendations for changes to legislation,
- f) public education campaigns,
- g) recommendations regarding spas and ornamental ponds,
- h) review requirements for swimming pools in regional areas, and

address the other issues regarding current legislation affecting swimming pools raised in the WALGA, SPASA, Kidsafe WA and RLSSA submissions.



Hon Kate Doust MLC
Deputy Chairman
Date: December 16 2002

APPENDIX 1
PROBLEMS WITH THE CURRENT REGULATIONS

APPENDIX 1

PROBLEMS WITH THE CURRENT REGULATIONS

1 SWIMMING POOL AND SPA ASSOCIATION SUBMISSION

1.1 SPASA considers that the *Building Amendment Regulations 2001* and the *Building Amendment Regulations (No. 2) 2001* were written and disseminated in a confusing manner. Many local governments are still seeking clarification on the interpretation of these regulations. The following are some examples:

- i) Clause 38B (3) of the *Building Amendment Regulations (No. 2) 2001* states that a building can be within a pool enclosure when it should state that it can be part of a pool enclosure. It goes on to state that a building other than a Class 10a building can be within an enclosure if doors and windows comply with AS 1926.1, but a Class 10a building can be within an enclosure without the need for doors and windows to comply. One local government has already refused a building licence by interpreting this regulation to mean that a house can form part of an enclosure yet a Class 10a building can only be within an enclosure. In other words, although both buildings are permitted in the regulation to be "within an enclosure" not "part of an enclosure" the local government has decided that one type is permitted to form part of an enclosure but the other is not. SPASA is already aware of a thirty five thousand dollar contract that was cancelled over this one issue. The client decided to install a large fish pond instead of a swimming pool.
- ii) SPASA has been informed that upon inspection of a pool legally fenced with Category 2 - barrier fencing, a local government discovered that the owner had also purchased and installed a portable spa direct from a retail outlet. The local government then told the owner he must obtain a building licence for the spa and he must place a fence around the spa. In this case the pool did not need to have isolation fencing, but the spa did.
- iii) Regulation 38B (4) of the *Building Amendment Regulations (No. 2) 2001* is the clause that prevents the use of a complying door (self-closing and latching) in the pool enclosure. However, this regulation opens with the words "*Except as provided by this Part*". The "Part" referred to is Part 10 of the *Building Regulations*, which deals with pool safety matters. Since regulation 38B (3) is part of Part 10, which allows doors complying with AS 1926.1, it is an "exception" provided for in regulation 38B(4) and thus takes precedence. SPASA believes this contradictory explanation only exacerbates the situation and creates more uncertainty with the local governments.

2 ROYAL LIFE SAVING SOCIETY AUSTRALIA SUBMISSION

2.1 In their submission RLSSA provided the following information regarding problems with the regulations.⁴⁶

Local Government (Miscellaneous Provisions) Act 1960

2.2 Section 245A (1) provides a definition of a swimming pool as follows:

“swimming pool” means a place or premises provided for the purpose of swimming, wading or like activities which the public are not entitled to use.

2.3 The RLSSA believes there is a need for clarification as to whether a spa is considered to be included within this definition. The RLSSA is aware of local governments that do not consider a spa to be included as they have received legal advice stating that users of a spa do not participate in “...swimming, wading or like activities...” RLSSA is of the view that it may be appropriate to consider alternative barriers for spas, such as moulded covers, to prevent unintended access by a young child.

2.4 Section 245A (2)(a) requires –

...the owner or occupier of land on which there is a swimming pool to install or provide such structures or devices as are prescribed for the protection of persons who may, with or without the knowledge or consent of the owner, enter upon that land;

2.5 The RLSSA is aware of problems in the implementation process of this legislation for new swimming pools. A percentage of these pools by-pass the registration process and are therefore not subject to initial or ongoing inspections. A number of local governments have discovered unregistered pools through the use of aerial photography.

2.6 The installation of new fibreglass pools presents a unique problem in that they are required to be filled with a certain amount of water (commonly more than 300mm) to stabilise the surrounding land during installation. Construction limits the ability to provide a fence until the process is completed. RLSSA believes SPASA needs to consider techniques to provide a suitable barrier for this part of the pool installation process.

2.7 Section 245 (2)(aa) requires -

...the owner or occupiers of land on which there is a swimming pool to annually provide the local government with a signed statement that

⁴⁶ Royal Life Saving Society Australia submission dated October 2002.

the person has checked such structures or devices as are prescribed for the protection of the safety of persons who may, with or without the knowledge or consent of the owner, enter upon that land;

2.8 It is the understanding of the RLSSA that very few local governments enforce this requirement and that they need greater assistance to enforce this or there is little reason for it to be in the Act.

2.9 Section 245A 5(aa) requires that -

for the purpose of ascertaining whether the previous requirements have been complied with, the local government shall cause an authorised person to inspect the land and the swimming pool at least once before July 1 1992 and periodically thereafter so that a period of not more than four years elapses between inspections;

2.10 RLSSA evidence shows that the provision of inspections every two years provides a significantly higher level of compliance to pool barrier legislation than four yearly inspections. The City of Subiaco is one of the few local governments that provide this service every two years. At the completion of the last round of inspections 96 percent of swimming pools within the City of Subiaco complied with pool barrier legislation compared to the state average of 80 percent.⁴⁷

2.11 RLSSA believes that to provide these extra inspections local governments and service providers would be required to increase their labour force. Initially costs for the provision of the service would increase. However, the RLSSA would expect that over time the number of follow-up inspections required to achieve compliance would be reduced. Therefore the overall cost of providing the service would decrease. Evidence to support this is provided by Stevenson et al (2001).⁴⁸ Inspection services were first required to be completed by July 1 1992. The State-wide level of compliance during this initial round of inspections was 45 percent. At the end of the third round, eight years later, the compliance rate had risen to 70 percent.

2.12 Stevenson et al (2001)⁴⁹ makes reference to the advantage of providing inspection services during the summer period. Logistically this would require local governments and service providers to employ more staff on a casual basis. If this were to occur training and staff induction would need to improve, to ensure that inspectors understand the legislative requirements and possess the ability to implement these requirements. RLSSA has created an industry-specific training course that provides

⁴⁷ Royal Life Saving Society Australia submission dated October 2002.

⁴⁸ Stevenson M, Rimajova M, Edgecombe D 2001 *The Adequacy of Inspections of Barriers to Private Swimming Pools*. Injury Research Centre, University of Western Australia (for the Western Australian Department of Health).

⁴⁹ Ibid.

inspectors with the necessary skills to provide inspection services. Currently there is no formal requirement for inspectors to complete a training qualification.

Building Regulations 1989

- 2.13 Knowledge of these regulations within the population of swimming pool owners and occupiers is low. The current complexity of the legislation when combined with the relevant Australian Standards makes this no easy task. Opportunities exist for a more coordinated approach to be introduced to better disseminate this information directly to home pool owners and occupiers.
- 2.14 If there was uniform legislation for all swimming pool standards the task of education would be simplified and easier to implement.
- 2.15 The RLSSA believes that a coordinated education campaign implemented and driven by them with input from all of the relevant stakeholders would provide the best possible process for the dissemination of relevant and targeted information.

Building Amendment Regulations (No.2) 2001 - Regulation 38B. Enclosure of pool

- 2.16 RLSSA maintains that currently AS 1926.1 is the only document referenced within the regulations. This document provides no information on the delivery of public awareness or 'behavioural change mechanisms'. RLSSA believes a broader document needs to be created to help prevent toddler drowning. Support for this has been provided by the Coroner in relation to an inquest held into the immersion death of a child. As a result the Coroner recommended that all local governments take advantage of compulsory pool inspections as an opportunity to provide educational resources and information to home pool owners, particularly addressing the importance of adult supervision.

Building Amendment Regulations (No.2) 2001 - Regulation 38C. Approval of doors by local government

- 2.17 Regulation 38C provides local governments with options to approve doors from the house as entry points to the pool area. These doors are required to comply with AS 1926.1.
- 2.18 Options for approving this alternative barrier (that is doors complying with AS 1926.1) are provided by Regulation 38C (1)(a) under the following circumstances where there is:
- iv) *a sufficient problem of a structural nature; or*
 - v) *a sufficient problem of any other nature the cause of which is neither within the control of the owner nor occupier;*

- 2.19 The RLSSA believes that these options are not well defined and provide pool inspectors with insufficient information to approve barriers of this nature. RLSSA is not aware of any local governments that actually use these exemption sections.
- 2.20 Information obtained from the research project conducted by Stevenson et al (2001) on the adequacy of inspections of barriers to private swimming pools details that only three percent of pool owners considered a resuscitation course as something useful in relation to children and water safety.⁵⁰
- 2.21 The RLSSA believes an opportunity exists to require all home pool owners to display a resuscitation flow chart in a prominent position near their pool. This would assist in raising awareness of the importance of learning resuscitation and provide timely prompts for an individual required to perform this life saving skill. This requirement is currently enforced through legislation in New South Wales.

Building Amendment Regulations (No.2) 2001 - Regulation 38D (7) Transitional

- 2.22 This section details the timeframes within which pool owners with swimming pools built prior to 1992 must update to Category 2 - barrier fencing. RLSSA believes the introduction of targeted implementation strategies would assist in providing pool owners with the motivation and knowledge to introduce these changes before the scheduled date.
- 2.23 Potential strategies recommended by the RLSSA include the provision of financial subsidies for pool owners that complete these changes within a specified time. An example of this is a system recently introduced in the Northern Territory, where pool owners can apply for one third of the estimated cost of updating pool barriers. A specific educational campaign would also assist in providing pool owners with knowledge of the required changes.

Building Amendment Regulations 2002

- 2.24 These regulations provide exemptions for properties within rural areas. RLSSA is not aware of why these areas have been exempt and understands that knowledge of these exemptions is low within local governments.

3 WESTERN AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION SUBMISSION

- 3.1 In their submission to the Committee WALGA made the following comments and suggestions regarding the *Building Regulations 1989* swimming pool fencing laws.⁵¹ The comments are based on feedback received from member local governments and are not exhaustive, but are indicative of some the additional work that will be

⁵⁰ Stevenson et al, op cit.

⁵¹ Local Government Association of Western Australia submission dated 23/08/2002.

required. Given this, WALGA believes it is essential that measures be put in place to enable local governments to recoup the costs associated with these additional tasks.

Three Month Upgrade Period

- 3.2 Given the impact that the regulations will have on both local governments, in terms of resourcing, and property owners, in terms of upgrade costs, WALGA suggested that the timeframe provided for new owners to upgrade pool safety barriers should be extended from three to six months. This will allow new home owners more time to upgrade to the required standards and result in less pools being non-compliant on first inspection.

Definition of “Swimming Pool” in the Local Government (Miscellaneous Provisions) Act 1960

- 3.3 According to WALGA precisely what constitutes a “swimming pool” is presently unclear. This has been raised previously as part of other legislative reviews. While WALGA understands a definition is currently contained within the *Local Government Miscellaneous Provisions Act 1960*, it would be appropriate in the current environment to clarify the definition, particularly in relation to whether spas and other large water features are subject to the same controls as swimming pools.

Young Child Definition

- 3.4 WALGA seeks clarification of the terms “young children” and “young child” that are used in the regulations. While the definition within the *Building Regulations 1989* describes a “young child” as a person between the ages of one and five, this assumes a physical age only, and does not take into account the mental age of a person.

Changes in Occupancy

- 3.5 WALGA believes that as the regulations enable some safety standards to be relaxed in cases where a disabled person resides at the premises, provision should also be made for the premises to be upgraded to the normal standard in the event that the disabled person is no longer a resident. Owners should be required to inform the local government in writing of the change, within a certain timeframe.

Real Estate Agents/Settlement Agents

- 3.6 WALGA considers it is imperative that regulations are put in place and changes made to the conveyancing process to ensure that real estate agents and settlement agents are legally required to provide prospective purchasers with information pertaining to the current swimming pool compliance requirements associated with the property.
- 3.7 This could be achieved through settlement agent’s questionnaires and contract of sale documents.

Building Amendment Regulation (No2) 2001 - Regulation 38B (2)

- 3.8 According to WALGA, the word “rear” in Regulation 38B (2)(a) should be more clearly defined as it may be taken to imply that pool areas in other locations, which serve as a yard area on dual street and odd shaped lots, are not included.

Building Amendment Regulation (No2) 2001 - Regulation 38B (3)

- 3.9 Regulation 38B (3) regarding the types of buildings within or forming part of the swimming pool enclosure. WALGA submits that the wording is confusing as to its intent. It appears to relate to a non-Class 10(a) building within the swimming pool enclosure.
- 3.10 WALGA recommends that the words “area enclosed” be replaced with “enclosure may include a building as part of the barrier”.

Building Amendment Regulation (No2) 2001 - Regulation 38C (1)

- 3.11 Regulation 38C (1) allows local government to use its discretionary powers to provide an exemption where it considers that it is not practicable to have fencing in cases of structural difficulties, indoor pools and where a disabled person is a resident at the premises.
- 3.12 To avoid uncertainty and disagreement, WALGA suggests clarification of the circumstances under which these dispensation powers are to be used should be included into the regulations.

Right of Appeal

- 3.13 Although an avenue of appeal against a local government’s decision appears to exist under Part 9 of the *Local Government Act 1995*, WALGA recommends that appeal rights be made clear in the regulations.

Enforcement Powers

- 3.14 To enable local governments to enforce the regulations WALGA believes it is crucial that appropriate enforcement and infringement powers are afforded to local governments. This is particularly necessary for cases of repeated non-compliance.

Liability

- 3.15 WALGA is aware of significant concern within local governments about the possibility of their liability in relation to pool safety under the new regulations. WALGA considers that it is imperative that all aspects of potential liability are investigated and addressed.