

17th July 2017

DELWP
Director, Building Planning
Department of Environment, Land, Water & Planning
Level 7, 8 Nicholson Street,
East Melbourne VIC 3002

By email: building.submission@delwp.vic.gov.au

Dear Sir/Madam,

Re: Building Regulations 2017 RIS

Introductory comments:

- The RIS proposes a retrospective 4-sided barrier regime for all pools and spas in Victoria to avert toddler drowning, yet the majority of toddlers who have died in Victorian pools in the past 15 years have died in pools with 4-sided barriers
- Western Australia has had Mandatory Barrier Inspections (MBI) of private pools since 1992 and has reduced their rate of toddler fatalities by 80%. Yet the RIS does not even consider the Western Australian experience of MBIs
- MBIs are supported by multiple Victorian Coroners, the World Health Organisation, Lifesaving Victoria, Kidsafe, Real Estate Institute of Victoria, Victorian Municipal Building Surveyors Group, Landscaping Victoria, Royal Life Saving & SPASA
- Multiple reports from Victorian Councils show the average fail-rate of pool barriers in Victoria is 80%+. The fundamental problem in Victoria is clearly a lack of ongoing pool barrier maintenance. Compelling evidence that 4-sided barriers are safer than 3-sided barriers does not exist
- In the past 15 years, Victoria has had 22 toddler drownings in backyard pools. On average, for every fatality, there are around 6 non-fatal drownings. Most of those toddlers suffer ongoing brain injury. Total: 22 dead plus 60+ with permanent mental impairment. It is vital that all is done in the 2017 RIS to keep toddlers safe – government must act now

Summary of SPASA's position on the 2017 RIS:

- 1. Immediately make pool barrier compliance certification mandatory for all properties sold or leased in Victoria; &**
- 2. Introduce a MBI program that ensures all residential properties with a pool or spa in Victoria are inspected every three years; &**
- 3. Abandon the retrospective barrier regulation contained in the RIS**



Building 10
270 Ferntree Gully Road
Notting Hill VIC 3168
P 03 9501 2040
F 03 9501 2041
info@spasavic.com.au
www.spasavic.com.au
ABN 66 076 867 091

SPASA submits the following discussion in response to the 2017 Building Regulations RIS. **Specifically, we address the proposal of retrospective pool and spa barrier laws, and the absence of a MBI program.**

Mandatory Barrier Inspections

Since the introduction of mandatory inspections in WA in 1992, there has been an 80% reduction in the rate of toddler drownings. This Western Australia data proves that mandatory barrier inspection legislation works (*8.7 deaths per 100,000 people in 1992 down to 1.66 deaths per 100,000 people in 2016 (Source: Royal Life Saving Society WA Inc)

Secondly, according to Victorian Coroner reports on cases closed between 2000-2015 there have been 20 drowning deaths of toddlers (0-4 years) in backyard pools where the pool or spa barrier configuration was known to be either four-sided isolation barrier or not. In the majority of these cases, toddlers drowned in pools or spas that had existing four-sided isolation barriers already in place. It was a lack of maintenance of these barriers that led to the toddler drowning.

The broader purpose of Coronial investigations is to contribute to a reduction in the number of preventable deaths, both through observations made in the investigation and by the making of recommendations. Victorian Coroners have repeatedly called for tougher pool safety laws in Victoria, with four specific recommendations to implement and legislate a mandatory barrier inspection program - see Summary of Coroner Findings [HERE](#).

SPASA members visit backyard pools seven days a week, the vast majority of pool barriers are not maintained and are unsafe. Recent media coverage regarding barrier inspection failures by local Councils underlines this fact.

The [recently-published fail-rate of Victorian barriers](#) is nothing short of staggering –

BOROONDARA: 24 pools inspected, zero compliance

DANDENONG: 22 pools inspected, zero compliance

FRANKSTON: No exact figures available but issues 40-55 non-compliance notes a year

GLEN EIRA: 195 pools inspected, more than 98 per cent failed to comply

HUME: 196 pools inspected, “at least 90 per cent” failed to comply

KINGSTON: Could not say how many inspections were made or how many pools complied

KNOX: 100 pools inspected, no figures provided but the “vast majority” failed to comply

MACEDON RANGES: No proactive pool inspection program and no figures available

MAROONDAH: 270 pools inspected in the past 18 months, 98 per cent failed to comply

MONASH: 151 pools inspected, only eight complied.

MOONEE VALLEY: 27 pools inspected, zero compliance

MORELAND: 130 pools inspected, “many” failed to comply

MORNINGTON PENINSULA: 261 pools inspected, zero compliance

NILLUMBIK: 75 pools inspected, 23 complied

STONNINGTON: 60 pools inspected, zero compliance

The largest majority of Victorian industry, building and safety stakeholders support SPASA’s stance on this issue, including the: Real Estate Institute of Victoria, Victorian Municipal Building Surveyors Group, Royal Life Saving Society Australia, Lifesaving Victoria, Kidsafe Victoria, Landscaping Victoria and multiple Victorian Coroners.

We feel so strongly that we’ve taken the unprecedented step to combine and submit this recent collaborative letter to the Premier Andrews and Minister Wynne [HERE](#)



Retrospective Aspects of the RIS: Pools to Comply to Current Standard by 1/10/2020

SPASA opposes the retrospective barrier aspects contained in the 2017 RIS (ie: Regulation 141). The RIS itself states that ‘The extent to which the adoption of the post-1 May 2010 barrier standard will reduce drowning and near-drowning incidents relative to the current Regulations is uncertain’ (RIS Part B p113) AND ‘It is difficult to ascertain the extent to which current drownings and near-drownings will be reduced under this option.’ (Option 11.1, RIS Part B, p121).

A great deal of reliance in the RIS is placed on the US-based Cochrane Library Report (Updated 2010), “Pool Fencing for Preventing Drowning of Children”. SPASAs view is that much of the evidence referenced is decades old and certainly not relatable to the Victorian situation. We note also that among its recommendations is a strong “ongoing enforcement” of barrier regulations - this being a MBI program - which the RIS elects to not even debate.

Secondly, the costs to upgrade to the current barrier standard is estimated in the RIS to be under \$3,900. Frankly, this is an absurdly low estimate. A great number of the tens-of-thousands of pool owners will be compelled to spend well in excess of \$10,000, plus the cost of permits, etc. It is in the realms of possibility that after architects or designers, surveyors and fencing contractors have completed their tasks that some homeowners will have to spend well in excess of \$50,000 - all to make what is an already safe barrier comply to “current standards”.

SPASA estimates the cost to Victorians pool owners of implementing upgrades to both boundary fences and barriers that ensure compliance for doors (previously) opening into pool areas to be in the vicinity of \$800 million. (There are 200,000 Victorian pools & spas. We estimate 160,000 were built pre-2013 & the majority will require at least (partial) new barriers and ancillary works/landscaping = 80,000 x \$10,000ea).

Legislating 4-sided isolation barriers for all pools and spas constructed prior to 1 May 2013 will impose a heavy burden on thousands of Victorians, who dutifully complied with the safety standards that were current at the time of building.

It is also important to note that many Victorians have built their homes and living areas around their pool or spa, and in many situations the construction of a new isolation barrier will be physically impossible - the Building Appeals Board will have thousands of cases to contend with if the RIS proceeds unchanged.

We also note a significant anomaly in the RIS, where it describes the retrospectivity issue as pool barriers having to comply “to the current standard” and in some sections “for all pools built prior to 1 May 2010 to upgrade” prior to 1 October 2020 - these two descriptions conflict.

The Australian Standards AS1926 was updated in 2012, and was introduced into Victorian Regulations in 2013. Therefore, the RIS directs all pools built prior to 1 May 2013 to “upgrade” – that is – virtually all of the 200,000 Victorian pools will be compelled to “upgrade”. Yet the evidence that safety outcomes are improved is highly tenuous.

In short, the retrospectivity regulations in the RIS do not address the ongoing 80% fail-rate of pool barriers and will make homeowners with already safe and compliant barriers needlessly “upgrade” to a standard unproven to provide safer outcomes.

Should retrospective barrier laws become legislation, and assuming all pool and spa owners do subsequently upgrade their barriers by 2020, it is only a matter of time after the construction of those new barriers that they will require maintenance. Without MBIs the proposed regulation dictates that the owner/occupier will be responsible for this maintenance, a model which we have seen fail historically.



It is unrealistic to expect homeowners to become expert in interpreting highly technical pool barrier Standards. Many within industry struggle to keep abreast of regularly-changing barrier laws. How does government propose to educate property occupiers on compliance to Standards? Car owners are not expected to self-certify their vehicle and issue a roadworthy certificate - a licensed inspector is engaged for that purpose. It must be a VBA registered pool inspector or RBS who carry can out this task.

Achieving the best pool and spa safety outcomes for all Victorians remains SPASA's absolute priority. It is important to note that SPASA members are largely pool builders, not fencing contractors, our members will not benefit from any of the changes proposed in this paper, or the RIS. More on the SPASA Pool & Spa Safety Campaign can be found [HERE](#)

The problem in Victoria is a lack of ongoing barrier maintenance by pool owners and a lack of enforcement by regulators. Mandatory barrier inspections are the solution to preventing toddler drownings in this state, not a retrospective barrier regime.

SPASA avails itself to work closely with government on this vital safety issue.

Yours sincerely,



Brendan Watkins
CEO

Copy: Premier Andrews
Minister Wynne
Prue Digby, VBA CEO

