



MUNICIPAL ASSOCIATION OF VICTORIA

Swimming Pool and Spa Safety Standards

Submission

September 2019



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1 Introduction

The Municipal Association of Victoria is the peak representative and advocacy body for Victoria's 79 councils. The MAV was formed in 1879 and the *Municipal Association Act 1907* appointed the MAV the official voice of local government in Victoria.

Since 1991, pools and spas in Victoria have been required to have barriers meeting prescribed standards. This is due to a recognition of the serious drowning hazard they pose.

However, Victoria has not had an effective compliance regime to ensure those standards are met. Evidence from councils suggest that current rates of compliance are less than 10%.

Parental supervision is the key to pool safety. A functioning inspection regime can provide additional protections to ensure that momentary lapses do not have tragic and irreversible outcomes. The Victorian Coroner has repeatedly cited non-compliance with barrier standards as a contributing cause to drownings, and called for action to address this.

The MAV largely supports the framework proposed in the draft regulations. It is in line with our understanding of the evidence and the views of expert stakeholders. In many ways this is a positive step forward

In 2017, the MAV sought the views of our member councils on this issue. 38 of Victoria's 79 councils responded. Those responses were overwhelmingly in favour of a mandatory registration and inspection regime. 33 councils supported mandatory registration of pools and spas and 36 councils supported mandatory regular inspections.

Administering a mandatory inspection regime imposes a significant burden on council resources. We believe it is necessary and justified to set fees to meet full cost recovery for councils. Pool owners, and not other ratepayers, should bear the cost of ensuring pool safety.

We understand many pool owners will be resistant to increasing the costs of owning a pool. Those without children in particular may wonder why this applies to them. In a significant proportion of fatal drownings, the victim did not reside at the property in question. In some cases they have accessed the pool without the knowledge of the pool owner. We must ensure that all pools are safe through having a compliant barrier.

It is unlikely that councils will realise a net profit from the implementation of this regime. Proposed maximum fees have been modelled based on expected costs. Councils would face significant pressure from their community not to overcharge. Some councils may choose to operate an inspection service, in which case they would be competing against private practitioners in a commercial market.

2 MAV Feedback

The MAV largely supports the preferred options set out in the Regulatory Impact Statement. We draw attention specifically to the below issues in addition to our responses to the questions below.

Financial implications for councils

Several councils have indicated that the proposed fees and penalties will be significantly below cost recovery for them.

We believe councils have submitted these modelled costs directly to DELWP and so have not repeated them here.

Councils operate in a rate-capped environment, and are extremely constrained in their ability to take on new responsibilities that are not appropriately funded. Council building units are often among the most resource constrained areas within council, and we are concerned by the prospect of stretching these resources even further.

We believe that in addition to further reviewing the proposed fees and penalties ahead of implementation, a commitment should be given to a 12-month review. Councils and ratepayers cannot afford to bear the costs of this regime for five or ten years until a mid-term or sunset review is conducted if the initial assumptions prove to be incorrect.

Awareness

A wide-reaching and multi-media awareness and education campaign must be funded and implemented by the State to communicate to swimming pool and spa owners their obligations under the regulations. Materials should also be made available to councils to assist them in providing localised communication to their community.

We also believe that upon an RBS issuing an occupancy permit for work including a pool or spa, the RBS should be required to provide the landowner with notice in a prescribed form of their requirements to lodge a certificate of compliance, and their ongoing responsibilities.

For the viable operation of the regulations, it is vital that the existing baseline awareness among pool and spa owners is lifted. Without this, councils will be faced with unmanageable workloads due to excessive levels of non-compliance requiring their attention.

Guidance material

The VBA must produce effective guidance for practitioners and councils to accompany the regulations.

Under the proposed regulations, an inspector must immediately issue a certificate of non-compliance if “*the non-compliance of the barrier with the applicable barrier standard poses a significant and immediate risk to life or safety*”. We believe practitioners will require guidance on the interpretation of this requirement. In the absence of appropriate guidance, practitioners may

choose to refer any issue of non-compliance to councils via a non-compliance certificate. Due to limited council resources, this would undermine the entire operation of the proposed system.

Lack of accessible records

In many cases, councils do not have accurate and accessible information about pools in their municipality. This will mean a significant burden in determining the construction date of pools, particularly older pools, as required under the regulations. Building permit records may be incomplete, missing, or difficult to access. Due to this, the initial registration period will be challenging for councils. The State should make administrative support available for those councils that require it.

Implementation timelines

There are four key dates proposed by the regulations, that for initial registration of all pools and spas, and three different dates for initial lodgement of a certificate based on the date of construction. We are concerned by the dates proposed in the draft regulations.

We believe that the date for initial registration does not afford councils enough time to establish their registers.

We believe that there should be 12 months, rather than 6 months, between lodgement dates for the three tranches of pre-existing pools.

We also believe that the current proposed timeframes do not allow enough time for a sufficient private workforce to be established to undertake inspections. Nor do they provide adequate timeframe to revisit the proposed fee and penalty structure as we believe is required.

How to notify new and prospective owners of their responsibilities

Councils should not be required to pro-actively notify new pool owners of their responsibilities upon a transfer of land. This is better handled through existing procedures, rather than creating a new burden on councils.

In the long term, this should be handled through sale or lease of land:

- A current certificate of barrier compliance should be required as a part of Section 32 information for prospective buyers
- A current certificate of barrier compliance should be required prior to entering into a residential rental agreement

Acknowledging that these solutions require changes to other legislation and regulations, shorter term alternatives include:

- Standard notifications on rates notices, noting whether there is or is not a pool registered at this property and if so the requirements on that property owner.
- Inclusion of the relevant information as part of a Regulation 51 notice supplied by council on request.

CPR Signage

We support Life Saving Victoria's view that CPR signage should be required. This would come at minimal cost to the pool owner. It serves both to assist proper application of CPR, and as a visible reminder of the potential risk of drowning.

Auditing

Auditing of this regime will be challenging for the VBA. Existing audits depend on the VBA having access to building work. We believe pool owners could be reluctant to give the VBA access to their property to do secondary inspections and determine whether a certificate has been issued correctly. A lack of information relating to inspections on the pool register may also hamper the ability to conduct audits. Data on when and where particular inspectors have undertaken inspections would be valuable in identifying where due care may not be given. A high volume of inspections in a short period may serve as an initial red flag.

Powers of the Municipal Building Surveyor

The power to issue a barrier improvement notice should lie with the Municipal Building Surveyor rather than council. This would be consistent with other similar powers under the Act and Regulations.

This also applies to the power to extend time for lodgement of a certificate of compliance.

It should be clear that the decision to issue a barrier improvement notice may be made by relying on the certificate of barrier non-compliance that has been provided. Otherwise, some MBSs may be unwilling to issue a barrier improvement notice without having conducted an inspection themselves. This would undermine the operation of the system which relies on much of the inspection load being born by private inspectors.

On paper appeals

Where a pool owner wishes to appeal a determination made by council on the construction date of a pool, this appeal process should occur on papers. Appeal processes are onerous for councils. For rural councils in particular, they will generally need to dedicate an entire day to commute to and participate in an appeal, in addition to any preparatory work.

Decommissioning and deregistration of swimming pools

Many Municipal Building Surveyors would not be willing to remove a pool or spa from the register based only on the claim of the landowner that it has been decommissioned. In most cases, an inspection by council staff to verify this would be prudent before removing a pool from the register. This should be subject to cost recovery by the council through a prescribed fee associated with the removal of a pool from the register. Minimum criteria should also be established to determine whether a pool has been decommissioned, to ensure a consistent process is applied.

Relocatable pools

Relocatable pools are clearly one of the most challenging aspects of the regulations.

Many relocatable pools contain water filtration systems, indicating that the intended use is for a prolonged period of time. Consideration should be given as to whether any pool that contains a filtration system should not be considered relocatable.

Some councils have also noted that relocatable pools are sometimes located in front yards of properties or in rear yards with poor boundary fencing. This highlights the lack of understanding of requirements among owners of relocatable pools in particular, and the high risk they can pose.

Prescribed forms

All required notices, directions, and certificates must be prescribed forms. This will ensure consistency in format and the provision of all required information. This will also assist councils seeking to automate capturing of information digitally from physical forms. This is impossible if each practitioner is using instruments in different formats.

Timelines for action

Some councils have noted that where action is required within a specified timeframe, such as 20 business days to address minor non-compliance, this would be better expressed in the equivalent number of calendar days.

It has also been raised that these time periods should be considered in context with the time frames for Building Appeals Board appeal processes and adjusted accordingly.

Certificates of barrier non-compliance

The current proposed model, whereby a pool owner is charged a fee for lodging a certificate of non-compliance, is unintuitive and creates additional burden on council. We believe that rather than a lodgment fee, this should be structured as a penalty.

3 Response to Questions

Chapter 2—Proposed regulatory approach

1. Do you agree that there should be no prescribed fee for the carrying out of an inspection and certification of a safety barrier? Please explain your response.

In order for a successful commercial market to establish, we believe there must be no prescribed maximum fee for the inspection and certification of a safety barrier.

However, we are wary of the potential for a race to the bottom by practitioners offering inspection services. The VBA should take an active role in monitoring the performance of inspectors. Particular regard should be given to where an inspector purports to have undertaken numerous inspections on the same day. This may indicate that a lack of due care is being given to the inspections.

If the oversight of inspectors proves to be ineffective, DELWP should consider introducing a prescribed minimum fee for inspections at a later date.

2. Do you agree that there should be no prescribed fee for councils to carry out information searches in relation to determining the date of construction of pools and spas? Please explain your response.

Due to changes in record practices, the difficulty of performing an information search will vary considerably from pool to pool and council to council. In general, the older a pool is the more difficult it will be to provide information on that pool.

We believe that the proposed registration fee does not adequately cover the cost to council of establishing the construction date. To avoid this burden being passed onto the general ratebase, we believe it is appropriate that councils be able to charge a fee for the associated information searches.

3. If you believe that a separate fee for council information searches should be charged, do you believe that the fee should be prescribed via regulations or set by individual councils? Please explain your response.

We believe the question of whether this fee should be prescribed or set by council needs further investigation. While a prescribed fee would provide certainty and consistency to owners, the significant variation in burden across different council information management systems means this may not be an effective method of achieving cost recovery.

4. Do you agree that there should be no requirement for renewal of registration? Please explain your response.

We support the option to not require renewal of registration. However, we believe the lodgement fees for certificates of compliance should be revisited to ensure that they adequately account for administrative costs in the period between lodgement. We do not believe this is currently the case.

Chapter 3—Registration

5. Do you support mandatory registration of all swimming pools and spas? Please explain your response.

We support the mandatory registration of all swimming pools and spas. Current levels of compliance with requirements for barrier fences are extremely low. A mandatory scheme is required to address non-compliance and the resulting potential for significant harm.

6. Is the proposed deadline of 14 April 2020 for owners of existing swimming pools and spas to apply to register an appropriate timeframe? Please explain your response.

This deadline is not appropriate.

We do not believe that this deadline, and the associated date of 1 December 2019 for councils to allow registration, provides councils with enough time to implement an appropriate database.

We also believe more time is required to educate pool owners on their responsibility to register. Failure to register by large numbers of pool owners would lead to registration being a council-led process. Councils do not have the resources to undertake this.

7. Is the requirement for a registration application for new swimming pools and spas to be submitted within 30 days of the owner's receipt of a certificate of final inspection/occupancy permit appropriate? Please explain your response.

This timeframe is appropriate.

8. Do you support no fee being required for an application to remove a swimming pool or spa from the register? Please explain your response.

No. Removal of the pool from the register requires the council be satisfied that the pool or spa no longer exists or has capacity to contain water that is more than 300mm deep. Councils may be unwilling to approve the removal of a pool from the register without inspecting the property. A fee to address this would be appropriate.

9. Do you agree with the information proposed to be prescribed as required to be kept on the register? Please explain your response.

All the information proposed to be prescribed on the register is appropriate.

10. Is there any other information that should be required to be included on the register? Please explain your response.

The information on a certificate (of barrier compliance or barrier non-compliance) is directly relevant to the operation of the inspection and registration regime. We understand that the provisions in the Act may not currently support prescribing that copies of certificates be included on the register. The Department should investigate whether a legislative change allowing this to occur would be feasible, and provide advice to the Minister accordingly.

However, there may also be benefit in transcribing some of the information on a certificate directly into the register. This would ensure that key information can be easily searched and compiled, which may not be the case with a scanned version of a physical document. This information should be limited to that which is relevant across multiple properties to lessen the need for data entry by council.

For any certificates issued, the identity of the pool inspector and the time of inspection should be included on the register directly. This would enable the VBA to assess at a glance the frequency with which an individual inspector is undertaking inspections. Where an inspector is reporting a large number of inspections in a short space of time, it may indicate they are not performing those inspections with due care. This could be an important prompt for the VBA to investigate further. This information would also give some insight into the health of the industry.

Photographs taken of the approved barrier, as well as information on the matters of non-compliance previously identified, would prove invaluable both to councils and building inspectors in future assessment of a pool.

11. What, if any, additional obligations should be placed on councils to keep the register up to date? For example, if after inspecting a safety barrier, an inspector believes that the applicable barrier standard recorded on the register is not accurate, should council be required to update the register? Or can this be left to the discretion of councils?

None. The responsibilities under the Act are sufficient.

12. Do you have any information or data supporting an amendment to the requirements in relation to windows in walls used as barriers for pools constructed prior to 8 April 1991? If so, what amendments should be introduced to address these issues?

No.

13. Do you have any information or data regarding how many swimming pool and spa barriers are likely to have multiple applicable barrier standards, i.e. because of alterations to part of a barrier?

No, but several councils expect this to be a common issue.

14. To what extent do you believe a system of mandatory self-assessment by owners of the compliance of their safety barriers would increase the safety of swimming pools and spas across Victoria? Please explain your response.

The availability of a self-assessment tool may assist owners in non-inspection years, as well as in preparing for an inspection.

However, the limited uptake of the VBA's voluntary register is informative. Self-assessment can at-best perform a supplemental role in improving compliance. Self-assessment tools may become more effective once pool and spa owners are made more aware of their responsibilities through the mandatory regime.

15. Do you agree that councils should be responsible for determining the date of construction? Please explain your response.

Yes. Councils have access to records of historical building approvals, which should be the primary source for determining date of construction.

Unlike pool owners, councils do not have a potential incentive to overstate the age of a pool thus making it subject to less stringent requirements.

As noted under questions 2 and 3, this will often be a significant burden on councils and should be subject to cost recovery.

Some councils have suggested that a more appropriate test is to establish the appropriate standard that applies, rather than the date of construction, as this is the key information that is being sought.

Chapter 4—Inspection and Certification

16. Do you agree that the average period for operable components of a barrier to fail in the absence of appropriate maintenance is approximately three years? Please explain your response.

Yes. This matches discussions we have had with a number of stakeholders.

17. Do you agree with the proposed timeframes for when owners of swimming pools and spas constructed or under construction prior to 14 April 2020 must provide their first certificate of pool and spa barrier compliance? Please explain your response.

We agree that pools should be brought into compliance as soon as reasonably practicable. However, we have concerns about the proposed timeframes. The initial registration and first lodgement period will be the most challenging and resource intensive period for councils. We are concerned that the current proposed dates will result in a new deadline being reached when the work required by the previous deadline is still occurring.

We believe that 12 months between lodgement dates for the three tranches is more appropriate.

18. How long does it usually take councils to resolve matters of swimming pool and spa safety barrier non-compliance? Which factors influence the time taken (e.g. age of barrier)?

Bringing a safety barrier into compliance is an onerous task for councils. By far the largest factor in the time taken is the willingness of the owner to cooperate. An uncooperative pool owner can mean that compliance takes many months, and even years.

19. Do you believe that 30 days is an appropriate maximum 'currency' period for the lodging of a certificate of pool and spa barrier compliance? If you believe an alternative period is more appropriate, please indicate the period in your response.

Yes.

20. If periodic inspection and certification of barriers is required under the new scheme, what is the most appropriate interval for requiring owners to provide a new certificate of barrier compliance? Please explain your response.

Three years is an appropriate interval to lodging a certificate of barrier compliance. This matches our understanding of the timeframes with which compliance issues will arise.

21. Do you consider the size of the existing cohort of registered building surveyors and building inspectors to be enough to support the efficient and effective operation of the proposed scheme? Please explain your response.

No. Building Surveyors and Inspectors are already in significant demand. A new class of practitioner is required to fulfil the proposed workload.

22. If the new building inspector (pool safety) class is to proceed, are the proposed qualification and experience requirements suitable for the proposed scope of work? Please explain your response.

Yes. We support the ability of the VBA to accept the relevance of experience under a practitioner other than an inspector or surveyor on a case-by-case basis. We think that inspectors being registered following a potentially short course with no practical experience would carry risk of inspections not being undertaken with due care or expertise.

23. Do you foresee any issues with applicants for the new building inspector (pool safety) class successfully meeting the proposed experience requirements? Please explain your response.

Initially there will likely be difficulties for new practitioners in gaining the required experience. However, as discussed in Question 22 experience forms an important part of the requirements for inspectors.

Chapter 5—Procedures for dealing with non-compliant barriers

24. How effective do you believe the current enforcement powers available to MBSs under the Building Act are at addressing non-compliance of swimming pool barriers? Please explain your response.

As discussed under question 18, bringing a safety barrier into compliance is currently an onerous process. This is exacerbated where an owner is unwilling to cooperate. Powers of entry are also heavily restricted with regard to residential premises where these pools are located.

25. Do you agree with the proposal to provide swimming pool and spa inspectors with discretion to oversee the rectification of minor instances of non-compliance? Please explain your response.

Yes. This will hopefully significantly reduce the instances where councils need to take a direct enforcement role. This will have benefits for both council resources and the speedy resolution of minor non-compliance.

26. Is it likely that there will be many instances of non-compliance identified where the inspector forms a belief that there is no significant and immediate risk to life or safety? Please explain your response.

Guidance will need to be provided to inspectors through a VBA practice note to provide them with some comfort around when they are not expected to refer issues immediately to councils.

27. Is the proposed maximum period of 20 business days the appropriate limit for the period that inspectors can provide owners to address non-compliance? Please explain your response.

Yes. This is an appropriate timeframe for rectification where there is not an immediate risk.

28. Are there any other criteria, apart from the immediacy of risk of young children gaining unsupervised access to the swimming pool or spa, that should be considered in prescribing matters for this purpose? Please explain your response.

No. This should be the basis for determining in what circumstances non-compliance should be immediately referred to council.

29. Are the non-compliance matters proposed to be prescribed as always requiring the immediate lodgement of a certificate of pool and spa barrier non-compliance with council appropriate? Please explain your response.

The four matters prescribed in draft Regulation 147ZF(c) appear sufficient. As addressed in Question 26, guidance will be required for inspectors around interpretation of when non-compliance does and does not pose a significant and immediate risk to life or safety.

Where possible, it may be appropriate to allow an inspector to address immediate safety issues themselves and then deal with other issues of compliance through a follow-up inspection, rather than immediately issue a certificate of non-compliance. This would increase the number of matters which could be dealt with without council involvement, as well as providing a more immediate remedy to improve safety compared to referring the matter to council.

Consideration should be given as to whether a prescribed period should apply to lodgement of a certificate of barrier non-compliance with council by an inspector. This would give increased certainty, rather than the current requirement for lodgement as soon as practicable.

30. Are there any matters that are not listed that should be prescribed in the proposed Regulations? Please explain your response.

No.

31. Is there an approach other than the proposed barrier improvement notice process, that would better assist councils to effectively and efficiently respond to non-compliance raised through lodgement of certificates of pool and spa barrier non-compliance? Please explain your response.

We hope the barrier improvement notice process will serve to bring many barriers into compliance. It is far simpler for councils to use this tool than existing tools under the Act.

Given the number of different powers available to the MBS, it would be beneficial to all parties for DELWP to work with councils, MAV, and the VMBG to prepare guidance for MBSs. This would provide more certainty and consistency in the application of those powers.

DELWP should consider vesting the power to issue a barrier improvement notice in the MBS rather than council. This would be consistent with other powers under the Act and Regulations.

32. Do you agree that 14 days is a reasonable minimum period of time for owners to be required to comply with a barrier improvement notice issued by a council? Please explain your response.

Yes. Where a shorter period is justified due to an immediate risk, other options including emergency orders remain open to the MBS.

33. Do you believe the existing exemptions in items 3 and 4 of Schedule 3 to the Building Regulations cover repair, renewal, maintenance, or alterations work on a swimming pool or spa barrier? Please explain your response.

The existing exemptions are open to interpretation regarding in what circumstances they would apply to maintenance for a barrier fence.

34. Do you agree with the proposal to insert a new item into Schedule 3 that would exempt certain work involving replacement of parts of a swimming pool or spa barrier from the building permit requirements? Please explain your response.

Yes. See question 33.

35. Are the limitations on the proposed exemption relating to the replacement of safety barrier parts appropriate? Is it necessary to broaden or lessen the application of the proposed exemption in some manner? Please explain your response.

Yes, these restrictions appear appropriate. They allow a pool owner to have minor works carried out following an inspection, while recognising that some work should still require a building permit.

Inspectors will need to consider the timeframes of receiving a building permit when determining if the barrier is likely to be compliant within the required timeframes. This influences whether they should immediately issue a certificate of barrier non-compliance. Similarly, councils should have some regard to these timeframes when receiving a certificate of barrier non-compliance and deciding on their appropriate response.

Guidance on these matters would assist in ensuring a consistent response.

Inspectors must also give clear guidance to a pool owner whether or not they require a building permit for the rectification work required.

36. How much is it likely to cost owners to appoint a building surveyor to oversee building work to rectify a non-compliant safety barrier? Please explain your response.

Estimates we have received from councils range from \$300 at the lower end, up to \$1000 at the higher end.

Chapter 6—Relocatable pools

37. Do you have any data or information regarding the number of relocatable pools sold that have a depth of at least 300mm, but which do not constitute a ‘structure’ as discussed in section 6.6?

No.

38. Do you have a view as to whether an amendment to Building Act should be made to ensure that its requirements apply to all relocatable pools with a depth of at least 300mm? Please explain your response.

Relocatable pools are by far the most challenging aspect of these reforms.

While the drowning hazard presented by a pool relates to depth rather than the form the pool takes, we must also consider the practicability of enforcement.

There is not an effective way under the Building Act to regulate pools and spas that do not fall under the definition of a building or structure. This would require the Building Act, and thus councils under Section 212, to enforce barriers around single-piece inflatable pools, clamshell pools, etc. The Building Act is not conducive to such a task, nor are councils resourced to undertake it.

There must be significant community education alongside these changes. This must address not only which pools require registration, but also the risks associated with other pools and how to address them.

39. Are there alternative means for ensuring that landlords are not unfairly burdened by the actions of their tenants in relation to the erection of a relocatable pool? Please explain your response.

This must be primarily addressed through discussions with CAV and potential changes to the Residential Tenancies Act or regulations.

40. What is the current rate of compliance amongst relocatable pool owners applying for building permits to erect their pools?

Compliance is likely to be lower than that of permanent pools. Several councils believe current compliance rates for relocatable pools to be zero prior to inspection.

41. Do you support exempting the erection of all relocatable pools from the requirement to apply for a building permit? Please explain your response.

Yes. It is impractical to require relocatable pools to require a building permit to erect. Requiring this would also be a significant waste of the limited resources of building surveyors in Victoria. However, owners of relocatable pools must be made more aware of the requirements on them. This includes both the requirement to register a pool, as well as ensuring a compliant barrier fence is in place.

42. Do you agree that it is reasonable to only require the registration of a relocatable pool or spa once it has remained erected for three consecutive days? Please explain your response.

Yes. We agree that there should be a timeframe attached to this. Three days, being more than a weekend, appears to be a reasonable threshold to set.

43. Do you believe that the registration requirement for relocatable pools and spas can be effectively enforced? Please explain your response.

This will be challenging for councils to enforce. If a council desires to, they could take a number of approaches to identify pools within their municipality. This includes aerial photography, building permit data, and real estate listings. These measures are largely impractical for relocatable pools. Identification of relocatable pools (where the owner does not register them voluntarily) will likely be complaint based.

The three-day threshold only applies to registration of a pool. Regardless of how long a pool is erected for, it must have a compliant barrier. If the MBS deems it appropriate, they have other powers available to ensure a compliant barrier is in place.

44. Do you have any information regarding how many relocatable pools are likely to be left in place for longer than three days?

Councils indicate that most relocatable pools are treated as semi-permanent and left erected and filled for long periods of time. However, proving a pool has been filled continuously will be extremely challenging for councils and likely lead to significant disputes with pool owners.

45. Do you think that the fee for the registration of a relocatable pool should be the same as for a permanent pool? If not, please indicate an appropriate fee and the reasons why the registration fees should be different.

Yes, they should be the same.

46. Do you agree with the proposed requirement that councils will nominate when the first certificate of pool and spa barrier compliance is required to be provided for a relocatable pool or spa, not being more than 30 days after it was registered? Please explain your response.

Yes. Thirty days strikes a balance between allowing reasonable time for an owner to arrange an inspection, and ensuring the barrier is compliant in a timely manner. Standard notification of this date should draw the owner's attention to the potential need for rectification work, and advise them to incorporate that in their timing of an inspection.

Chapter 7—Additional regulatory options considered

47. To what extent do you believe mandatory CPR signage would contribute to a reduction in fatal drownings and lessen the impacts of non-fatal drownings of young children in private swimming pools and spas across Victoria? Please explain your response.

We support the position of Life Saving Victoria to require mandatory CPR signage. The purchase and placement of CPR signage represents minor additional cost to a pool or spa owner. In addition to the potential benefits to proper performance of CPR, signage would serve as a reminder to potential drowning risks.

48. To what extent do you believe a mandatory warning notice like that required in NSW would promote the safe use of private swimming pools and spas across Victoria? Please explain your response.

If desired, this could be incorporated into an approved form of CPR signage.

49. Do you believe the Building Regulations should allow for lockable spa lids to be used as an alternative means of complying with the requirement for spas to be enclosed by a compliant safety barrier in Victoria? Please explain your response.

We do not believe lockable spa lids have been demonstrated to provide adequate protection compared to barrier fences.

In addition to this, by their nature lockable lids must be able to be fixed in an open position to allow for use of the spa. This is fundamentally inconsistent with the rationale that barrier fences must be self-closing.

50. If you agree that lockable spa lids are an acceptable alternative to a safety barrier, are there any limitations on the types of lids that should be accepted? Please explain your response.

N/A

51. If lockable spa lids are accepted as an alternative to a safety barrier, what is an appropriate method of ensuring that they are effective in preventing access to the spa by young children? For example, is it necessary that they be inspected by an independent third party; or, should owners be required to use a self-assessment checklist; or is there another mechanism?

As above, we do not support the use of lockable spa lids as an alternative to a barrier fence.

If spa lids were allowed as an alternative, they should be inspected in a similar manner to barrier fences and not by self-assessment.

Chapter 10—Implementation, evaluation and forward work program

52. Do you believe including information regarding certificates of pool and spa barrier compliance in the due diligence checklist under sale of land obligations would promote the safety of swimming pools and spas across Victoria? Please explain your response.

Yes. It is important that land owners are made aware of obligations they have with regards to swimming pools and spas. However, this alone is not sufficient (see Question 53).

53. Do you think amending regulation 51(1) of the Building Regulations so potential purchasers can request information regarding the existence of a certificate of pool and spa barrier compliance from the relevant council is sufficient to allow them to fully inform themselves regarding the status of a pool or spa? Please explain your response.

Where a pool or spa exists, the most recent certificate (whether for compliance or non-compliance) should be required to be included in the Vendor Statement prepared under Section 32 of the Sale of Land Act. We recognise this would require legislative change. We strongly urge that DELWP further discuss this with Consumer Affairs Victoria and the relevant Minister.

Requirements under Section 32 would be the best method to ensure that the potential buyer is aware of their future responsibilities and the current condition of the pool or spa. The ability for a potential buyer to proactively seek out the existence of a certificate does not achieve the same end.

54. Have you ever purchased a property with a swimming pool or spa? If so, what was the condition of the safety barrier?

N/A

55. Do you think including a compliance certificate as part of the prescribed information under the Residential Tenancies Act 1997 would promote the safety of swimming pools and spas across Victoria? Please explain your response.

Yes. This would assist in ensuring compliance and educating renters about compliance and the risk posed by a pool.

56. Do you think including a certificate of compliance on the condition report for residential rental properties would promote the safety of swimming pools and spas across Victoria? Please explain your response.

Yes. See Question 55.

57. Do you have any information regarding how many residential rental properties have swimming pools or spas?

No.

58. Have you ever rented a property with a swimming pool or spa? What was the condition of the barrier? If the barrier was in a poor condition, did the owner repair the barrier?

N/A