

FEEDBACK FORM

Name: **Hannah's Foundation, Drowning Prevention, Awareness and Support (not for profit charity and advocates for Water Safety)**

Organisation (please tick the applicable box below):

Pool owner	☐
Council	☐
Water safety advocacy organisation	☒
Industry organisation	☐
State agency	☐
Other:	☐

If 'Other', please specify: _____

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Closing date: **Friday 24 February 2012.**

Questions

Swimming Pool Register

1. Should the NSW Government develop and maintain an on-line, State-wide register of swimming pools containing certain prescribed information about the pool including (but not limited to) address, type of pool, date of construction/installation as well as date of any inspection and result.

Yes ☒

No ☐

Unsure ☐

Q1 Comment:

Further to this section the State Wide pool register should also include details of any immersions, injuries or deaths

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previously to the property and that this information be noted on the Pool Safety Register. Any exemptions on the property must be listed on the Pool Safety Register and have the date application and expiry date. The register should also include a section if the property is a rental property or is in fact an owner resided home. The owner of the home should be responsible for this information. Public registers will aid other Government departments in the monitoring and cross checking of records which is imperative to the safety of young children.

Any additional approvals or changes to the pool or fencing should also trigger a change onto the State Wide register so that there is knowledge of when the change was made.

2. (a) Should each private swimming pool owner be required to directly register their swimming pool, at no cost, via the on-line, State-based register at no cost to themselves

Yes ☒

No ☐

Unsure ☐

- (b) with the option for pool owners to request councils to register their pools on the pool owner's behalf for a fee of no more than \$10?

Yes ☐

No ☒

Unsure ☐

Q2 Comment:

This question has been divided into two parts by Hannah's Foundation as it requires two answers. It is the view that All pool owners should register their pools on the State Pool Register with the onus on the owner. This amendment should include a subsequent fine of no more than \$2000 for failing to register a pool by an appropriate date.

In the first instance the register should be auto populated with Council data and with the ability to register a pool or

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check registration on the register. Given a reasonable lead in time similar to what was applied in Queensland

Is it highly unlikely that pool owners will contribute to paying fees issued by councils as in few as five coronial inquests across NSW some pools were not known to councils. Owners may believe their pool is known to council but the facts remain that some pools have been illegally built and are not registered with councils.

Council's should have a pool register which can be crossed checked by both the State and the Council and owners notified to register their pools and have appropriate certifications/applications cross checked.

3. (a) Should the swimming pool registration process include a 'self-certification' process that requires the pool owner to complete a swimming pool safety checklist and certify that, to the best of their knowledge, their swimming pool barrier complies with the requirements of the *Swimming Pools Act 1992*

Yes ☐

No ☒

Unsure ☐

- (b) with the option for pool owners to request councils or private certifiers to certify their pool as compliant with the Act on the pool owner's behalf for a fee?

Yes ☒

No ☐

Unsure ☐

Q3 Comment:

This question has been divided into two parts by Hannah's Foundation as it requires two answers.

Q3 part (a),

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Hannah's Foundation disagrees strongly with self certification practices. Self Certification in previous drowning cases as seen in the Coronial Inquest of December 2009 and June 2011 and subsequent inquests in regional NSW have proven that owners/tenants of houses do not fully understand how to check fences, what complies regarding measurements and what is expected of pool owners in relation to responsibilities of maintenance. Hannah's Foundation supports owners checking the surrounds and general maintenance however legally stating that your pool complies is a cause for major legal ramifications when owners are not qualified to 'certify' their pool. Members of Hannah's Foundation as parents/pool owners used 'self certification' practices and sadly that has resulted in the loss of life of young children. Landlords equally are not qualified to certify pools and to do so would be in breach of their responsibilities to the Residential Tenancies Act of having a compliant pool and Insurance policies regarding same.

Given that a roadworthy certificate is required to be issued a vehicle registration can be renewed or transferred a Certificate should only be issued by appropriately trained and appropriately qualified personnel. When Qld adopted the new legislation all previous standards were amalgamated into one resulting in a simple and easier to understand standard. It places too much of a burden onto the 'self certifier' to try and interpret the Australian Standards 1926.1 and other amendments and then apply the appropriate legislation to when the pool or fence was constructed. If a error is made than not only will it result in a loss of life or injury but the 'self certifier' would be liable for immense costs.

The establishment of the Qld Pool Safety Council responsible for the training and education of Pool Safety Inspectors has shown that it functions and works well. Currently there are a number of Registered Training Course providers who have approved Swimming Pool Safety Inspector Training Courses and there would be little changes required to those courses to modify them to suit the any legislative changes to NSW.

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Those Inspectors who complete the courses understand the technical aspects that is specifically relating to Compliant pool barriers and also hold public liability insurance without having trained inspectors the risk of an increase in drownings is a very real and frightening prospect as many of the fences currently failing in Qld may well appear on a quick visual inspection to be compliant. It is only through inspections that these have been identified. There have been numerous stories of tragedy over many years where the fences, gates and latches look to have worked however have not been checked or maintained by the home owner.

There have been many faults identified by PSI's that have been conveyed these included:

- a) wooden boundary fence panels that have deteriorate around attachment point so whilst the pool fence panel intact it pulls free from the attaching nail/screw point, excessive play/movement on same so that it fails to comply with the strength and rigidity elements.**
- b) Gate latches currently are not compliant with poor maintenance and care has allowed the latching mechanism to work intermittently.**
- c) Hinges, poor maintenance of hinges has resulted in and significantly contributed to the majority of faults, many hinges don't properly aid the closing of the pool gate because of a lack of maintenance. Hinges provide a climbing point. Hinges also when coupled with with unstable posts allow the gate to not fully latch.**
- d) Gaps underneath fencing is also another common fault where animals or poor maintenance and overgrown landscaping has contributed to the increase in the maximum gap required by law.**

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- e) Objects such as pot plants, furniture or other equipment within the Non Climbable Zone (NCZ) is another reason for failure.**

The regulatory impact statement identified various costs to the pool owner to rectify non compliance issues. Whilst in some cases complete pool fencing has had to be replaced or in some cases installed anecdotal evidence has shown that common faults such as objects within NCZ can be cleared with little to no cost. The installation of 60° wedges on fence rails has shown to be an exceptionally cheap and practical alternative to fence replacement.

Power point and tap shields has again shown to be significantly cheaper than the cost of a professional electrician or plumber for the relocation of same.

For all of the negative press and arguments that were aired prior to the adoption of the New Legislation in Qld there has been little if any negative media campaign surrounding the cost of compliance. Ultimately the cost of non compliance is so much greater. Indeed those families who have experienced a loss or injury of a child cannot put a price on the safety of others.

Q3 part (b),

All pools should be certified by fully qualified and licensed Building Certifiers or Council officers or under new proposals to the Swimming Pools Act, any licensed or recognised qualified in relation to Pool Safety Standards. As Similar for the Queensland Pool Safety Council any licensed officer in Queensland, should be able to certify pools across Australia. Hannah's Foundation encourages the NSW Dept of Local Government and Policy Advisors to strongly consider the Queensland State Governments Policies and Practices to Pool Safety, Training organisations and those licensed under the Act. A similar model should be adopted by NSW to lessen the burden on the Councils and to also give the consumer the

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power to choose as to whom with confidence that they can engage a Pool Safety Inspector (PSI).

4. Should a new offence be established for failing to register a swimming pool attracting a penalty notice amount of \$220, with a maximum penalty of \$2,200, with a transitional period of at least twelve months so that there is sufficient time for pool owners to be notified of the requirement to register their pool?

Yes ☒

No ☐

Unsure ☐

Q4 Comment:

A new offence should be established YES.

Owners of pools failing to register after the considered 12 month phase in period should be automatically fined at the maximum penalty. One notice, one fine, one breach policy should be adopted. Registrations should be online in a simple form that is easy to use for Pool owners. Local libraries, councils should also offer a Public Registration facility for those owners who do not have access to computers.

After a considerable 12 months advertising campaign providing Public Education for registering pools owners should be fined at the Maximum penalty for failing to comply. Qld had a similar policy of fines for failing to non register pools. It is the viewpoint of Hannah's Foundation that if minimum fines exist then some owners will 'take a chance/risk' in not registering their pools and this places children at greater risk of drowning in a non compliant pool.

Swimming Pool Barrier Inspection Program

5. Should councils be required to, in consultation with their communities, develop and publish on their websites a swimming pool barrier

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inspection policy and program that is acceptable and affordable to their community?

Yes ☐

No ☒

Unsure ☐

Q5 Comment:

As current regimes require councils in NSW to enforce pool legislation and safety it is accepted by Coroners that this current process has significant inadequacies.

Councils should develop internal procedures for Pool Compliance Inspections however other organisations and Licensed Inspectors should be able to issue Safety Certificates for properties which are recorded on the Statewide Register.

If the statewide Pool register is to be governed by the State then the onus should be placed on the State Government to develop a 'ONE STOP SHOP' of Pool Safety and information website with all updated information, factsheets and the facility for pool owners to nominate themselves on a database to receive up to date information on the legislation as it arises.

To date some NSW Councils exhibit links to older information sheets and previous legislation amendments which should be deleted and all Councils should refer to the State Government Department that is responsible for Pool Compliance. Consistent and up to date information must inform the public on the awareness and responsibilities of Pool Ownership and maintenance.

6. Should councils be required to undertake mandatory, periodic inspections of pools associated with tourist and visitor accommodation and other multi-occupancy developments at least every 3 years?

Yes ☒

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No ☐

Unsure ☐

Q6 Comment:

Hannah's Foundation supports fully that all States in Australia have the same governing laws. The Foundation supports mandatory inspections on all Tourist and Visitor Accommodation and Shared Multi-Occupancy Pools every 12 months. This would coincide NSW with QLD

As these pools have a further high traffic area of tenants and visitors the safety of children in higher traffic areas is crucial in reducing drownings or immersions in multi occupancy surrounds.

Where the compliance with the Australian Standards cannot be practically met (resorts etc) than a Management Plan for Pool Safety should be provided.

7. Should any property with a swimming pool be inspected, and have a valid compliance certificate issued under the Swimming Pools Regulation 2008, before the property is leased or sold (with appropriate parallel amendments made to conveyancing, residential tenancy and land use planning legislation made), with compliance certificates for pools on leased properties being valid for a period of 2 years, even if the pool is leased in the interim?

Yes ☒

No ☐

Unsure ☐

Q7 Comment:

Hannah's Foundation supports fully that all States in Australia have the same governing laws. All rental properties must be inspected at the renewal of any lease. Damages to pool fences during tenancies are not able to be inspected by Real

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Estate Agents and the most endangering time frame for drownings is within six months of entering a property. All Rental properties must be inspected by a fully qualified inspector at the time of a new lease and be valid for two (2) years.

Rental property immersions and drownings are increasing in NSW and Research conducted by Hannah's Foundation states that currently over 91.76% of drowning occur in Rental Properties Nationally with Western Sydney, South West Sydney and North West Sydney regions being the highest in the country demographically.

8. Should councils be able to set an inspection fee, in consultation with their communities, and charge that fee for each inspection undertaken to reflect the actual cost of the inspection to a maximum of \$150 for the initial inspection and to a maximum of \$100 for one additional re-inspection, should it be necessary but with no additional inspection fees charged for any subsequent re-inspections?

Yes ☒

No ☐

Unsure ☐

Q8 Comment:

Fees for inspections should be determined within the Act for Councils and other organisations. All fees should be displayed publicly and list all costs associated in that fee inclusively. Regional councils should under the Swimming Pools Act, if required to do so charge more for Inspections with reference to travel cost incurrence's due to some pool locations being over 300km from the nearest Licensed Pool Inspector or Council.

Regional Councils will be disadvantaged on costs that are set to a maximum charge as their Urban counterpart Councils.

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Hannah's Foundation supports the fees in Question 8 to be scheduled under the Act for Urban Council areas and Regional Areas be set at different amounts.

Individual organisations can set their own fees but again must not determine costs over the Regulated maximum fees for Urban and Regional areas as determined under the Act.

Fees within the Act would be applicable to CPI increases on a yearly basis.

Queensland provides only for the fixed cost of Certificate currently at \$31. The respective Pool Safety inspections range from \$150 upwards for a first inspection with some Inspectors charging a fee for a subsequent inspection.

Cost to homeowner for a compliant inspection is around \$200 – \$250 in the first instance. Where a subsequent inspection of a compliant fence is required the following term prices are around \$100 for the next inspection plus Certificate cost.

9. Should councils be required to report annually on the number of swimming pool inspections undertaken and the level of compliance with the requirements of the Swimming Pools Act?

Yes ☒

No ☐

Unsure ☐

Q9 Comment:

This is fully supported with additional advocacy that all councils must update their Local Pool Safety information to include number of pools registered, number of pools with current certificates and the number of immersions and fatalities within their region.

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Currently in Queensland the issuance of a Non Conformity Notice is not required to be added to the register so we are currently unaware how many non compliant pools have been inspected or are waiting to be inspected. This data would be able to allow for targeting of awareness campaigns in areas where compliance is lacking.

Other Proposed Amendments

10. Should the Swimming Pools Act be amended to include a provision to clarify that, where an existing swimming pool that is exempt from the Act's fencing requirements is fenced voluntarily, such fencing must meet the Act's requirements for a compliant, four-sided barrier (effectively 'disapplying' or removing the exemption)?

Yes ☐

No ☒

Unsure ☐

Q10 Comment:

All pools should comply under the Swimming Pools Act. The Act should remove exemptions and those with current exemptions would need to reapply for that exemption.

All pools should be fenced with four sided barriers irrespective of property land size. Those with exemptions for Medical or disability access must apply for Exemptions every two years and the exemptions under Medical/Disability should not be transferable to the new property owner or tenant upon sale or lease.

The Pool Safety Register should also display the exemption date application and expiry date on the public register.

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All pools with exemptions to not include four sided fencing must display on the Boundary of the home that an unfenced or exempted pool exists and the appropriate cautionary signs displayed. Failure to display the Exemption Cautionary signs should be a breach of the Act and an appropriate fine recorded and issued.

11. Should the Swimming Pools Act be amended to clarify council powers of entry to inspect private swimming pool barriers and make these consistent with the Local Government Act 1993?

Yes ☒
No ☐
Unsure ☐

Q11 Comment:

All Councils should have powers to enter properties to enforce pool compliance and to inspect a non registered, non compliant or reported unfenced portable pools.

All reports to the State Register or relative Councils regarding unfenced or poorly maintained pool fences must be inspected by the regulatory council within 24 hours. Councils must enforce the Swimming Pools Act with the issuances of breaches and monetary fines and the Act must also contain powers for the Inspector of Council to issue on the spot fines.

12. Should the definition of 'swimming pool' in the Swimming Pools Act be amended by replacing the words '300 mm or more' with 'greater than 300 mm' to increase national uniformity?

Yes ☒
No ☐
Unsure ☐

Q12 Comment:

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The definition in the Act should also additionally include “Swimming pool or Spa greater than 300mm”.

13. Should the term ‘hotel or a motel’ be replaced with the term ‘tourist and visitor accommodation’, wherever occurring in the Swimming Pools Act, to make it consistent with instruments called up through the Environmental Planning and Assessment Act?

Yes ☒

No ☐

Unsure ☐

Q13 Comment:

The definition in the Act should also additionally include “Tourist, visitor or temporary accommodation”. Bed and Breakfast facilities are not hotels or motels but temporary accommodation facilities.

14. Should there be a delayed commencement of a period of 12 months for the introduction of a new offence for failing to register a swimming pool and a delayed commencement of 6 months for all other proposed amendments to the Swimming Pools Act?

Yes ☒

No ☐

Unsure ☐

Q14 Comment:

Hannah’s Foundation would like to support compulsory Safety Certificates on the sale and lease of properties as soon as possible. Rentals pose a higher risk to children under five and new dwellings with pools for children upon permanent residency. The Act should once passed through parliament allow a date that is able to be enforced by the Real Estate

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Institute of NSW and that councils are prepared for the influx of Pool Inspections.

All tenants and relative prospective buyers must be told in writing by the leasing agent, owner or legal representative during conveyancing that the Pool is currently not certified.

All owners and tenants through a public awareness campaign should be informed of the changes and their rights accordingly. The Lease Agreement between Agent and Landlord and Agent and Tenant MUST Include a section for pool compliance whereby all information is recorded for the tenant. All pool maintenance MUST be carried out by licensed Builders or Maintenance workers with appropriate licenses and qualifications. Any major works must be recertified and a list of Major works should be publicly advertised to inform owners of their responsibilities.

The Act should be amended to include legislation to enforce Real Estate Agents to comply and appropriate schedule of fines for not complying to the Act.

Please write down any additional comments you have.

The NSW Pool Safety review has come at a crucial time when drowning and immersions are on the increase. Hannah's Foundation would encourage the NSW Government to strongly develop further awareness campaigns on Supervision around water and fully compliant barriers around Pools, including portable pools. The Office of Fair Trading should also be encouraged strongly to issue warnings on the purchases and sales of portable pools and the responsibilities of the warnings regarding same.

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Currently portable pools do not carry enough warning signage, dept stores are unaware of their responsibilities and online sales are not monitored.

Immersion Investigations:

There needs to be a system where all Pool immersions need to be reported by Doctors, Hospitals and NSW Ambulance. The reasoning behind the immersion investigation process is that the information obtained from these investigations can be used to identify and change any subsequent legislation to prevent drownings from occurring.

Whilst the Coroner has a duty to investigate all sudden and unexpected deaths be that drownings or traffic accidents all police services within Australia investigate non fatal traffic accidents and take enforcement action against those persons at fault where applicable. Hannah's Foundation view is that where breaches of the legislation have been intentionally ignored or disregarded then there should be enforcement action taken against those who commit the offence.

Hannah's Foundation supports Deputy State Coroner Paul McMahon's recommendations in particular those that relate to the creation and prosecution of offences. Coroners across the country have identified and recommended changes to State Pool Laws and chief amongst these is the establishment of a State based pool safety register, the introduction of regular or cyclic inspections, the adoption of uniformed standards and the introduction or expansion of public awareness and education programs.

As has been shown with Road Safety Education the constant education through all forms of media and advertising about the

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serious risks imposed through speeding, seatbelts, alcohol and fatigue is something that is universally recognised across the country and enforcement action is accepted by the general public.

When compared most Governments Road Safety Education Programs to the current Road Toll Deaths and subsequently the Drowning Prevention Education with Drowning deaths the ratio of costs of same are vastly different. Road Safety and other causes of Public awareness campaigns are funded significantly higher than Drowning Prevention.

Hannah's Foundation contributed to the Qld State Pool Safety Campaign both professionally and the founders personally in regards to campaigning for Supervision, Compliant Barriers and the need for children to have Water Familiarisation. Hannah's Foundation fully supports the consistent campaigns involving constant supervision and barriers for all Drowning prevention education. Coroners are undoubtedly frustrated that Supervision breakdowns when non compliant or no barrier is in place when a young child drowns. These Two key components to Drowning prevention has been supported, recommended and found to reduce drowning incidences. The education programs and public awareness campaigns provide one of the greatest means of increasing compliance and through this education there has been a greater understanding of how drownings can occur and the prevention of same.

Qld since new legislation and awareness campaigns has taken effect since 2009 has reduced significantly drownings from eight (8) to a single fatal drowning in January 2012 and for the first time since 1993.

Thank you for taking the time to provide this feedback. Details on the ways you may submit this form and the use of this information are provided on the final page of the Discussion Paper.