

# Building Amendment (Swimming Pool and Spa) Regulations 2019

## Summary of, and response to, submissions on the Regulatory Impact Statement and draft Building Amendment (Swimming Pools and Spas) Regulations 2019

### Overview

Public consultation on the draft Building Amendment (Swimming Pools and Spas) Regulations 2019 (the Regulations) and Regulatory Impact Statement (RIS) ran from 30 July 2019 until 6 September 2019. The Department of Environment, Land, Water and Planning (DELWP) received 1221 submissions during this period. Submissions were received from stakeholders of various backgrounds, including pool and spa owners, members of the public, the swimming pool and spa industry, building industry, child and water safety organisations, and local government.

The key amendments made in response to submissions were outlined in a Notice of Decision published on 25 November 2019 in the Herald Sun and the Victorian Government Gazette. The key amendments are:

- Certificates of barrier compliance will only be required to be lodged every 4 years, instead of every 3 years. This will reduce costs for swimming pool and spa owners and lessen the administrative burden on Councils.
- Timeframes for the implementation of the new requirements have been altered to provide longer periods for owners to take certain actions, including applying to register their pools and spas and lodging their first certificates of barrier compliance. These changes respond to feedback that the implementation timeframes presented for public consultation were too ambitious and risked successful enactment of the new requirements.
- Inclusion of the ability for councils to charge an information search fee in addition to the registration fee for applications to register existing pools and spas. The information search fee (maximum of 3.19 fee units or approximately

\$47.20 in 19/20 FY) will better reflect council costs in determining the date of construction and addresses local government concerns that the proposed registration fee would not adequately resource them to undertake this function.

- As a result of the introduction of the information search fee, the registration fee will be reduced to 2.15 fee units (\$31.80 in 19/20 FY) from the proposed fee unit equivalent of \$37.
- Swimming pool and spa inspectors may now provide owners with a maximum period of 60 days to bring their barriers into compliance, rather than 20 business days as previously proposed. Inspectors may give the owner a further 7 days if they believe that progress has been made to bring the barrier into compliance. This ensures that owners are provided a reasonable opportunity to rectify their barriers before the non-compliance is referred to council.
- Swimming pool and spa inspectors who carry out work on safety barriers prior to certification must record this on the certificate of barrier compliance. This will ensure transparency and provide oversight over potential conflicts of interest.

Some suggestions made in stakeholder submissions could not be addressed as part of the making of the Regulations as they would require further consultation, another RIS, an amendment to the *Building Act 1993* (the Act) or were otherwise outside the scope of what is covered by the Regulations.

DELWP will work closely with stakeholders during the implementation of the Regulations to monitor the success of the implementation and begin gathering data on how effective the Regulations are in achieving their primary objective of reducing drownings of young children.

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## Table of Issues

The below table provides responses from DELWP on issues raised during the public consultation process.

Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
<b>6 – Definitions</b>	Sets out the definitions of key terms used in the Regulations.	Some stakeholders advocated that there should be a single applicable barrier standard applied to all private swimming pools and spas.	<b>No change</b> The proposal to require all existing swimming pools and spas to upgrade their barriers to a later, single standard was considered in a RIS released in 2017 during the Building Regulations Sunset Review. It was rejected as being excessively costly for owners and burdensome on councils to enforce.
<b>147A – Application of this part</b>	Establishes which swimming pools and spas the Regulations apply to, specifically: <ul style="list-style-type: none"> <li>- Swimming pools and spas that are associated with buildings that are classified as Class 1 (single dwellings), Class 2 (multiple dwellings), Class 3 (hotels, hostels etc.), Class 10 (such as a garage or swimming pool) or Class 4 parts of a building (a dwelling located within a building used for another purpose, such as a dwelling above a shop); and,</li> <li>- Swimming pools and spas that are capable of holding water of a depth greater than 300mm.</li> </ul>	Feedback received from some stakeholders highlighted the dangers posed by dams, rivers, beaches and other waterways and argued that the focus of the Regulations on private swimming pools and spas is disproportionate.	<b>No change</b> The requirements of the Regulations apply to private swimming pools and spas because the data shows that these locations are the most common drowning location for young children. In addition, it is not within the scope of the Building Act or the Regulations to require fencing around waterways such as dams or rivers.
		Some local government stakeholders argued that relocatable pools and spas should be exempted from the requirement to install a safety barrier as long as the water is emptied after each use.	<b>No change</b> As noted in the RIS, the requirement for relocatable pools and spas to be fenced is contained in the National Construction Code. It would not be appropriate to vary out of this longstanding requirement given it would be contrary to the underlying policy intent of improving the safety of backyard pools and spas.

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<b>Division 3 – Maintenance and operation of barriers for swimming pools and spas</b>	Requires that owners, occupiers and person accessing the pool area must take all reasonable steps to ensure the barrier is maintained and the gate operating effectively.	One stakeholder raised concerns that the penalty of 50 penalty units was excessive, queried how enforceable such a requirement was, and if there are circumstances where such a penalty could be waived or reduced.	<p><b>No change</b></p> <p>These requirements have formed part of the Building Regulations since 2001. The prescribed penalties are maximums that may be imposed and are intended to signal to owners, occupiers and visitors the critical importance of ensuring the pool barrier is operating effectively, including checking that gates remain closed.</p>
		One stakeholder argued that landlords should not be held responsible for non-compliance with these provisions that occurred due to actions by their tenants.	<p><b>Agreed, no change required</b></p> <p>Regulations 147G and 147H place an obligation on the occupier of a property, including a tenant to take all reasonable steps to ensure that the barrier operates effectively, and any gate remains closed except when entering or leaving the pool area.</p>
		The RIS invited feedback from stakeholders as to whether CPR information signage should be required to be displayed in the pool or spa area. Some local government and water safety organisations expressed support for the requirement, while most pool and spa owners were against the proposal for a range of different reasons.	<p><b>No change</b></p> <p>DELWP's review found insufficient evidence demonstrating the effectiveness of CPR signage in mitigating drownings in home swimming pools to justify introducing this as part of these reforms. Such a requirement would have added further complexity and costs without strong evidence that it would contribute to the policy aim, unlike the clear evidence base for strengthening barrier laws. It also had the potential to confuse the messaging about the new requirements, given that such signage is not directly associated with compliant safety barriers. DELWP will continue to monitor this issue and may revisit it as part of a future review.</p>

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		<p>The RIS invited feedback from stakeholders on whether lockable lids should be permitted as an alternative to the installation of safety barriers around spas. Stakeholders representing the spa industry and many spa owners argued that spa lids are as effective as a safety barrier. However, local government stakeholders and water safety organisations argued that because spa lids required human intervention, they were inherently less safe than a compliant barrier.</p>	<p><b>No change</b></p> <p>Use of lockable spa lids as an alternative to a barrier is not currently permitted by the National Construction Code (NCC). Varying out of this NCC requirement would be contrary to the Intergovernmental Agreement between the Commonwealth and States and Territories to minimise jurisdictional variations from the NCC.</p> <p>In addition, the national standards setting processes overseen by the Australian Building Codes Board, and on which numerous technical experts from varied backgrounds participate, have not produced any support for broadly altering the barrier requirements in this manner.</p> <p>Finally, the absence of a relevant Australian Standard means that, in order to proceed with this option, Victoria would be required to develop a set of acceptable technical requirements. This was not within the scope of this project.</p>
		<p>The RIS invited feedback regarding whether the requirements in relation to window coverings for pools built prior to April 1991 needed to be strengthened. The feedback received was mixed. One local government stakeholder argued that no changes were required. One industry stakeholder argued that the requirements should be amended to align with the latest version of the Australian Standard.</p>	<p><b>No change</b></p> <p>The underlying policy intent is to require owners to comply with the requirements that applied at the time the pool or spa was constructed. Changing the window covering requirements for pre-April 1991 pools and spas would be contrary to this policy intent and result in additional costs for affected owners.</p> <p>No evidence was provided that justifies a change to the existing requirements at this time.</p>

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Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
<b>147J - Prescribed information for swimming pool and spa registers</b>	Sets out the information that must be recorded on the registers required to be kept by councils in relation to private swimming pools and spas in their municipalities.	Stakeholders from child safety and water safety backgrounds suggested that the prescribed information should be expanded to include the details of the relevant inspector carrying out the inspection and certification of the safety barrier as well as details of the defective items identified on certificates of barrier non-compliance.	<p><b>Agreed in part</b></p> <p>The prescribed information was expanded to include the registration details of the relevant inspector. However, DELWP considered that requiring all identified non-compliance listed in the certificate to be captured would add additional significant administrative burden for councils. In addition, it would be an incomplete and potentially misleading record of the common types of non-compliance. It is anticipated that the majority of non-compliance is rectified through processes overseen by the inspector and is therefore unknown to council.</p> <p>These details can be gathered using alternative means, for example via periodic surveys of inspectors. DELWP will consult further with stakeholders on the best approach at the appropriate time.</p>
		Several stakeholders argued that copies of certificates of compliance and certificates of non-compliance should be included on the register and therefore be accessible by those able to access the register, such as pool and spa owners and the VBA.	<p><b>Noted, no change</b></p> <p>It is outside the existing relevant regulation-making powers contained in the Act to require the keeping of documents, including certificates, on the register.</p> <p>The Building and Environment Protection Legislation Amendment Bill 2019 that is currently before the Victorian Parliament includes provisions that would allow certificates to be prescribed as being required to be kept on the register. DELWP may examine this issue further if and when the Bill is passed by Parliament.</p>

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		<p>It was argued that the register should also retain any photographs of barriers taken by inspectors. This would provide a record of the condition of the barrier at the time of the inspection.</p>	<p><b>Noted, no change</b></p> <p>It is outside the existing relevant regulation-making powers contained in the Act to require the keeping of photographs on the register.</p> <p>The Building and Environment Protection Legislation Amendment Bill that is currently before the Victorian Parliament includes provisions that would allow for records or documents to be prescribed as being required to be kept on the register. DELWP may examine this issue further if and when the Bill is passed by Parliament.</p>
		<p>Some rural and regional councils expressed concern over the potential difficulty of engaging sufficient building surveyors or inspectors to oversee the registration process.</p>	<p><b>Noted</b></p> <p>The registration process is a largely administrative task that will generally not require the technical skills and knowledge of a building surveyor or inspector.</p>
		<p>One local government stakeholder submitted that suitably redacted certificates of compliance or certificates of non-compliance should be accessible by any person through the request for information from the relevant council mechanism under regulation 51.</p>	<p><b>No change</b></p> <p>Copies of certificates are not prescribed information that is required to be kept on council registers.</p> <p>Even if councils could be required to keep copies of certificates on their registers, section 216D(8) of the Act prohibits councils from making information on the register available to any person who is not from a category listed in section 216D(7).</p>

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		<p>One stakeholder argued that the property information on Form 22 - Registration Application Form should be simplified as property owners are unlikely to have all the details.</p>	<p><b>No change</b></p> <p>The information requirements regarding the identification of the property are consistent with those required on existing forms in the Building Regulations. DELWP is not aware of any issues arising out of the information requirements on these forms. In practice, the owner will need to provide enough information for the council to accurately identify the property on which the pool or spa is located - this may not always require lot and plan numbers to be supplied.</p>
		<p>One stakeholder argued that if a property was managed by an agent on an owner's behalf, or if that owner is based overseas, this should also be recorded on the register.</p>	<p><b>No change</b></p> <p>This information is not essential for the operation of the scheme. To ensure minimum burden is placed on councils and owners, the Regulations only prescribe information that is essential to the operation and administration of the new requirements. However, councils may elect to record these details on their register if they choose to do so.</p>
		<p>The RIS invited feedback as to whether an additional obligation should be placed on councils to keep their individual swimming pool and spa registers up-to-date. Most local government stakeholders argued that this was not necessary.</p>	<p><b>No change</b></p> <p>Councils are already under obligations to update their registers upon receiving certain information from pool or spa owners, for example when compliance certificates are lodged. DELWP did not identify any need for a broader obligation upon councils to keep their registers current.</p>
<p><b>147K – A register must be maintained in the following form and manner</b></p>	<p>Requires councils to keep the register of private swimming pools and spas in either documentary or electronic form.</p>	<p>Some local government stakeholders and water safety organisations advocated for the creation of a central state-wide register to be kept by the Victorian Building Authority (VBA) or the Victorian Government as an alternative to the individual registers kept by local government.</p>	<p><b>Noted, no change</b></p> <p>The obligation on councils to establish and maintain a register of private swimming pools and spas within their municipal districts is mandated under the Act. It was outside the scope of the Regulations to alter this requirement.</p>

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<p><b>147L - Application for registration of swimming pools and spas constructed, or where construction commenced, before 1 June 2020.</b></p> <p><b>147M - Application for registration of swimming pools and spas constructed, or where construction commenced, on or after 1 June 2020.</b></p>	<p>Requires all existing and future owners of land with a swimming pool or spa to register with the relevant council within the prescribed timeframe.</p>	<p>Some swimming pool and spa owners and members of the public argued that registration was unnecessary as councils already have details of the pools and spas in their area as a result of historic building approval records.</p>	<p><b>No change</b></p> <p>Although councils may have some records relating to swimming pools or spas on particular properties, they are not likely to not have the full set of information that is required to be kept on the register. In addition, council records are not likely to contain details of illegally constructed pools or spas.</p> <p>The registration process involves a one-off cost that ensures councils have a full record of pools and spas in their municipality. The registration fee covers the cost of establishing and maintaining the register of pools and spas.</p>
		<p>Some swimming pool and spa owners opposed mandatory registration on the basis that the new requirements are an unjustified intrusion into the private enjoyment of their swimming pool or spa.</p>	<p><b>Noted, no change</b></p> <p>The purpose of the new requirements is to reduce drowning incidents of young children by ensuring that swimming pool and spa safety barriers are compliant with existing laws. Evidence of low compliance rates with existing safety barrier laws supports the introduction of mandatory registration obligations.</p> <p>In addition, the very low percentage of owners who chose to voluntarily register their pool or spa with the VBA (approximately 200) demonstrated that a mandatory registration requirement is necessary.</p>

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		<p>Some swimming pool and spa owners and members of the public argued that registration will not contribute to the safety of young children around pools or spas as this is the responsibility of individual pool and spa owners and parents.</p> <p>Many stakeholders from local government, child safety and water safety organisations and the building industry all expressed support for mandatory registration as an essential part of improving compliance.</p>	<p><b>Noted, no change</b></p> <p>The data shows that private swimming pools are the most common location for drownings of young children. Adult supervision is critical for keeping young children safe around pools and spas. However, compliant safety barriers also have an important role to play.</p> <p>The new mandatory inspection and certification requirements are essential to ensuring improved compliance of barriers with relevant technical standards. Mandatory registration is necessary to ensure that councils have a comprehensive picture of the pools and spas in their area in order to effectively enforce the new requirements.</p>
		<p>Some local government stakeholders expressed views that the proposed deadline of 14 April 2020 for owners of existing swimming pools and spa to register with Council was unrealistic as it did not allow enough time for Councils to establish the necessary infrastructure or to educate pool and spa owners in relation to their new obligations.</p>	<p><b>Agreed, change made</b></p> <p>The deadline for registration of existing swimming pools and spas was extended to 1 June 2020.</p>
		<p>Several local government stakeholders argued that pool and spa owners should be required to periodically renew their registration in order to contribute to the ongoing costs of maintaining the register and undertaking associated enforcement action. However, other local government and industry stakeholders supported a one-off registration requirement.</p>	<p><b>No change</b></p> <p>The lodgement fee that must be paid by owners when they lodge a certificate of barrier compliance is intended to support councils' ongoing maintenance of their register.</p>
		<p>Local government stakeholders broadly expressed support for the requirement that owners must register within 30 days of receiving either a Certificate of Final Inspection or Occupancy Permit related to their new pool or spa.</p>	<p><b>Noted</b></p>

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<b>147N - Application for registration of relocatable swimming pools and relocatable spas</b>	Requires all owners of land on which a relocatable pool or spa is erected to register with the relevant council within the timeframe prescribed in the Regulations.	Some local governments argued that requiring the registration of relocatable pools was unrealistic given the ease with which such pools can be purchased and the limited resources available to councils to enforce compliance. Instead, an amendment should be considered to exempt relocatable pools from the requirement to have barriers installed provided they were emptied after each use.	<p><b>Agreed in part, change made</b></p> <p>As noted in the RIS, the requirement for relocatable pools and spas to be fenced is contained in the National Construction Code. It would not be appropriate to vary out of this longstanding requirement given it would be contrary to the underlying policy intent of improving the safety of backyard pools and spas.</p> <p>However, in recognition of the unique challenges posed by relocatable pools and spas, the Regulations only require registration after they have been in place for longer than 3 consecutive days.</p>
		Most members of the public and pool and spa owners expressed support for the registration of relocatable pools and spas. The most commonly expressed view was that the requirements should be consistent for all pool and spa owners and that the relocatable pools and spas posed the same risks as permanent pools and spas.	<p><b>Noted</b></p> <p>The Regulations broadly impose the same registration, inspection and certification requirements to both permanent and relocatable pools and spas, with minor modifications to reflect the unique nature of relocatable pools and spas.</p>
		One local government stakeholder suggested that any relocatable pool that was sold with a filtration system is clearly intended to remain up for a prolonged period and questioned whether it should really be considered relocatable.	<p><b>No change</b></p> <p>In the RIS, DELWP considered an option that would have treated relocatable pools with filtration systems differently from those without this equipment. However, this option was not preferred because filtration systems are now commonly available even for relatively small and medium pools. It was not considered appropriate to treat these pools as permanent pools with the additional requirements that would impose, such as the obligation to apply for a building permit when erecting them.</p>

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		<p>Many stakeholders expressed concern that the obligation to register falls on the owner of the land, instead of the owner of the relocatable pool. It was highlighted that in cases where a tenant may purchase a relocatable pool, this could potentially leave the landlord at risk of committing an offence.</p>	<p><b>Noted</b></p> <p>DELWP acknowledges that there is the potential for landlords to unwittingly be non-compliant with these requirements if a tenant erects a relocatable pool without informing them. However, placing the registration obligation on tenants was beyond the head of power set out in the Act and could not be actioned through this regulation-making process.</p> <p>In practice, it would be unlikely that a council would penalise a landlord for failing to register or fence a relocatable pool that they had no knowledge of. Council municipal building surveyors are likely to exercise their discretion in how they approach these situations.</p> <p>DELWP will monitor this issue during the implementation of the Regulations and may consider potential changes to the application of the requirements to land subject to a residential tenancy agreement. It is also noted that reforms currently being considered under proposed changes to the Residential Tenancies Regulations may improve landlords' awareness of their tenant's intention to erect a relocatable pool on the property.</p>
		<p>One industry stakeholder argued that any owner who registered by the prescribed deadline should be granted a temporary amnesty from prosecution for non-compliant barriers as an additional incentive for owners to register.</p>	<p><b>No change</b></p> <p>The Regulations provide sufficient time for owners to apply for registration. DELWP did not believe that any additional incentive was required to encourage compliance with the registration timeframes.</p> <p>In addition, the scheme is not designed for prosecution to generally be the first step taken upon an inspection finding non-compliance of a barrier. Rather, the owner will most often be provided with an opportunity to bring the barrier into compliance.</p>

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		<p>Several stakeholders suggested that a relocatable pool should only be required to be registered once, even if it is taken down and re-erected on multiple occasions.</p>	<p><b>No change</b></p> <p>The requirement to have a barrier compliant with the current standard takes effect every time the relocatable pool or spa is erected or re-erected. Accordingly, it is possible that the technical standard could change during the period that the relocatable pool is packed away, meaning that when it is re-erected the barrier would need to be compliant with the new standard. Equally, the relocatable pool may be erected in a different location which will mean that it is erected inside a different barrier. In these circumstances, it is preferable for the relocatable pool to be newly registered so that councils may confirm the relevant applicable barrier standard and specify a date by which the barrier must have its first inspection under regulation 147R(4).</p> <p>For this reason, it is preferable that a new registration is made each time the relocatable pool is erected. This means the inspection cycle can begin again and trigger a contemporary check of the barrier. However, in practice there is nothing preventing a relocatable pool owner from leaving their pool on the register indefinitely, even if they were to subsequently disassemble and re-erect their pool. In these cases, the relocatable pool will remain subject to periodic inspections ensuring that it remains within a compliant barrier which is in line with the policy intent.</p> <p>In addition, DELWP notes that the requirement that relocatable pools and spas only need to be registered if they remain in place for three or more days will reduce incidences of repeated registrations if the relocatable pool only remains up for a day or weekend at a time.</p>

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<b>147P – Form and fee for registration</b>	Requires that registration applications be provided to Council using the prescribed form and be accompanied by the prescribed fee (or fees if relevant).	Almost all submissions from local councils indicated that the proposed registration fee was insufficient to recover the costs of establishing the register and administering the registration process, particularly in relation to determining the date of construction of older pools and spas. For example, in some cases councils may need to search historic records that will need to be recalled from offsite storage.	<p><b>Agreed, change made</b></p> <p>To ensure councils are adequately resourced to determine dates of construction the Regulations include the ability for councils to charge an 'information search fee' that must be paid when applying to register an existing pool or spa.</p> <p>The information search fee (maximum of 3.19 fee units or \$47.24 in 19/20 FY) has been set based on the existing fee charged by councils in response to requests for information under regulation 51 of the Building Regulations.</p> <p>This will better reflect council costs in determining the date of construction and assist with the overall efficient administration of the registration process.</p>
		Several local government stakeholders argued that councils should be able to determine the amount of the fee they charge for carrying out information searches.	<p><b>No change</b></p> <p>The Regulations specify a maximum fee (3.19 fee units) that is reasonable given the administrative burden placed on councils. Councils may charge any amount they consider appropriate up to this maximum.</p>
		Many swimming pool and spa owners submitted that the fees were either excessive or unnecessary. Some expressed views that the intent appeared to be focused on raising additional revenue while others believed that councils should fund the scheme out of existing resources, such as rates revenue.	<p><b>No change</b></p> <p>The fees were set on a cost recovery basis for councils to recoup the expenses associated with carrying out functions under the scheme. In addition, given that owning a private swimming pool or spa is a personal choice, it was not considered reasonable for councils to recover their costs from the broader community through increases to rates. The fee levels are comparable to similar registration fees, for example those paid for pet registration.</p>

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<p><b>147R - Relevant council must give a notice to the applicant of registration of swimming pool or spa and certain other matters</b></p>	<p>After registering a swimming pool or spa, councils must notify the owner of several matters including the:</p> <ul style="list-style-type: none"> <li>- date of construction that has been determined;</li> <li>- right to appeal to the Building Appeals Board in respect of a date of construction;</li> <li>- applicable barrier standard;</li> <li>- date when the first or next certificate of barrier compliance is due.</li> </ul> <p>This regulation also sets out the relevant dates by which the first certificate of barrier compliance for existing pools and spas must be lodged.</p>	<p>Many stakeholders submitted that the proposed deadlines by which owners of existing pools/spas must lodge their first certificate were impractical because they were set too soon after the commencement of the scheme and were clustered too closely together.</p> <p>Some local government stakeholders expressed concern that the proposed 6-month gaps would not allow adequate time to resolve non-compliance matters brought to their attention before the next deadline.</p> <p>Concerns were also raised as to whether enough inspectors would be available to provide services across Victoria under these timeframes.</p>	<p><b>Agreed, change made</b></p> <p>The deadline for swimming pool and spa owners to provide their first certificates of compliance have been extended to:</p> <ul style="list-style-type: none"> <li>- 1 June 2021, for a swimming pool or spa with a date of construction on or before 30 June 1994;</li> <li>- 1 June 2022 for a swimming pool or spa with a date of construction on or after 1 July 1994 and before 1 May 2010;</li> <li>- 1 June 2023, for a swimming pool or spa with a date of construction on or after 1 May 2010.</li> </ul>
		<p>Some stakeholders, particularly many swimming pool and spa owners, indicated that they believed that the requirement to provide a certificate of compliance every 3 years was excessive. Most indicated that their preference was that a certificate only be required upon sale or lease of the property.</p> <p>However, stakeholders representing local government, child and water safety organisations and the building industry all expressed support for the proposed 3 yearly inspections cycle.</p>	<p><b>Change made</b></p> <p>A change was made to the frequency with which owners must lodge a new certificate of barrier compliance with council. The Regulations require that a new certificate is provided every 4 years. This was increased from a 3 year cycle in recognition of DELWP's expectation of a rise in the general level of awareness of owners regarding their obligations and particularly the need to maintain their barriers. There will also be an added financial incentive for owners to take action to ensure compliance ahead of an inspection. A four-year cycle balances the need for frequent inspections to ensure safety while minimising the cost burden imposed on pool owners.</p> <p>It was considered that certification only upon sale or lease of the property would be significantly less likely to achieve the underlying policy aim of reducing incidences of young children drowning in private swimming pools and spas. The reason for this is the frequency at which a property is sold or leased is arbitrary and many years may pass without the barrier being checked before one of these events occurs.</p>

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		<p>One stakeholder raised concerns that last minute efforts to bring pools and spas into compliance may mean there is a lack of suppliers and installers to cope with demand. A shortage of experienced trades may lead some owners to decommission their pools or spas.</p>	<p><b>Noted, no change</b></p> <p>DELWP acknowledges that there is likely to be a spike in demand in the lead up to the prescribed deadlines for lodgement of first certificates. However, this would be the case regardless of when the lodgement deadlines are set. In addition, owners unable to engage a tradesperson in time may apply to the relevant council for an extension to the lodgement deadline under regulation 147Z of the Building Regulations.</p>
		<p>The RIS invited feedback from stakeholders as to whether swimming pool and spa owners should be required to complete a self-assessment of their safety barriers in the 'off-years' between inspections by an inspector.</p> <p>Feedback received from numerous local government stakeholders indicated that this was impractical given the complexity of the technical requirements.</p>	<p><b>Noted</b></p> <p>The benefits of a mandatory self-assessment requirement were not proportionate with the additional burden it would place on owners and councils. In particular, there is uncertainty regarding the willingness of owners to complete a thorough, practical self-assessment, and the level of knowledge and understanding required to carry out a technically sound assessment. Instead, owners can voluntarily undertake self-assessments in the 'off-years' using easy-to-follow checklists provided by the VBA.</p>
<p><b>147S - Removal of swimming pool or spa from a register</b></p>	<p>If the owner wishes to remove their pool or spa from the register, they must demonstrate to the satisfaction of the relevant council that the pool or spa no longer exists, or that it is no longer capable of holding 300mm of water. There is no fee attached to applying to remove a pool or spa from the register.</p>	<p>Several local government stakeholders advocated for the inclusion of a fee to remove a pool or spa from the register. This would provide additional funding for councils to assist their work determining whether the conditions existed to remove the pool or spa from the register. Some council submissions indicated that they may be required to inspect the property to determine this. Submissions from the swimming pool and spa industry and other stakeholder strongly opposed a fee for this action.</p>	<p><b>No change</b></p> <p>The Regulations require owners to demonstrate to the satisfaction of the relevant council that the pool or spa no longer exists or is no longer capable of holding 300mm of water. Councils have broad discretion regarding the evidence that they will require to meet this threshold and this will vary depending on individual circumstances. In addition, the demolition of a permanent pool or spa requires the owner to apply for a building permit which will be provided to the relevant council.</p>

# Building Amendment (Swimming Pool and Spa) Regulations 2019

Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
		One stakeholder argued that an owner should have an explicit right to appeal to the Building Appeals Board if a council unreasonably refuses to grant an extension of time for lodging a certificate of compliance or if they refuse to remove a swimming pool or spa from the register.	<p><b>Agreed, no change required</b></p> <p>Section 144 of the Act already provides the Building Appeals Board with broad discretion to hear appeals in relation to determinations made by councils on this matter and further regulations are not required.</p>
<p><b>147T - Determination by the relevant council of the date of construction of a swimming pool or spa</b></p>	<p>Requires council to determine the date of construction for the swimming pool or spa upon receipt of a registration application.</p>	<p>Most local government stakeholders supported the preferred option of giving councils the responsibility for determining the date of construction because they have access to records of building approvals in their local area.</p>	<p><b>Noted</b></p>
		<p>Some councils suggested that they should have the option of charging an additional fee to cover the cost of a site inspection if they believe it necessary to make an accurate determination of the date of construction.</p>	<p><b>No change</b></p> <p>The Regulations allow councils to consider any relevant information, including that provided by the swimming pool or spa owner, in determining the date of construction. Councils may choose to carry out an inspection if they believe it necessary, however this is not required by the Regulations and is unlikely to be needed in the vast majority of cases. It was not considered to be reasonable to require owners to fund this activity.</p>
		<p>One stakeholder suggested that if a council is unable to establish a date of construction the applicable barrier standard should default to the earliest Standard.</p>	<p><b>No change</b></p> <p>The broad range of information that councils are able to draw on will allow councils to determine a date of construction with sufficient accuracy for the purpose of the scheme.</p>
		<p>It was suggested that if a council believes that a safety barrier has multiple applicable barrier standards the MBS should be able to determine a single Standard that would then apply to the barrier as a whole.</p>	<p><b>No change</b></p> <p>This would be inconsistent with the underlying principal of the Regulations that swimming pool and spa owners should only be required to comply with the law as it was at the time of construction.</p>

# Building Amendment (Swimming Pool and Spa) Regulations 2019

Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
<b>147V - Obligation to lodge certificate of pool and spa barrier compliance</b>	<p>Requires the owner of the land on which the swimming pool or spa is located to provide a certificate of barrier compliance by the applicable date specified in the notice provided by the relevant council.</p> <p>This provision also requires that any certificate lodged with the council must be dated not more than 30 days before the date it is lodged.</p>	<p>Several rural and regional councils expressed concern regarding the availability of registered building surveyors and inspectors to carry out inspection and certification work in their areas.</p>	<p><b>Noted</b></p> <p>To assist the availability of inspectors to do this work across Victoria, the Regulations introduce the new class of building inspector (pool safety). In addition, some councils may elect to carry out the inspection and certification of barriers for a fee. DELWP will monitor this issue as scheme is implemented and as part of the midterm review.</p>
		<p>One stakeholder argued that the penalties imposed in the Regulations were insufficient to persuade uncooperative owners to make their safety barriers compliant.</p>	<p><b>Noted, no change</b></p> <p>The purpose of the new regulatory requirements is to ensure that pool and spas safety barriers are compliant. The penalties are designed to incentivise pool owners to take appropriate action where their barrier is non-compliant and penalty levels are proportionate with the nature of the offences. However, DELWP also notes that council municipal building surveyors have powers under Part 8 of the Act to issue a notice or order requiring the owner to take action if required.</p>
		<p>One local government stakeholder reported that it can be difficult to effectively enforce requirements where property owners are based overseas.</p>	<p><b>Noted</b></p> <p>The effective enforcement of the requirements in relation to foreign-based property owners is a broader issue that cannot be satisfactorily resolved within the scope of these Regulations.</p>
		<p>The RIS invited feedback on whether it was desirable to prescribe a fee that private inspectors may charge for carrying out an inspection and certification of a safety barrier. Some stakeholders argued that a minimum fee should be set as a minimum amount to prevent unscrupulous practitioners from under-cutting diligent inspectors. Others suggested a maximum fee to prevent inspectors charging excessive amounts.</p>	<p><b>No change</b></p> <p>There was insufficient information available to inform an appropriate fee level without risking unintended market consequences. In particular, DELWP was mindful of the risks of setting fees at a level that would disincentivise the market and create a shortage of inspectors or result in owners being forced to pay fees above the level the market would have otherwise set. However, this issue will be monitored and form part of DELWP's midterm review of the operation of the Regulations.</p>

# Building Amendment (Swimming Pool and Spa) Regulations 2019

Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
		<p>One local government stakeholder expressed concerns over the expertise and knowledge of the private inspector industry and argued that the VBA should be required to carry out the inspections.</p>	<p><b>No change</b></p> <p>The Act defines the persons who may carry out functions as a swimming pool and spa inspector and changing this was beyond the scope of the regulation-making project.</p> <p>In addition, the VBA is not equipped or resourced to provide such a service across Victoria and private building surveyors and inspectors can already carry out this work.</p>
		<p>Many local government stakeholders supported the preferred option that a certificate of barrier compliance only remain valid for 30 days.</p>	<p><b>Noted</b></p>
<b>147X Fees for lodging a certificate of pool and spa barrier compliance with a relevant council</b>	<p>Requires the owner to pay a lodgement fee when they lodge a certificate of barrier compliance. Councils may determine a fee no greater than 1.38 fee units (\$20.43 in the 2019-20FY).</p>	<p>Several local government stakeholders argued that the prescribed maximum lodgement fee should be increased to assist councils in resourcing the burden of administering the register in the years when no certificates will be received.</p>	<p><b>No change</b></p> <p>The fee level was set based on consultation with a range of different councils based on their costs in processing certificates upon receipt. In addition, the revised timeframes mean that councils will receive clusters of certificates and their accompanying lodgement fees approximately three out of every four years. This will provide adequate spread of fee revenue for this function across the life of the scheme.</p>
<b>147Z - Relevant council may extend time for lodgement of a certificate of pool and spa barrier compliance</b>	<p>A council may at any time, either on its own initiative or at the request of the swimming pool or spa owner, provide an extension of time for lodgement of the next certificate of compliance. The postponement can be for no longer than 6 months at a time.</p>	<p>Several local government stakeholders recommended that the power to provide an extension sbe vested in the council municipal building surveyor.</p>	<p><b>No change</b></p> <p>The Regulations prescribe the grounds on which extensions may be granted. Assessing whether these grounds have been met is a largely administrative decision and does not require the technical expertise of a municipal building surveyor. Vesting this decision in the municipal building surveyor would therefore unnecessarily limit council's options for resourcing this function. Councils may still elect to have the municipal building surveyor make this decision or otherwise have them involved in the process.</p>

# Building Amendment (Swimming Pool and Spa) Regulations 2019

Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
<b>147Y - Issuing of certificates of pool and spa barrier compliance</b>	Requires the relevant building surveyor or a swimming pool and spa inspector to issue a certificate of barrier compliance if they have inspected the safety barrier and they are satisfied that it complies with the applicable barrier standard.	It was suggested that councils should be prevented from updating the register to show receipt of the certificate of compliance until it is confirmed that the inspector has been paid.	<p><b>No change</b></p> <p>The council does not have any involvement in the contractual relationship between the owner and the inspector engaged to carry out the inspection. Payment issues should not delay council processes to record/update the status of barriers on their registers. In addition, there are other mechanisms available to settle payment disputes.</p>
		It was suggested that upon issue of a certificate of barrier compliance inspectors should be required to give owners an information sheet outlining their obligations to lodge the certificate with the relevant council.	<p><b>No change</b></p> <p>This is an unnecessary burden on inspectors when alternative means of educating swimming pool and spa owners are available. DELWP will work with the VBA and councils to ensure that appropriate information is available to educate owners on their obligations.</p>
		One stakeholder argued that if a certificate of barrier compliance is issued by a municipal building surveyor, the municipal building surveyor should be responsible for lodging it on behalf of the owner.	<p><b>No change</b></p> <p>The Regulations place the obligation to lodge certificates of barrier compliance on the owner. This was viewed as the most appropriate mechanism due to the owner being the person whose details must be listed on the register and the need for a lodgement fee to be paid.</p> <p>Placing the obligation on the municipal building surveyor would add unnecessary complexity and administrative burden for councils.</p>
		One industry stakeholder argued that if a building permit has been issued in relation to a pool or spa the obligation to lodge the first certificate of compliance should lie with the person who applied for the building permit.	<p><b>No change</b></p> <p>The Regulations place the obligation to lodge certificates of barrier compliance on the owner. This was viewed as the most appropriate mechanism due to the owner being the person whose details must be listed on the register and the need for a lodgement fee to be paid.</p>

# Building Amendment (Swimming Pool and Spa) Regulations 2019

Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
<b>147ZD - Relevant council must update applicable barrier standard in register</b>	Requires councils to update the applicable barrier standard recorded on the register if they receive a certificate of barrier compliance which certifies compliance against an updated standard that changed following building work.	Some councils submitted that they should be able to charge the owner a fee for carrying out a follow up inspection to confirm the accuracy of the change in applicable barrier standard.	<p><b>Not Agreed</b></p> <p>Councils may choose to carry out follow up inspections if they believe it necessary. However, this would not generally be required because the work in question will be subject to a building permit. Accordingly, should they wish to enquire further, councils should have access to all information they require to assess the effect of the work on the applicable barrier standard. It is therefore not reasonable to require swimming pool and spa owners to fund this activity.</p>
<b>147ZF Circumstances in which a certificate of pool and spa barrier non-compliance must be immediately issued</b>	Requires the inspector to immediately issue a certificate of non-compliance if they are of the opinion that: <ul style="list-style-type: none"> <li>- the barrier cannot or will not be made compliant within 60 days; or</li> <li>- the non-compliance poses a significant and immediate risk to life safety; or</li> <li>- the barrier is non-compliant in certain critical respects, such as the gate is unable to be completely closed.</li> </ul>	One building industry stakeholder expressed concern that the Regulations would require the issuing of certificate of non-compliance for critical defects that could be fixed quite easily, such as where a gate is unable to be closed because the spring requires readjustment.	<p><b>Noted, change made</b></p> <p>The intent of the Regulations is to capture critical defects that cannot be easily rectified, for example where a gate cannot be closed even with manual force. Minor changes have been made to this provision to clarify this intent. DELWP will work with the VBA to prepare further guidance to assist inspectors in interpreting these requirements.</p>
		Several industry stakeholders suggested additional defects should be added to the list of those requiring the inspector to issue an immediate certificate of non-compliance. One example provided was where the non-climbable zone around the barrier was found to be non-compliant.	<p><b>No change</b></p> <p>The Regulations already provide inspectors with a broad power to issue a certificate of barrier non-compliance if they believe any non-compliance issue poses a significant and immediate risk to life or safety. In addition, non-compliance relating to non-climbable zones may be relatively quick and simple to rectify and should not automatically be referred to council – e.g. moving chairs out of the zone.</p>

# Building Amendment (Swimming Pool and Spa) Regulations 2019

Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
<p><b>147ZG Procedure if a barrier does not meet the applicable barrier standard</b></p>	<p>If a safety barrier does not comply on first inspection, the inspector may give the owner up to 60 days to rectify the barrier before issuing a certificate of non-compliance. If the barrier still does not comply by the date specified by the inspector, or if the owner of the land refuses to permit the inspector to reinspect the barrier, the inspector must issue a certificate of non-compliance.</p>	<p>Several local government stakeholders indicated that it can take a prolonged period and multiple inspections to achieve compliance, particularly if the owner of the land is uncooperative.</p>	<p><b>Noted, changes made</b></p> <p>DELWP acknowledges that it may take several inspections to ensure that compliance is achieved. Given that owners are likely to pay for each time the inspector visits the property, it is likely that this will provide the owner with significant incentive to ensure the barrier is rectified with as few inspections required as possible.</p> <p>However, two changes have been made to address the points raised in these submissions. Firstly, following the first reinspection of the barrier, if the inspector believes that progress has been made to bring the barrier into compliance, they now have the ability to give the owner a further 7 days to address the non-compliance before the certificate of non-compliance must be issued.</p> <p>In addition, a change has been made that requires the inspector to issue a certificate of non-compliance if the owner refuses to let the inspector back onsite for a reinspection.</p>
		<p>Several stakeholders questioned whether the proposed maximum 20 business day period to rectify the barrier is long enough. One industry stakeholder suggested that 3 months would be more appropriate whereas one local government stakeholder suggested 30 days.</p> <p>Most local government stakeholders supported the 20 business day period as appropriate.</p>	<p><b>Agreed, change made</b></p> <p>The maximum period able to be specified by the inspector has been extended to 60 days. This is considered to be an appropriate maximum period of time for addressing most types of non-compliance that do not require the immediate issue of the certificate of barrier non-compliance.</p>
		<p>There was broad support amongst local government, child and water safety, building industry and swimming pool and spa industry stakeholders for the proposed process whereby inspectors will oversee the rectification of minor instances of non-compliance.</p>	<p><b>Noted</b></p>

# Building Amendment (Swimming Pool and Spa) Regulations 2019

Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
<b>147ZJ Fees for lodging a certificate of pool and spa barrier non-compliance with a relevant council</b>	Requires a pool and spa owner to pay a fee of up to 26 fee units (\$385.06 in 2019/20FY) on receipt of a notice from the relevant council stating that the council has received a certificate of barrier non-compliance in relation to their safety barrier.	Many swimming pool and spa owners expressed views that the prescribed maximum fee of 26 fee units was excessive in comparison to the 1.38 fee units prescribed for lodgement of a certificate of barrier compliance.	<p><b>Noted</b></p> <p>The higher lodgement fee payable in relation to certificates of barrier non-compliance reflects the costs councils incur in taking enforcement action following receipt of a certificate of barrier non-compliance. These costs are significantly higher than the administrative costs for councils of updating the register following receipt of a certificate of barrier compliance.</p> <p>As noted above, changes have been made to the provisions relating to the processes under which inspectors are required to refer non-compliance to a council via a certificate of barrier non-compliance. These changes, including extending the period that an inspector can provide an owner for rectification works to 60 days, will provide more opportunity for owners to address their non-compliant barriers before the certificate of barrier non-compliance is issued and the fee becomes payable.</p>
		Several local government stakeholders suggested that instead of a lodgement fee, the fee payable in respect of council's receipt of a certificate of barrier non-compliance should be prescribed as a penalty.	<p><b>No change</b></p> <p>The lodgement fee is intended to fund the associated council enforcement action and is more appropriately designated as a fee. DELWP notes that failure to pay the lodgement fee by the date specified by council is an offence and carries a penalty of up to 10 penalty units.</p>
<b>147ZI - Issuing a certificate of pool and spa barrier non-compliance under this Division</b>	Requires the inspector who issues a certificate of barrier non-compliance to lodge the certificate with the relevant council and provide a copy to the owner.  This provision also requires these certificates to be in the form of Form 24.	Some local government stakeholders argued that if the certificate of non-compliance related to a safety barrier that had been approved by a private building surveyor then the certificate should be forwarded to the VBA and any follow up enforcement overseen by the VBA or the private building surveyor.	<p><b>No change</b></p> <p>Depending on the age of the swimming pool or spa the private building surveyor may or may not still be practising. In addition, this option would possibly lead to disputes regarding whether the barrier was altered after the final inspection organised by the private building surveyor. Councils have the widest range of enforcement tools available to bring about compliance, including the new ability to issue a barrier improvement notice.</p>

# Building Amendment (Swimming Pool and Spa) Regulations 2019

Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
		<p>Some local government stakeholders argued that councils should have the power to charge owners for follow up inspections in response to receiving a certificate of non-compliance.</p>	<p><b>No change</b></p> <p>The Regulations already prescribe a fee that is payable upon receipt of a certificate of barrier non-compliance. This fee is intended to assist councils in covering the costs associated with carrying out relevant enforcement activity.</p>
		<p>One industry stakeholder expressed concerns regarding the ability of councils to respond to non-compliance because of limitations on their powers of entry to residential properties.</p>	<p><b>Noted</b></p> <p>Powers of entry for municipal building surveyors are contained in the Act and therefore outside the scope of these Regulations. DELWP will continue to monitor this matter.</p>
		<p>One local government stakeholder argued that inspectors should be required to lodge certificates of barrier non-compliance within a prescribed period, rather than as soon as practicable.</p>	<p><b>No change</b></p> <p>The requirement to issue a certificate “as soon as practicable” achieves the policy intent as it requires the inspector to lodge the certificate as soon as they can. This provides more flexibility while ensuring the certificate is lodged without delay.</p>
<p><b>147ZK - Municipal building surveyor may serve a barrier improvement notice on owner</b></p>	<p>This provision gives municipal building surveyors the ability to serve a ‘barrier improvement notice’ as an additional enforcement tool in response to receiving a certificate of barrier non-compliance.</p>	<p>Some local government stakeholders indicated that they would be reluctant to issue a barrier improvement notice because any non-compliance represents a potential danger that should be addressed through more immediate processes.</p> <p>One industry stakeholder argued that as owners are often reluctant to bring their barriers into compliance even where there is a threat of prosecution the issuing of a barrier improvement notice is unlikely to prompt many to take action.</p>	<p><b>Noted</b></p> <p>The new barrier improvement notice process is designed to give councils and municipal building surveyors greater flexibility when responding to non-compliance by providing a formal mechanism that stops short of the more resource-intensive issuing of a notice or order under Part 8 of the Act. It responds to feedback from local government stakeholders that notices and orders can be a resource-intensive and inefficient means of dealing with some instances of non-compliance.</p> <p>Municipal building surveyors have full discretion to choose what action to take depending on the circumstances of the non-compliance.</p>

# Building Amendment (Swimming Pool and Spa) Regulations 2019

Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
		<p>One local government stakeholder suggested that the minimum prescribed period contained in a barrier improvement notice should be 30 days.</p>	<p><b>No change</b></p> <p>Providing owners a minimum of 30 days to rectify their barriers was considered as excessive and may discourage some municipal building surveyors from issuing barrier improvement notices. The minimum 14-day period prescribed in the Regulations is appropriate.</p>
		<p>One building industry stakeholder argued barrier improvement notices should provide the owner with the same maximum period of time to bring about compliance as is provided by an inspector via written notice.</p> <p>Most local government stakeholders expressed views supporting the proposed 14-day minimum period.</p>	<p><b>No change</b></p> <p>The maximum period that inspectors can give owners under written notice sets an upper limit on the time allowed for rectification works that inspectors can oversee. Any instances of non-compliance that require longer than this period to address are rightly referred to councils. There is no need to set an upper limit on municipal building surveyors issuing a barrier improvement notice. If, in their judgment, the works required may take longer than 60 days and they believe the barrier improvement notice process is appropriate (rather than utilising other powers under the Act), then there is no reason why their discretion should be restricted.</p>
<p><b>Various amendments to Schedules 9 and 11, clause 12A Class of building inspector (pool safety)</b></p>	<p>Sets out the prescribed qualifications and experience required to become a Building Inspector (Pools Safety).</p>	<p>Swimming pool and spa owners and other members of the public were divided over their support of a new class of building inspector. Those who opposed it expressed a range of concerns including scepticism that a new class was necessary and views that it represented 'more bureaucracy'.</p> <p>Some stakeholders raised concerns that the creation of a new class of inspector would create more complexity and was unnecessary given that the work could be carried out by building surveyors and building inspectors.</p>	<p><b>Noted, no change</b></p> <p>Based on its own research and feedback provided by industry stakeholders, DELWP held concerns that the existing population of registered building surveyors and building inspectors would not be enough to meet the market demand for barrier inspections.</p> <p>The purpose of introducing the new class of registered building inspector is to ensure that sufficient inspectors are available to inspect and certify safety barriers within the prescribed timeframes and at a reasonable cost to owners.</p>

# Building Amendment (Swimming Pool and Spa) Regulations 2019

Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
		<p>Several stakeholders, particularly those from building industry and local government backgrounds, expressed concern as to whether the prescribed qualifications and experience were sufficiently robust.</p>	<p><b>Noted</b></p> <p>It is important that all persons registered in the new building inspector (pool safety) class possess appropriate knowledge, skills and experience to ensure the competent undertaking of their functions.</p> <p>The VBA is currently developing a course specification to set minimum content, delivery and learning outcomes for training in swimming pool and spa barrier inspection. This course, together with the prescribed experience requirement, should appropriately equip persons registered in the new class to perform their functions under the scheme.</p>
		<p>One stakeholder advocated that the existing course <i>10660NAT – Swimming Pool Safety Inspection Qualification</i> should be contextualised for training Victorian pool inspectors.</p>	<p><b>No change</b></p> <p>Based on DELWP’s research, as well as advice from the VBA and other stakeholders, 10660NAT was not considered appropriate for the delivery of training for the new Victorian inspector class. The VBA are currently developing a course specification for the purpose of setting minimum requirements in the delivery of relevant training approved by the VBA.</p>
		<p>One industry stakeholder recommended that the Qualification for the new class of building inspector (pool safety) should be a minimum Cert IV-level and a subset of the existing Advanced Diploma in Building Surveying. It should also be mapped against qualification benchmarks with an additional subject specifically related to the relevant Australian Standard. The course should also include at least 9 units that are used for AIBS BS-L-level accreditation.</p>	<p><b>Noted</b></p> <p>This feedback has been provided to the VBA for them to consider as part of their work to develop a suitable course specification.</p>

# Building Amendment (Swimming Pool and Spa) Regulations 2019

Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
		<p>One stakeholder suggested that there was no need to require applicants to demonstrate a minimum of 6 months experience as a precondition of registration. Inspectors can acquire the necessary skills and experience through suitable training or from demonstrating experience in similar audit and/or inspection roles.</p> <p>Feedback from other stakeholders supported an experience requirement as being an essential component of ensuring appropriate competency for applicants in the new inspector class.</p>	<p><b>No change</b></p> <p>A period of relevant experience has been required to ensure applicants have been exposed to a broad range of 'real world' barrier configurations and non-compliance issues. The VBA advised that on-site experience is as important in developing the skills of practitioners as the completion of a formal qualification.</p>
		<p>One stakeholder raised concerns that persons operating in rural and regional areas may struggle to gain 6 months experience given the comparatively small number of new pools and spas in country areas.</p>	<p><b>Noted</b></p> <p>DELWP acknowledges that it may potentially be more difficult for some regionally-based persons to gain the necessary experience. However, it is critical that all applicants for the new class present some relevant experience as that has been determined to form an integral part of the competence required. DELWP, in cooperation with the VBA, will monitor the availability of inspectors to ensure that sufficient numbers are available across Victoria.</p>
		<p>Several stakeholders raised concerns that applicants for the new class may struggle to acquire the required six months of relevant experience prior to the period when the first group of existing pools and spas will need to be inspected.</p>	<p><b>Noted, change made</b></p> <p>The deadlines by which existing swimming pools and spas must have their barriers first inspected and certified has been extended. Among other things, this will allow more time for applicants for the building inspector (pool safety) class to complete the required training and gain the relevant experience.</p>

# Building Amendment (Swimming Pool and Spa) Regulations 2019

Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
		<p>One building industry stakeholder recommended that the building inspector (pool safety) class should be restricted to carrying out the inspection and certification of pools/spas appurtenant to class 1a buildings only. They stated that pools and spas in multi-story Class 2 or 3 buildings have more complex requirements, such as access and emergency egress which the new class of inspector is not appropriately trained to consider.</p>	<p><b>No change</b></p> <p>The scope of work of the new class is limited to the inspection and certification of safety barriers in accordance with the applicable barrier standard. Building inspector (pool safety) practitioners should be competent to carry out their specific functions regardless of the class of building the swimming pool or spa is associated with.</p>
		<p>Some stakeholders recommended that in order to prevent potential conflicts of interest, inspectors should be prohibited from inspecting and certifying barriers that they, or someone they were closely associated with, had performed building work on.</p>	<p><b>Agreed in part, minor change made</b></p> <p>DELWP acknowledges the potential for real and perceived conflicts of interest. However, this risk needs to be considered within the broader context of ensuring that any provision that attempts to limit conflicts of interest does not unintentionally make the scheme more expensive or less effective in achieving the policy aim. For example, preventing inspectors from assisting with rectification work may result in the non-compliance remaining unaddressed for a longer period and the owner facing higher rectification costs, particularly in regional locations.</p> <p>However, in recognition of the need for greater transparency in relation to this issue, the prescribed form for the Certificate of Barrier Compliance has been amended to require the inspector to indicate if they have carried out work on the barrier prior to certification. If patterns emerge that warrant further investigation, the VBA will be able to investigate the conduct of the registered practitioner.</p>

# Building Amendment (Swimming Pool and Spa) Regulations 2019

Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
<b>Amendments to Schedule 3</b>	Inserts a series of new exemptions relevant to work on relocatable swimming pools and spas as well as safety barriers.	<p>Feedback from industry and local government stakeholders presented a range of opinions as to whether the existing exemptions in Schedule 3 could be applied to certain work on safety barriers. One local government stakeholder believes that the exemption would never apply, because any work on a safety barrier would impact the safety of the public or the occupier. However, other stakeholders disagreed.</p> <p>Many building industry and local government stakeholders supported the creation of specific exemptions to improve clarity and minimise costs.</p>	<p><b>Noted</b></p> <p>The differing interpretations expressed by stakeholders reinforced the need for the new exemptions.</p>
		<p>One local government stakeholder argued that any replacement of swimming pool barrier parts should only be carried out with the involvement of a registered building practitioner overseeing the work.</p>	<p><b>Agreed, no change required</b></p> <p>The new exemption relating to replacement or alteration of parts of a barrier only applies if the work is being carried out in order to rectify non-compliance identified as a result of an inspection by a swimming pool inspector. Accordingly, under the requirements of the Regulations the inspector will always be required to reinspect the barrier following the completion of the work.</p>
		<p>One local government stakeholder argued that relocatable pools and barriers should be required to apply for a building permit to ensure they comply, and therefore that the proposed exemptions were inappropriate.</p> <p>However most local government stakeholders supported the preferred option of exempting relocatable pools from the obligation to apply for a building permit.</p>	<p><b>No change</b></p> <p>A survey of municipal building surveyors from across the state indicated that compliance with the previous requirement to apply for a permit when putting up a relocatable pool appears to have been widely ignored. New requirements are likely to be more effective in encouraging compliance with the broader range of requirements applicable to relocatable pools.</p>

# Building Amendment (Swimming Pool and Spa) Regulations 2019

Division/Regulation number and title	Description	Summary of issue raised through feedback received in submissions	DELWP response
		<p>One stakeholder highlighted that the prescribed standard that swimming pool and spa safety barriers around relocatable pools must comply with - AS 1926.1:2012 – requires the barrier to be “permanent structures” and questioned whether it was possible for a portable or relocatable barrier to comply with that requirement.</p>	<p><b>No change</b></p> <p>The relevant Australian Standard defines a “permanent structure” to be something which “cannot be removed without the use of tools”. Although this would exclude some types of portable or relocatable barriers, it can be argued that others would fall within the definition.</p>

## Feedback on matters that fall outside of the scope of the Regulations

In addition to the feedback discussed above, DELWP also received feedback on a range of issues that are not within the scope of the Regulations or the Act. Where appropriate, DELWP will engage with the relevant departments and agencies to discuss these matters further. The feedback falling into this category were:

- Several stakeholders argued that vendor statements issued under section 32 of the *Sale of Land Act 1962* should be required to include details regarding the compliance of the safety barrier. This was supported by other stakeholders who argued that many purchasers fail to check the due diligence checklist when purchasing a property.
- One stakeholder highlighted that the Estate Agents (Professional Conduct) Regulations 2018 requires estate agents (or their representatives) to make all reasonable enquiries to ascertain information relevant to a service or transaction. It was suggested that Consumer Affairs Victoria should be advising estate agents about enquiries they should make in relation to the requirements of the Building Regulations if they are engaged to sell property with pool or spa (e.g. relocatable pool to be removed from register if not included in sale). The agent should ensure that the vendor's legal representative is advised of the presence of pool so that appropriate special conditions can be included in contract of sale.
- The *Residential Tenancies Act 1997* should be amended to require that current certificates of barrier compliance be provided to new tenants as part of their lease agreement. Another stakeholder argued that it should be made an offence under that Act to lease a property without a current certificate of barrier compliance.
- Some local government stakeholders argued that owners who lease their properties should be required to provide a new certificate of barrier compliance within 30 days of a new tenancy agreement being entered into.
- One stakeholder argued that the Local Government (General) Regulations 2015 should be amended in relation to the contents of the Land Information Certificate issued under section 229 of the *Local Government Act 1989*.
- One stakeholder suggested that every sale of a relocatable pool sold should come with information regarding the obligations of the pool owner under the Regulations.