DISCUSSION PAPER:
REGULATION OF WATER SAFETY IN ACT PUBLIC POOLS

CHIEF MINISTER, TREASURY AND ECONOMIC DEVELOPMENT DIRECTORATE
DECEMBER 2015
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INTRODUCTION

The ACT’s Public Pools Act 2015 (the Public Pools Act) supports contemporary pool management practices and accessibility for the whole community for Territory-owned public pools through:

- minimum standards and guidelines for the management, operation and maintenance of pool facilities, which address water safety matters including staff qualifications, supervision ratios, signage requirements and prohibited articles; and
- a modern early intervention framework to manage inappropriate behaviour in the pool environment.

All public pools (whether they are owned by the Territory or not) are regulated in relation to:

- health risks, water quality and sanitation (ACT Health under the Public Health Act 1997, particularly the Code of Practice to minimise the Public Health Risks from Swimming/Spa Pools 1999);
- planning and building aspects (Environment and Planning Directorate/Access Canberra); and
- work health and safety matters and dangerous goods (WorkSafeACT/Access Canberra).

Water safety at public pools not owned by the Territory is currently self regulated. Self regulation of water safety principles means there are no minimum standards or guidelines with which pool operators must comply. Further, the community has limited recourse for issues they may experience at privately-owned public pools (e.g. ACT Health or Planning complaints). The government does not have the ability to address water safety issues and problems at these facilities; this may be out of step with community expectations.

Generally, however, the operators of privately-owned public pools in the ACT are aligned to industry associations, such as the Royal Life Saving Society — Australia (RLSS), and are supported in this way in developing water safety initiatives.

This discussion paper seeks the community’s views on whether the government should regulate water safety at all public pools in the Territory, not only at those that are Territory-owned.

SUMMARY OF QUESTIONS FOR DISCUSSION

**DISCUSSION QUESTION 1:**
Do the water safety risks justify government regulation of water safety (e.g. lifeguard ratios, minimum staff qualifications) at privately-owned public pools, noting the low rate of drowning but potentially catastrophic consequences?

**DISCUSSION QUESTION 2:**
If the government regulated privately-owned public pools, are there any categories of public pools that should be exempt, noting that different requirements may apply to different categories?

**DISCUSSION QUESTION 3:**
Should privately-owned public pools be required to undertake a safety audit each year? If so, would it be appropriate for the government to require participation in (and payment of fees for) safety audits conducted by a non-government organisation such as the Royal Life Saving Society — Australia?

**DISCUSSION QUESTION 4:**
Should the government prohibit alcohol at privately-owned public pools?
PUBLIC POOLS IN THE ACT

There are over 95 publicly-accessible pools in the ACT, these include:

• 6 public pools owned by the ACT Government. Since 1 July 2015, Territory-owned public swimming pools are regulated under the Public Pools Act;¹

• about 50 privately-owned pools for which regulation is currently being considered. These include:²
  ◦ four public pools where there are limited restrictions on access (e.g. <12 years only with a parent or guardian) and activities are often unstructured (e.g. Canberra International Sports and Aquatic Centre);
  ◦ about 20 public pools where access is generally restricted to particular users and structured activities occur, and may also include special purpose pools (e.g. learn-to-swim pools, hospital pools, school pools); and
  ◦ about 30 pools where access is generally restricted to particular users but activities are unstructured (e.g. hotels, motels, health clubs, student accommodation) – users of these pools are more transient in nature so risks may be higher due to an unfamiliar environment; and

• over 40³ pools where access is generally restricted and activities are unstructured but user groups are likely to be more permanent (e.g. apartment blocks). As these pools are not accessible by the broader public, regulation is limited to health risks and water quality, planning and building aspects, work health and safety matters and dangerous goods. These pools are considered residential in nature and therefore outside the scope of this paper.

¹ Further detail about the Public Pools Act is at Attachment A.
³ The number in this category is difficult to determine based on current data sources.
WATER SAFETY IN PUBLIC POOLS

The rate of drowning in public pools is very low. In the past 10 years, there have been two deaths in public swimming pools in the ACT, one of which is still the subject of coronial investigation. Nonetheless, the consequences can be catastrophic. Water safety measures are an important part of managing the risk of injury and drowning.

CORONIAL INVESTIGATION FINDINGS ABOUT WATER SAFETY IN PUBLIC POOLS

Following the inquest into the death of Kaled Kanj, Chief Coroner Cahill identified a number of areas where improvements could be made to the oversight of all public pools, specifically:⁴

- requiring RLSS auditing
- prescribing occupancy loadings as well as ratios of lifeguards to people in the water and minimum training requirements for lifeguards
- informing patrons through educational material and appropriate signage

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⁴ Chief Coroner RJ Cahill, Inquest into the Death of Kaled Kanj, 29 October 2009, ACT Coroners Court CD13/2005, at (64).
STATISTICS ABOUT DROWNING

A recent National Drowning Report⁵ released by RLSS revealed 271 people drowned in Australia in 2014-15, slightly below the ten year average of 288; this reflects approximately 1.15 drowning deaths per 100,000 people. The ACT has the lowest rate of drowning in Australia (0.26 per 100,000 population); this may, in part, be a result of the ACT not having surf beaches. Despite their high profile, child drowning deaths represent only a small percentage of overall drowning deaths. High risk factors that contribute to a person’s risk of drowning death include: gender (male); socio-economic status; the presence of underlying medical conditions; visitor status (new to location / tourist); cultural background; skill level, and agent factors such as the consumption of drugs and alcohol.

STATISTICS ABOUT DROWNING DEATHS⁶

- 216 (80%) of all drowning deaths were male
- 26 (9.6%) drowning deaths occurred in children aged 0-4 years
- 9 (3.3%) drowning deaths occurred in children aged 5-14 years
- 23 (8.5%) drowning deaths occurred in young people aged 15 to 24 years
- 89 (32.8%) drowning deaths occurred in people aged 55 years and over

Data on deaths by aquatic location show the number of deaths in swimming pools (32 people, 12 per cent of deaths in 2014-15) is lower than in natural locations. Over the 10 years to December 2002, there were 88 recorded deaths in public swimming pools in Australia.⁷ However, not all of these deaths are attributable to drowning. Research from 1988 to 2002 found 42 deaths occurred at public swimming pools in Victoria, but only 64 per cent of these were attributed (in whole or in part) to drowning.⁸ This makes the risk of death from drowning at a public swimming pool very low.⁹

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6 Ibid.


9 The rate of drowning deaths in Victorian public pools was around 0.04 per 100,000 population over the 15 year period. Noting ACT drowning rates for all aquatic locations are considerably lower than in Victoria (0.26 per 100,000 in the ACT compared to 0.66 per 100,000 in Victoria), it would be reasonable to infer the rate of drowning in an ACT public swimming pool would also be lower than in Victoria.
NEAR-DROWNING AND OTHER INJURIES

In addition to the risk of drowning causing death, there is a risk of significant, sometimes life-long effects of near-drowning and other injuries.\(^\text{10}\)

In some countries with good drowning rescue resources, the burden of near-drowning can be considerable. The national drowning prevention alliance in the United States of America has estimated as many as 20 per cent of near-drowning victims suffer severe, permanent neurological disability.\(^\text{11}\)

The World Health Organization indicates the annual cost of drowning injury in Australia is US$85.5 Million.\(^\text{12}\)

There are a range of other possible injuries in public pools; the risk of which can be mitigated through sound water safety practices such as:

- signage indicating shallow water depth.
  - This helps mitigate risks of minor (abrasions, bruising) or significant (head and spinal) injuries as well as drowning;
- maintenance/cleaning and signage of wet areas on pool deck. This helps mitigate risks of falls resulting in minor (abrasions, bruising) or significant (head and spinal) injuries; and
- evacuation plans, signage and drills. This helps mitigate risks of minor (abrasions, bruising) or significant (broken bones) injuries and death due to crushing or suffocation.

**DISCUSSION QUESTION 1:**

Do the water safety risks justify government regulation of water safety (e.g. lifeguard ratios, minimum staff qualifications) at privately-owned public pools, noting the low rate of drowning but potentially catastrophic consequences?

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10 US research has found more than half of drowning victims are hospitalised, well above the rate of emergency department hospitalisation for other unintentional injuries (about 4 per cent).


The Strategy identifies three priority areas and ten goals. It is intended as a call to action for drowning prevention agencies, State and Territory AWSC member groups, governments and the community to consider, prioritise and respond to each goal and priority area in a collaborative effort.

### AUSTRALIAN WATER SAFETY STRATEGY 2012-15 PRIORITY AREAS AND GOALS

**Priority Area 1: Taking a Life Stages Approach**
- Reduce drowning deaths in children (aged 0-14)
- Reduce drowning deaths in young people (aged 15-24)
- Reduce drowning deaths in people aged 55+

**Priority Area 2: Targeting High Risk Locations**
- Reduce drowning deaths in inland waterways
- Reduce surf beach drowning deaths
- Reduce drowning deaths by strengthening the aquatic industry

**Priority Area 3: Focusing on Key Drowning Challenges**
- Reduce alcohol and drug related drowning deaths
- Reduce drowning deaths attributed to watercraft and recreational aquatic activities
- Reduce drowning deaths in high risk populations
- Reduce the impact of disaster and extreme weather on drowning deaths

The Public Pools Act demonstrates the ACT’s commitment to these priority areas and goals.

### STATE AND TERRITORY POOL AND WATER SAFETY LEGISLATION

The majority of water safety legislation in Australia is focussed on water quality and safety of chemicals, and restriction of access including fences and barriers for swimming pools. Each State and Territory in Australia has a different approach to the regulation of swimming pools (whether public or private) and general water safety:

- NSW has a public health approach to legislation related to public pools and spas;
- Queensland regulation focuses on development and construction of pool areas;
- Victoria complements their planning and development focus with various water safety campaigns particularly targeted at children;
- South Australia also has a mixed approach, with various general regulations setting out obligations for owners, occupiers and managers. These are complemented by Standard Operating Guidelines that are underpinned by public health principles; and
- Western Australia has the most comprehensive approach (outlined below).

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13 The Australian Water Safety Council acts as a consultative forum comprising the major water safety and related government agencies. It focuses on presentation of key water safety issues to governments, industry and the community.
**WESTERN AUSTRALIA CODE OF PRACTICE FOR THE DESIGN, CONSTRUCTION, OPERATION, MANAGEMENT AND MAINTENANCE OF AQUATIC FACILITIES**

Western Australia’s Code of Practice for the Design, Construction, Operation, Management and Maintenance of Aquatic Facilities classifies different aquatic facilities; the Code of Practice applies different regulatory measures to each group. Classification groups are based on the level of public access to the particular facility.

<table>
<thead>
<tr>
<th>Group 1</th>
<th>Group 2</th>
<th>Group 3</th>
<th>Group 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public access with limited restrictions (age-based).</td>
<td>Access is restricted to discrete users and user groups.</td>
<td>Access restricted to discrete users and user groups.</td>
<td>Access restricted to owner/occupier residents and guests.</td>
</tr>
<tr>
<td>Facilities are typically available to general public for payment of an entry fee. Examples include:</td>
<td>Facilities generally include:</td>
<td>Facilities generally include:</td>
<td>Facilities include:</td>
</tr>
<tr>
<td>• aquatic centres;</td>
<td>• schools;</td>
<td>• discrete user access of group 1, 2, or 4 aquatic facilities by community/swimming groups; or</td>
<td>• small temporary accommodation developments such as bed and breakfast and farm-stay facilities;</td>
</tr>
<tr>
<td>• waterslides; and</td>
<td>• learn-to-swim centres;</td>
<td>• commercial developments for guests such as hotels, motels, resorts, serviced apartments, caravan parks, health clubs, recreational camp-sites, lodging houses, staff/student accommodation and places restricted to adult only access</td>
<td>• permanent/semi-permanent residential developments with 30 or more dwelling units/apartments; and</td>
</tr>
<tr>
<td>• water-parks</td>
<td>• learn-to-dive pools;</td>
<td>• retirement/lifestyle villages that do not allow non-residential based club/member access to facility</td>
<td>• retirement/lifestyle villages that do not allow non-residential based club/member access to facility</td>
</tr>
</tbody>
</table>

**Indicative Water Safety Requirements**

<table>
<thead>
<tr>
<th>Group 1</th>
<th>Group 2</th>
<th>Group 3</th>
<th>Group 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>• All patrons directly supervised with minimum 1 lifeguard per 100 patrons</td>
<td>• All patrons directly supervised</td>
<td>• No direct supervision</td>
<td>• No direct supervision</td>
</tr>
<tr>
<td>• Emergency care personnel on-site at all times</td>
<td>• Emergency care personnel on-site at all times</td>
<td>• Signage – ‘no lifeguard on duty’</td>
<td>• Signage – ‘no lifeguard on duty’ and resuscitation notice</td>
</tr>
<tr>
<td>• Rescue equipment e.g. poles, tubes</td>
<td>• Rescue equipment e.g. poles, tubes</td>
<td>• Emergency care personnel able to respond within a reasonable period of time</td>
<td>• No emergency care personnel on-site</td>
</tr>
<tr>
<td>• Separate first aid room or area with first aid kit, resuscitation equipment including oxygen, spinal board, stretcher</td>
<td>• Separate first aid room or area (reduced requirements) with first aid kit, stretcher</td>
<td>• Rescue equipment e.g. poles, rescue tubes</td>
<td>• First aid room and equipment not required to be maintained on-site</td>
</tr>
</tbody>
</table>

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FLEXIBLE AND TAILORED REGULATION

ACT Government intervention in water safety at privately-owned public pools could be tailored to suit different categories. Regulation would not necessarily be heavy-handed.

For some pools, regulation might be limited to signage requirements and first aid equipment being available. Lifeguard supervision, for example, may not be required for all pool categories.

Compliance measures may include issuing of maintenance directions and emergency closure orders, or could also involve more traditional measures such as improvement notices or infringement notices.

However, some intervention (maintenance directions, for instance) can have a significant impact on the financial viability of privately-owned pools. Any level of intervention may result in costs to private operators in meeting any new requirements, and to the government (and therefore ultimately the wider community) in administration and enforcement.

DISCUSSION QUESTION 2:

If the government regulated privately-owned public pools, are there any categories of public pools that should be exempt, noting that different requirements may apply to different categories?
INDEPENDENT WATER SAFETY ACCREDITATION

The RLSS has developed voluntary Guidelines for Safe Pool Operation aimed at assisting pool operators to achieve best practice in a range of areas such as:

- general and technical operations of swimming pool;
- first aid;
- facility design;
- supervision;
- swimming programs; and
- low patronage pools.

However, the guidelines have no formal legal status, and compliance is up to individual operators.

The RLSS annually benchmarks industry performance against its Guidelines for Safe Pool Operation. To inform its latest report, the RLSS conducted 247 Aquatic Facility Safety Assessments, nine of which were for ACT facilities.

The RLSS has noted broader industry compliance with the guidelines (at 80.1 per cent) ‘had fallen to its lowest level since 2008.’ ACT public pools, however, generally performed better in the RLSS assessments (at over 90 per cent compliance) than the national average.

In addition to industry benchmarking, the RLSS also provides an accreditation and audit program for ‘5-star Water Safety Partners’. This recognition involves an annual assessment against a 40 point aquatic safety check based on reduced components of the Guidelines for Safe Pool Operation. Participation is voluntary with a fee payable to the RLSS to cover its costs. A number of swimming pools, including all Territory-owned pools, have achieved this accreditation.

One option available to government would be to require all public pools to undertake an annual mandatory safety audit; this could be delivered, for example, through a non-government organisation such as the RLSS.

DISCUSSION QUESTION 3:

Should privately-owned public pools be required to undertake a safety audit each year? If so, would it be appropriate for the government to require participation in (and payment of fees for) safety audits conducted by a non-government organisation such as the RLSS?

15 Released 25 June 2014.
16 An AFSA is a risk management tool for the successful and continued operation of an aquatic or leisure facility which provides an independent and comprehensive assessment of the operations of a particular facility. The AFSA is made up of an Onsite Safety Inspector Checklist, Safety Score, Safety Improvement Plan, and Observations and Recommendations. An AFSA is conducted in line with Guidelines for Safe Pool Operation, and covers general operations, emergency procedures, record keeping, first aid, plant room operations and chemicals, facility design, supervision, programming and specific aquatic areas such as wave pools and diving towers.
ALCOHOL AT PUBLIC POOLS

Alcohol use around water is a risk factor for drowning; even small amounts of alcohol can lead to higher risks.20

The Public Pools Act prohibits consumption or possession of alcohol at Territory-owned public pools. This means, for example, that alcohol cannot be consumed as part of a barbecue on pool grounds and that functions involving alcohol cannot be held at any government-owned pool.

If government regulation of water safety was extended to privately-owned public pools, there is a question about whether this restriction should be applied to those pools.

However, liquor is already regulated under the Liquor Act 2010. An operator would need to comply with the requirements of that Act as well as consider any insurance implications.

DISCUSSION QUESTION 4:

Should the government prohibit alcohol at privately-owned public pools?


21 RLSS reports around 83 per cent of people with a positive reading for alcohol when they drowned had a blood alcohol level equal to or greater than 0.05mg/L, therefore 17% were below this level. See Royal Life Saving Society – Australia, National Drowning Report 2015, released 15 September 2015, http://www.royallifesaving.com.au/__data/assets/pdf_file/0006/14650/RLLS_NDR2015_Report_LR.pdf, p 27.
CONCLUSION

Through application of the Public Pools Act to all Territory-owned public pools, the government has sought to ensure its facilities are operated safely and are accessible to, and enjoyed by, all in the community.

Regulation of privately-owned public pools would come at a cost. This could potentially result in increased costs to business, increased costs of admission for pool users, and indirectly carry through from costs associated with government regulation and enforcement.

Based on the low rate of drowning in public pools, it could be argued that there is no market failure and regulation of privately-owned public pools is unnecessary government intervention.

If the community values facilities which have met a recognised level of safety, people may seek out either the Territory facilities which are compliant with the Public Pools Act or private facilities which have obtained accreditation.

Further, other market forces may drive safety standards at facilities, such as the ability to secure public liability insurance at a reasonable cost.

As such, this discussion paper seeks views on whether the government should regulate water safety at privately-owned public pools. Community feedback in response to this discussion paper will be collated and provided to the government for consideration.

Depending on the outcomes of the consultation, should any legislative changes be required these would need to be considered by the ACT Legislative Assembly. Any new legislation would not take effect before late 2016/early 2017.
HOW TO COMMENT

Any and all comments about the regulation of water safety at privately-owned public pools in the Territory are welcome. Comments may be submitted in any form.

Responding to the questions in this Paper is one way to put your views forward. Questions under each topic are designed to help focus comments but don’t necessarily need to be individually answered. It is also not necessary to comment on all the discussion questions.

You can email your comments to legislationracingandgamingpolicy@act.gov.au or post them to:

Regulation of Water Safety in ACT Public Pools – Consultation
Policy, Projects and Legislation, Economic Development
Chief Minister, Treasury and Economic Development Directorate
GPO Box 158, Canberra ACT 2601

You are welcome to arrange a meeting with us to discuss your views, ask questions or simply provide verbal feedback. Please call (02) 6205 0072 if you wish to make a time.

The closing date for comments is Friday, 26 February 2016.

Please note that the information you provide may be subject to release under the Freedom of Information Act 1989 unless you clearly indicate that your comments should be treated as confidential. If you have any questions about the Paper or would like to receive a hard copy please phone (02) 6205 0072.

The Paper can be accessed online at: http://www.sport.act.gov.au/pools-and-facilities
ATTACHMENT A – WHAT DOES THE PUBLIC POOLS ACT 2015 DO?

POOL FACILITIES ADMINISTRATION – MINIMUM REQUIREMENTS AND STANDARDS

Instruments under the Public Pools Act set out minimum standards for:

- operational matters;
- qualifications, skills, training of operators, employees, people engaged under contract and volunteers;
- conditions of entry and removal;
- signage; and
- prohibited articles.

Instruments are legally binding, though operators can exceed the standards if they wish to.

MAINTENANCE DIRECTIONS AND POOL CLOSURE ORDERS

Maintenance directions can be given when:

- the facility is not in good repair or condition; and
- this is causing undue risk to people, property or the environment.

A decision to issue a maintenance direction can be reviewed.

Emergency closure orders can be issued when:

- a maintenance direction is not complied with, and there is no other alternative; and
- it is the only viable option to prevent or reduce undue risk.

Penalties apply for non-compliance with an emergency closure order. However, an operator may apply to cancel the order and any decision to refuse cancelling the order can be reviewed.

EARLY INTERVENTION FRAMEWORK

The early intervention framework assists in modifying anti-social behaviour, this includes removal from the pool facility if required. The framework must be exercised for the health and safety of persons at the facility, and protection of property or the environment.

The framework provides for warnings and directions; it is closely tied to standards for conditions of entry and removal. It outlines processes and requirements for signage, and provides legislative protection for operators.

OFFENCES

Streamlined and modernised criminal offences apply only where there are implications to public health or safety and the protection of property and the environment, such as:

for patrons: infections, smoking, consumption and possession of liquor, graffiti, damaging infrastructure, and failing to comply with direction; and

for operators: failing to comply with an emergency closure order, not providing reasonable assistance to an inspector, and failing to comply with a notice for documentation and information.

ENFORCEMENT

The Act provides for the appointment of Inspectors who are public servants. Police officers are automatically appointed to exercise powers under the Act.

Inspectors have specific powers under the Act, for example they may:

- enter premises and operators must give reasonable assistance; and
- request information or documents.

OTHER

The Act also provides that the Minister may set fees for the Act (e.g. water safety audit fees), make regulations, and for other miscellaneous matters.

The Minister may also set pool fee guidelines for Territory-owned public pools.