

## Table of Recommendations

### **Recommendation 1**

The Department of Mines, Industry Regulation and Safety continues to develop and implement strategies for educating parents and caregivers regarding the importance of maintaining active supervision of children who are placed in bath seats and of avoiding altogether the use of floor seats in the bath or shower.

### **Recommendation 2**

The Department of Mines, Industry Regulation and Safety continues to monitor data specifically regarding fatal and non-fatal drowning incidents that occur in the bath and, if warranted, pursue the development of further regulation applicable to the products associated with these incidents.

### **Recommendation 3**

Taking into account the findings of the Investigation, and the findings and recommendations of the Coroner regarding private swimming pools at rental properties, the Department of Mines, Industry Regulation and Safety develops and implements further strategies designed to ensure that real estate agents, including property managers, and private landlords, respond appropriately to information regarding swimming pool barriers that do not comply with the *Building Act 2011* and the *Building Regulations 2012*.

### **Recommendation 4**

The Department of Mines, Industry Regulation and Safety considers the introduction of requirements for property managers and private landlords to provide, in the most cost-effective way and resulting in the least regulatory burden, a copy of the most recent inspection form confirming that the swimming pool barrier was found to be compliant, to the potential tenant at the time of entering into a lease agreement.

### **Recommendation 5**

The Building Commissioner reviews the operation of section 33 of the *Building Act 2011* in order to determine the level of compliance of permit holders (including owners, registered and unregistered builders and swimming pool barrier installers) with requirements to submit notices of completion for private swimming pools and their barriers in accordance with section 33.

### **Recommendation 6**

In undertaking the review of the operation of section 33 of the *Building Act 2011*, the Building Commissioner works cooperatively and collaboratively with local governments to increase compliance by permit holders (including owners, registered and unregistered builders and swimming pool barrier installers) with section 33 of the *Building Act 2011* through a series of the most complementary strategies utilising the expertise and experience of the Building Commissioner and ensuring that such strategies are the most cost-effective and result in the least regulatory burden. At a minimum, consideration should be given to:

- (i) the provision (by either local governments, the Building Commissioner or both) of advice, information, education and training for permit holders regarding the requirements and importance of section 33 of the *Building Act 2011*;
- (ii) the Building Commissioner undertaking risk-based compliance audits of the work and conduct of registered builders of swimming pools;
- (iii) measures which specifically target increased compliance by builders and installers of swimming pool barriers who are not registered builders; and
- (iv) where appropriate in all of the circumstances, use of sanctions by local governments, as provided for by the *Building Act 2011*.

### **Recommendation 7**

The Building Commissioner monitors local governments' compliance with regulation 53(1) of the *Building Regulations 2012*, including by requiring that local governments report on compliance with regulation 53(1) each year, and that the Building Commission reports this information to Parliament in its annual report.

### **Recommendation 8**

The Building Commissioner provides guidance to local governments regarding the manner and form in which the information relating to swimming pools and their barriers should be kept including the key elements of any associated record management system, bearing in mind the need to avoid any inappropriate regulatory burden particularly for small local governments and local governments with few recorded swimming pools in their districts.

### **Recommendation 9**

Taking into account the findings of the Investigation, the Building Commissioner, subject to consultation, and in development with local governments and industry stakeholders, reviews the concessions for pre-November 2001 swimming pools provided for in regulation 52 of the *Building Regulations 2012*, with a view to considering whether an amendment to the *Building Regulations 2012* ought to be made to remove these concessions. If regulatory changes are made, any such regulatory change should consider an appropriate extended phase-in period to take into account regulatory (sovereign) risk and costs imposed upon existing property owners.

### **Recommendation 10**

The Building Commissioner clarifies with local governments the charges that local governments are able to impose for inspections of swimming pool barriers, including whether these charges may be imposed only in the year of an inspection, or each year.

### **Recommendation 11**

The Building Commissioner consults with local governments regarding the adequacy of charges to meet the cost of swimming pool barrier inspections, including:

- (i) establishing the actual cost of the efficient delivery of swimming pool barrier inspection practices;
- (ii) if appropriate, seeking an amendment to the *Building Regulations 2012* so that the allowed charge reflects this efficient cost; and
- (iii) informing local governments of the efficient cost so that such cost is transparent and borne by the users of the system (that is, ratepayers who have a swimming pool and not cross-subsidised by non-swimming pool owners).

### **Recommendation 12**

The Building Commissioner, in consultation with local governments and other stakeholders, considers whether it would be appropriate to co-ordinate the development and provision of a training program (including curriculum, scheduling arrangements, modes of delivery and assessment methods) specifically for inspectors of swimming pool barriers. In doing so, the Building Commissioner can take into account matters relevant to the expertise and experience of the Building Commissioner, but should at a minimum consider:

- (i) the cost of the program including developing and delivering the program at least cost to taxpayers. For example, the Building Commission could consider funding such training from the Department of Mines, Industry Regulation and Safety's internal training fund. Such funding would not require new funding and potentially represents a cost-beneficial way of contributing to enhanced inspection standards and enhanced protection for Western Australian children and ultimately the reduction of risk of child death by drowning;
- (ii) any unintended consequences of establishing the training program, including if establishing the program could act to restrict the supply of inspectors and thus exacerbate the difficulties in recruiting inspectors; and
- (iii) if the training program can and should be linked to the national training system.

### **Recommendation 13**

The Building Commissioner, in consultation with local governments and other stakeholders, considers improvements to training in compliance promotion and conflict resolution. This could be included as part of the training program developed specifically for inspectors of swimming pool barriers, discussed at Recommendation 12.

### **Recommendation 14**

The Building Commissioner, in consultation with local governments and other stakeholders, considers the development and provision of a systematic program of cost-effective continuous professional development for inspectors of swimming pool barriers to support inspectors to remain up-to-date with changes in the legislation, regulations and standards.

### **Recommendation 15**

The Building Commissioner considers the promotion of a quality assurance process (for which there is currently a good practice example) for swimming pool barrier inspections to local governments. This quality assurance process could include reviewing a sample of inspections undertaken by each inspector at appropriate intervals throughout the inspection program, with additional information on this process included in the *Inspector Guidelines*.

### **Recommendation 16**

The Building Commissioner works with local governments and other stakeholders to develop a template swimming pool barrier inspection checklist template, which incorporates all of the required elements to meet the applicable standards, and is as efficient to complete as possible for inspectors, for use across local governments.

### **Recommendation 17**

In implementing Recommendation 12, the Building Commissioner works with local governments to (at least cost to taxpayers and ratepayers):

- (i) ensure that the training program for inspectors of swimming pool barriers includes specific training on the template swimming pool barrier inspection form and the requirement to complete all elements of the form; and
- (ii) to develop a quality assurance process for ensuring that all elements of swimming pool barrier inspection forms are consistently completed.

### **Recommendation 18**

Taking into account the findings of the Investigation, the Building Commissioner, in consultation with local governments and other stakeholders:

- (i) develops an evidence-based enforcement strategy to improve compliance with the *Building Act 2011* and the *Building Regulations 2012* for use across local governments, taking into account:
  - a. the resourcing available to local governments to implement the enforcement strategy;
  - b. that any regulatory compliance model is done, as a matter of principle, in a cost-beneficial way, that is, at least cost to local governments (and, by extension, to ratepayers); and
  - c. that costs for inspections represent benchmarked efficient costing that is transparently passed on to pool-owning ratepayers who cause these costs to be incurred rather than subsidised by ratepayers who do not own a swimming pool; and
- (ii) determines whether legislative amendments are required to support the effectiveness of the enforcement strategy and, if so, seeks these amendments.

### **Recommendation 19**

The Building Commissioner, in consultation with local governments and other stakeholders:

- (i) includes the use of re-inspection of barriers to swimming pools that do not initially comply with the *Building Regulations 2012*, as part of an evidence-based enforcement strategy to improve compliance with the *Building Act 2011* and the *Building Regulations 2012* for use across local governments; and
- (ii) if necessary, seeks an amendment to the *Building Regulations 2012* to provide a specific basis for these re-inspections.

### **Recommendation 20**

The Building Commissioner, in consultation with local governments and other stakeholders:

- (i) considers a charge for re-inspection of barriers to swimming pools that do not initially comply with the *Building Regulations 2012*, in an evidence-based enforcement strategy to improve compliance with the *Building Act 2011* and the *Building Regulations 2012* for use across local governments; and
- (ii) if necessary, seeks an amendment to the *Building Regulations 2012* to provide the basis for these charges.

### **Recommendation 21**

The Building Commissioner reviews the requirements that are in force in other jurisdictions for temporary barriers, and, informed by cost benefit analysis, explores whether any such requirements should be considered in Western Australia, including those that relate to:

- (i) time limits on temporary barriers; and
- (ii) the need for temporary barriers to be inspected and approved by a building certifier (or equivalent).

### **Recommendation 22**

The Building Commissioner collaborates with relevant state government agencies, local governments and other stakeholders, through a senior working group or other appropriate mechanism, to develop strategies for ensuring compliance by owners of portable swimming pools and spas with the requirements of the *Building Regulations 2012*, including strategies to:

- (i) ensure owners and occupiers are aware of the requirements of regulation 50(1) of the *Building Regulations 2012*, and how these requirements apply to portable swimming pools and spas; and
- (ii) assist local governments to identify when portable swimming pools and spas may require inspection.

### **Recommendation 23**

The Department of Mines, Industry Regulation and Safety considers appropriate community education regarding the specific risks of children drowning in portable pools and spas and the need for these portable pools and spas to comply with the *Building Regulations 2012*, including exploring, subject to appropriate consideration of seeking to limit as far as possible costs imposed on business by regulation, opportunities for retailers and suppliers to inform purchasers at the point of sale of the risks of children drowning in portable pools and spas and the need to comply with legislative requirements.

### **Recommendation 24**

The Building Commissioner promotes to local governments the good practice of conducting random inspections of swimming pools that have been recorded as decommissioned to ensure that these swimming pools have not been recommissioned, and therefore require a swimming pool barrier pursuant to regulation 50(1) of the *Building Regulations 2012*.

### **Recommendation 25**

The Building Commissioner considers an amendment to the *Building Regulations 2012* to remove excluded areas so that regulation 50(1) of the *Building Regulations 2012* applies to all owners and occupiers of premises throughout Western Australia. Alternatively, if such an amendment is not considered appropriate, the Building Commissioner works with relevant local governments in excluded areas to provide accurate advice regarding the need to provide swimming pool barriers as part of the relevant building permit.