



Submission on the

# Proposed Amendments to the Building Professionals Regulation 2007

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## INTRODUCTION

This submission is made by the Swimming Pool and Spa Association of NSW & ACT (SPASA).

SPASA represents hundreds of businesses within the swimming pool and spa industry.

Members of SPASA include pool builders, service technicians, retailers, manufacturers, suppliers, subcontractors, installers, consultants and other allied trades, all of whom set themselves apart from the rest of the industry by setting standards of skill, workmanship and ethical business behaviour in the best interests of pool and spa owners.

SPASA is also a Registered Training Organisation (RTO) that provides training and assessment to the swimming pool and spa industry. Our courses are designed in consultation with key industry stakeholders and our qualifications and accreditations are highly valued by government, employers and the wider community.

Please find attached our comments to the BPB proposed amendments to the *Building Professionals Regulation 2007*.

## PROPOSED AMENDMENT 1

Amend the conflict of interest conditions to allow E1 certifiers who hold an endorsed licence or a qualified supervisors certificate issued under the *Home Building Act 1989* that authorises the person to construct a swimming pool or structural landscaping, to carry out work on the swimming pool (to a value not exceeding \$1,000 including the cost of materials and labour).

## MINOR REPAIRS TO A BARRIER

SPASA supports E1 Certifiers being able to undertake minor repairs to a barrier up to the value not exceeding \$1,000.00 (including labour and materials) where a "Minor Repair" can be rectified relatively easily without requiring them to hold a licence.

## WHAT SHOULD BE CONSIDERED AS “MINOR REPAIRS”

In the absence of a definition or guidance provided to support the proposed BPB amendment, SPASA considers the type of repairs that could be carried out for under \$1,000.00 and may include (but not be limited to the following):

Table 1

Supply & Install of CPR Signs	Adjustment of latches & hinges
Supply & Install of Gate Hinges & Latches	Installation of perspex pool gate shields
Internal Window Lock/Constraints	Replacing of a defect pool barrier panel
Clearing of vegetation	.....other such minor repairs

## LICENCING

The BPB’s proposed amendment to only allow E1 Certifiers who hold an endorsed licence or qualified supervisors to carry out repairs on the swimming pool (to a value not exceeding \$1,000 including the cost of materials and labour) *is at odds* with recent Building Regulation 2014 amendments whereby with the exception of *Specialist Work*, the threshold for requiring a licence for *Residential Building Work* was raised from \$1,000 over \$5,000 (including labour and materials).

NB: It is important to note that *Residential Building Work* may include the construction, repair or installation of pool barriers under \$5,000.

Whilst SPASA strongly opposed increasing the threshold from \$1,000 to \$5,000 at the time of consultation, there is merit in allowing E1 Certifiers to undertake “Minor Repairs” as suggested in Table 1 without requiring them to hold a licence.

## MUTUAL RECOGNITION

SPASA does not support the proposed amendment in its current form as it seeks to exclude Mutual Recognition E1 Certifiers and others who are not Builders, Pool Builders and Structural Landscapers.

The proposed amendment, if adopted, may result in multiple E1 Accreditation Categories which is likely to lead to a number of unforeseen and unintended consequences not limited to contravening the *Mutual Recognition Act 1992*.



Unlike Queensland's model whereby it has a higher threshold of \$3,300.00 for licensed pool safety inspectors to undertake Minor Repairs, the proposed BPB amendment in NSW is limited to just \$1,000.00.

Accordingly, SPASA supports all E1 Certifiers being accredited in undertaking "Minor Repairs" as suggested in Table 1 above.

## **CONFLICT OF INTEREST**

SPASA acknowledges the BPB may have some concerns regarding conflict of interest; however, the conflict significantly diminishes if repairs able to be undertaken are prescribed and capped at \$1,000.00.

With estimates as high as 90% of NSW swimming pool barriers being non-compliant, urgent consideration should be given to allowing all E1 Certifiers to undertake "Minor Repairs".

This measure would result in:

- a) a reduction in multiple inspections
- b) a faster remediation timeframes
- c) a reduction in compliance costs

## **EXPANDING E1 ELIGIBILITY CRITERIA**

There is a belief that a large number of Builders, Pool Builders and Structural Landscapers will swarm to become E1 Certifiers. SPASA does not believe this is the case - *even if the proposed amendments are adopted.*

A career as an E1 Certifier is currently limited and will only be attractive to a small group of individuals. Despite the restricted criterion, there are many more experienced individuals that should be considered as a welcome and necessary addition to the E1 pool of Accredited Certifiers such as *Swimming Pool and Spa Technicians and other such industry relevant persons.*

## **INSURANCE REQUIREMENTS**

There is no reference or guidance material provided as to the type of insurance the BPB may require E1 Certifiers to purchase should they choose to carry out repairs on the swimming pool (to a value not exceeding \$1,000 including the cost of materials and labour).

What requirements will the BPB impose on E1 Certifiers undertaking "Minor Repairs"?

Insurance is an important area that must be considered and addressed as part of the BPB's current proposed amendments.

## CURRENT INDEPENDENT REVIEW

Aspects of the proposed amendments have already been raised as part of the recent *Review of the Swimming Pool Barrier Requirements for Backyard Swimming Pools in NSW* drafted by Mr Michael Lambert. Mr Lambert was also the reviewer for the recent BPB Act Review.

SPASA is unsure whether the BPB's consultation regarding the proposed amendments is aligned with the Lambert Review (due shortly) or running parallel to it?

In this regard, SPASA considers the Building Professional's Board's proposed amendments untimely and an afterthought.

### Proposed Amendment 2

Reduce the fee for the issue or renewal of a certificate of accreditation for category E1 from \$1,500 to \$750.

SPASA cannot foresee any circumstances whereby any accredited E1 Certifier would object to a reduction in their annual accreditation from \$1,500 to \$750.

Accredited E1 Certifiers have informed SPASA that the BPB is already charging E1 Certifiers using a two tiered non-transparent fee arrangement:

- Tier 1: \$750.00 for Accredited E1 Certifiers under the BPB Eligible Criteria
- Tier 2: \$1,500.00 for Mutual Recognition approved Accredited E1 Certifiers

Nevertheless, the proposed reduction from \$1,500 to \$750.00 for the narrow scoped 'E1 Swimming Pool Certification' category is still excessive when compared to the functions of other BPB categories of accreditation which have a broader focus.

By comparison, Pool Safety Inspectors in Queensland pay an Application Fee of \$356.90 and a License Fee of \$171.90 = Total \$528.80

SPASA submits that there is no valid basis for the E1 Category fee to be excessive and that it should be brought into line with Queensland Pool Safety inspector Fees.

Any recommended fee reduction should see refunds provided to all E1 Certifiers that were required to pay the Tier 1: \$1,500.00 E1 Accreditation Fee.

## **2014 BPB CONSULTATION CONFIRMED FEES EXCESSIVE**

The BPB already have stakeholder input regarding E1 Accreditation Fees.

The proposed amendment concerning E1 Fees was already raised in August 2014 when the BPB consulted stakeholders on the creation of the E1 Category.

A vast majority of the responses within those submissions to the BPB in August 2014 expressed views that the E1 Accreditation Fee of \$1,500.00 was excessive.

Disappointingly, it would appear now that stakeholder feedback relating to fees in the 2014 Consultation was either overlooked or disregarded.

## **TIMING**

Timing allocated for stakeholders to consider the proposed amendments has been inadequate.

It is both unfortunate and untimely that such changes are now being proposed so close to the festive season and industry shut down periods whilst the 29<sup>th</sup> April commencement date draws closer.

The perception by industry is that the management of the swimming pool barrier program continues to be an afterthought and a playground for regulators to create policy on the run.

## **DISCUSSION PAPER**

SPASA understands that the BPB Proposed Amendments was only provided to a number of selected stakeholders when it should have been sent out to a broader audience.

Nonetheless, stakeholders who were invited to respond to the proposed amendments were not provided with an appropriate Explanation Note or a Discussion Paper.

SPASA considers a Discussion Paper critical in understanding: 2) the background to the problem, 2) what are the proposed amendments, 3) options for consideration and 4) the conflicts, impacts and benefits of change.

A BPB Discussion Paper should have been created and circulated widely to all concerned stakeholders so that what is being proposed is able to be appropriately scrutinised by the very people affected.

## SUMMARY

Industry and NSW residents have lost confidence in the Government's ability to roll out a swimming pool barrier inspection program. Sadly, the entire management of swimming pool and spa safety has been an outright mess from the start.

Failures and concerns have included:

- a) numerous and parallel one way consultations
- b) a botched roll out of the NSW Swimming pool register
- c) two x twelve month
- d) concerns relating to course providers, course scope and content
- e) confusion regarding application and interpretation
- f) limited resources to enact rollout
- g) limited communication to both industry and homeowners
- h) loss of confidence by industry and homeowners

SPASA continues to remain concerned at the government's ability to commence a pool and spa barrier inspection on the 29<sup>th</sup> April 2016 when the current *Review of the Swimming Pool Barrier Requirements for Backyard Swimming Pools in NSW* is currently being finalised and the *BPB proposed amendments* have only just gone out to consultation.

SPASA supports the 29th April 2016 implementation BUT only if all of government (including the BPB) move quickly to address the many and varied shortcomings previously and repeatedly raised.

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