

REIV's response to the Regulatory Impact Statement

Private Swimming Pools and
Spas

AUTHOR: G King

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REIV

INTRODUCTION

The Real Estate Institute of Victoria (REIV) is the peak professional association for the real estate industry in Victoria.

Our members specialise in all facets of real estate, including residential and commercial and industrial leasing and sales, auctions, business broking, buyers' agency, property management, owners' corporations and valuations.

REIV represents more than 80 per cent of these professions.

These businesses employ more than 15,000 people in Victoria in a market that handles around \$76 billion in transactions totalling 20 per cent of GSP.

The REIV supports the State Government's efforts to improve the safety of pools and spas in Victoria households, efforts that we hope will save the lives of children and anyone at risk of drowning.

Chapter 2 - Proposed regulatory approach

Q1. Do you agree that there should be no prescribed fee for the carrying out of an inspection and certification of a safety barrier? Please explain your response.

The REIV **agrees** there should be no prescribed fees for the carrying out of an inspection and certification of a safety barrier.

The REIV supports the principle of a free-market approach to inspection fees. This will allow a level of flexibility to owners in choosing the most suitable inspector to meet their needs. Furthermore, it is unlikely that a prescribed fee could be standardised for a metropolitan inspection, a regional city/town inspection and an inspection in a remote location. Inspections in each of these broad geographical locations would require their own cost modelling.

Q2. Do you agree that there should be no prescribed fee for councils to carry out information searches in relation to determining the date of construction of pools and spas? Please explain your response.

The REIV **agrees** that there should be no prescribed fee for councils to carry out information searches.

The REIV does not support a prescribed fee because this would result in owners with relatively recently constructed pools subsidising owners with older pools. Furthermore, owners of property within a council that has maintained an efficient record-keeping system will be subsidising owners who own property within a council with a history of poor record-keeping. Also see our response to Question 15 identifying the variance in the application of such searches for legally constructed pools compared with illegally constructed pools.

The REIV does not support councils setting their own fees. The REIV is concerned at the potential for large variations in the application of fees by different councils as identified on page 42 of the RIS. Unlike its response to Question 1, the REIV does not support a free-market approach within the local government sector.

Q3. If you believe that separate fee for council information searches should be charged, do you believe that the fee should be prescribed via regulations or set by individual councils? Please explain your response

The REIV **does not support** additional fees applied by councils. See our response to Question 2.

Q4. Do you agree that there should be no requirement for renewal of registration? Please explain your response.

The REIV **agrees** that there should be no requirement for renewal of pool and spa registration and supports the approach in the draft regulations enabling an owner to remove a pool from the register on the basis it no longer exists or is no longer captured by the legislation.

Chapter 3 - Registration

Q5. Do you support mandatory registration of all swimming pools and spas? Please explain your response.

The REIV **supports** the mandatory registration of all swimming pools but cautiously questions the applicability of the proposed registration and barrier inspection requirements for spas and in particular spas not associated with a swimming pool.

The REIV does not have sufficient information to enable it to comment in support or otherwise for the mandatory registration and barrier inspection requirements for spas, and specifically for spas not associated with a swimming pool.

The REIV emphasises that there is no intent to trivialise the potential danger of outdoor spas, or to question the current requirement for spa barriers. The REIV does not have enough information to make an informed decision as to its position.

Q6. Is the proposed deadline of 14 April 2020 for owners of existing swimming pools and spas to apply to register an appropriate timeframe? Please explain your response.

The REIV considers that the deadline of 14 April 2020 for owners of existing pools and spas is extremely tight and optimistic. There is a significant risk of substantial non-compliance with registration requirements beyond that date.

The REIV acknowledges that the proposed regulations are a response to the poor levels of compliance in relation to the provision of barriers for swimming pools and spas. The government appears to be seeking to 'adjust' the apathetic approach of Victorian pool and spa owners and local government to the provision, maintenance and enforcement of barriers by creating a prosecutable offence not to register a pool and spa.

The RIS has identified that a voluntary registration programme has resulted in fewer than 120 people out of an estimated 220,000 pool and spa owners registering (<0.06%) despite 32,000 individual visits to the VBA pool safety website.

If the estimation of 220,000 pool and spa owners is accurate then the registration process would require approximately 1,630 registrations each day and every day until the deadline (including weekends and public holidays), or more accurately close to 2,500 registrations every business day until the deadline.

The REIV, notes the levels of non-compliance with pool and spa registration in NSW at between 10 and 20 per cent some two years after the requirement for registration was introduced as cited on page 50 of the RIS. The REIV considers that to call this a minority is misleading. These figures support the REIV comments above.

The administrative burden on councils if compliance is high will be extraordinary. The compliance burden on councils if compliance is low will be even greater.

The REIV questions what the approach by the State Government and local councils will be in the face of substantial non-compliance with registration requirements beyond the due date.

Q7. Is the requirement for a registration application for new swimming pools and spas to be submitted within 30 days of the owner's receipt of a certificate of final inspection/occupancy permit appropriate? Please explain your response.

The REIV considers that 30 days is an appropriate reporting time for applying to register a new swimming pool and spa.

However, the REIV notes that the construction of any new pool or spa would continue to be required to be reported to councils through the lodgement of documents by the relevant building surveyor. What is being created through these proposed regulations is an added layer of regulatory burden on owners that rightly sits with councils.

The REIV accepts that the retrospective registration of pools by an owner is an appropriate method to achieve historic information. The REIV can find no justification for applying an ongoing obligation on owners to register new pools and spas, particularly as a prosecutable offence is being created as the 'stick' to owners rather than requiring councils to meet their statutory obligations under section 212 of the Building Act.

The REIV also considers that a building surveyor, on signing-off a building permit for a pool or spa must be satisfied that the work complies with the Building Act, the building regulations and the building permit. It would seem a more appropriate option for the building surveyor to lodge a certificate of compliance after the final inspection of the building work, and any additional lodgement fee above what is currently provided for in the regulations for documents lodged with council be waived.

The REIV respectfully contends that the authors of the RIS have misinterpreted the provisions regarding the sign-off of building work on page 47 (note 63) of the RIS or have at least missed a vital step in the approval and inspection stages. While occupancy permits and certificates of final inspections cannot be used as evidence that the building work complies with the Building Act or the Building Regulations, a final inspection is required to be undertaken at the completion of all building work for every building project. A building surveyor has an obligation to take appropriate action if that final inspection identifies non-compliance and only after the non-compliance has been rectified can the building surveyor approve the final inspection. This has nothing to do with occupancy permits or certificates of final inspection. All too often, a final inspection is not carried out as required, particularly after an occupancy permit has been issued. Therefore, having approved a final inspection, the building surveyor is best placed to issue a certificate of compliance without the need for another practitioner to be engaged.

Q8. Do you support no fee being required for an application to remove a swimming pool or spa from the register? Please explain your response.

The REIV **supports** no fee being required for an application to remove a swimming pool or spa from the register.

As outlined in the RIS, there is minimal administrative burden in removing an entry on the register.

Q9. Do you agree with the information proposed to be prescribed as required to be kept on the register? Please explain your response.

The REIV **agrees** with the information proposed to be prescribed as required to be kept on the register.

The REIV notes, in reference to its response to Question 7, that all of the proposed information to be prescribed could be provided easily by a building surveyor conducting a final inspection of the pool or spa and barrier.

Q10. Is there any other information that should be required to be included in the register? Please explain your response.

The REIV considers that all four suggested pieces of information outlined in Table 13 on page 54 of the RIS should be included in the register. The collation and identification of 'common issues' would help to achieve the intent of the regulatory changes because it would allow for specific targeted campaigns to raise awareness of those common defect issues.

It is unfortunate that the lack of homogeneity between councils means that this information will be collated and stored in a great variety of ways and without the capacity to have a single central record for ease of analysis.

Q11. What, if any, additional obligations should be placed on councils to keep the register up to date? For example, if after inspecting a safety barrier, an inspector believes that the applicable barrier standard recorded on the register is not accurate, should the council be required to update the register? Or can this be left to the discretion of councils.

The REIV considers that the council should be required to maintain the register with the most current and accurate information available. Failure to do so would see an erosion of the proposed system and make the regulatory burden imposed on owners somewhat pointless in that a register would exist with inaccurate information. Furthermore, knowingly failing to update information would come under some intense scrutiny in the unfortunate event of a coronial inquest or other legal proceeding.

Q12. Do you have any information or data supporting an amendment to the requirements in relation to windows in walls used as barriers for pools constructed prior to April 1991? If so, what amendments should be introduced to address these issues?

The REIV is not in a position to provide a response.

Q13. Do you have any information or data regarding how many swimming pool and spa barriers are likely to have multiple barrier standards, i.e. because of alterations to part of a barrier?

The REIV is not in a position to provide a response.

Q14. To what extent do you believe a system of mandatory self-assessment by owners of the compliance of their safety barrier would increase the safety of swimming pools and spas across Victoria? Please explain your response.

The REIV **does not** support a system of mandatory self-assessment by owners of the compliance of their safety barriers. The legal liability risk and financial impost for owners who lease their property (landlords) would be significant.

Unlike an owner/occupier, a landlord does not have control of the property from hour to hour and from day to day. In fact, the government's policy on residential tenancies applies an obligation on landlords to allow tenants to have 'quiet enjoyment' of the property. This places further philosophical if not practical limitations on the frequency rights of an owner (or property manager) to inspect the property. What a tenant does between inspections or visits is beyond the control of the landlord/owner and/or property manager. Naturally, an owner/landlord could not rely upon a self-assessment by a tenant and would be required to engage a building surveyor or building inspector at significant cost every year rather than every three years. This places a landlord at a disadvantage compared with an owner/occupier. This cost would be passed on to the tenant thereby increasing rental prices at a time the government is applying stringent new laws on residential tenancies likely, on their own assessment, to increase rental prices and reduce rental supply.

The REIV strongly opposes the introduction of a system of mandatory self-assessment by owners of the compliance of their safety barriers. This opposition was communicated at the earliest phase of the project and has been a regular theme in all responses

Q15. Do you agree that councils should be responsible for determining the date of construction? Please explain your response.

The REIV **agrees** that councils should be responsible for determining the date of construction. In cases where a swimming pool or spa has been constructed with the requisite building permit, the information as to the date of construction is already held by the council. In cases where a pool has been constructed without the requisite building permit, it is a matter of compliance and enforcement. Councils, which have for decades largely abrogated that responsibility, should act to legitimise the swimming pool or spa, and ensure appropriate records are in place to verify the history of the structure.

Chapter 4 – Inspection and Certification

Q16. Do you agree that the average period for operable components of a barrier to fail in the absence of appropriate maintenance is approximately three years? Please explain your response.

The REIV is not in a position to comment on the likely average period for operable components of a barrier to fail.

Q17. Do you agree with the proposed timeframes for when owners of swimming pools and spas constructed or under construction prior to 14 April 2020 must provide their first certificate of pool and spa barrier compliance? Please explain your response.

The REIV refers to its response to Question 6. The REIV considers that the timeframes as outlined in the RIS are tight and does not leave sufficient time for owners to be made aware of the proposed new requirements. Should the registration date be maintained at 14 April 2020, the REIV accepts the timeframe for provision of a certificate of compliance is appropriate.

Q18. How long does it usually take councils to resolve matter of swimming pool and spa safety barrier non-compliance? What factors influence the time taken (e.g. age of barrier)?

The REIV is not in a position to provide a response.

Q19. Do you believe that 30 days is an appropriate maximum 'currency' period for the lodging of a certificate of pool and spa barrier compliance? If you believe an alternative period is more appropriate, please indicate the period in your response.

The REIV **agrees** that 30 days is an appropriate maximum 'currency' period for the lodging of a certificate of compliance.

Q20. If periodic inspection and certification of barriers is required under the new scheme, what is the most appropriate interval for requiring owners to provide a new certificate of barrier compliance? Please explain your response.

The REIV supports the proposed three-year cycle of mandatory inspection and certification **if** mandatory periodic inspections are implemented. The REIV considers that it is more appropriate that the mandatory inspection and certification takes place prior to the sale of a property or prior to entering into a new lease for leased properties.

The responsibility for compliance with the legislation and regulations currently exists but is not appropriately enforced. Part of this shortfall in enforcement comes from the lack of registration of pools and spas and the lack of a trigger-point for inspection for continued compliance. By requiring an inspection prior to the sale or re-leasing of a property that trigger point would be in place.

The responsibility for continued compliance should fall with the new owner for the life of the pool/spa or the tenant (as well as the landlord) for the life of the lease agreement.

The REIV is concerned that an overbearing approach to compliance could lead to a significant cost impost for owners as building surveyors and inspectors require rectifications of compliant barriers in circumstances where they may believe that the barrier will deteriorate into non-compliance in the next three-year cycle. This is one reason for the REIV's support for inspections only prior to sale and lease accompanied by a registration system.

Inspections, by their very nature, are point-in-time compliance inspections. The REIV considers that an inspection under the proposed regulations is, in effect requiring a risk-assessment as to the likelihood that the barrier will continue to comply until the next inspection cycle.

Q21. Do you consider the size of the existing cohort of registered building surveyors and building inspectors to be enough to support the efficient and effective operation of the proposed scheme? Please explain your response.

The REIV has grave concerns regarding the proposed timeframes for the implementation of these proposed regulations. Exacerbating those concerns is the strong likelihood that there will be insufficient suitably qualified persons to conduct the requisite inspections.

The recent publicity around the professional indemnity insurance issues associated with building surveyors supports this concern. The implications for a building practitioner to be sued in the event a child drowns in a swimming pool contained within a barrier that is recently or previously certified as compliant are significant. As a consequence, we could see the insurance industry 'walk-away' from the provision of insurance for this function.

The REIV refers also to its response to Question 20 and again calls on the government to move to a prior to sale or lease model for inspections supported by a registration system. There is some concern that in order to ensure their ongoing viability as an insured person, an inspector or building surveyor may take an overbearing approach to inspections, particularly in light of the three-year gap between inspections.

There is little doubt the certification and inspection professions are facing a crisis that has been a long-time coming. A swimming pool or spa barrier inspection carries no less risk, and arguably a greater risk, than (say) an inspection of cladding or waterproofing. Cladding, once approved as compliant, will continue to be compliant under the standards in place at the time of approval. A swimming pool or spa barrier does not possess that same advantage and the functionality of its components and other factors can make a point-in-time compliance inspection worthless within a short period after the inspection is carried out.

Q22. If the new building inspector (pool safety) class is to proceed, are the proposed qualification and experience requirements suitable for the proposed scope of work? Please explain your response.

The REIV supports the qualification standard but does not support the experience requirement. It is considered that this will lead to a shortfall in available practitioners during the implementation phase and cause significant delays and backlogs in compliance activities.

Q23. Do you foresee any issues with applicants for the new building inspector (pool safety) class successfully meeting the proposed experience requirements? Please explain our response.

The REIV refers to its response to Question 22. The qualification that is to be offered should be attained with a practical assessment component that is included in a stringent evaluation under the required competencies to meet the standard for registration.

Chapter 5 – Procedures for dealing with non-compliant barriers

Q24. How effective do you believe the current enforcement powers available to MBSs under the Building Act are at addressing non-compliance of swimming pool barriers? Please explain your response.

The REIV considers that the enforcement powers currently available to MBSs under the Building Act are sufficient in most circumstances for the purpose of the existing and proposed regulations. The REIV considers that this issue is not about the availability of powers, but rather about appropriate resourcing and focus. This is exacerbated by the varying level of resources committed to the building departments between councils.

An historic aspect of this is that Councils generally, and MBSs specifically, have been reluctant to take compliance action where a building permit has been issued by a private building surveyor.

The REIV considers that a building order for minor work is an appropriate and effective tool to ensure compliance. It is widely recognised and reported within the RIS that councils have a low appetite to take proactive enforcement action regarding swimming pools and spas and adopt a risk management approach, often only responding to complaints and referrals.

The REIV points to Division 1 of Part 13 of the Building Act that gives the Minister for Planning broad directive powers where a council or municipal building surveyor has not satisfactorily carried out any function given to the council or building surveyor under the Act.

However, the REIV recognises that the impact of these proposed regulations on councils, particularly those with limited resources in their building departments, will be significant. The REIV therefore supports the proposed barrier improvement notice and infringement penalties to ease this burden, particularly during the transition period. (see REIV's response to Question 31)

Q25. Do you agree with the proposal to provide swimming pool and spa inspectors with discretion to oversee the rectification of minor instances of non-compliance? Please explain your response.

The REIV **agrees** (in principle) with the proposal to provide pool and spa inspectors with discretion to oversee the rectification of minor instances of non-compliance. The REIV cautions against the potential for an inspector to become involved in recommending a design solution or having any role in recommending a supplier or rectifying tradesperson. The REIV also cautions against the potential for an inspector to require rectification in circumstances where the barrier is currently compliant, but due to the likelihood that a component of the barrier will deteriorate within the ensuing three-year cycle, rectification is required. In the absence of third-party intervention (such as a council) empowering inspectors to oversee rectification could lead to an abuse of power or inappropriate enforcement action.

Please read this response in the conjunction with the responses to Questions 20 and 21.

Q26. Is it likely that there will be many instances on non-compliance identified where the inspector forms a belief that there is no significant and immediate risk to life and safety? Please explain your response.

The REIV considers there may be many instances where minor issues of non-compliance do not pose a significant and immediate risk to life or safety. Examples of this include the removal of an object adjacent to a barrier, a defective single element of a pool barrier located in a hard-to-access location, or small maintenance requirements that can be rectified quickly and easily.

The REIV considers that there may also be instances where compliant barriers with a deteriorating component are deemed to be non-compliant as a risk-mitigation strategy by an inspector (see responses to Questions 20, 21 and 25).

Q27. Is the proposed maximum period of 20 business days the appropriate limit for the period that inspectors can provide owners to address non-compliance? Please explain your response.

The REIV considers the proposed maximum period of 20 business days is an appropriate limit for the period to address non-compliance. The REIV cautions that this should be the active judgment of the inspector and should take into consideration the extent and nature of the non-compliance, the weather conditions and season (the warmer months potentially posing a higher immediate risk because of the heightened attraction to the pool area) and the perceived attitude of the owner to address the non-compliance. There is a natural propensity for a maximum period to be applied without flexibility or consideration of extant circumstances that may warrant a shorter period.

Q28. Are there any other criteria, apart from the immediacy of risk of young children gaining unsupervised access to the swimming pool or spa, that should be considered in prescribing matters for this purpose? Please explain your response.

The REIV is not in a position to provide a response.

Q29. Are the non-compliance matters proposed to be prescribed as always requiring the immediate lodgement of a certificate of pool and spa barrier non-compliance with council appropriate? Please explain your response.

The REIV considers that the four prescribed matters within the RIS are appropriate for the immediate lodgement of a non-compliance certificate.

The REIV would expect that should other matters be identified as posing unacceptable levels of risk, they may be added to the list as the registration and certification process matures.

Q30. Are there any matters that are not listed that should be prescribed in the proposed Regulations? Please explain your response.

The REIV is not in a position to identify other potential prescribed non-compliance matters.

Q31. Is there an approach other than the proposed barrier improvement notice process, that would better assist councils to effectively and efficiently respond to non-compliance raised through lodgement of certificates or pool and spa barriers non-compliance? Please explain your response.

The REIV refers to its response to Question 24. Notwithstanding, the proposed barrier improvement notice process appears to be an efficient additional tool for councils to use. The REIV does not propose any alternative approach.

Q32. Do you agree that 14 days is a reasonable minimum period of time for owners to be required to comply with a barrier improvement notice issued by a council? Please explain your response.

The REIV agrees that 14 days is a reasonable minimum period of time for owners to be required to comply with a barrier improvement notice issued by a council.

Councils should be encouraged to provide a slightly longer period of time for rented premises to allow a landlord/property manager to access the property for this purpose.

Q33. Do you believe the existing exemptions in items 3 and 4 of Schedule 3 to the Building Act cover repair, renewal, maintenance, or alterations work on a swimming pool or spa barrier? Please explain your response.

The REIV believes that the existing exemptions adequately cover the rectification of the majority of swimming pool or spa barrier defects.

However, the REIV recommends additional clarification to ensure owners are not subjected to unnecessary costs and delays because of the potential for a variety of interpretations of the current exemptions.

Q34. Do you agree with the proposal to insert a new item into Schedule 3 that would exempt certain work involving replacement of parts of a swimming pool or spa barrier form (sic) the building permit requirements? Please explain your response.

The REIV agrees with the proposal to insert a new item into Schedule 3 that would exempt certain work involving replacement of parts of a swimming pool or spa barrier from the building permit requirements.

The REIV considers that this insertion will provide a level of clarification and consistency ensuring owners are not subjected to unnecessary costs and delays because of the potential for a variety of interpretations of the current exemptions.

Q35. Are the limitations on the proposed exemption relating to the replacement of safety barrier parts appropriate? Is it necessary to broaden or lessen the application of the proposed exemption in some manner? Please explain your response.

The REIV considers the proposed exemptions relating to the replacement of safety barrier parts is appropriate.

The REIV considers that the application of the proposed exemption should be broadened to include all work required to return the barrier into a state of compliance.

The rationale for broadening the exemption is that a building permit has already been issued for the construction and supposedly 'signed off' as compliant. All that is being achieved in ensuring the barrier complies is a reinstatement to a position of compliance and a building permit should not be required to achieve this. Such a requirement would be an unnecessary regulatory burden and cost to the owner.

The only proviso to the REIV's position on this aspect is that work to (in effect) replace or rebuild the entire barrier should require a fresh building permit.

Q36. How much is it likely to cost owners to appoint a building surveyor to oversee building work to rectify a non-compliant safety barrier? Please explain your response.

The REIV is not in a position to estimate this cost.

The REIV queries why a building surveyor would be required to oversee the building work to rectify a non-compliant safety barrier. Any non-compliance would require a re-inspection, by a registered practitioner, building surveyor or building inspector.

The REIV supports a free-market approach to the setting of fees. (See the REIV's response to Question 1.)

Chapter 6 - Relocatable pools

Q37. Do you have any data or information regarding the number of relocatable pools sold that have a depth of at least 300mm, but which do not constitute a 'structure' as discussed in section 6.6?

The REIV does not have any data or information in this regard.

Q38. Do you have a view as to whether an amendment to the Building Act should be made to ensure that its requirements apply to all relocatable pools with a depth of at least 300mm? Please explain your response.

The REIV identifies the existing lack of clarity and certainty around the issue of relocatable pools and whether any particular relocatable pool is in fact a structure for the purposes of the Building Act. The REIV, while not able to provide a response to this question, has great concern that the RIS itself has not been able to remove that lack of clarity and certainty.

The REIV recommends that every effort be made to establish whether or not any specific relocatable pool is captured by the Act and the proposed regulations. Failure to do so will expose many owners to unfair interpretation and potential prosecution or other legal action.

Q39. Are there alternative means for ensuring that landlords are not unfairly burdened by the actions of their tenants in relation to the erection of a relocatable pool? Please explain your response.

The REIV strongly opposes any legislation or regulations that impose an unreasonable expectation on a person who has no control over the circumstances. The REIV considers that any proposal that an owner, being a landlord, should in anyway be held responsible for the unlawful actions of a tenant is reprehensible. As previously stated, the government's policy on residential tenancies applies an obligation on landlords to allow tenants to have 'quiet enjoyment' of the property.

This places further philosophical if not practical limitations on the frequency rights of an owner (or property manager) to inspect the property. What a tenant does between inspections or visits is beyond the control of the landlord/owner and/or property manager.

The fundamental principle of any offence in these circumstances should be 'knowledge' or '*mens rea*'. The element of proof required for a prosecution against an owner who is a landlord must include knowledge. In the absence of knowledge, or in the absence of evidence suggesting a blind indifference, no prosecution relating to relocatable pools should be levied against a landlord. This becomes problematic in terms of infringement notices which typically are issued for offences that do not require the element of knowledge (such as speeding or parking infringement notices) and are categorised as absolute liability offences.

The REIV notes that if it could be shown that an owner/landlord knew, or should have known, of the existence of a relocatable pool, then the owner/landlord should be held accountable.

The REIV does not consider that the proposal that DELWP 'work with Consumer Affairs Victoria ... in their ongoing review of the residential tenancies framework to prioritise consideration of his issue' is an appropriate solution. Firstly, the REIV has no confidence that an outcome would be achieved in a timely manner (if at all). Secondly, the REIV considers that it is not appropriate to introduce a regulatory regime with such a significant flaw, knowing that such a flaw exists. Thirdly, while a practical approach may be taken by some councils in some circumstances, it is likely that a broad range of interpretations and application of compliance would be applied within and between councils.

The REIV also notes the language used in drafting this question. In our view use of the terminology 'unfairly burdened by the actions of their tenants' is not appropriate. It would have been more accurate and transparent to use words such as 'unfairly exposed to legal action and liability by the actions of their tenants'.

Q40. What is the current rate of compliance amongst relocatable pool owners applying for building permits to erect their pools?

The REIV is not in a position to respond to this question.

Q41. Do you support exempting the erection of all relocatable pools from the requirement to apply for a building permit? Please explain your response.

Without providing a definitive answer, the REIV supports (in principle) exempting the erection of all relocatable pools from the requirement to apply for a building permit.

The REIV identifies the existing lack of clarity and certainty around the issue of relocatable pools and whether any particular relocatable pool is in fact a structure for the purposes of the Building Act. The REIV has great concern that the RIS itself has not been able to remove that lack of clarity and certainty.

The REIV recommends that every effort be made to establish whether or not any specific relocatable pool is captured by the Act and the proposed regulations. Failure to do so will expose many owners to unfair interpretation and potential prosecution or other legal action.

Q42. Do you agree that it is reasonable to only require the registration of a relocatable pool or spa once it has remained erected for three consecutive days? Please explain your response.

The REIV refers to its response to Question 39 (as it applies to landlords and tenants).

In terms of the broader application of this requirement, the REIV is not able to provide an informed response to this question.

Q43. Do you believe that the registration requirement for relocatable pools and spas can be effectively enforced? Please explain your response.

The REIV does not consider the registration requirement for relocatable pools and spas (whether it be one day, three days, or longer) can be enforced effectively.

The current level of compliance by owners of relocatable pools and spas is reportedly extremely low, as is the level of oversight by councils. There is nothing in the RIS that convinces the REIV that councils will take a more rigorous approach to this particular area or that owners will take a more responsible approach.

Q44. Do you have any information regarding how many relocatable pools are likely to be left in place for longer than three days?

The REIV is not in a position to respond to this question.

Q45. Do you think that the fee for the registration of a relocatable pool should be the same as for a permanent pool? If not, please indicate an appropriate fee and the reasons why the registration fees should be different.

The REIV can see no justification in varying registration fees for pools and spas based on their type.

Q46. Do you agree with the proposed requirement that councils will nominate when the first certificate of pool and spa barrier compliance is required to be provided for a relocatable pool or spa, not being more than 30 days after it was registered? Please explain your response.

The REIV is not in a position to provide an informed response to this question and refers to its response to question 39.

Chapter 7 – Additional regulatory options considered

Q47. To what extent do you believe mandatory CPR signage would contribute to a reduction in fatal drownings and lessen the impact of non-fatal drownings of young children in private swimming pools and spas across Victoria? Please explain your response.

The REIV has no data to support this proposal or otherwise, other than that provided in the RIS. The REIV supports the requirement for mandatory CPR signage however refers to its response to Question 39 (as it applies to landlords and tenants).

Q48. To what extent do you believe a mandatory warning notice like that required in NSW would promote the safe use of private swimming pools and spas across Victoria? Please explain your response.

The REIV has no data to support this proposal or otherwise, other than that provided in the RIS. As a general proposition, the REIV does not support this proposal.

Q49. Do you believe the Building Regulations should allow for lockable spa lids to be used as an alternative means of complying with the requirement for spas to be enclosed by a compliant safety barrier in Victoria? Please explain your response.

The REIV supports the use of lockable spa lids as an alternative means of complying with the requirement for spas to be enclosed by a compliant safety barrier in Victoria.

The REIV takes this position on the basis that it would reduce the regulatory burden for owners and provides a suitable alternative to the expense of providing a compliant safety barrier. The REIV refers to its response at Question 5 for some context around this issue.

Q50. If you agree that lockable spas lids are an acceptable alternative to a safety barrier, are there any limitations on the types of lids that should be accepted? Please explain your response.

The REIV does not have sufficient information to provide an informed response to this question however the emphasis on 'lockable' seems vital.

Q51. If lockable spas lids are accepted as an alternative to a safety barrier, what is the appropriate method of ensuring that they are effective in preventing access to the spa by young children? For example, is it necessary that they be inspected by an independent third party; or should owners be required to use a self-assessment checklist; or is there another mechanism?

The REIV does not have sufficient information to provide an informed response to this question. Given, that by its very nature, the lockable lid is unlocked and removed before and during use of the spa, there should be a requirement for the lid to be replaced and locked when (generally) not in use.

Chapter 10 – Implementation, evaluation and forward work program

Q52. Do you believe including information regarding certificates of pool and spa barrier compliance in the due diligence checklist under sale of land obligations would promote the safety of swimming pools and spas across Victoria? Please explain your response.

The REIV supports the proposed three-year cycle of mandatory inspection and certification if mandatory periodic inspections are implemented. The REIV considers that it is more appropriate that the mandatory inspection and certification takes place prior to the sale of a property or prior to entering into a new lease for leased properties.

The responsibility for compliance with the legislation and regulations currently exists but is not appropriately enforced. Part of this shortfall in enforcement comes from the lack of registration of pools and spas and the lack of a trigger-point for inspection for continued compliance. By requiring an inspection prior to the sale or re-leasing of a property that trigger point would be in place.

The responsibility for continued compliance should fall with the new owner for the life of the pool/spa or the tenant (as well as the landlord) for the life of the lease agreement.

The REIV is concerned that an overbearing approach to compliance could lead to a significant cost impost for owners as building surveyors and inspectors require rectifications of compliant barriers in circumstances where they may believe that the barrier will deteriorate into non-compliance in the next three-year cycle. This is one reason for the REIV's support for inspections only prior to sale and lease accompanied by a registration system.

Inspections, by their very nature, are point-in-time compliance inspections. The REIV considers that an inspection under the proposed regulations is, in effect requiring a risk-assessment as to the likelihood that the barrier will continue to comply until the next inspection cycle.

Q53. Do you think amending regulation 51(1) of the Building Regulations so potential purchasers can request information regarding the existence of a certificate of pool and spa barrier compliance from the relevant council is sufficient to allow them to fully inform themselves regarding the status of a pool or spa? Please explain your response.

The REIV supports such an amendment to regulation 51(1) as a practical approach but also refers to its response to question 52.

Q54. Have you ever purchased a property with a swimming pool or spa? If so, what was the condition of the safety barrier?

This question is irrelevant to the REIV for the purposes of the RIS.

Q55. Do you think including a compliance certificate as part of the prescribed information under the Residential Tenancies Act 1997 would promote the safety of swimming pools and spas across Victoria? Please explain your response.

The REIV supports such inclusion but also refers to its response to question 52.

Q56. Do you think including a certificate of compliance on the condition report for residential rental properties would promote the safety of swimming pools and spas across Victoria? Please explain your response.

The REIV supports such inclusion but also refers to its response to question 52.

Q57. Do you have any information regarding how many residential rental properties have swimming pools or spa?

The REIV does not hold such records.

Q58. Have you ever rented a property with a swimming pool or spa? What was the condition of the barrier? If the barrier was in a poor condition, did the owner repair the barrier?

This question is irrelevant to the REIV for the purposes of the RIS.