

7 Quality of inspections

As discussed in Chapter 4, the Office found that, of the 16 children who died by drowning following an incident in a swimming pool, 13 children aged under five years (81 per cent) died following an incident in a swimming pool with either no barrier, a defective barrier or a climbable object near the permanent barrier.

As discussed in Chapter 6, regulation 53(1) of the *Building Regulations 2012* requires local governments to arrange for the inspection of private swimming pool barriers every four years to monitor whether the barriers are compliant with the requirements specified in the *Building Regulations 2012*.

Chapter 6 identified whether local governments had undertaken such inspections in the required time period. This Chapter discusses the quality of local governments' inspections, that is, whether these inspections effectively monitored whether the barriers were compliant with the requirements specified in the *Building Regulations 2012*.

7.1 The Office's approach to examining the quality of local governments' swimming pool barrier inspections

7.1.1 Research literature

The research literature recognises that inspections are one of the most important ways to enforce regulations and ultimately to safeguard health and safety:

Regulatory enforcement is ... a major element in safeguarding health and safety ...inspections are the most visible and important among regulatory enforcement activities.¹⁹⁷

Through its literature review of best practice for regulatory inspections, the Office developed an approach to examining the quality of local governments' inspections of swimming pool barriers. In particular, the Office considered the Organisation for Economic Cooperation and Development's (OECD's) *Regulatory Enforcement and Inspections, OECD Best Practice Principles for Regulatory Policy*¹⁹⁸ (the **OECD Principles**) and the National Association of Testing Authorities (Australia) *ISO/IEC 17020 Inspection Standard Application Document* (the **NATA Inspection Standard**).¹⁹⁹ The literature review identified the following key elements as fundamental to a quality inspection process:

¹⁹⁷ Organisation for Economic Cooperation and Development, *Regulatory Enforcement and Inspections, OECD Best Practice Principles for Regulatory Policy*, OECD Publishing, 2014, viewed 2 August 2015, <<http://www.oecd.org/gov/regulatory-enforcement-and-inspections-9789264208117-en.htm>>, pp 1-69.

¹⁹⁸ Organisation for Economic Cooperation and Development, *Regulatory Enforcement and Inspections, Best Practice Principles for Regulatory Policy*, OECD Publishing, 2014, viewed 2 August 2015, <<http://www.oecd.org/gov/regulatory-enforcement-and-inspections-9789264208117-en.htm>>.

¹⁹⁹ National Association of Testing Authorities, *The ISO/IEC 17020 Inspection Standard Application Document*, 2015, Australia.

- the person undertaking the inspection has the appropriate experience and/or qualifications;²⁰⁰
- inspections are undertaken against a sound framework;²⁰¹ and
- adequate records are kept of the inspections.²⁰²

The Office's examination of each of these elements is set out below.

7.2 Experience and qualifications of inspectors

7.2.1 Legislative requirements

The *Building Act 2011* enables local governments to authorise an employee or another person not employed by the local government to inspect swimming pool barriers. Where the authorised person is a local government employee, the legislation does not specify any requirements in relation to their experience or qualifications. However, where the person is **not** an employee of the local government (that is, a contractor), regulation 5A of the *Building Regulations 2012* provides that:

5A. Authorised persons (s. 3)

For the purposes of paragraph (b) of the definition of **authorised person** in section 3 an authorised person includes a person who is authorised by a local government for the purposes of section 93(2)(d) as a **person having the appropriate experience or qualifications**, whether the authorisation is effective before or after the day on which the *Building Amendment Regulations (No. 2) 2012* regulation 4 comes into operation. [Emphasis added]

7.2.2 Guidelines

The *Inspector Guidelines* specify that a pool inspector is required to be an authorised person and that this includes having appropriate experience or qualifications, as follows:

A pool inspector is required to be an authorised person. An authorised person includes a person who is authorised by a local government as having the appropriate experience or qualifications (*Building Act 2011* sections 3, 93(2)(d) and 96, *Building Regulations 2012* regulations 5A and 53(1)).²⁰³

²⁰⁰ National Association of Testing Authorities, *The ISO/IEC 17020 Inspection Standard Application Document*, 2015, Australia, p. 9.

²⁰¹ Organisation for Economic Cooperation and Development, *Regulatory Enforcement and Inspections, Best Practice Principles for Regulatory Policy*, OECD Publishing, 2014, viewed 2 August 2015, <<http://www.oecd.org/gov/regulatory-enforcement-and-inspections-9789264208117-en.htm>>, p. 12; National Association of Testing Authorities, *The ISO/IEC 17020 Inspection Standard Application Document*, 2015, Australia, p. 9.

²⁰² National Association of Testing Authorities, *The ISO/IEC 17020 Inspection Standard Application Document*, 2015, Australia, p. 17.

²⁰³ Government of Western Australia, Department of Commerce, Building Commission, *Inspector Guidelines: Private swimming and spa pool*, August 2016, viewed 31 August 2016, <https://www.commerce.wa.gov.au/sites/default/files/atoms/files/private_swimming_and_spa_pool_inspector_guidelines_-_august_2016_web.pdf>, p. 7.

The *Inspector Guidelines* do not distinguish between authorised persons who are local government employees and those who are contractors and do not provide any further advice to local governments regarding what constitutes appropriate experience or qualifications of authorised persons.

7.2.3 Research literature

The NATA Inspection Standard states that the competence of inspectors is critical to the validity of inspection findings and identifies requirements regarding the competence of inspectors, as follows:

6.1 Personnel

...

6.1.3

a) The competence of inspectors is critical to the validity of inspection findings. Competence is understood to encompass both theoretical knowledge and practical ability. Depending upon the industry group, competence may demand familiarity with relevant regulations, technologies, processes, standards, codes, materials, failure modes and industry practice. Competent outcomes may also be influenced by the personnel's knowledge of the inspection body's management system and ability to implement administrative as well as technical procedures applicable to the activities performed.

b) Competence requirements apply equally for both employed and contracted personnel.²⁰⁴

7.2.4 Employment of inspectors of swimming pool barriers by local governments

The Office found that, at the time of the Investigation, none of the five selected local governments were engaging contractors to undertake inspections. For this reason, the discussion in this section focuses on the experience and qualifications of local government employees working as inspectors.

Prior to the Investigation, two of the five selected local governments had wholly, or in part, contracted out the inspection function. For completeness, therefore, the Office asked RLSSWA for details of the inspections they undertook on behalf of local governments from 2008 to 2016.

The Office's analysis of the information provided by RLSSWA found that, from 1 January 2008 to 25 November 2016:

- 23 local governments had engaged RLSSWA to undertake inspections of swimming pool barriers; and
- RLSSWA had undertaken 54,407 inspections of swimming pool barriers.

²⁰⁴ National Association of Testing Authorities, *The ISO/IEC 17020 Inspection Standard Application Document*, 2015, Australia, p. 9.

As at 25 November 2016, three local governments had contracts in place with RLSSWA for inspections.

7.2.5 There is no specified level of experience or specific qualification for inspectors

As previously discussed, there is no legislative requirement for local governments to ensure that local government employees who undertake inspections of swimming pool barriers have the appropriate experience and qualifications (as opposed to people who are not local government employees, that is, contractors).

The NATA Inspection Standard specifies that:

The following matters are required to be addressed:

1. The inspection body must identify the minimum levels of qualification and experience necessary for people to perform relevant tasks.

...

3. The inspection body must develop and implement competency assessment criteria for staff outlining their responsibilities, and the expectations of the inspection body regarding the conduct of work including field activities and interpretation of codes.²⁰⁵

The Office reviewed the job description forms for inspectors at the five selected local governments to identify if they included any requirements with regard to experience and qualifications.

With respect to experience, the Office found that one of the five selected local governments included experience in the swimming pool or pool enclosure industry (for example, experience as a swimming pool installer) as a selection criterion in the job description form and four of the five selected local governments included general experience in compliance inspections including in the planning, building or health fields in the selection criteria. At interview, all five selected local governments reported they sought people who had previous experience in swimming pool inspections, although four of the five selected local governments reported that this was difficult to achieve.

With respect to qualifications, two of the five selected local governments included a generic qualification as a desirable requirement in the selection criteria, for example, a qualification in Building Surveying or relevant field or a Diploma in Legal Studies, a Diploma in Applied Science or a Certificate IV in Government Statutory Investigations and Enforcement. Three of the five selected local governments did not include a qualification as either an essential or desirable requirement in the job description form.

In addition, as the Independent Review Discussion Paper observed, in Western Australia '[t]here are no accreditation requirements for pool inspectors established by the state and it

²⁰⁵ National Association of Testing Authorities, *The ISO/IEC 17020 Inspection Standard Application Document*, 2015, Australia, p. 10.

is up to individual local authorities to assess the suitability of pool inspectors.²⁰⁶ The Independent Review Discussion Paper also identified that accreditation arrangements, involving training and certification, apply in Queensland and New South Wales.²⁰⁷

7.2.5.1 Local governments reported that the lack of a specific qualification for swimming pool barrier inspections makes it difficult to recruit inspectors with the appropriate skills and experience

One difficulty reportedly arising from the absence of a specific qualification or other training program for swimming pool inspectors was in sourcing inspectors with the necessary skills and experience. All five selected local governments stated at interview that a qualification specific to swimming pool barrier inspections would assist with the recruitment of inspectors. Of particular note, at interview, the City of Bayswater informed the Office that it did not have a dedicated inspector of swimming pool barriers for much of the time from 1 July 2014 to 30 June 2015 due to difficulties in recruiting a suitably skilled and qualified inspector. During this time, the building surveyors at the City of Bayswater undertook swimming pool barrier inspections in addition to their other duties.

Difficulties in sourcing inspectors was also identified by several of the 138 survey respondents from small local governments that stated that providing the inspection service is complex, costly (as discussed in 6.8.3) and challenging, particularly with respect to recruiting appropriately skilled staff. These survey respondents stated that they either operated on 'skeleton staff' or the position of the inspector was not filled by an appropriate candidate.

This sentiment has been echoed by the RLSSA as follows:

Different jurisdictions have different qualification and training requirements for pool fence inspectors. Within jurisdictions there is also variation between qualifications required for certification of new fences and qualifications required for certification of existing fences.

This variation[s] [in qualifications] adds a degree of complexity which frustrates inspection and enforcement. It makes it harder to source qualified inspectors and it makes it more expensive to train inspectors. If one national qualification was accepted for pool fence inspectors then national training programs could be developed and economies of scale would reduce training costs. The pool of qualified inspectors would also be increased for all regulators and qualified staff would be easier to source.²⁰⁸

²⁰⁶ Lambert, M, *Independent Review of NSW Swimming Pool Barrier Requirements: Discussion Paper*, 2015, viewed 10 August 2016, <<https://www.olg.nsw.gov.au/sites/default/files/Independent-Review-of-NSW-Swimming-Pool-Barrier-Requirements-Discussion-Paper-2015.pdf>>, p. 23.

²⁰⁷ Lambert, M, *Independent Review of NSW Swimming Pool Barrier Requirements: Discussion Paper*, 2015, viewed 10 August 2016, <<https://www.olg.nsw.gov.au/sites/default/files/Independent-Review-of-NSW-Swimming-Pool-Barrier-Requirements-Discussion-Paper-2015.pdf>>, pp 44-48.

²⁰⁸ Royal Life Saving Society Australia, *Position Paper: Nationally consistent regulation of pool barriers*, Royal Life Saving Society Australia, 2007, Broadway, p. 9.

7.2.6 There is no formal training for new inspectors

The OECD Principles identify that inspectors should be trained in the inspection process and managed to ensure consistency and transparency in the inspection process, as follows:

11. Professionalism. Inspectors should be trained and managed to ensure professionalism, integrity, consistency and transparency: this requires substantial training focusing not only on technical but also on generic inspection skills, and official guidelines for inspectors to help ensure consistency and fairness.²⁰⁹

All five selected local governments stated at interview that formal training leading to an inspector qualification specific to swimming pool barrier inspections would improve the quality and consistency of inspections within and between local governments. More specifically, all five selected local governments suggested that a training program with content based on the *Building Regulations 2012* and the principles of building inspections would assist in training new inspectors in the process of undertaking swimming pool barrier inspections. Similarly, one of the 138 survey respondents suggested that a specific training course for inspectors could be adopted throughout the state to ensure an adequate standard and consistency of inspections.

As discussed at section 6.3.5, section 86(h)(i) of the *Building Services (Complaint Resolution and Administration) Act 2011* relevantly provides:

86. Functions

The Building Commissioner has the following functions —

...

- (h) to provide, or facilitate the provision of, advice, information education and training in relation to —
 - (i) building standards and codes; and
 - (ii) consumer protection in relation to building services;

Taking into account the importance placed on training in the research literature, and by local governments and RLSSWA, as discussed above, a training program specifically for inspectors should be considered.

²⁰⁹ Organisation for Economic Cooperation and Development, *Regulatory Enforcement and Inspections, Best Practice Principles for Regulatory Policy*, OECD Publishing, 2014, viewed 2 August 2015, <<http://www.oecd.org/gov/regulatory-enforcement-and-inspections-9789264208117-en.htm>>, p. 14.

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.

7.2.6.1 Compliance promotion and conflict resolution skills are essential skills for undertaking swimming pool barrier inspections

The OECD Principles state:

A competency framework for inspectors would encompass not only technical skills (of course fundamental – ensuring that inspectors' specific knowledge remains current throughout their career), but just as importantly generic skills relating to their work as inspectors. This should include the understanding and analysis of risk, approaches to compliance promotion (communication, relationship-building, how to handle infringements), etc.

...

Conflict management skills are also important for them to handle often complex situations with businesses.²¹⁰

The Office analysed whether inspectors were recruited with specific knowledge and skills in compliance promotion and conflict resolution. At interview, all five selected local governments stated that they looked for people with good communication skills to employ as inspectors. The ability to negotiate and resolve conflicts was considered to be of particular importance as inspectors are required to negotiate with people to ensure the barrier to their swimming pool complies with the legislation. All five selected local governments' job description forms for inspectors included good customer service skills, communication skills and conflict resolution skills as essential requirements. The five selected local governments identified that specific training in compliance promotion and conflict resolution would assist inspectors in their compliance promotion and enforcement roles, which is a particularly challenging area of their work.

²¹⁰ Organisation for Economic Cooperation and Development, *Regulatory Enforcement and Inspections, Best Practice Principles for Regulatory Policy*, OECD Publishing, 2014, viewed 2 August 2015, <<http://www.oecd.org/gov/regulatory-enforcement-and-inspections-9789264208117-en.htm>>, pp. 63-64.

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.

7.2.7 All five selected local governments used a system of pairing newly employed inspectors with an experienced inspector as part of their on-the-job training

The NATA Inspection Standard recognises that '[w]here relevant, inspection body staff must have ... completed relevant in-house training',²¹¹ and further that a system is needed to develop less experienced staff, stating:

2. A system to manage the development and appointment of staff must be developed and associated procedures must be documented. It may be possible for a graded system to be developed, allowing for personnel development, enabling recognition of experience while limiting the risks associated with using less experienced staff.²¹²

All five selected local governments stated that all new employees were given a general induction to local government. As part of their on-the-job training processes, all five selected local governments organised for new inspectors to shadow an experienced inspector. The new inspector conducted inspections with the experienced inspector until the experienced inspector assessed the new employee as competent in the role. This process lasted from two to four weeks. Two of the five selected local governments organised for the new inspector to shadow two different experienced inspectors until the experienced inspectors assessed that the new inspector was competent.

7.2.8 There is limited continuous professional development for inspectors

The NATA Inspection Standard identifies that:

4. Where relevant, staff must participate in professional development (for example, through attendance at exhibitions, industry meetings and ongoing training).²¹³

Continuous professional development is particularly relevant to inspectors of swimming pool barriers as the applicable standards have been, and are likely to continue to, change over time.

The Office analysed the professional development provided by the five selected local governments to their inspectors and by the Building Commission. The Office found that there is no continuous professional development program specifically for inspectors on

²¹¹ National Association of Testing Authorities, *The ISO/IEC 17020 Inspection Standard Application Document*, 2015, Australia, pp. 9-10.

²¹² National Association of Testing Authorities, *The ISO/IEC 17020 Inspection Standard Application Document*, 2015, Australia, p. 10.

²¹³ National Association of Testing Authorities, *The ISO/IEC 17020 Inspection Standard Application Document*, 2015, Australia, p. 10.

undertaking swimming pool inspections. The Office notes that, between April and June 2016, some professional development was provided by the Building Commission regarding changes to the *Building Regulations 2012* and the AS 1926.1-1993. This was in the form of a half-day workshop for both local government inspectors and building surveyors. Four of the five selected local governments reported that their inspectors had attended this workshop. The five selected local governments did not identify any other specific training or professional development opportunities for their inspectors during the previous two years. However, the five selected local governments stated that continuous professional development, including information, education and training about the *Building Regulations 2012* and applicable standards would assist inspectors in undertaking inspections in accordance with the legislation and regulations.

In relation to continuous professional development, the Independent Review Discussion Paper identified:

[T]he ... [inspector] is a quite specialised role and operates in a narrow area, the requirements of the role are quite complex, given the legislative and regulatory requirements and the multiple numbers of pool barrier standards that can apply, depending on when the pool was constructed, its maintenance and the nature of any subsequent work. For these reasons there would appear to be merit in allocating a certain number of hours each year to CPD [Continuous Professional Development], provided it is targeted at the specific function and responsibilities of ... [inspectors].²¹⁴

The Independent Review Discussion Paper's findings regarding New South Wales are also relevant to Western Australia given the three barrier standards that can apply here, depending on when the pool was constructed, its maintenance and the nature of any subsequent work. As discussed at section 7.2.6 the Building Commissioner's education role, pursuant to section 86(h)(i) of the *Building Services (Complaint Resolution and Administration) Act 2011* is to 'provide, or facilitate the provision of, advice, information education and training in relation to ... building standards and codes'.

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.

7.2.9 Only one of the five selected local governments had a quality assurance process for ensuring consistency of swimming pool barrier inspections across inspectors

The research literature recognises that it is critical that inspections are undertaken in a consistent manner. In relation to the importance of consistency, the OECD Principles recognise:

²¹⁴ Lambert, M, *Independent Review of NSW Swimming Pool Barrier Requirements: Discussion Paper*, 2015, viewed 10 August 2016, <<https://www.olg.nsw.gov.au/sites/default/files/Independent-Review-of-NSW-Swimming-Pool-Barrier-Requirements-Discussion-Paper-2015.pdf>>, p. 45.

Lack of consistency between inspectors in the way they interpret requirements, and lack of predictability in what will be expected from the regulated subjects, are issues that not only create burden for businesses – but also result in lower compliance overall, as businesses are discouraged from trying to comply.²¹⁵

The NATA Inspection Standard also identifies that inspection bodies should take steps to ensure that there is consistency in inspections across inspectors:

7. A system to assure confidence in inspections conducted by different inspectors must be developed ... The use of this system must continue at appropriate intervals throughout the employment of the inspector.²¹⁶

In relation to consistency in the inspection of swimming pool barriers, the Independent Review Discussion Paper identified:

... [T]here is a need for an audit program to be conducted ... to review a sample of assessments made by [inspectors]... and provide feedback to [inspectors]. The audit program should also be linked to the training program for there may be best practice examples identified or areas of poor practice that need to be drawn to the attention of all [inspectors].²¹⁷

The Office recognises that the process of pairing newly employed inspectors with experienced inspectors, discussed above, provides for consistency in swimming pool barrier inspections within the local government. However, there is still the potential for the quality of inspections to vary between inspectors, particularly as local governments may use a number of different inspectors, the qualifications considered when recruiting inspectors varies and there is no specific training or continuous professional development on swimming pool barrier inspections provided to inspectors. A quality assurance process, as suggested in the research literature, could assist in ensuring that inspections are conducted in a consistent manner within, and potentially across, local governments.

The Office analysed the inspection processes at the five selected local governments to determine if a quality assurance process was in place to ensure that inspections were conducted in a consistent manner. The Office found that one of the five selected local governments had a quality assurance process in operation - a supervisor at the City of Joondalup reviews the percentage of swimming pool barriers that were found by each inspector to comply with the applicable standards. If the supervisor identifies that an individual inspector consistently finds that more swimming pool barriers comply than the overall average, the supervisor will re-inspect a sample of swimming pool barriers inspected by this inspector. This is an example of good practice that could be considered for wider adoption by other local governments.

²¹⁵ Organisation for Economic Cooperation and Development, *Regulatory Enforcement and Inspections, Best Practice Principles for Regulatory Policy*, OECD Publishing, 2014, viewed 2 August 2015, <<http://www.oecd.org/gov/regulatory-enforcement-and-inspections-9789264208117-en.htm>>, p. 59.

²¹⁶ National Association of Testing Authorities, *The ISO/IEC 17020 Inspection Standard Application Document*, 2015, Australia, p. 11.

²¹⁷ Lambert, M, *Independent Review of NSW Swimming Pool Barrier Requirements: Discussion Paper*, 2015, viewed 10 August 2016, <<https://www.olg.nsw.gov.au/sites/default/files/Independent-Review-of-NSW-Swimming-Pool-Barrier-Requirements-Discussion-Paper-2015.pdf>>, p. 49.

In addition to the potential for the quality of inspections to vary between inspectors within each local government, there is also the potential for the quality of inspections to vary between local governments. Continuous professional development, discussed at section 7.2.8, could assist in promoting consistency and quality in the swimming pool inspection process between local governments. The quality assurance process, discussed above, could also be used by the Building Commissioner to assist in ensuring that inspections are conducted in a consistent, quality manner both between and within local governments.

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*.

7.3 Inspection frameworks

7.3.1 The *Building Regulations 2012* require that a swimming pool barrier must comply with applicable standards and these standards form the framework for the inspection

As discussed in Chapter 6, regulation 50 of the *Building Regulations 2012* sets out the circumstances in which a barrier to a private swimming pool is considered to be suitable for restricting access by young children to the pool and its immediate surrounds. At the time of the Investigation, AS 1926.1-1993 set out the technical requirements for a barrier to comply with the *Building Regulations 2012*. Therefore, at the time of the Investigation, AS 1926.1-1993 provided the framework for assessing, through an inspection of the swimming pool barrier, whether or not the barrier was compliant.²¹⁸

7.3.2 The *Inspector Guidelines* establish a sound basis for inspections

The *Inspector Guidelines* provide advice to local governments regarding a number of issues that are relevant to the conduct of inspections, particularly the technical details of the applicable standards.

7.3.3 Appropriate forms are a key element in ensuring the consistent application of the framework

The OECD Principles identify that inspections should be based on appropriate checklists or forms so that the inspection process is undertaken consistently by individual inspectors across their inspections and across different inspectors, as follows:

²¹⁸ Where relevant, the Investigation also took into account the amendments to the *Building Regulations 2012* and the updated *Australian Standard Swimming Pool Safety Part 1: – Safety Barriers for Swimming Pools (AS 1926.1-2012)*.

10. Compliance promotion. Transparency and compliance should be promoted through the use of appropriate instruments such as guidance, toolkits and checklists.²¹⁹

The NATA Inspection Standard also recognises that, where criteria are the basis of compliance (as is the case in the inspections of swimming pool barriers, where the elements of the standards form the criteria), forms and checklists should include these criteria, stating:

7.1 Inspection methods and procedures

...

7.1.4 Where acceptance/rejection criteria are nominated in contracts or specification documents, the criteria should be included, as appropriate, in the worksheets and/or checklists used by the inspection body.²²⁰

7.3.4 Inspection forms at four of the five selected local governments prompted inspectors to identify which standards applied to the swimming pool barrier

As discussed at section 6.6.3, for swimming pools installed before November 2001, compliance with the requirements of regulation 50 of the *Building Regulations 2012* may include a wall that contains a door permitting access through a building, if that door satisfies the requirements of AS 1926.1-1993.²²¹ It is therefore important that the inspector identifies whether or not this concession applies to the swimming pool barrier being inspected. The Office analysed whether the inspection forms at the five selected local governments prompted inspectors to identify whether this concession applied to the swimming pool barrier. The Office identified that this prompt was present on inspection forms at the five selected local governments, except the City of Joondalup.

7.3.5 None of the five selected local governments identified all elements of the relevant standard on their inspection forms

The Office analysed the inspection forms used by the five selected local governments to determine if they provided for the inspection of all elements in AS 1926.1-1993 by identifying these elements and providing a space for recording the result of their inspection. The Office found that, while most elements were identified across all inspection forms, none of the five selected local governments identified all elements of AS 1926.1-1993 on their inspection forms. This practice creates the risk that these elements will not be assessed as part of the inspection process. The elements of AS 1926.1-1993 that were and were not identified on the inspection forms used by the five selected local governments are shown in Figure 47.

²¹⁹ Organisation for Economic Cooperation and Development, *Regulatory Enforcement and Inspections, Best Practice Principles for Regulatory Policy*, OECD Publishing, 2014, viewed 2 August 2015, <<http://www.oecd.org/gov/regulatory-enforcement-and-inspections-9789264208117-en.htm>>, p. 14.

²²⁰ National Association of Testing Authorities, *The ISO/IEC 17020 Inspection Standard Application Document*, 2015, Australia, p. 15.

²²¹ Where relevant, the Investigation also took into account the amendments to the *Building Regulations 2012* that took effect from 1 May 2016 and the updated *Australian Standard Swimming Pool Safety Part 1: – Safety Barriers for Swimming Pools (AS 1926.1-2012)*.

Figure 47: Elements of AS 1926.1-1993 identified on the inspection forms used by the five selected local governments

Elements of AS 1926.1-1993	Number of local governments that identified the element
Fence and gate strength test	0
The barrier is permanently fixed into position	0
All gates and posts are adequately anchored	1
No climbable objects are within 300 mm of the inside of the gate	1
Child resistant doorsets	1
No climbable objects are within 300 mm of the inside of the fence	2
Retaining walls or balcony do not allow access to the swimming pool	2
Cranked wire or chain wire mesh fencing is greater than 13 mm in diameter but less than 100 mm in diameter	2
Roller door or garage door not allow access to the swimming pool	3
Surface under the gate is stabilised	3
Surface under the fence is stabilised	4
Horizontal members are less than 900 mm apart	4

Source: Ombudsman Western Australia

7.3.6 Inspection forms at all of the five selected local governments provided for recording the inspection outcome and a prompt for inspectors to provide information on how to rectify elements of the barrier that did not comply

The research literature recognises the importance of providing inspection reports that identify areas of non-compliance so that these can be rectified, with the NATA Inspection Standard providing that:

7.4.2 Inspection reports – content

Inspection reports may be simple or complex. ISO/IEC 17020 Clause 7.4.2 mandates some elements, and offers Annex B which identifies optional elements; NATA's Rules include requirements relating to endorsement. Additional reporting requirements may be imposed by the context of the inspection. The text below identifies the source of the element.

...

- o) inspection results ... ;
Results may include reference to specifications, defects or other non-compliances identified;
- p) a statement of conformity where applicable ...²²²

The Office analysed the inspection forms used by the five selected local governments to determine if they provided for recording the outcome of the inspection and related details. Drawing on the elements identified in the NATA Inspection Standard, the elements analysed included:

- a statement of the requirement to comply;
- whether the swimming pool barrier complied with the AS 1926.1-1993;

²²² National Association of Testing Authorities, *The ISO/IEC 17020 Inspection Standard Application Document*, 2015, Australia, pp. 18-19.

- an explanation of how to rectify elements of the barrier that did not comply;
- contact details for further enquiries;
- a due date for action to be taken to rectify identified issues; and
- a description of penalties for non-compliance.

The Office found that, as shown in Figure 48, all five selected local governments' inspection forms provided for recording whether the swimming pool barrier complied or did not comply with AS 1926.1-1993, provided a space for an explanation of how to rectify elements that did not comply and included contact details for further inquiries. As also shown in Figure 48, the Office also identified areas for improvement in the forms, as follows:

- the City of Joondalup's inspection form did not provide for identifying whether the swimming pool barrier was required to comply with AS 1926.1-1993;
- the City of Canning's inspection form did not provide for identifying the date due for rectification; and
- the City of Canning's inspection form did not detail the penalties for not complying with the *Building Regulations 2012*.

Figure 48: Outcome elements provided for and included in the inspection forms used by the five selected local governments

Elements	Number of local governments including the element
Statement of the requirement to comply with the <i>Building Regulations 2012</i>	4
Identification that the swimming pool complied or did not comply with the <i>Building Regulations 2012</i> and AS 1926.1-1993	5
Explanation of how to rectify elements that did not comply	5
Contact details for further enquiries	5
Date due for rectification of identified issues	4
Description of penalties for not complying with the <i>Building Regulations 2012</i> and AS 1926.1-1993	4

Source: Ombudsman Western Australia

In summary, the Investigation found that inspection forms vary across local governments, and that none of the five selected local governments' inspection forms identified all the elements of AS 1926.1-1993.

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.

7.4 Inspection records

While it is not a legislative requirement that an inspection form be used, section 130(c) of the *Building Act 2011* requires local governments to keep records of inspections of barriers to a private swimming pool. The Office examined the 485 inspection records and the 474 inspection forms completed by inspectors at the five selected local governments (11 inspection forms were not completed as the inspector found the swimming pool was emptied or removed), to determine if the inspection form was completed in full.

7.4.1 Three of the five selected local governments consistently recorded which standard applied to the swimming pool barrier on the completed inspection forms

As identified at section 7.3.4, inspection forms at four of the five selected local governments prompted inspectors to identify if concessions applied to the swimming pool barrier. The Office also reviewed the completed inspection forms for the five selected local governments to identify whether this information was recorded in these inspection forms. The Office found that inspectors within the five selected local governments recorded the applicability of concessions as follows (Figure 49):

- The City of Bayswater, City of Canning and City of Mandurah recorded whether concessions applied on 98 per cent of inspection forms;
- The City of Rockingham recorded whether concessions applied on 23 per cent of inspection forms; and
- The City of Joondalup did not include on the inspection form whether concessions applied and no inspectors separately recorded this information.

Figure 49: Identification of the applicability of concessions by the five selected local governments

Local government	Percentage of inspection forms where it was recorded if concessions applied
City of Bayswater	98
City of Canning	98
City of Joondalup	0
City of Mandurah	98
City of Rockingham	23

Source: Ombudsman Western Australia

7.4.2 Two of the five selected local governments consistently recorded the outcome of the inspection on the completed inspection forms

The Office found that inspectors at the five selected local governments completed the inspection forms as follows (Figure 50):

- the elements of AS 1926.1-1993 that were included in the five selected local governments' inspection form were completed on:
 - 95 per cent of inspection forms at the City of Bayswater and the City of Canning;
 - 45 per cent of inspection forms at the City of Joondalup;
 - 26 per cent of inspection forms at the City of Rockingham; and

- 17 per cent of inspection forms at the City of Mandurah;
- the outcome of the inspection was recorded on:
 - 100 per cent of inspection forms at the City of Mandurah and the City of Rockingham;
 - 92 per cent of inspection forms at the City of Bayswater and the City of Canning; and
 - 81 per cent of inspection forms at the City of Joondalup.

Figure 50: Completion of inspection forms at the five selected local governments

Local government	Percentage of elements of the AS 1926.1-1993 that were included in the inspection form and completed	Percentage of inspection forms where the outcome of the inspection was recorded
City of Bayswater	95	92
City of Canning	95	92
City of Joondalup	45	81
City of Mandurah	17	100
City of Rockingham	26	100

Source: Ombudsman Western Australia

7.4.3 Four of the five selected local governments consistently recorded all other essential details on the completed inspection forms

Neither the legislation (*Building Act 2011* and *Building Regulations 2012*) nor the *Inspector Guidelines* provide information regarding the other essential details of the inspection that need to, or should, be recorded. The NATA Inspection Standard provides for the key elements of such records to include:

7.4.2 Inspection reports – content

- ...
- c) unique identification of the report
- ...
- e) identification of the client
- ...
- g) date(s) of inspection...
- h) information on where the inspection was carried out
- ...
- t) names (or unique identification) of the personnel members who have performed the inspection ...
- u) signature or other indication of approval, by authorised personnel ...²²³

The Office analysed the completed inspection forms at the five selected local governments to determine if inspectors recorded this information, which this report terms ‘record

²²³ National Association of Testing Authorities, *The ISO/IEC 17020 Inspection Standard Application Document*, 2015, Australia, pp. 18-19.

keeping elements'. Consistent with the research literature, the record keeping elements analysed by the Office included:

- an identification number linked to the building permit for the swimming pool;
- the name and address of the property owner;
- the date of the inspection; and
- the inspector's name or signature.

The Office found that inspectors from four of the five selected local governments consistently recorded all of the record keeping elements on the inspection forms (more than 95 per cent of the time).²²⁴ However, the Office found that at the City of Bayswater, inspectors recorded the property owner's name on 26 per cent of the forms and wrote 'owner' or 'occupier' on the remainder of the forms (Figure 51).

Figure 51: Percentage of elements recorded on the completed inspection forms by the five selected local governments

Local government	Identification number linked to the building permit	Name of property owner	Address of property	Date of inspection	Inspector's name or signature
City of Bayswater	100	26	100	100	96
City of Canning	99	100	100	100	100
City of Joondalup	98	97	100	100	100
City of Mandurah	100	100	100	100	99
City of Rockingham	100	95	100	100	95

Source: Ombudsman Western Australia

Recommendation 17

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

- 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
- to develop a quality assurance process for ensuring that all elements of swimming pool barrier inspection forms are consistently completed.

²²⁴ The Office used 95 per cent or more as the cut off for completion based on the Australian Accounting Standards Board's *Accounting Standard 1031 Materiality*, which states that 'an amount which is equal to or less than 5 per cent of the appropriate base amount may be presumed not to be material unless there is evidence, or convincing argument, to the contrary.' (Australian Accounting Standards Board, *Accounting Standard 1031 Materiality*, July 2004, p. 12).

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