

# ADVISORY NOTICE BUILDING

05/19

Advisory Notice issued to assist in the interpretation of the  
*Planning, Development and Infrastructure Act 2016*

September 2019

## ADMINISTRATION:

### **Swimming pool safety requirements under the *Planning, Development and Infrastructure Act 2016***

This Advisory Notice provides advice on the operation of swimming pool regulation under the *Planning, Development and Infrastructure Act 2016* (PDI Act).

#### BACKGROUND

The PDI Act is being 'switched on' progressively to underpin the implementation of the new planning and development system across the State. Section 156 of the PDI Act titled 'Designated safety requirements' addresses swimming pool safety and new regulations, the *Planning, Development and Infrastructure (Swimming Pool Safety) Regulations 2019* (Swimming Pool Regulations) have been made under this section of the PDI Act.

Of note:

- Section 156(5) of the PDI Act allows the State Planning Commission (Commission) to issue a practice direction to require councils to carry out inspections of swimming pools; and
- Section 80 of the PDI Act enables the Minister to publish Ministerial Building Standards (MBS) as part of the Building Rules. An MBS relating to swimming pools safety has been published on the SA Planning Portal (Portal).

Importantly, new swimming pools in South Australia must continue to be assessed and inspected in accordance with the requirements of Building Code of Australia (2019 edition) and the associated Australian Standard (AS 1926).

#### DISCUSSION

On 1 July 2019, by the operation of clause 28 of Schedule 8 of the PDI Act, section 156 of the PDI Act commenced, and section 71AA of the *Development Act 1993* (1993 Act) was repealed. The commencement of s156 of the PDI Act affected the regulation of swimming pool safety across the State.

Overall there is no significant change to the key issues of upgrade and inspection requirements – the changes are mostly of a 'mechanical' nature to support implementation of the PDI Act.

Note, as per clause 28 of Schedule 8 of the PDI Act, section 156 of that Act is taken to form part of the *Development Act 1993* to the extent that development under that the 1993 Act includes the construction or installation of, or other work associated with a swimming pool or any swimming pool safety features.

Therefore section 156 of the PDI Act, and the new Swimming Pool Regulations replace section 71AA of the 1993 Act from 1 July 2019 onwards. Importantly, this section of the PDI Act and the Regulations now apply across the whole of the State.

**Ministerial Building Standard**

On 1 July 2019, *MBS 004 – Swimming pool safety - designated safety features for pools built before 1 July 1993*, was also published to apply across the whole State.<sup>1</sup> This Standard sets out requirements for older swimming pools, both when an upgrade is required due to a transfer of title, and ongoing safety requirements at all other times. On 5 September 2019, this Standard was amended by gazettal notice and republished on the Portal (edition dated August 2019).

**Practice Direction**

To support the operation of section 156 of the PDI Act, on 29 July 2019, the Commission issued the *State Planning Commission Practice Direction (Swimming Pool Inspection Policy)* under section 156(5) of the PDI Act, to set out swimming pool inspection requirements that apply across all council controlled areas of the State (the Practice Direction). Councils should note that-

- The Practice Direction carries over the current requirements set out at section 71AA of the 1993 Act and therefore should not result in any additional imposition on councils.
- Broader council inspection requirements (under section 144 of the PDI Act) are currently being developed by the Commission and will be in place once the 1993 Act is fully repealed.

**Council action required at this time**

Councils and practitioners are advised to familiarise themselves with the requirements set out above to continue to ensure swimming pool safety across the State.

In relation to undertaking required compliance and enforcement action, councils are advised that, pursuant to Schedule 8 clause 35 of the PDI Act, there is no need to appoint persons as authorised officers under the PDI Act for the purpose of undertaking the functions of an officer in relation to swimming pool safety where those persons were authorised officers under the 1993 Act. Councils are however advised to assess existing delegations to ensure they are sufficient for the purposes of compliance and enforcement activities under the section 156 of the PDI Act.

Regulation 112 of the *Planning, Development and Infrastructure (General) Regulations 2017* (Authorised officers and inspections), does not apply to section 156 inspections. Accordingly there is no need for authorised officers inspecting swimming pools to be accredited under the Accredited Professionals Scheme.

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<sup>1</sup> Note this is the only Ministerial Building Standard that applies to the entire State at this time (at 1 July 2019).

**ADDITIONAL INFORMATION**

The *Planning, Development and Infrastructure (Swimming Pool Safety) Regulations 2019* are available at [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

The *State Planning Commission Practice Direction (Swimming Pool Inspection Policy)* is available on the [SA Planning Portal](#) under 'resources'.

The *Ministerial Building Standard 004 - Swimming pool safety – designated safety features for pools built before 1 July 1993* is also on the [SA Planning Portal](#), under 'resources'.

*This Advisory Notice is for general information only and should not be relied upon as legal advice or an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations you should obtain independent legal advice.*

**Further information**

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