

23 December 2014

Deputy State Coroner Iain West
Coroners Court of Victoria
66 Kavanagh Street
SOUTHBANK VIC 3006

By email: cpuresponses@coronerscourt.vic.gov.au

Dear Deputy State Coroner,

**INQUEST INTO THE DEATH OF LAUREN KAYLEY HARRIS
COURT REF: COR 2008 004363**

Thank you for providing the REIV with a copy of your Finding into the death of Lauren Harris.

Insofar as your Recommendations are concerned, the REIV provides the following comments, using the numbering adopted in your Finding:

- 1-7. We support these recommendations.
8. We support the three year, mandatory inspection. However, we have reservations about other aspects of the recommendation.

We are concerned about the potential cost to property owners of requiring that inspections be conducted by "licensed pool safety inspectors". They will have a monopoly. That is undesirable so far as the potential cost to property owners is concerned.

We consider inspections should also be able to be carried out by the municipal council for the area in which the pool is located at the cost of the ratepayer in question.

We do not support the creation of a state-wide swimming pool register. We have commented on this at 11, below.

So far as a penalty is concerned, we note the suggested 20 penalty units currently equates to a maximum fine of \$2,952.20 (\$147.61 per unit, 2014-2015 financial year).

We consider penalties require closer consideration, for a number of reasons.

First, the recommendation makes no distinction between properties owned by individuals and those owned by corporations. One should be made. Individuals should incur a lesser penalty.

A recent precedent is to be found in the penalty regime in the *Sale of Land (Infringements) Regulations 2014*. Under it, a lesser penalty is imposed on a seller of real estate (who we will equate with an individual) – for not giving a potential buyer a due diligence checklist – than the penalty imposed on an estate agency (who we will equate with a corporation) for an identical failure.

Second, a penalty will only be imposed on a conviction being recorded. And, even if one is, there is no guarantee a 20 unit penalty will result.

Third, a prosecution is time consuming and expensive. We suggest a cost effective alternative: on-the-spot fines. Again, a precedent is to be found in the *Sale of Land (Infringements) Regulations 2014* which provides an alternative to a *Sale of Land Act 1962* prosecution.

We also consider that on the letting of a residence the landlord should have to provide a copy of the current inspection report with tenancy condition report. And, on the sale of the property, the owner should have to provide the inspection report as part of the *Sale of Land Act* vendor's section 32 statement.

If a swimming pool safety barrier is out of repair, the repair of it should be treated as an urgent repair, for the purposes of the *Residential Tenancies Act*.

9. We do not support this recommendation.

If there is to be a statutory requirement for mandatory inspection of swimming pool safety barriers at set intervals with penalties for non-compliance, it is unnecessary there be an additional, mandatory inspection as pre-condition to a sale, letting, or house-sitting. To require otherwise is, we suggest, over-burdensome regulation.

We do not support a requirement that pool safety barriers, which on inspection comply with regulations current when they were constructed, be required, nevertheless, to be altered to comply regulations current at the time of inspection.

It is unclear if the recommendation is intended to apply to owners' corporations with swimming pools on common property. If it is intended, we consider it is impractical and over-burdensome to require owners corporations with numerous lots to comply with a mandatory inspection regime, each time a lot owner sells or lets their lot.

10. If legislation along the lines suggested in recommendation 9 is enacted, appropriate consideration will be given to the need to amend the jointly badged REIV - LIV contract of sale of real estate.

Consideration will also need to be given to amending the prescribed contract of sale of real estate published in the *Estate Agents (Contracts) Regulations 2008*. That is a role for Consumer Affairs Victoria as the administrator of the Regulations.

So far as the residential tenancy agreement is concerned, amendment will be considered by Consumer Affairs Victoria in its role as the administrator of the *Residential Tenancies Regulations 2008*, in which prescribed form of the residential tenancy agreement is published.

11. We do not support this recommendation, so far as the creation of a state-wide swimming pool register is concerned. We support registration of swimming pools with municipal councils.

We consider information about residential swimming pools, including compliance with safety barrier requirements, should be recorded under the *Building Regulations* and kept by the council of the municipality in which the pool is located.

If this procedure is adopted, we envisage a person interested in knowing the state of compliance of swimming pool safety barriers could apply under regulation 326 for the relevant information.

Furthermore, when a residential property is offered for sale the information certificate, included as part of the *Sale of Land Act 1962* section 32 vendor statement, will disclose the required information.

So far as the suggested penalty for non-compliance is concerned, the comments appearing in 8 above, also apply to this recommendation.

12. We support this recommendation on the basis the suggested uniform rules and requirements relating to the construction and fencing of pools appear in the *Building Regulations*.

The REIV does not support the recommendation the post May 2010 requirements should be mandatory, regardless of the construction date.

13. The REIV will be prepared to provide education to its members on the importance of residential swimming pool surrounds being compliant with regulations and the potential issues arising if that is not the case.

14 – 16. These recommendations are matters for Consumer Affairs Victoria to consider and address.

Yours sincerely,



Enzo Raimondo
Chief Executive Officer