



## BUILDING NOTE

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### S245A(8) LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1960 (WA)

#### Purpose

To advise local governments that s245A(8) of the *Local Government (Miscellaneous Provisions) Act 1960 (WA)* does not permit them to impose a swimming pool inspection fee when builders apply for a licence.

#### Background

The Department of Housing and Works was recently informed that some local governments have required builders to pay a swimming pool inspection charge when they made an application to construct a pool. In addition, it appears local governments withheld licences until the fee had been paid.

#### Comments

The *Local Government (Miscellaneous Provisions) Act 1960 (WA)* (“the Act”) permits local governments to make local laws requiring the installation of swimming pool barriers on land on which a pool is situated (s245A(2)), and authorises regulations to also be made in this respect (s245A(3)). Local governments must ensure that an authorised person inspects the land at least every 4 years to ensure that requirements for swimming pool fencing are complied with (s245A(5)(aa)).

Section 245A(8) of the Act provides that:

- “(8) A local government may, for a financial year, fix the charge to be imposed on each owner or occupier of land on which there is a swimming pool, to meet the estimated cost in that financial of carrying out the inspections required by subsection (5)(aa), but the charge fixed –
- (a) shall not exceed the estimated cost of carrying out inspections in that year; and
  - (b) shall not exceed the maximum charge, if any, prescribed by regulation.”

The charge fixed by the local government for a swimming pool inspection must be published in the *Government Gazette* and notice of the charge provided to each person on whom the charge is levied, specifying when it is due and payable (s245A(10)). The maximum inspection charge that can be levied under s245A(8) of the Act is currently \$55 (reg 38F *Building Regulations 1989 (WA)*).

Before a person commences to build a pool, he or she must cause a copy of the plans and specifications to be lodged with the local government, and must pay the prescribed application fee (s374(1)(a)). The prescribed fee for a building licence application is provided in the scale of fees annexed to reg24 of the *Building Regulations* 1989 (WA). The current fee is 0.35% of 10/11 of the estimated value of the construction as determined by the local government, but must not be less than \$40. Work must not be commenced until the local government has issued the licence.

The above provisions make it clear that section 245A(8) does not authorise local governments to impose a swimming pool inspection fee other than on an owner or occupier of land on which there is a pool already installed. The prescribed fee for an application to construct a pool is that provided for in Item 1 of regulation 24, 0.35% of 10/11 of the estimated cost of the works as determined by the local government. In addition, local governments may not withhold the issuance of a building licence pending payment of a swimming pool inspection fee.

If you require further information, please contact the Building Codes and Regulation Branch of the Department of Housing and Works at [buildingcontrol@dhw.wa.gov.au](mailto:buildingcontrol@dhw.wa.gov.au); or Dan Egloff-Barr, Building and Advisory Officer on (08) 9222 4563.



Peter Gow  
EXECUTIVE DIRECTOR OFFICE OF POLICY AND PLANNING

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