

# **SOUTH AFRICA: The impact of lack of legislation governing water safety and drowning prevention.**

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## **1. Introduction:**

In South Africa there is a marked absence of direct reference(s) to “drowning prevention” and “water safety” enacted in legislation governing the various state departments. A scan of the major Acts of government, legislation or policies governing the various departments show that there is barely a reference to these matters. The inference could then be that the state has not prioritised the need for any legislation to prevent drowning and promote water safety.

This is despite the fact that drowning is the second highest cause of accidental death among children up to the age of fifteen years (Medical Research Council, 2004 report.) Furthermore, with a geography that entails almost 3500 kms of coastline and many rivers and lakes, coupled with sunny and hot weather for much of the year in most parts of the country which encourages recreation in aquatic sites, it would be expected that a greater commitment to ensure preventive plans are implemented.

This paper sets out to scan the various Acts and policies that have relevance to water safety so as to identify if there is in fact legislation relating to water safety and drowning prevention. It is hoped that by highlighting the fact that there may not be any legislation, that the state would be spurred to initiate legislation in this regard. The writer is of the opinion that preventative measures would become the key driver to reducing the numbers of unnecessary deaths by drowning. The paper also proposes that for there to be a plans to be sustainable that the government should support the establishment of water safety councils at all levels so that there can be a collective effort to promote water safety awareness and education as well as grow the efforts to get the nation to swim.

## **2. Methodology:**

The approach used was to conduct a desk-top research of the various acts of parliament and to search for any references to “Water safety” and “drowning prevention”. In some instances it was necessary to call up an official familiar with the acts related to her/ his department. There was no structured interview questionnaire used as the purpose of the telephone engagement was purely to check one’s understanding of the Act and to confirm one or two matters.

The following departments and relevant acts were examined:

ACRONYM	DEPARTMENT	ACT	
DEAT	Dept of Environmental Affairs & Tourism	National Environmental Management Act ( 107 of 1998)	
		Seashores Act (21 of 1935)	
		Integrated Coastal Management Bill (2006-7)	

DWAF	Dept of Water Affairs & Forestry	National Water Act (36 of 1998)	
DoE	Dept of Education		
DPLG	Dept of Provincial & Local Government		
DoL/ D.P.W.	Dept of Labour Dept of Public Works	Occupational Health and Safety Act 1993.	
DSAR	Dept of Sport & Recreation		

The closest one would find reference to drowning prevention would be the references to lifeguards in the municipal bye-laws. However the most direct reference to water safety can be found in the Occupational Health and Safety Act which has two minor references to safety of workers in workplaces around water.

### 3. **Findings of Research:**

#### **MUNICIPAL BYE-LAWS: (third tier government)**

It has been difficult to find a specific references to water safety and drowning prevention in a specific Municipal bye-law. However, it seems that the various references to swimming, bathing and other recreational use , especially of the ocean is found in the old Seashores Act (21 of 1935), which has been incorporated into the more updated version of the Seashores Regulation (1987). However it is understood that this act will be incorporated into the Coastal Management Bill. It would appear that the coastal municipalities have used this archaic Act as an underpinning to their provision of lifeguard and beach patrol systems as a service to the beach bathing communities.

The gist of the references in the municipal bye-laws refer to the role and duties of the professional / paid lifeguards. Other references are concerned with warnings to the users of the aquatic recreational site, for example:

*“Swim only where the lifeguards are on duty”*  
*“swim at your own risk if the lifeguards are not on duty”*  
*“no swimming allowed”*  
*“lifeguard patrol hours”*

A recent bye-law is the reference to the “bathing being banned at night”. This is particularly found in a major city like Durban on the eastern seaboard, where the balmy summer weather and well lit beaches encourage some revellers to risk swimming in the ocean at night even though there are stern warnings of being prosecuted if caught doing so.

Although there is no evidence in the policies of local governments, it is often found that some municipalities make an effort to invest in resources that promote learn to swim programmes as part of their “mass participation” programme. For example the Ethekweni Municipality (Durban Metropolitan City) has an organised campaign to

reach out to schools to bring their pupils to community pools and arrange for these pupils to be given free swim lessons conducted by the municipal lifeguards stationed at those pools.

However there is no evidence that these initiatives are part of a sustained campaign. It is often difficult to ascertain numbers targeted and attained, follow up, throughputs and retention rates and so on. Such mass participation programmes only show trends of “pockets of success” in the following observations:

- if the municipality has pools and competent lifeguards to conduct the programmes.
- If they have buy-in from the lifeguards or if there is attractive incentives to motivate the lifeguards to conduct the training.
- If there are schools which will make the effort to get their children to the local pools.
- The more successful stories are often from the urban areas or where the community pools are located in the warmer climes of the country as it is rare to find a community pool with heated water facilities. (pools often lie un-utilised for anything up to eight months of the year in many parts of the country).

When such community based programmes are undertaken in conjunction with the other organisations such as Lifesaving South Africa or one of its voluntary lifesaving clubs. It is obvious that the partnership approach would ensure more sustainability of such programmes. The once-off and ad hoc approaches often yield minimal or unnoticeable results. But once again, there is no evidence of policy that compels the local government authority to promote water safety and learn to swim programmes even if it is in targeted areas. Where it does happen in some of the bigger metropolitan cities, it is obvious that they have to cater for the competing interest from different codes of sport or recreational activities.

## **OCCUPATIONAL HEALTH AND SAFETY ACT, 1993:**

Probably, the most direct reference to water safety and drowning prevention is found in the above-mentioned act. However the references are specific to work-place environments and absent in other human environments, such as schools, recreational areas, and so on. The two specific regulations within the act are quoted below:

### **Occupational Health and Safety Act, 1993 Environmental Regulations for Workplaces, 1987 8. Precautions against flooding**

1. Where a substantial risk exists that a workplace may be flooded, the employer shall take measures to be informed forthwith of any imminent flooding.
2. Every employer shall take measures to be informed forthwith of any imminent flooding from constructions for conserving water, or which may cause water to converge or accumulate on his premises, and shall, prior to the erection of such a construction, give notice in writing to all persons situated in the danger zone below such construction of the possibility of flooding owing to such construction.

If anything, it is comforting to note that there is provision in the legislation for the worker in work-place environments in and around water. The responsibility for the safety of the worker is placed on the contractor.

It is hoped that a similar approach would be taken if the law-makers would consider introducing legislation that would ensure that a teacher would be held responsible and accountable for the safety of school children who are in her/his care during an excursion to the coastline or any aquatic recreational site.

**Occupational Health and Safety Act, 1993  
Construction Regulations, 2003  
24. Water environments**

- 1) A [contractor](#) shall ensure that where [construction work](#) is done over or in close proximity to water, provision is made for-
  - a) preventing workers from falling into water; and
  - b) the rescuing of workers in danger of drowning.
- 2) A contractor shall ensure that where a worker is exposed to the risk of drowning by falling into the water, a lifejacket is provided to and worn by the worker.

The above two regulations are the only direct reference to water safety in the search undertaken. The writer is aware of other pieces of legislation that is being worked on by a statutory body called Standards South Africa (StanSA - which is the former SA Bureau of Standards or SABS). As part of a bigger regulation on safety at live concerts, one of the regulations that they are working on is a safety at a live concert around or near water.

What follows is a description of other acts of legislation which were also studied and what was found was either a very cursory reference to “recreational users of water” (National Water Act, 1998) or no reference at all.

**NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 of 1998.**

The “Environment” in the Department of Environmental Affairs & Tourism (DEAT) has its jurisdiction along the coastline. A key department within DEAT is the Marine and Coastal Management (MCM). However the gist of this commission and the Act itself is mainly on the matters of conservation of the natural environment and pollution control.

Relatively speaking, due to the higher incidences of drowning in the inland, DEAT does not see water safety as a priority area, even though it does support a voluntary organisation in the name of the National Sea Rescue Institute (NSRI) which is instrumental in going to the rescue of crewmen in boats, ships, and other craft in distress along the coastline.

DEAT recently tabled the Integrated Coastal Management Bill (ICMB, Dec 2006) which caters extensively for the protection of the natural coastlines as well as promote sustainable livelihoods especially among indigent communities, but the issues of safety and drowning prevention is absent in this legislation

## **THE NATIONAL WATER ACT, 37 of 1998.**

The Department of Water Affairs & Forestry's (DWAF) jurisdiction is the inland waterways and forestry areas. A keyword search of this legislation reveals no specific reference to drowning prevention and water safety. But in one of the regulations in the Act, there is a reference to "recreational users" in a one line example of the various stakeholders that the Act would like to encompass. The only other reference to safety is a regulation that deals with the safety and integrity of "dam walls"

As mentioned earlier, the country has experienced many incidents of drowning in the inland and rural areas. This can be attributed to the fact that people living in these areas may have not had the opportunity to engage in learn to swim programmes or have access to water safety education. The reports of the incidents often show that the victims are school children who have to cross rivers on their way to and from school, or little children playing in rivers and streams that often turn into death traps, or rural persons trying to sustain some sustainable livelihoods around a dam or river

To the credit of DWAF, it can be noted that this is the only national government department which has embarked on implementing and paying for the delivery of learn to swim programmes in rural areas. It was partnered with Swimming South Africa (SSA), a national sports federation to implement swim programmes in various rural and outlying communities. While the writer is aware of the aims and objectives of the campaign, what is not very clear is the scale of this programme.

A common observation is the fact that in many instances there is a lack of capacity to meet the large demands or needs for such programmes in our country. While it is laudable that the government departments are prepared to partner with organisations to meet the needs of the people, it would be hoped that such programmes become evident as national programmes and campaigns. That would be one way of galvanising a collective effort nationally with a range of stakeholders so that programmes and campaigns are rolled out in a sustainable manner and not just in a once-off or ad hoc approach.

## **THE NATIONAL DEPARTMENT OF EDUCATION (DoE)**

The national Department of Education (DoE), has various Acts and policies which govern the education systems and provisions in the country. It was decided to rather examine the Curriculum Statements of the various levels of education provision in the country.

It would appear that the search for references to water safety can be found in the Life Orientation Learning Area in the ***Revised National Curriculum Statements: Grades R-9 (Schools)***

But what is evident is that there is no specific legislation to promote national water safety campaigns on the curriculum. Despite this absence of legislation, like the experience with DWAF, there seems to be the opportunity for partnerships to exist with the DOE for an organisation like Lifesaving South Africa (LSA). In this

partnership LSA will be able to become accredited to the department to provide a water safety qualification to senior secondary school pupils looking to achieve the completion of an extra-curricular qualification.

The problem is that the focus of attention is mainly on senior secondary phase pupils and not on the primary school children. The other problem with this provision is that it caters mainly for the privileged (model C) school children and disadvantages the children from the rural and disadvantaged communities where no pools exist in the community nor in the schools. If anything this increases the imbalances of the past as the “haves” continue to have access, while the “haves not” are further marginalised.

The primary schools are ideal starting point to ensure that the appropriate campaigns are initiated and sustained at school levels. For the message to become permanent lessons the school kids need to be ingrained the safety message. Even little kids can point out to their illiterate care-givers (grandmothers, etc) the danger of leaving unattended nappy buckets lying around as these could become potential drowning points for little toddlers who may stumble into the uncovered buckets half filled with water.

In recent years there have been a number of reported incidents of school children drowning during school excursions to the coastline. A well reported case is the Richards Bay incident in May 2005 when seven school pupils lost their lives during a school outing to that coastline. On an early morning the children stopped off at a beach and decided to swim in the ocean. There were no lifeguards on patrol and this was in any event a time of the morning before the lifeguards came on duty.

The fact that large numbers of children also have to cross rivers and estuaries to get to schools on a daily basis, contributes to the heightened risks to these children's lives. While there is no expectation of legislation to protect these children and their teachers, there is an expectation that the local authorities would do something to ensure the safety of members in that community. Recently one local authority ensured that a foot-bridge was constructed over a river that was crossed on a daily basis. This is one way in which the problem was addressed, however, it is quite conceivable that the local authorities could make an investment in water safety education for members in that community, especially its school children, which could result in that kind of capacity being passed down from one generation to another to ensure that the levels of safety is observed by members of that community.

This incident could have been prevented had the necessary precautions been taken. The teachers should have been compelled to ensure that they would only allow the excursion bus stop off at beaches where and when the lifeguards were on patrol. In fact an implication out of this incident would compel the education authorities to legislate that any teacher organising a school excursion to the coastline or to any area near a dam or river to check whether that aquatic environment is patrolled by lifeguards, what are the duty times of the lifeguards and make prior arrangements that with the relevant local authority to ensure that there would be lifeguards on duty.

A teacher organising a tour to the coastline should be held culpable if s/he has not made the necessary arrangements in advance.

Another common trend of drowning along the coastline is during the practice of baptismal ceremonies in the ocean - particularly at night. It is quite a tragic read in the morning newspapers when it is reported that a few individuals were swept out to sea and drowned while participating in a baptismal or other ceremonial practice in the shore-break. Inevitably it is discovered that none of the victims could swim.

Alongside this trend is the unfortunate occurrence of individual incidents of drowning during night bathing. The sea temperature conditions along the eastern seaboard is quite inviting even during the night and during the winter months. Cities such as Durban attract large number of visitors over the holiday period and weekends despite byelaws preventing night bathing along the city beaches, the incidents continue to mount.

It is obvious that even if the laws are promulgated to prosecute against these practices, the fact of the matter is that there will not be enough security personnel to police the beaches to prevent such risky behaviour.

The drownings at domestic residence pools are becoming commonplace. As the political changes are occurring rapidly in a changing society, there are more and more first time home-owners growing in the affluent suburbs. Each of the houses sold inevitable have the pool as a standard feature of these homes. While it may have been the case of the former owners and their children being quite water safe and adept swimmers, in many instances it is not the case of the new owners of that property especially if they come from former black townships where even community pools are not the norm. In instances like this the young children of that household is at high risk not knowing how to swim or naïve about the dangers of falling into the pool. The statistics of children drowning in domestic pools goes higher when adds up the number of children of domestic workers who stray off and fall into the pools of their employers especially when the mother is herself a non-swimmer and there is no member of the household present during the day due to work and school commitments. Another unfortunate child drowns because the pool was not fenced off, the mother could not swim, nor was there any potential lifesaver around.

It is unclear whether the laws of the country enforce the fencing off of uncovered pools and it would be an area to study. However, it could be expected that the real estate agents selling these properties would educate particularly new owners to ensure that the pools are fenced especially if the parents and their children cannot swim. It should be expected that the laws governing the transfer of properties would ensure that there is a level of education and conscious raising of the danger and risks associated with pools that are not protected. Many new householders are oblivious of the risks to their visitors and their children and their domestic servants.

In a related paper on drowning statistics in South Africa, it is revealed that accidental drownings is the second highest cause of death among children under 15 years of age after road deaths. Almost 42-50% of accidental deaths in this age group is attributed to drowning. That paper explores the reasons for the high phenomenon.

However some of the reasons from the studies reveal the following trends:

- Almost 86% of the population either do not know how to swim or do not have any knowledge, training nor skills on water safety.
- There is a greater percentage of drowning in the inland (rural areas) compared to the statistics of drowning that occur along the coastline.
- Many school children have to cross rivers and estuaries to get to their schools in the mornings and afternoons thereby running the risk encountering difficulty and drowning.
- Often schools organise excursions to the coastline with busloads of pupils without ensuring in advance whether their trip to a particular beach is patrolled by lifeguards, the times that the lifeguards are on duty or in fact whether that particular beach is safe or not.
- There is an increasing trend of little children drowning in domestic/residential pools. This is often as a result of the unsupervised child falling into the pool and drowning. Although the statistic is not clear on the matter, it is believed that many of these children's parents are first-time-home owners in affluent suburbs. The previous owners did not find the need to install pool covers or safety nets as they knew how to swim and had their children learn from early ages. The opposite holds true for the new owners who are usually formerly from the township areas. Then the tragedy also befalls the young child of the domestic worker from that party.
- Then there is an even chilling trend that has been observed in recent years especially in inland rivers and spruits (smaller rivers which run through urban and township settlements. This trend relates to young children who drown in such rivers during high rainfall or the commonly experienced high-veld storms. The absence of proper recreational facilities in these townships results in these young children playing in the streams and spruits. Such young children are totally oblivious to the dangers inherent in the fast-flowing and swollen rivers. A shallow stream one-day of that morning turns into a death trap the next day or that same afternoon, due to the sudden rise in water levels and strength of flow. The risk factors are significantly increased by the fact that such urban streams and rivers are severely polluted so submerged objects such as logs and debris could easily add to the risks.

## **THE DEPARTMENT OF SPORT AND RECREATION (DSR)**

LSA is registered with the DSR and in that way its focus is purely in the sport ambit. The DSR has only two concerns: that of the elite or high performance codes and that of mass participation. They contend that the issue of drowning prevention is a matter of some other departments.

It would appear that DSR lost an opportunity to make an impact on influencing policy decisions in this country. In 2000 the DSR commissioned a study by the Human Sciences Research Council (HSRC) on participation in sport. One of the findings of this study is that only 1% (one percent) of the South African population participates in swimming activities. This is a stark reminder of the challenge in a nation that has a coastline of some 3500 kms and large numbers on inland waterways (rivers, lakes and dams). This figure highlights the challenge of drowning prevention and water safety



as it shows that the need for the education and the skills training is an enormous one indeed.

The alarming statistic also highlights a huge imbalance of the unequal systems that have carried over from the apartheid days. In the past dispensation there was always an emphasis on sport and swimming lessons in the historically white schools. It was common found that most white children particularly in the urban and coastal areas went to schools which had pools, lived in homes that had a pool and resided in communities which had community pools. The experience of the black children living and attending schools in peri-urban townships and rural areas was the direct opposite in terms of resources and facilities.

The problem and challenges extend far beyond the education sector, the imbalances in terms of facilities and resources extend to other areas. Municipalities that govern in the historically black areas have just not made the necessary resources available to build pools in the townships, or to create safe recreational swimming areas for locals to learn to swim and to recreate. Even in historically disadvantaged areas, where pools have been built, these facilities soon turn to white elephants, because of non-provision of suitable lifeguards, budgetary constraints for repairs and maintenance or for that matter enclosed facilities or heated pools for the poor weather or cold seasons. It is unfortunate that many pools do remain closed for over 6-8 months in the year.

## **CONCLUSION:**

The fact that there is no dedicated reference to drowning and water safety in the various legislations that one expects to cater for it, results in the risks being significantly heightened. The question remains as to what can be done to reduce the risks. In the light of the practice of a lifesaving organisation to implement *preventative measures*, it is the belief of an organisation like Lifesaving South Africa (LSA) that there needs to be various policies to ensure that preventative legislations are enforced.

However, as there is no pertinent or substantive legislation to ensure that measures are put in place to prevent the unnecessary loss of life through drownings, Lifesaving South Africa advocates the establishment of Water Safety Councils to work towards helping government to develop the relevant policies and programmes to promote water safety awareness and provide for drowning prevention measures. This statutory agency should be established at and introduced at national, regional and local levels.

LSA advocates the establishment of Water Safety Councils which includes the participation of government departments, emergency organisations, aquatic sports and related organisations. The different tiers of government can be represented at the different levels that is suggested.

The roles and responsibilities (terms of references) for the Water Safety Councils will be envisaged as incorporating, but not limited to the following:

- facilitate the development of policies and guidelines on Drowning prevention and water safety which will eventually become law in the statutes of the country.

- Co-ordinate the activities of the various service providers, both government and non-profit, who take on the responsibility of providing water safety programmes and learn to swim programmes.
- Hopefully this co-ordination will result in a national campaign that can deliver programmes to meet the need to swim and become water safe within our country as well as in neighbouring countries.
- Ensure that relevant and appropriate water safety education is entrenched in the schools' curriculum so that all children can have access to this education.
- Become a regulatory body for all lifeguard service providers both voluntary or private/ commercial.
- Help to develop and maintain quality standards on lifeguard service provision and first aid training.
- Monitor the performance of all agents responsible for ensuring lifesaving services as well as water safety education.

Although this paper does not explore all the implications and benefits of the role and impact of Water Safety Councils, but it is the considered view of Lifesaving South Africa, that to benchmark against similar structures in Australia and New Zealand, may be an appropriate strategy to ensure that there is the necessary programmes and projects in place to reduce the high number of drowning especially among young children.

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- (ii) Integrated Coastal Management Bill (2006)
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- c. Beach tragedy 26/05/2005