

Swimming pool fencing

Discussion paper



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ACT Planning &
Land Authority



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Contents

Introduction	1
What the statistics say	2
What has been done - national strategies to address drowning	3
What is being done in the ACT?	3
Home swimming pool - what does this mean?	4
Current home swimming pool safety standards in the ACT	5
What still needs to be done. The need for further action.	7
The ACT context and challenges	7
Summary of requirements in other states	10
How to achieve safety in a home swimming pool	11
What model should we use to comply with the Building Code?	12
Implementing the new model	15
What happens next?	16
Where to get further information on home swimming pool safety	16

Introduction

For the second year in a row the number of people drowning in Australia has risen. A 2010 study showed that a person was 200¹ times more likely to drown, relative to exposure to water, than to be involved in a traffic fatality². Over a five year average, drowning death in a home swimming pool was up by 35%³. While the Royal Life Saving 2010 report on drowning shows an increase in drowning in locations such as dams and the beach, the home swimming pool is an area where all pool owners can participate to help change these statistics.

Many things can be done to help reduce this number and reverse this trend. For instance, in the home the use of effective home swimming pool fencing or other barriers is one of the simple things that every home swimming pool owner can do. This can and does help prevent drowning and other injuries. Such measures have been supported by a number of community and government initiatives such as Safe Waters ACT, a program that sets priorities and actions for the Canberra community and the NSW Home Pool Safety Weekend to name a few. You only have to watch TV over the summer period to see the increase in advertising around water safety (including pools).

This discussion paper seeks to identify some possible strategies to build on these existing initiatives focussing on the construction of safety pool fencing or barriers and their operation. In particular, this discussion paper seeks comment on what model should be adopted to apply the latest home swimming pool safety laws across the ACT community.

Early records cited by the Australian Water Safety Council put the Australian drowning death rate as high as 8.76 deaths per 100,000 head of population in 1920. In today's terms, this rate would equate to approximately 1800 drowning deaths per annum. A program of lifesaving, water safety, drowning prevention and community action has resulted in a rate of less than two deaths per 100,000 in 2007⁴. These reforms have made a difference and continue to form part of current strategies to reduce the number of drowning deaths associated with water-based recreational activities in Australia.

It is important as a community that we take note of the emerging data that tells us the incidence of drowning is on the rise and review what we are doing to see if we need to do more. By going through this process we can work towards appropriate measures to help ensure swimming pool safety. How effective this is depends on the community. Of course there is no doubt that the important work that has gone before this discussion paper has contributed to a lower risk of drowning. The ACT Government is committed to continuing to ensure the ACT community has home swimming pool and spa safety laws that protect and serve the community.

What makes a pool 'safe' is complex. Many parts make up the solution and already work towards pool safety. The Building Code looks at the type and location of pool fences. It does not look at the other elements that contribute to swimming pool safety such as active supervision, storage of pool chemicals, resuscitation signage etc. How should we as a community ensure that the pool fencing is effective? And what other elements should we consider? This discussion paper asks you to consider not just the swimming pool fence in isolation but also those other vital elements that together contribute to swimming pool safety.

At a national level the focus on home swimming pool safety and drowning deaths has been influenced by the Australian Water Safety Council's Australian Water Safety Strategy 2008 – 2011⁵ which set the target of reducing drowning deaths by 50% by the year 2020.

A 2010 study showed that a person was 200 times more likely to drown, relative to exposure to water, than to be involved in a traffic fatality.

1 The rate of '200' times considers likely exposure rates based on NSW data and a survey as reported by Mitchell RJ Williamson AM, Oliver J (2010). Estimates of drowning morbidity and mortality adjusted for exposure risk. *Injury Prevention* 16: 261-266

2 *ibid*

3 The National Drowning Report 2010. Special issue: Child drowning deaths. Australian Royal Life Saving Society

4 Australian Safety Water Council (2008). Australian Water Safety Strategy 2008 – 2011; Australian Water Safety Council, Sydney

5 *ibid*

At the conclusion of the public consultation period, the Government will consider all public comments.

A survey conducted by the Sunshine Coast Regional Council showed that 74% of respondents were in favour of swimming pool fencing or other barrier being required by law⁶ and that emphasis should be placed on the promotion of compliant fencing or other strategies such as water safety education and awareness campaigns.

As each state and territory government reviews home swimming pool and spa safety laws, the ACT is also undertaking a review to ensure the community has a home swimming pool and spa safety regime suitable for its needs. Information on recent reforms in Queensland and South Australia is summarised in the table at page 10. Alternatively you can access each state and territory swimming pool safety rules on the internet.

This discussion paper is intended to encourage public comment and debate. The contact address and other details for making comment are at the end of the paper. This paper does not represent the views of the ACT Government. At the conclusion of the public consultation period, the government will consider all public comments. This consideration will be the basis for decisions on possible future legislation and other initiatives in this area.

What the statistics say

Of all near drowning incidents, 22.3% of people, many of them children, will have some form of permanent brain damage.

The home swimming pool remains the most common location for drowning death and injury for children under five. 314 people drowned in Australian waterways in 2009/2010⁷ compared to 270 in 2007. 35 of these people drowned in home swimming pools and spas. This was a 4% increase on the year before and a 12% increase on the five year average.

The statistics are particularly alarming for children aged below 15 years. 41 of the 314 people who drowned in 2009/2010 were under the age of 15. Of these 41 possibly preventable drownings, over 20 were children aged under nine. These drownings occurred in home swimming pools or spas.

Most drowning deaths of young children resulted from the child falling or wandering into water. NSW research has shown that a leading cause of toddlers drowning in a home swimming pool is the failure of an existing pool fence⁸.

In addition to the deaths from drowning statistics there are many stories of young children that survive immersion in water, but are left with lasting physical and mental disabilities. The Children's Hospital Westmead⁹, with the support of the Samuel Morris Foundation and the Swimming Pool and Spa Association, have released a video "protect your pool protect your kids" which discusses the impacts (and stories of children) who have survived an immersion incidence.

Of all near drowning incidents, 22.3% of people, many of them children, will have some form of permanent brain damage, leading to the need for long term care, resulting in persistent and ongoing disability¹⁰.

The ACT currently has the lowest incidence of drowning in Australia, however there is too much at risk to be complacent. Since 2000 there have been 19 drowning deaths in the ACT as opposed to two deaths in the previous decade. Although there have been no incidences of drowning in home swimming pools in the ACT since 2005, during that year there were three drowning deaths in the space of several months.

Australian Water Safety Council findings and experience suggests that it is, unfortunately, only a matter of time until there is another drowning in a home swimming pool in the ACT.

6 Australian Safety Water Council (2008). Australian Safety Water Council Strategy 2008-2011: p 25. Australian Water Safety Council, Sydney

7 National Drowning Report 2010; Royal Life Saving Society Australia

8 Analysis of drowning involving children aged five years and under in NSW. Williamson A, Irvie P, Sadural S; NSW Water Safety Taskforce, 2002

9 The video can be accessed through the Swimming Pool and Spa Association website at http://www.chw.edu.au/parents/kidshealth/pool_fencing/# and clicking on the link to the video

10 Deaths and hospitalisations due to drowning, Australia 1999/00 – 2003/04. Kreisfeld R, Henley G; Australian Institute of Health and Welfare, 2008



What has been done - national strategies to address drowning

The Australian Water Safety Strategy 2008-2011, seeks action for water safety from agencies, state and territory governments and the community to work towards achieving a 50% reduction in drowning deaths by 2020. In the foreword, the Federal Minister for Sport commented that the strategy would:

"...build on the knowledge gained from previous water safety plans and is a testament to the continued hard work by water safety agencies, governments, community groups and individuals to prevent drowning."

Part of this work is done by the Australian Building Codes Board (ABCB). In May 2010 the ABCB amended the Building Code of Australia to reference the latest version of the Australian Standard for home swimming pool fencing. Since then compliance with the "deemed to satisfy" provisions of the Building Code have required that:

- all new outdoor home swimming pools and spas to be surrounded by a pool fence or other such appropriate barrier. Wall and child restraint windows can still be used as part of the barrier;
- doors to indoor pools or spas must open outwards and away from the pool.

The ACT was amongst the first state or territory to introduce this new Australian Standard, through the Building Code, and give it legislative force. The new Australian Standard has now been adopted in whole or in part by Queensland, Western Australia and South Australia. This discussion paper seeks to gain your views and comments on what model should be adopted to implement the new home swimming pool safety laws across the ACT community.

What is being done in the ACT?

The ACT Water Safety Action Plan 2010-2013 has a target of zero drowning deaths. The Safe Waters ACT Committee, responsible for implementation of the Action Plan¹¹, has identified eight priority areas, linked to the Australian Water Safety Council strategy, to help achieve this target. The following two sections are key to this discussion paper:

- Priority Area 2 Home swimming pools
- Priority Area 5 Strengthen Policies and Legislation

Committee initiatives have included:

- awareness campaigns
 - the Home Pool Safety Weekend is a checklist for swimming pool owners to use to check the various components of the pool fence (and other things associated with a pool such as chemicals, electricity supply etc);
- resources for new pool owners
 - Home Pool Safety resource kit
- establishment of new water safety initiatives
 - Water Safety Week
 - Keep Watch Program.

This discussion paper seeks to gain your views and comments on what model should be adopted to implement the new home swimming pool safety laws across the ACT community.

¹¹ Further information on the Action Plan can be accessed at http://www.tams.act.gov.au/play/sport_and_recreation/programs/safe_waters

In December 2009, the ACT Minister for Planning, Andrew Barr MLA announced the ACT's intention to develop new laws for pool fences. This discussion paper is part of the process of consulting with the community and industry about 'what swimming pool safety means'. The results of consultation may suggest a model of home swimming pool safety that would require legislative reform. This could build on existing legislation and help to ensure all home swimming pools across the ACT have an effective swimming pool fence.

This discussion paper focuses on safety surrounding home swimming pools. There is legislation already in-place that governs safety requirements in public pools that are not associated with a residence.

Home swimming pool - what does this mean?

The discussion paper uses the term 'home swimming pool'¹². This is because most people understand what this is i.e. the pool in the backyard. In this paper the term also includes:

- pools that may be inside (or partially inside):
 - a residence
 - a townhouse
 - an apartment, motel, hotel etc
 - a caravan park etc¹³
- pools that home owners put up (and take down) such as inflatable wading pools or prefabricated pools that do not require a licensed builder to install them
- a pool under a pergola or other type of enclosure
- spas that are not emptied after each use. This includes spas that are inside or partially inside a residence, may have a cover that is removed before use, may be part of a swimming pool, and may be surrounded by decking or under a pergola or other type of enclosure.

The term does not include public swimming pools.

¹² The Building Code may not use the term 'home swimming pool' and you should refer to the Building Code for full information about the application of the Code to swimming pools.

¹³ Please refer to the Building Code of Australia and Australian Standard for full detail on what the Code and Standard applies to.



Current home swimming pool safety standards in the ACT

The standards for pool construction and fencing in the ACT have changed over many years. For example before 1970 many ACT pools did not require any fencing or other barriers. In the ACT there is currently no specific statutory requirement to upgrade fencing or other barriers to new standards once the pool has been built and certified for use, or to require pool fencing or other barriers to be maintained or checked. However, the ACT does have laws that can require, by written notice, pool owners to make unsafe pool barriers safe, on a case-by-case basis.

Current rules require that new swimming pools in the ACT must be installed in accordance with the Building Code of Australia as updated in May 2010. Home swimming pool fences, approved for construction after 1 May 2010 can only be deemed BCA-compliant by complying with Australian Standard 1926.1 - Fencing for Swimming Pools, and other relevant BCA requirements.

Although the construction of pools, including their safety barriers, in the ACT is largely exempt from the need to apply for development approval a building certifier must inspect and certify that the pool's barriers comply with the Building Code of Australia. A certificate of occupancy to allow use of the home swimming pool, and its safety barrier can then be applied for.

The deemed-BCA compliant requirements for home swimming pools¹⁴ include:

- safety fence and gate must be of a certain height and non-climbable and no gaps through which a 100mm ball can pass
- pool fences must be kept clear of objects which could assist a child to climb over the fence
- outdoor pools associated with a residence must be entirely enclosed in a fence or other barriers separate to the door from the residence to the pool area
- pool gate must swing outwards from the pool area, be self-closing and latch from any position with a stationary start. The gates latch mechanism should be at least 1.5m above ground or, if lower, must be shielded to restrict access to the mechanism by children
- doors to indoor pools must open away from the pool and self-close and latch etc as for pool gates
- if a window forms part of the barrier, the window must be physically restricted so that access to the pool can not be gained through it.

These rules apply to swimming and paddling pools over 300mm deep (inside or outside the house) and to a spa (that is not emptied after each use). These requirements are currently not applied to lawfully constructed pre-existing pools, so there is no general requirement, unless a written notice about an unsafe pool fence has been issued, for home swimming pool or spa owners to modify existing fencing or other barriers to comply with changes in home swimming pool safety requirements.

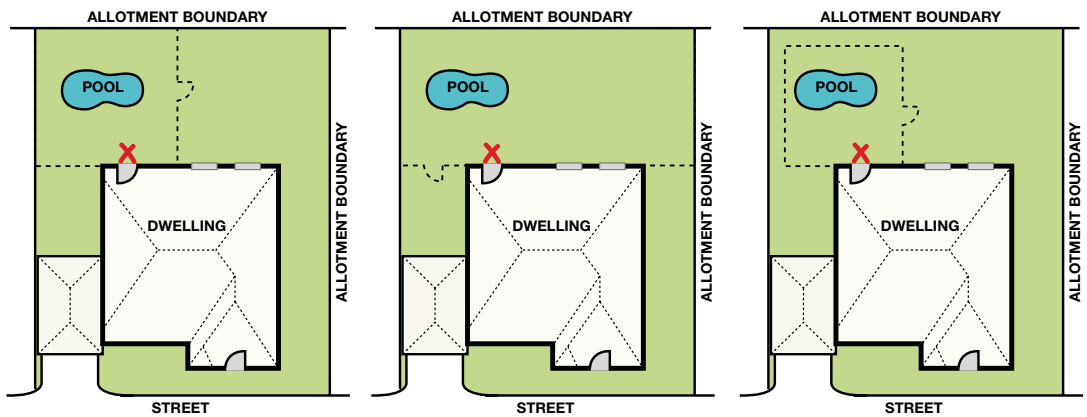
...the ACT does have laws that can require, by written notice, pool owners to make unsafe pool barriers safe, on a case-by-case basis.

¹⁴ The BCA as it applies to home swimming pools has a 'deemed to satisfy' provision. This means that if the same effect would be achieved by an alternate means then it is 'deemed to satisfy'. This needs to be assessed and if compliant certified by a licensed person.

The following diagrams show examples of what might be compliant BCA fence locations. They do not reflect the many different variations that are possible under 'deemed to satisfy' provisions of the BCA. A licensed building surveyor is required to assess and determine if the pool and its associated safety barrier is compliant with the BCA:



Pool/spa fences that would **not** comply with the May 2010 standard:



What still needs to be done. The need for further action.

The need for further action was underlined by the Australian Water Safety Strategy. The Strategy identified that emerging trends were eroding the good work of the previous “...ten years as the downward path of the drowning numbers has stalled or plateaued and in some demographics is increasing”¹⁵. This is an alarming development and one where governments and the community need to work together to achieve a reduction of drowning deaths by 50% by 2020 (and beyond).

It is suggested that to achieve this reduction in drowning deaths a number of interrelated measures are required. The next part of the discussion paper talks about:

- the ACT context and challenges
- provides a summary of what applies in other states
- how to achieve safety in a home swimming pool
- what model should the ACT use.

The ACT context and challenges

How many pools and spas are there in the ACT?

There is no accurate record of the number of pools in the ACT. The Australian Bureau of Statistics¹⁶ figures for 2007 showed there were 5,900 households in the ACT with home swimming pools (not including spas) whereas initial analysis of ACT aerial imagery has identified almost 7,000 ‘things’ that could be pools or spas. This does not include home swimming pools or spas that could be inside or under pergolas or pools and spas that are associated with residential areas such as motels, apartment complexes etc.

The Royal Life Saving Society suggests that there could be as many as 30,000 pools and spas across the ACT.

Without accurate knowledge of the number of pools in the community, ensuring community safety is challenging.

Without accurate knowledge of the number of pools in the community ensuring community safety is challenging.

There is no current requirement to register a home swimming pool or spa

Several states around Australia have established a pool register. A register of pools could enable the government to provide information directly to pool owners and users, including information on home swimming pool safety and updated regulations. A register could also assist the government to assess how many pools and spas exist in the ACT and tailor ongoing programs accordingly. It may also enable authorities to review pool fencing or other barriers on existing pools. Charging owners a small registration fee could help cover the costs of administration and encourage compliance with home swimming pool safety laws.

What would be a reasonable fee to register a home swimming pool or spa? Should it be a one-off fee?

¹⁵ Australian Water Safety Council (2008). Australian Water Safety Strategy 2008 – 2011: Reducing drowning deaths by 50% by 2020; page 5. Australian Water Council, Sydney.

¹⁶ Australian Bureau of Statistics 4602.0 – Environmental Issues: People’s views and Practices, March 2007

There may be no requirement for fencing of older home swimming pools and spas

Legislation in the ACT requires all newly lawfully constructed home swimming pools and spas, to meet BCA pool fencing or other barrier requirements. However, there are many older home swimming pools and spas that are not required to have their pool barrier up to the latest BCA standard and for some it may be that at the time of lawful construction only perimeter fencing was required.

What should happen with these home swimming pools and spas? Should they be required to bring the home swimming pool and spa fence up to the current BCA standard? What should happen if the BCA changes in the future?

If you suspect an ACT pool is unsafe you can report this through Canberra Connect.

There are no checks for home swimming pool or spa safety

The ACT does not currently have a system for ensuring home swimming pool fences are properly maintained and operated. For new home swimming pool fences, once the pool has been certified for use there are no further statutory checks to ensure that the pool fence is maintained or operated correctly. However if a pool fence or barrier is determined to be unsafe a written notice can be given to the owner to bring the fence or barrier up to standard.

There is no direct legal requirement for home owners to maintain the pool fencing or other barriers. Should there be? How would this be managed? What costs would be involved?

Tenants in rental properties are reliant on the home owner to maintain the pool fence. If a problem is noticed by the tenant (and they might not be fully aware of the requirements for pool fencing or other barriers) then there could be a lengthy process to get the problem fixed. In the meantime the swimming pool will continue to pose a risk to members of the household, particularly young children.

In several states there are now requirements to have pool fences and other safety features checked either on a regular basis (Western Australia) or prior to selling or renting a property with a home swimming pool (South Australia, Queensland). If you suspect an ACT pool is unsafe you can report this through Canberra Connect.

There is no current requirement for home swimming pool owners to display safety signs

There are no existing requirements to display safety notices or resuscitation signs, nor are home swimming pool owners required to have any knowledge of resuscitation.

Should home swimming pool owners be required to demonstrate an appreciation of home swimming pool safety, perhaps by participating in a short course, or needing to sit a simple test, as is required before someone gets a driver's licence?



There is no current requirement for home swimming pool safety fencing to comply with current rules

Currently the nature of ACT regulations means that, depending upon when a pool was built, there are different rules that apply to the pool fencing or other barriers and other safety features.

Pool and pool fencing construction standards and laws do change from time. It is not practical or equitable for home swimming pool owners to repeatedly alter pool fencing or other barriers to comply with changing laws. It is important, however, that a minimum level of home swimming pool safety exist across all home swimming pools. Standards in other states suggest that a fence that meets the Building Code of Australia May 2010 is an appropriate minimum to apply to all home swimming pools and spas. This is also the recommendation of the Royal Life Saving Society of Australia.

For some pools in Canberra, for example those which may only have a boundary fence (and that fence does not meet the BCA), rather than a specific pool fence, updating to current standards could be quite expensive or difficult. For example:

- the existing pool and surrounds may be 10 or 20 years old and might require significant renovation to be brought up to current standards
- the pool may be in a small area where space restrictions make installation of a fence difficult without major impacts on existing dwelling walls or other structures, for example some pools in townhouses or multi-dwelling apartment complexes.

In extreme cases, the design and location of the pool might be such that there is no practical means of complying with the standard other than to fill in or remove the pool. Such an action would amount to a significant loss of amenity and could also significantly impact on the overall value of the relevant property.

Should such a universal standard apply to existing spas as well? Some might contend that some spas which are raised above ground level and which can be easily and securely covered present a lesser risk relative to swimming pools and that a fence for these is unwarranted. Others might suggest that a spa as a large body of water presents the same risks as a swimming pool.

Is it appropriate to require pre-existing home swimming pools in Canberra to have upgraded fencing or other barriers to meet current standards? Should there be any exceptions for existing pools to such a new rule? Should existing pool owners be able to apply for an exemption from such a rule on the basis of practical difficulty? Should the same requirements apply to existing spas?

There is no requirement for home owners to be responsible for on-going pool fencing

Currently, the ACT encourages Canberra's homeowners to take responsibility for personal safety around the home. For example, there are no systems in place to independently check smoke detectors, or child-safety features in kitchens or on home stairways.

The cost associated with establishing a regular regime of checking the safety of each pool fence or requiring pools to be registered may be considerable and could be viewed by some as unnecessary red-tape. The ACT does not have as many swimming pool owners or as high a population as other Australian states over which to share the cost of establishing or managing such schemes.

Should regulations in the ACT leave the onus on the home swimming pool owner to ensure safety standards are met? Penalties could apply to those who are found to be in breach of safety standards; however, this may mean that a complaint or pool related accident would have to occur before any breach was identified.

Should regulations in the ACT leave the onus on the home swimming pool owner to ensure safety standards are met?

Summary of requirements in other states

While it is important that home swimming pool safety regulations are developed to suit the particular needs of the ACT, it is useful to understand the systems in other states. The following table broadly summarises home swimming pool safety requirements in four states. For full detail please refer to the websites provided for each state.

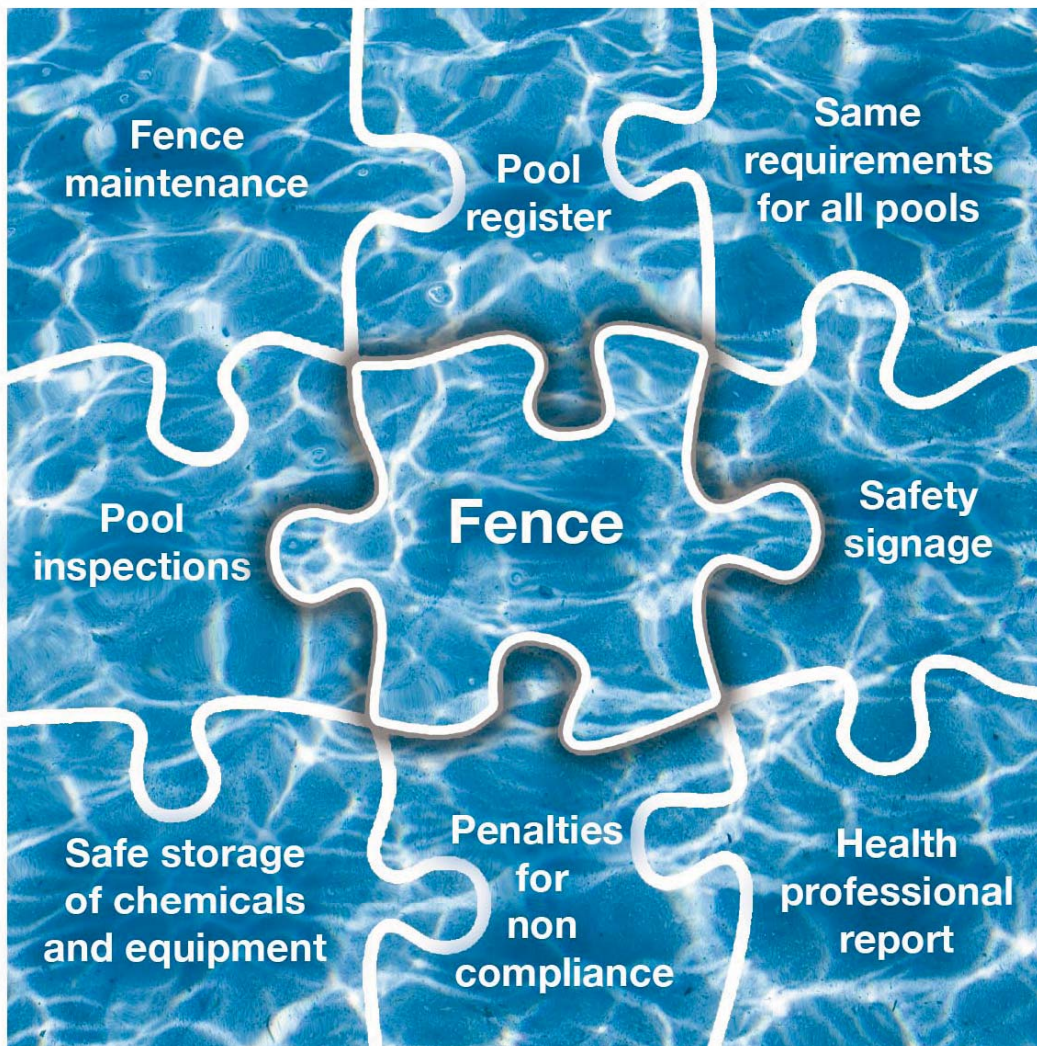
New South Wales	South Australia	Western Australia	Queensland
<p>Independent swimming pool legislation.</p> <p>2007 fencing or other barrier rules apply to all new pools.</p> <p>Law not applied to pre-existing pools.</p> <p>No inspection.</p> <p>No register.</p>	<p>May 2010 fencing or other barrier rules applies to pool constructed since 1993.</p> <p>Must comply with 2010 before sale or rental.</p> <p>No inspection.</p>	<p>1993 fencing or other barrier rules apply.</p> <p>Inspection every 4 years.</p>	<p>May 2010 fencing or other barrier rules apply to all pools.</p> <p>Inspection required every 2 years.</p> <p>Pool register.</p>
<p>Swimming Pool Act requires new pools built consistent with current fence requirements and maintained to that standard. There is no requirement to modify fences if the standard changes post construction.</p> <p>Pools constructed since September 2008 need to comply with AS1926.1 – 2007 Swimming Pool Safety. Law is not applied to pre-existing pools.</p> <p>Amendments made to the Building Code of Australia May 2010 have not been reflected in NSW legislation.</p>	<p>Fencing or other barrier to comply with Building Code of Australia May 2010.</p> <p>Child restraint doors are not allowed to form part of the pool fence or barrier.</p> <p>Law has been applied to pools constructed prior to July 1993 if pools are to be sold.</p> <p>Pools constructed since 1993 are required to meet the standards at time of construction.</p>	<p>Fencing or other barrier to comply with Australian Standard AS 1926.1 1993.</p> <p>Penalties for non-compliance to fencing or other barrier rules range from \$100 to \$5,000.</p>	<p>All pools to have fencing or other barrier that complies with Australian Standard AS 1926.1 and Building Code of Australia May 2010 requirements.</p>
<p>No inspection required prior to sale or at other intervals</p> <p>Must notify local council of all swimming pools.</p> <p>Local councils send out letters to pool owners periodically to remind them of the safety requirements.</p>	<p>No mandatory inspection.</p> <p>No registration of pool required.</p> <p>Pool must be brought up to standard, detailed above, prior to sale of the property.</p>	<p>Inspection required every 4 years.</p>	<p>Inspection required prior to sale or rental of property given a two year pool safety certificate.</p> <p>Pool safety certificate is registered in a central register.</p> <p>Pool registration is compulsory. Pool register is compulsory and is available to the public online.</p>
<p>Can obtain a certificate of compliance from the local council for a fee of no more than \$70.</p>	<p>No fees are payable.</p>	<p>Pool owners pay an annual fee in their rates of \$55.</p>	<p>Pool owners pay private inspectors a fee for inspection and registration. Prices vary up to \$700.</p>
<p>Useful websites</p> <p>www.safewaters.nsw.gov.au</p> <p>www.dlg.nsw.gov.au</p>	<p>Useful web sites</p> <p>www.planning.sa.gov.au/go/swimmingpools</p>	<p>Useful web sites</p> <p>www.buildingcommission.wa.gov.au/swimmingpools</p>	<p>Useful web sites</p> <p>www.qld.gov.au/poolsafety</p>

How to achieve safety in a home swimming pool

The Royal Life Saving Society Australia identifies a number of important features¹⁷ of keeping children safe around a home pool, these include:

- fence the pool with a four sided fence. This means that access to the pool or spa is via a self-closing, self-latching gate, not the house. The gate to the pool is never propped open
- equipment not related to the function of the pool is stored outside the pool area
- inspect pool fences regularly to ensure the fence and gate are in good working order, including ensuring there are no objects alongside the fence that could be used as climbing aids.

Pool fencing or other barriers are a vitally important feature of home swimming pool and spa safety. However other home safety features are relevant as suggested in the following diagram. What pieces of the puzzle should make up the ACT model?



¹⁷ For full details please refer to the RLSS Home Pool Safety website: www.homepoolsafety.com.au

What model should we use to comply with the Building Code?

There are a number of elements that go towards making up an effective home swimming pool safety model other than what type of fence is used. These could include:

- the use of a register to record home swimming pool locations and owner details
- requiring basic swimming pool safety signage such as resuscitation and safety signs
- regular inspections
- mandatory reporting by health professionals of immersion incidences
- requiring pool chemicals and other equipment to be stored securely
- penalties for not maintaining the pool fence.

The following basic elements could be considered and are based around models used in other states. A short summary of other state models is on page 10 and includes a link to the relevant websites. Alternatively other information on home swimming pool safety can be found on the internet.

Upgrade safety requirements so that all home swimming pools comply with the BCA

Regulations could be amended to require all existing home swimming pools and spas to have fencing or other barriers that comply with the current Building Code of Australia as at May 2010, regardless of when the pool was constructed. This will effectively require all pools to be brought up to date with current home swimming pool safety requirements. Transitional arrangements may be required to allow pool owners time to make necessary adjustments such as updated fences or gates.

In some states the requirement to bring pools into line with current regulations is triggered by the sale or rental of the property at which time the building inspection would include an inspection of the pool and associated upgrades as necessary. Should this happen in the ACT?

Establish a pool register

To assist in providing up to date information to pool owners, a pool register could be established that requires home owners and landlords to register their home swimming pool or spa. This registration could be accompanied by an annual fee which could help cover costs associated with administering home swimming pool safety in the ACT. This model has been adopted in Queensland and Western Australia. Consideration needs to be given to what would appear on the pool register. Would it be on the public record? How would privacy issues be addressed?

If a pool register and inspection model is chosen what should this apply to?

How should the community monitor compliance?

Currently in the ACT the Building Code of Australia applies to all new pools and spas being constructed since 1 May 2010. This includes a vast range of situations, other than the normal suburban home where the 'building class'¹⁸ means that it would have to comply with BCA for swimming pools. These types of things include:

- apartment complexes
- hotels
- motels

Should the model decided upon apply to these type of buildings (even though they would still need to be compliant with the BCA)? Is this appropriate? Should pool safety in public pools be discussed?

Compliance – self regulation or compulsory inspections

If new pool fencing standards (including maintenance and operation requirements) are adopted, there is the question as to how compliance with such new model is to be checked. Determining how compliance would work is challenging. Other states such as Queensland have put in a series of offences supported with regular compulsory inspections.

Other jurisdictions rely on 'self-compliance' with back-up options if the managing authority has reason for concern. For example, as a result of reporting on an immersion incidence, a follow-up inspection may determine that the pool fence or barrier was defective. Under this self regulation approach a pool owner could still elect to have their pool fence inspected to ensure that it is safe or to provide assurance to a prospective purchaser prior to sale of the property. Under this model it is likely that private inspectors such as building certifiers would also establish services to inspect and certify pool fencing or other barriers, as has occurred in other states with inspection requirements.

Currently in the ACT, ACTPLA investigates concerns about unsafe swimming pool fencing and if warranted issues a written notice to the pool owner to bring the fence up to a safe standard.

How should the community monitor compliance? Would this only be done through inspections? Or should compliance be a matter of self regulation by the pool owner? Should there be a system where neighbours can phone in if they are concerned? What happens if the neighbours concern is unfounded?

¹⁸ The *Building Act 2004* uses the term 'class' in relation to building types under the BCA. For further information please refer to the BCA.

Should mandatory reporting of immersion incidents happen?

Regular pool inspections

In Queensland and Western Australia all home swimming pools need to be regularly checked for safety. The cost of these inspections varies from \$50 to \$700. In Western Australia every pool is inspected once every four years. In Queensland pool owners have pool fencing or other barriers authorised by a pool safety certificate which is then lodged in a central register. This certificate is valid for two years.

Should this happen in the ACT? Or should compliance be self-regulated?

If a regime of regular safety checks was established in the ACT, features could include:

- inspections undertaken by existing building certifiers, or by newly established licensed inspectors from within the pool industry, such as pool maintenance professionals or lifesaving organisations
- inspectors would need to have specialist training, appropriate professional liability insurance
- home swimming pool safety certificates could be lodged with ACTPLA and supporting resources would need to be established within Government
- a pool inspection and associated home swimming pool safety certificate could also be required before sale or renting of any premises with a pool
- ACTPLA's existing inspector powers would permit inspection following a complaint of reasonable suspicion that a pool is not fenced or is inadequately fenced. Inspection could also occur following notification by health professionals of a pool immersion incident.

Whatever model is decided upon there will be a cost to the community. How much should this be for each home owner?

Health professional reporting

To measure the success of home swimming pool safety legislation in the ACT, it is important that there is adequate reporting of home swimming pool drowning or home swimming pool immersion¹⁹ injuries. If there were mandatory reporting requirements by health professionals, including hospitals and ambulance service, this would allow an inspection of home swimming pools following such incidents. Should mandatory reporting of immersion incidents happen?

Home swimming pool fence maintenance

Once standard pool fencing or other barrier requirements are established, rules could be put in place to ensure that pool owners are required to maintain pool fencing or other barriers in correct operating order. Failure to maintain the fence or other barrier would be an offence and the pool owner may incur a liability for the cost of repairs.

Home swimming pool owners would need to be informed of their responsibilities. Information on swimming pool safety requirements can be obtained from the Building Codes Board (or from SAI Global the organisation that sells the Australian Standard). Please note that some cost may be involved. Alternatively a licensed building certifier (or other qualified person) may be able to provide information on requirements.

What signs, if any should pool owners need to display?

¹⁹ The *Ambulance Service Act 1991* defines immersion incidence as "...means an event involving the immersion or partial immersion of a young child under water in a swimming pool, if because of the immersion or partial immersion—
(a) the child has died; or
(b) the child has been deprived of air and the health or wellbeing of the child has been adversely affected.



The importance of maintenance and operation of the pool fence to pool safety suggests this requirement is necessary to help ensure these practices are adopted as widely as possible. However, some might contend that such a new requirement is unwarranted and unfair to existing pool owners who acquired and operated a pool in the absence of such a compliance regime.

Should new legislation require pool owners to maintain pool fencing and operate the pool fencing correctly? Should failure to comply with these obligations be an offence subject to criminal penalties?

Requiring home swimming pool safety signage to be displayed

Home swimming pool safety regulations could require the display of resuscitation and first aid signs as well as information on the importance of appropriate supervision of people using the swimming pool.

The Royal Life Saving Society has a policy that promotes active supervision of children using the pool²⁰. What signs, if any should pool owners need to display?

Requiring pool filters and chemicals to be safe

Home swimming pool safety regulations could require that pool filters and pumps be checked for safety and that appropriate chemical handling and storage practices are being implemented. How would this be checked? It could be part of the pool inspection? Or mandatory reporting of an 'immersion' incidence could trigger inspection?

Implementing the new model

Whatever new home swimming pool safety model is decided upon for the ACT, there will need to be a period of transition before the new model came into effect. This would allow pool owners to understand the new model, their obligations and time to bring their pool fence or barrier into compliance (as required).

There could be many things that, depending on the new model, would need to be considered. For example:

- a lawfully constructed pool after 1 May 2010 may now need to be registered, when should this happen?
- a lawfully constructed pool prior to 1 May 2010:
 - may now need to bring the fence or barrier up to current BCA compliance. How long should the pool owner have to do this? How would we check?
- should there be any exemptions for pre-existing pools because:
 - of a disability²¹ of one of the pool users?
 - bringing a pre-existing pool up to BCA compliance would be impractical?

Implementation of the new model would require an extensive community awareness program to inform the public of the new requirements. This could be coordinated with existing home swimming pool safety programs being conducted as part of the Safe Waters Action Plan.

It is not proposed that specific swimming pool legislation be created, but rather that the *Building Act, 2004* is enhanced to strengthen outcomes in terms of home swimming pool safety. Proposed amendments to legislation would be provided to the public for comment.

²⁰ Further information on this policy is available at <http://www.royallifesaving.com.au/www/html/2647-keep-watch--public-pools.asp>.

²¹ There are no exceptions, from the current BCA, because of disability.

What happens next?

This discussion paper is the first step in seeking community and industry views on home swimming pool safety.

Comments are invited on the questions raised by this discussion paper and other matters associated with home swimming pool regulations in the ACT. Comments can be provided using the following options:

- Online feedback at www.actpla.act.gov.au
- Email comments can be provided to planning.systemreform@act.gov.au
- Written submissions can be posted to
ACT Planning and Land Authority, GPO Box 1908, Canberra ACT 2601.

For further information on the discussion paper contact ACTPLA on 6207 1662.

Submissions on this discussion paper need to be received by **15 April 2011**.

It is proposed that, based on feedback received on this discussion paper, that draft legislation, or amendments to existing legislation will be released for public comment during 2011.

Where to get further information on home swimming pool safety

There are many organisations that provide advice on home swimming pool safety, particularly for children. These include:

- Kidsafe ACT - www.kidsafeact.com.au
- Swimming Pool & Spa Association of NSW - www.spasa.org.au
- St John Ambulance Australia – www.stjohn.org.au
- Royal Life Saving Society Australia – www.royallifesaving.com.au
- The Samuel Morris Foundation - www.samuelmorrisfoundation.org.au.





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