



Review of pool fencing legislation in Australia

May 2023



ROYAL LIFE SAVING
AUSTRALIA

ABOUT ROYAL LIFE SAVING

Royal Life Saving Society - Australia (RLSSA) is focused on reducing drowning and promoting healthy, active and skilled communities through innovative, reliable, evidence based advocacy; strong and effective partnerships; quality programs, products and services; underpinned by a cohesive and sustainable national organisation.

Royal Life Saving is a public benevolent institution (PBI) dedicated to reducing drowning and turning everyday people into everyday community lifesavers. We achieve this through: advocacy, education, training, health promotion, aquatic risk management, community development, research, sport, leadership and participation and international networks.

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Drowning in Australia

An average of 282 people lose their lives to drowning each year. For each one of these fatal drowning incidents, three people are admitted to hospital following a non-fatal drowning.

This ratio increases to eight hospitalisations for each fatality among children aged 0-4 years. Among this age group, 50% of all drowning deaths occur in private swimming pools. The Australian Water Safety Strategy 2030 (AWSS 2030) identifies children aged 0-4 years as a priority population.

Fatal child drowning has reduced by 50% over the last ten years, however, one-year-old-toddlers still record the highest fatal drowning rate of any age group at 3.47 deaths per 100,000 population. Risk factors for drowning among young children include lapses in adult supervision and a lack of appropriate barriers around water. Previous research found a faulty fence or gate to be the most common means of unaccompanied access to private pools. Such incidents included structures which had fallen into disrepair, faulty gates which did not close and latch correctly, and loose fence palings.

Pool fencing in Australia

The definition of a swimming pool is based on the Australian Standard (AS1926.1-2012 Safety Barriers for Swimming Pools) which states a swimming pool is “any structure containing water to a depth greater than 300 mm and used primarily for swimming, wading, paddling or the like, including a bathing or wading pool, or spa pool.” Pool fencing legislation is governed at a jurisdictional level, with each State or Territory responsible for their own compliance laws, swimming pool registers and inspection regimes. Provided a portable pool can be filled to a depth of at least 300mm, it is included in the definition of a swimming pool and therefore the relevant legislation applies.

The current Australian Standard (AS1926.1-2012) is the standard for several States and Territories but not all, with some using an older version of the standard and others adopting a modified standard. This current standard outlines the requirements for an effective barrier, specifying a fence height of at least 1.2m and a non-climbable zone of 900mm surrounding the outside of the fence. Further details refer to maximum gaps between fence palings and the requirements of the pool gate, which should be self-closing and latching and always swing outwards away from the pool.

The requirement for a private swimming pool or spa to be registered and inspected differs by jurisdiction, with some States and Territories requiring registration through local authorities and periodic inspections to ensure adequate maintenance. Similarly, in some jurisdictions additional rules apply regarding the sale or lease of an affected property. This may include a compliance certificate which is valid for a specified period of time. Required safety signage is specified in some States and Territories, such as the presence of cardiopulmonary resuscitation guidance. Legislation has recently been updated in some jurisdictions and is currently under review in others.

Recommendations and Conclusion

It is essential that fatal and non-fatal drowning in private swimming pools and spas is regularly monitored, with a focus on children aged 0-4 years as the demographic most at risk.

A review of the effectiveness of pool fencing legislation by jurisdiction would be beneficial, particularly in relation to the varying approaches to compliance and enforcement of existing legislation.

Given the complexity of legislation across the country, identifying opportunities for improved communication of existing rules would assist new homeowners and renters to understand the risks and, in turn, their responsibilities.

It is also important to support efforts to strengthen existing pool fencing legislation at a jurisdictional level, highlighting instances where technical advice or industry assistance would be welcomed.

282

people lose their lives to drowning on average each year



INTRODUCTION

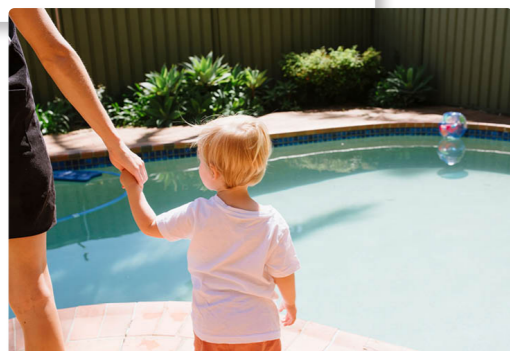
Drowning in Australia

Drowning is a significant public health issue in Australia, with an average of 282 people losing their lives each year (1). For each one of these fatal drowning incidents, three people are admitted to hospital following a non-fatal drowning (2). This ratio increases to eight hospitalisations for each fatality among children aged 0-4 years (2). The 2022 Royal Life Saving National Drowning report found 339 people fatally drowned in 2020/21, an increase of 24% on the 10-year average and 17 children aged 0-4 years fatally drowned (3).

Drowning in Australia occurs year-round, among all age groups and in all aquatic environments. However, trends are apparent which demonstrate areas of high risk among the population. For example, 11% of all drowning deaths occur in private swimming pools, including portable pools and private spas (1). However, among children aged 0-4 years this figure rises to 50%, the highest of any age group (1). Market research suggests nearly three million Australians reside in a house with a swimming pool, with the largest number of pools found in Queensland (4). Alongside inground swimming pools, these may include above ground pools, outdoor spas or portable pools.



SWIMMING POOLS ARE THE LEADING LOCATION FOR DROWNING AMONG YOUNG CHILDREN



WATER. IT'S ONLY SAFE WHEN YOU'RE WATCHING. KEEP WATCH.



Risk factors for child drowning

Young children are the age group at the highest risk of drowning (5). Curious and naturally attracted to water, children are at increased risk of drowning once they become more mobile (6, 7). Data from the Australian Bureau of Statistics shows drowning is the number one cause of death in one-, two- and three-year-old children (8).

Previous research has identified the risk factors for drowning among children, including lapses in adult supervision and a lack of appropriate barriers around water (5, 7). Lapses in adult supervision are commonly caused by distractions such as indoor and outdoor household duties, talking or socialising, electronic distractions and childcare (5). In situations where a distraction leads to a lapse in supervision, a barrier between a child and water can prevent unaccompanied access and thus, prevent child drowning. Pool fencing functions as an environmental intervention, averting unintended access to water (7).

The Australian Water Safety Strategy 2030 (AWSS 2030) acknowledges the complexity of reducing drowning in Australia, identifying children aged 0-4 years as a priority population (9). Existing interventions include public awareness campaigns, jurisdictional pool fencing legislation, swimming and water safety education for children and first aid training for parents and carers (9). It is encouraging to note that progress has been made, with fatal child drowning reducing by 50% over the last ten years (9). Despite this improvement, one-year-olds still record the highest fatal drowning rate of any age group at 3.47 deaths per 100,000 population (9). Programs such as Royal Life Saving's Keep Watch aim to reduce child drowning by educating parents and carers of children aged 0-4 years (6).

The program advocates four strategies to keep children safe around water:

- **Supervise:** Actively supervise children around water at all times,
- **Restrict:** Restrict children's access to water by placing a barrier between the child and water,
- **Teach:** Teach children basic swimming and water safety skills and
- **Respond:** Learn how to respond in an emergency and make sure first aid skills are up to date (6).

Pool fencing

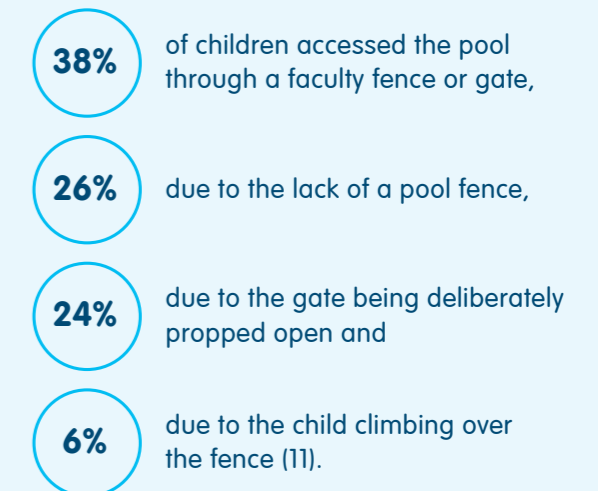
Previous research has examined the effectiveness of pool fencing to reduce child drowning. For example, a study investigating pool fencing legislation in Queensland found the number of children drowning in private pools decreased over the study period (2005-2015) (10). Mid-way through this period in 2009, legislation was revised to introduce a regular inspection program alongside strengthened policy regarding non-climbable zones and fencing materials (10).

A Cochrane review found that pool fencing significantly reduces the risk of drowning, specifying that isolation fencing was more effective than perimeter fencing (7). Isolation fencing refers to a fence which isolates the swimming pool from the house by completely enclosing it, such as four-sided fencing, whereas perimeter fencing encloses the house with the swimming pool, meaning access can be gained through the house, such as three-sided fencing (7). The review recommended legislation require all pools be fenced, whether newly constructed or existing, as well as noting the importance of enforcement of any legislation to ensure increased rates of compliance (7).

The Australian Water Safety Strategy 2030 highlights the vital role of partnerships across all areas of water safety, including State, Territory and local governments (9). In Australia, legislation regarding pool fencing requirements is governed at a jurisdictional level, with each state or territory responsible for their own compliance laws, swimming pool registers and inspection regimes.

Case study: A 15-year analysis of drowning deaths among children aged 0-4 years in New South Wales (NSW)

This research has identified the most common means of unaccompanied access to private pools and spas.



In the remaining 6% of cases, the child was already in the pool area when the drowning incident occurred (11). The cases which involved a faulty fence or gate included structures which had fallen into disrepair, faulty gates which did not close and latch as designed and loose fence palings (11).

Summary of key pool fencing requirements by State / Territory

	ACT*	NSW	NT	QLD	SA	TAS	VIC	WA
Uses current Australian standard for new pools	✓	✓	Old Version	Modified Version	✓	✓	✓	✓
Pool registration required		✓	✓	✓			✓	✓
Regular inspections required		#					✓	✓
Requirements when selling property with pool		✓	✓	✓	✓			
Requirements on landlord when renting property with a pool		✓	✓	✓			✓	
Signage (CPR / first aid) required		✓		✓	✓			

*ACT legislation is currently under review as at March 2023. # Required by some councils.

POOL FENCING IN AUSTRALIA

Definition of a private swimming pool and spa

All Australian States and Territories have legislation which covers private swimming pool and spa safety. The definition of a swimming pool is based on the relevant Australian Standard (AS1926.1-2012 Safety Barriers for Swimming Pools) which states a swimming pool is “any structure containing water to a depth greater than 300 mm and used primarily for swimming, wading, paddling or the like, including a bathing or wading pool, or spa pool” (12). As an example, in the Australian Capital Territory (ACT) a swimming pool is defined as “an excavation, structure or vessel that can be filled with water to a depth of more than 300mm that can be used for swimming, wading, paddling or any other human aquatic activity”, highlighting this definition captures portable pools as well as permanent structures, such as in-ground swimming pools (13).

All jurisdictions provide similar guidance to detail what types of structures are included in pool safety legislation, with the depth marker of 300mm emphasised by all States and Territories (13-20). It is important to note the inclusion of portable pools in the definition of a swimming pool. This includes wading or paddling pools, as well as inflatable or blow-up pools. Provided a portable pool can be filled to a depth of at least 300mm, pool fencing legislation applies (13-20). This depth marker applies whether or not the pool is actually filled to 300mm, as demonstrated by the Victorian Building Authority’s use of the phrase “capable of containing more than 300mm depth of water” (19).

Fencing requirements for private swimming pools and spas

Fencing requirements for private swimming pools and spas differ by jurisdiction, although all States and Territories incorporate the relevant Australian standard (AS1926) in their own legislation. The Swimming Pool and Spa Association (SPASA) provide an overview of pool fencing rules for pool owners, listing the current Australian Standard (AS1926.1-2012 Safety Barriers for Swimming Pools) as the standard for ACT, NSW, South Australia (SA), Tasmania, Victoria and Western Australia (WA) (12). The Northern Territory (NT) utilises a previous version of the Australian Standard, referring to AS1926.1-1993 and AS1926.2-1995, and Queensland has created its own standard using a modified version of the Australian Standard (AS1926-2007) known as MP3.4 (Swimming Pool Barriers) (12, 15, 21).

In addition, some jurisdictions have grandfathered legislation, meaning the applicable law varies by the age of the swimming pool and in some cases, its location. For example, in NSW different versions of the Australian Standard are used to determine pool fencing requirements dependent upon the year in which the pool was constructed (22). Pools constructed prior to 30 August 2008 must adhere to AS1926-1986, pools constructed from 1 September 2008 to 30 April 2013 must adhere to AS1926.1-2007 and pools constructed after 1 May 2013 must adhere to AS1926.1-2012 (22). Exemptions also apply to some pools based on their location, for example if they are located on very small or very large properties (22). This is similar to legislation in the NT which details requirements based on the date of construction and location of the swimming pool (15), and legislation in the ACT and Tasmania which again, offers exemptions for older swimming pools (12). Victorian and WA legislation also offers concessions for older swimming pools or spas outlining which version of the Australian standard applies with examples and checklists provided to assist in adhering to the required rules (19, 20).

The main Australian Standard (AS1926.1-2012) outlines the requirements for an effective barrier, specifying a fence height of at least 1.2m and a non-climbable zone of 900mm surrounding the outside of the fence (12). Further details include an outline of the maximum gap between vertical fence palings, maximum gap at the bottom of the fence, provision for the inclusion of a boundary fence as part of the pool fence and rules regarding any horizontal fence palings (12). Special attention is given to the requirements of the pool gate, noting gates should be self-closing and latching and always swing outwards away from the pool (12). Further information and details for pool owners, builders and inspectors can be found in the applicable Australian Standard.

Table 1: Pool Fencing Legislation in Australia by State/Territory

STATE OR TERRITORY	RELEVANT STANDARD	FURTHER INFORMATION
ACT	Australian Standard* AS1926.1-2012 Safety Barriers for Swimming Pools	https://www.planning.act.gov.au/backyardlifeguard/pool-barrier-safety
NSW	Australian Standard* AS1926.1-2012 Safety Barriers for Swimming Pools	https://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/pools-and-pool-safety
NT	Modified Australian Standard AS 1926.1 – 1993 Swimming Pool Safety Part 1: Fencing for swimming pools AS 1926.2 – 1995 Swimming Pool Safety Part 2: Location of fencing for private swimming pools	https://nt.gov.au/property/homeowners-and-landlords/pool-or-spa/install-a-pool-or-spa/about-pool-fencing-and-barrier-safety-standards
QLD	Queensland Standard (modified version of Australian Standard) MP 3.4 Swimming Pool Barriers	https://www.qld.gov.au/housing/buying-owning-home/pool-safety/pool-laws-and-standards/fences-and-barriers
SA	Australian Standard* AS1926.1-2012 Safety Barriers for Swimming Pools	https://www.sa.gov.au/topics/housing/owning-a-property/pool-and-spa-safety
TAS	Australian Standard* AS1926.1-2012 Safety Barriers for Swimming Pools	https://cbos.tas.gov.au/topics/products-services/safety/pool-safety-barriers
VIC	Australian Standard* AS1926.1-2012 Safety Barriers for Swimming Pools	https://www.vba.vic.gov.au/consumers/swimming-pools
WA	Australian Standard* AS1926.1-2012 Safety Barriers for Swimming Pools	https://www.commerce.wa.gov.au/building-and-energy/swimming-spa-and-portable-pools

Registration and inspection of private swimming pools and spas

The requirement for a private swimming pool or spa to be registered differs by jurisdiction. Pool owners in NSW, Queensland, Victoria and Western Australia must register their pool. Inspection regimes also differ by jurisdiction with Victoria and Western Australia requiring regular inspections to ensure existing fences are well maintained. In NSW, swimming pools and spas must be registered on the NSW Swimming Pool Register, which can be completed through the relevant local council (14). In Queensland, registration occurs through the Queensland Building and Construction Commission (QBCC) (23).

The relevant Victorian legislation was updated in 2019, introducing the requirement for pools to be registered with the local council and inspected on a regular basis (24, 25). Pools and spas must be registered with the owner's local council, with a specific provision for relocatable pools related to the numbers of days since the pool was erected (24). Pool fences must be inspected every four years to determine whether the fence is compliant with the relevant standard (25). The Victorian approach is similar to Western Australia which requires registration with the relevant local council and inspections scheduled at least once every four years (20).

Sale or lease of properties with private swimming pools and spas

In some jurisdictions additional rules apply regarding the sale or lease of a property which includes a private swimming pool or spa. In NSW, owners who are selling a property with a pool "must ensure the contract for sale includes a registration certificate issued from the Swimming Pool Register, and one of the following: a valid swimming pool certificate of compliance, or a relevant occupation certificate issued within the last 3 years, or a certificate of non-compliance" (14). Legislation also considers a change of tenants in a rental property with a pool or spa. In this situation it is the incoming tenant who must be provided with a "copy of the certificate of compliance or occupation certificate" (a certificate of non-compliance is unacceptable in this situation (14)). It should be noted that compliance certificates are only valid for three years, with an inspection necessary to obtain a new certificate (14).

A similar scheme exists in Queensland whereby properties for sale or lease with a pool or spa require a pool safety certificate (27). Similar to the NSW arrangement, relevant properties can be sold with or without a pool safety certificate, noting the responsibility for obtaining one then flows through to the new owner, however, a certificate must be provided to a new tenant prior to the lease being signed (27).

Obligations also exist in SA for owners who are selling a property with a pool or spa, with regulations highlighting the possibility of upgrades being required depending on the age of the pool (28).

Upon selling a property in the NT, documents must be provided which show the swimming pool or spa has or will have a compliant pool fence in accordance with the relevant standard for the age of the pool (29). Rental properties with a pool or spa must have a compliance certificate or applicable acknowledgement notice (30). It should be noted that the ACT Government is currently considering a disclosure requirement related to pool fencing compliance at the time of sale or lease of a property with a pool or spa (26).

Signage for private swimming pools and spas

Signage relevant to private swimming pools and spas may include warning signs (such as during pool construction), safety signs regarding pool rules and cardiopulmonary resuscitation (CPR) signs (12, 22, 31). Some jurisdictions require specific CPR signage to be located near a private swimming pool or spa, while others do not legislate this requirement. Signage showing the steps of cardiopulmonary resuscitation (CPR) should be in accordance with the 2016 Australian and New Zealand Committee on Resuscitation (ANZCOR) Guidelines for Cardiopulmonary Resuscitation (CPR) (12).

In NSW and Queensland legislation requires a cardiopulmonary resuscitation (CPR) sign be displayed prominently near the any private swimming pool (22, 31). In South Australia, new pools "must display prominent signage to assist when providing first aid and to perform cardiopulmonary resuscitation" (28). Despite the remaining jurisdictions not including specific provision in relevant legislation for CPR signage, all States and Territories conform to the ANZCOR guidelines to ensure best practice across the country (12).



RECOMMENDATIONS

Research

- › Prioritise ongoing monitoring of drowning trends in private swimming pools and spas
 - Ensure continued focus on children aged 0-4 years given the increased risk of drowning in this age group
 - Ensure both fatal and non-fatal drowning are included in all relevant research reports to highlight the full burden of drowning, particularly in private swimming pools and spas
- › Review the effectiveness of pool fencing legislation by jurisdiction, including registration and inspection regimes where applicable

Policy

- › Work with State and Territory authorities, including Royal Life Saving State and Territory Member Organisations, to strengthen existing pool fencing legislation where gaps have been identified
- › Identify opportunities for improved communication of existing pool fencing legislation, noting the differences across States and Territories and complexity in enforcement approaches
 - Consider ways to reach new homeowners and renters following the sale or lease of a property with a swimming pool or spa

Advocacy

- › Promote existing pool fencing legislation through current child drowning prevention campaigns
 - Highlight the implications for portable pools in regard to pool fencing and owner responsibilities
- › Support efforts to strengthen existing pool fencing legislation at a jurisdictional level, providing technical advice and industry assistance where appropriate
- › Collaborate with other drowning prevention organisations to standardise child drowning prevention messages
 - Tailor messages to a jurisdictional level where possible to communicate accurate information regarding local pool fencing legislation

CONCLUSION

Despite recent progress, child drowning remains an issue of critical importance in Australia with drowning a leading cause of death among children 0-4 years. Private swimming pools and spas account for half of all fatalities in this age group, necessitating a continued focus on pool fencing legislation. Research demonstrates the risks of inadequate fencing, including unaccompanied access to water through a faulty fence or gate, or lack thereof.

Pool fencing legislation is governed by Australia's States and Territories. Different approaches exist across the country regarding use of the Australian Standard, as well as swimming pool registers and inspection regimes to enforce existing legislation. In some jurisdictions additional legislation provides guidance on selling or renting a property with a pool or spa, as well as required safety signage. It is clear that effective pool fencing saves lives, however, maintaining progress in reducing drowning among children will require a focus on communication and collaboration.



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