



**ACT**  
Government

# Home Swimming Pool Safety Reforms

CONSULTATION PAPER

# Acknowledgement of Country

*Yuma. Dhawura nguna ngurumbangu gunanggu  
Ngunnawal.*

Hello. This country is Ngunnawal (ancestral/spiritual) homeland.

*Nginggada dindi dhawura Ngunnawalbun  
yindjumaralidjinyin.*

We all always respect elders, male and female, as well as Ngunnawal country itself.

*Mura bidji mulanggaridjindjula.*

They always keep the pathways of their ancestors alive.

*Naraganawaliyiri yarabindjula.*

They walk together as one.

The Environment, Planning and Sustainable Development Directorate acknowledges the Ngunnawal people as Canberra's first inhabitants and Traditional Custodians. We recognise the special relationship and connection that Ngunnawal people have with this Country.

Prior to the dislocation of Ngunnawal people from their land, they were a thriving people whose life and culture was connected unequivocally to this land in a way that only they understand and know and is core to their physical and spiritual being. The disconnection of the Ngunnawal people from Culture and Country has had long lasting, profound and ongoing health and wellbeing effects on their life, cultural practices, families and continuation of their law/lore.

The Environment, Planning and Sustainable Development Directorate acknowledges the historic dispossession of the Ngunnawal people of Canberra and surrounding regions. We recognise the significant contribution the Ngunnawal people have played in caring for Country as for time immemorial they have maintained a tangible and intangible cultural, social, environmental, spiritual and economic connection to these lands and waters.

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# Overview

The ACT Government is committed to preventing death and serious injuries from drownings and near drownings in home swimming pools. Regulatory reforms will be introduced in 2023 that will require all home swimming pools to have a barrier compliant with modern safety standards (within a specified transition period).

At present, pool owners only have to comply with the standard that applied when their pool was constructed unless there have been any substantial changes to the barrier. If substantial changes have been made, then the pool owner is required to comply with the standard that applies at the time the substantial changes are made.

Legislative reforms will:

- require all home swimming pool barriers to comply with modern safety standards
- require ongoing maintenance of home swimming pools and barriers with an associated penalty for non-compliance
- require disclosure of a pool's compliance status on sale or lease of the property
- establish a compliance framework to support enforcement of the above obligations.

The reforms will apply to all ACT home swimming pools and spa pools (which are capable of containing water to a depth greater than 30cm) associated with a residential building such as a house, unit, townhouse or block of apartments. Exemptions will be available in specified circumstances.

## Why is the ACT bringing in new pool safety reforms?

In the ACT, the home swimming pool is the most common location for drowning death and injury for children under the age of five. It is not only children who live at houses with swimming pools who drown, children and relatives who may be visiting or children from neighbouring properties are also at risk.

Pool barriers are a vital safety measure designed to help restrict children's access to a pool or pool area. Adult supervision in combination with pool fencing is the most effective method of preventing drowning. Children should always be supervised closely in and around pools.

As a community we are all responsible for safety around pools and together we can reduce the risk of people drowning or suffering serious injury in our swimming pools. The goal for these reforms is to save lives and prevent serious injuries from drownings and near drownings in home swimming pools.

## Pools affected by the reforms

### What pools will the reforms apply to?

The reforms will apply to all ACT home swimming pools and spa pools that are capable of containing water to a depth greater than 30cm and are associated with a residential building such as a house, unit, townhouse or block of apartments. This includes in-ground and above-ground pools, either temporary or permanent including wading pools, splash pools, inflatable pools, demountable pools, concrete pools, portable pools, kids' pools and spa pools.

The reforms will not apply to swimming pools in tourist and visitor accommodation such as hotels, motels and caravan parks.

## How do I know if my pool is compliant with the new safety standard?

The current safety standard in the ACT has not changed since 1 May 2013. Therefore, if your pool was approved, built or altered after 1 May 2013 it should already be compliant with modern safety standards. If your pool was approved, built or altered before that date, it may not be compliant with the new safety standard.

## Safety standard for pool barriers

### What prescribed safety standard will home swimming pools need to comply with?

The prescribed safety standard will be the current version of the Building Code of Australia (BCA) that requires compliance with Australian Standard AS1926.1 (2012) and AS1926.2 (2007).

#### Building Code of Australia

The Building Code of Australia (Volumes 1 and 2 of the National Construction Code) sets out the current standards for constructing new, or altering existing, residential swimming pools or spa pools. These standards already apply to new or recently altered pools in the ACT and include clear requirements for pool barriers.

In accordance with the BCA, a pool barrier must be provided around a swimming or spa pool that has a depth of water more than 300mm and must:

- be continuous for the full extent of the hazard (i.e. must surround the entire pool)
- be of a strength and rigidity to withstand the foreseeable impact of people
- restrict the access of young children to the pool and the immediate pool surrounds
- have any gates and doors fitted with latching devices not readily operated by young children and constructed to automatically close and latch.

These requirements apply to in-ground and above-ground pools, either temporary or permanent including wading pools, splash pools, inflatable pools, demountable pools, concrete pools, portable pools, kids' pools and spa pools. A pool satisfies the BCA requirements if it has safety barriers installed in accordance with the Australian Standard AS1926 (parts 1 and 2).

#### Australian Standards AS1926.1 and AS1926.2

Together these standards form the requirements for pool barriers in Australia. The standards require pool barriers that restrict access by young people to swimming pools and swimming pool areas that present a drowning risk.

Some examples of the requirements included in Australian Standard AS1926 are:

- a pool gate must be self-closing and self-latching on the first swing from any open position (even slightly ajar)

- a pool gate latch must be more than 1.5 metres from the ground, or if lower, shielded to restrict access to children from reaching the mechanism
- the bottom of a pool barrier should be no more than 100 millimetres from the ground.

#### AS1926.1 - Swimming pool safety, Part 1: Safety barriers for swimming pools

AS1926.1 assists pool owners/users to avoid pool-related drowning by specifying the requirements for the design, construction and performance of barriers that will restrict the access of young people to swimming pools. The requirements established by the standard are directed at achieving a barrier that will make it difficult for a young child to gain access to a pool area, whether under, over or through the barrier, that is a child resistant not child proof barrier. The requirements are established with the intention of leaving a high degree of flexibility to the consumer in the choice of barrier, desirable aesthetics and cost.

#### AS1926.2 - Swimming pool safety, Part 2: Location of safety barriers for swimming pools

AS1926.2 provides the requirements for the effective use of barriers in protecting children from pool hazards. It sets out options for the location of safety barriers intended to restrict access of young people to swimming pools and includes the factors to take into consideration in selecting the location of barriers.

Further details about Australian Standard AS1926 are at **Appendix 1**.

## Exemptions

### In what circumstances may exemptions be available?

Exemptions are proposed to be available in the following situations:

1. The pool area is unable to physically accommodate a safety barrier compliant with the prescribed standard. Considerations in determining whether this exemption should be applied will include:
  - i. requires movement or demolition of a building or part of a building on the premises
  - ii. requires the location or size of the pool to be changed
  - iii. requires removal of vegetation protected from removal under another ACT law
  - iv. dwelling has recognised heritage value (as defined under the ACT Heritage Act and listed on the ACT Heritage Register) where that value would be compromised by the installation of a barrier compliant with the prescribed safety standard.

These exemptions would apply only to the extent reasonably necessary in the circumstances to overcome the impracticality associated with compliance. An alternative safety measure must be proposed as part of any application for exemption on this ground. Where there is no viable alternative safety measure, the regulator may still consider the application.

2. A person with a disability is, or is to become, an occupier of the premises on which the pool is situated, and it would be physically impracticable for the person because of the person's disability, to access the pool if it had barriers complying with the prescribed safety standard. Should the premises cease to be occupied by a person with a disability the exemption would cease to have effect.

3. There are documented plans to demolish the property or the swimming pool within 24 months of the new laws commencing and/or evidence of compliance with the new laws being required.
4. The pool is a relocatable pool and will not remain up for more than three days.
5. Exemption for a spa pool so long as access to the water contained in the spa pool is restricted in accordance with the standards prescribed by regulation, at all times when the spa pool is not in actual use. The standards are being determined but are likely to require:
  - i. A spa pool to be covered and secured by a lockable child restraint structure.
  - ii. A lockable child-resistant structure includes a door, lid, grille or mesh.
  - iii. The lockable child-resistant structure must be of substantial construction and have no opening through which it is possible to pass a testing apparatus and is securely fastened by a device that is itself of substantial construction and has no opening through which it is possible to pass a testing apparatus.
6. A spa pool on the balcony of an apartment where self-closing and self-latching doors and windows restricts access.

Additional circumstances for exemption may be determined following this consultation process and as part of development of the legislative framework.

## Will there be a financial assistance scheme?

A limited financial assistance scheme for financially vulnerable households will be considered as part of the final design of the scheme.

# Ongoing obligations to maintain pool barriers

## What are the ongoing obligations to maintain pool barriers and prevent access?

The proposed reforms include establishing ongoing obligations to maintain pool barriers and prevent access. These obligations will include:

- a) the owner of premises, including an owners corporation, with a swimming pool, will be required to maintain the child-resistant barrier in a good state of repair as an effective and safe child-resistant barrier. This will be an offence provision with a fine attached.
- b) the occupier of any premises in or on which a swimming pool is situated, will be required to ensure that all doors and gates providing access to the swimming pool are kept securely closed at all times when they are not in actual use. This will be an offence provision with a fine attached.

The proposed offences are consistent with those in place in other jurisdictions.

These offences will apply irrelevant of when a pool is constructed and will apply from commencement of the scheme. Further details about ongoing obligations are at **Appendix 2**.

# Disclosure of pool's compliance status on sale or lease

The ACT Government is proposing to introduce a compliance disclosure framework as part of the scheme.

## What will the disclosure requirements be during the transition period?

During the transition period, any properties that are sold or leased will be subject to the following disclosure requirements:

- a) Provide an ACT Government factsheet on the new scheme with the lease or contract for sale; and
- b) Provide either:
  - i. a statement (disclosure statement) or other documentary evidence with the contract for sale or lease that provides information that is reasonably within the knowledge of the homeowner or owners corporation as to the age of the pool and the status of the pool against the prescribed safety standard or
  - ii. a compliance certificate.

## What will the disclosure requirements be following the transition period?

Following the transition period, a compliance certificate will be required to be provided at the time of sale or lease of the property unless the homeowner has a current exemption. The scheme will include proportionate consequences for failing to comply with these disclosure requirements post-transition.

Where the swimming pool is on common property, the responsibility for complying with the disclosure requirements will rest with the owners corporation.

# Compliance framework

The post-transition compliance framework will build on existing processes for certification of swimming pools and existing powers to address issues with building work under the *Building Act 2004*.

## Certificate of compliance

The ACT Government is considering options for who will be permitted to issue a compliance certificate. Where the pool is new and has been certified as required under the *Building (General) Regulation 2008*, evidence of that certification will constitute the initial certificate of compliance.

It is proposed that a certificate of compliance will be issued by a licensed building surveyor (certifier) or an approved pool barrier installer and then lodged with the ACT Government. The certificate will have a maximum validity period of five years, meaning property owners/owners corporations will need to obtain a new certificate of compliance every five years



If a certificate of non-compliance is proposed to be issued, the property owner will be given a prescribed statutory period (for example, 28 days) to rectify the issues resulted in non-compliance before lodgement of a non-compliance certificate with the ACT Government is required by the issuer of the certificate. In situations where the issue(s) requiring rectification present a significant and immediate risk to life or safety, the non-compliance certificate will be required to be issued immediately.

## Timeframe for implementation of the reforms

**The reforms are anticipated to commence in late 2023 with associated transitional arrangements. These arrangements are designed give property owners time to comply with the prescribed safety standard and support the community and industry to meet the new requirements. The transition arrangements will be determined following public consultation.**

### What rules will apply during the transition period?

During the transition period:

- homeowners with a pool subject to the reforms will have to bring swimming pool barriers up to compliance with the prescribed safety standards or seek an exemption.
- homeowners will be required to inform perspective tenants and purchasers of their pool's compliance (or non-compliance) with the new requirements.
- all pool owners (irrelevant of when the pool was approved, constructed or altered) will be required to meet new obligations relating to maintenance of pool barriers.
- all occupiers of premises where a swimming pool is situated (irrelevant of when the pool was approved, constructed or altered) will be required to ensure that all doors and gates providing access to the swimming pool are kept securely closed at all times when they are not in use.

## How we will use this information

Thank you for participating in this consultation on the introduction of home swimming pool safety regulatory reforms. We will use the feedback we receive to help finalise the details of the scheme and its key elements. Your feedback may be de-identified and included in material about the proposed scheme for Government consideration.

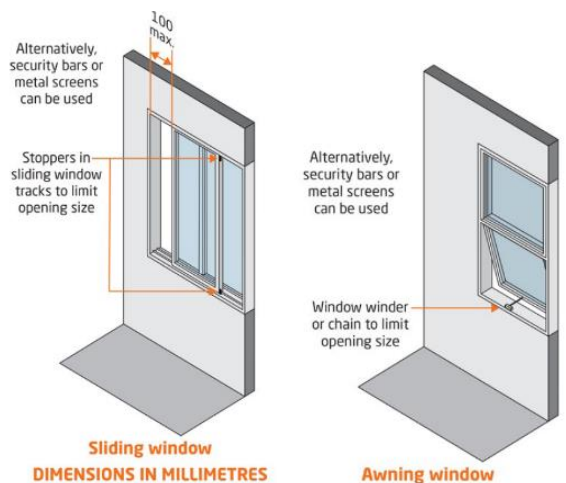
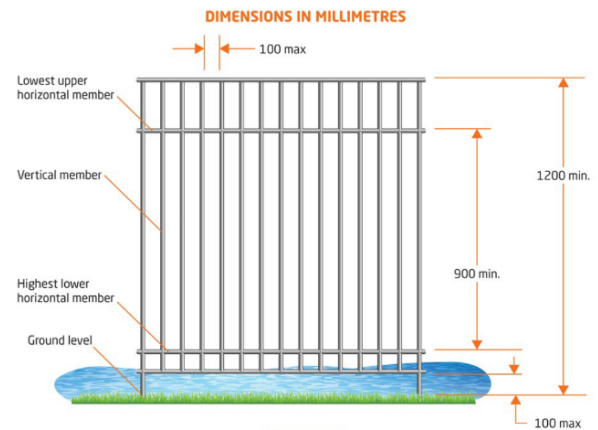
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## Appendix 1: Australian Standard AS1926

The requirements included in Australian Standard AS1926 are as follows.

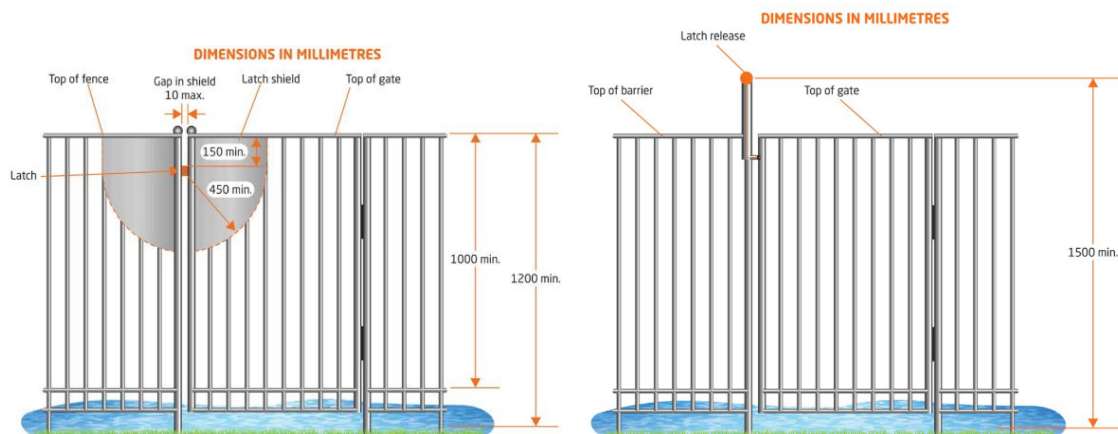
## POOL BARRIERS

- Must be secure and in good working order.
- The pool barrier located within the property (including the gate) must be at least 1.2 m high all the way around the pool (measured from outside the pool area), with a non climbable zone of at least 90 cm (i.e. no hands or foot holds).
- If a boundary barrier (e.g. your property fence) forms part of the pool barrier it must be at least 1.8 m high (measured from inside the pool area), with no climbable points within the top 90 cm (i.e. no hand or foot holds).
- The bottom of the barrier must be no more than 10 cm from the ground.
- No openings in the barrier can be larger than 10 cm.
- Objects or level changes that reduce the height of the barrier must be located at least 50 cm away from the barrier.
- If opening windows form part of the pool barrier and are less than 1.8 m above the pool area ground level, they must not open more than 10 cm (without the use of a tool) or must be shielded (i.e. by bars or a metal screen).



**POOL GATE**

- Must open outward from the pool area.
- Must be self-closing and self-latching from any open position (even slightly ajar).
- The latch release mechanism must be more than 1.5 m from the ground or, if lower, shielded to restrict access by children who may be able to reach the mechanism.



Diagrams for Barriers and Gates based on figures from AS 1926.1-2012. © Standards Australia Limited

## Appendix 2: Ongoing Obligations

### OBLIGATIONS DURING TRANSITION PERIOD

**NOTE:** These obligations apply to all swimming pools irrelevant of when approved, constructed or altered

Owner occupier	Rental providers	Tenant
If purchasing a home with a pool, ensure you are provided with information compliant with disclosure requirements with the contract for sale	If purchasing a home with a pool, ensure you are provided with information compliant with disclosure requirements with the contract for sale	
Check pool is compliant with prescribed safety standard by end of transition period*	Check pool is compliant with prescribed safety standard by end of transition period	Provide homeowner with reasonable access to the property to enable them to upgrade the pool to the prescribed safety standard
Undertake any required upgrades to make pool compliant with prescribed safety standard by end of transition period*	Undertake any required upgrades to make pool compliant with prescribed safety standard by end of transition period	
Submit an application for an exemption prior to the end of transition period*	Submit an application for an exemption prior to the end of transition period	
<p>Declare to potential purchasers the status of their pool** under pool safety laws</p> <p><i>**status could be:</i></p> <ul style="list-style-type: none"> <li>• date pool constructed,</li> <li>• date of any alterations,</li> <li>• date of building approval,</li> <li>• date house built,</li> <li>• date property purchased</li> </ul> <p><i>The purchaser is provided with sufficient information that informs them of whether they may need to take future action under the scheme.</i></p>	<p>Declare to potential tenants or purchasers the status of their pool** under pool safety laws</p> <p><i>**status could be:</i></p> <ul style="list-style-type: none"> <li>• date pool constructed,</li> <li>• date of any alterations,</li> <li>• date of building approval,</li> <li>• date house built,</li> <li>• date property purchased</li> </ul> <p><i>The tenant or purchaser is provided with sufficient information that informs them of whether they may need to take future action under the scheme.</i></p>	
Provide information compliant with disclosure requirements with lease/contract for sale	Provide information compliant with disclosure requirements with lease/contract for sale	Ensure you are provided with information compliant with disclosure requirements with the lease
Ensure barrier is securely closed when not in actual use		Ensure barrier is securely closed when not in actual use
Maintain pool barrier, ensure no objects that can be used to climb over the fence are placed next to the fence*		Maintain pool barrier, ensure no objects that can be used to climb over the fence are placed next to the fence
		Promptly report any maintenance issues with swimming pool and provide reasonable access for any maintenance work to be provided

\*This includes an owners corporation where a pool is located on common property. Where the property is part of an owners corporation but the swimming pool is not on common property the obligations fall on the owner.

## **OBLIGATIONS ON FULL COMMENCEMENT OF THE SCHEME**

**NOTE:** These obligations apply to all swimming pools irrelevant of when approved, constructed or altered

<b>Owner occupier</b>	<b>Rental providers</b>	<b>Tenant</b>
If purchasing a home with a pool, ensure you are provided with a certificate of compliance or exemption with contract for sale	If purchasing a home with a pool, ensure you are provided with a certificate of compliance or exemption with contract for sale	
Declare to potential purchasers the status of their pool under pool safety laws through a valid compliance certificate or provision of evidence of exemption	Declare to potential tenants or purchasers the status of their pool under pool safety laws through a valid compliance certificate or provision of evidence of exemption	Ensure you are provided with a certificate of compliance or exemption with lease
		Provide the homeowner with reasonable access to enable a certificate of compliance to be obtained or evidence for an exemption to be obtained
Undertake any remedial work required to obtain certificate of compliance*	Undertake any remedial work required to obtain certificate of compliance	Promptly report any maintenance issues with swimming pool and provide reasonable access for any maintenance work to be provided
Obtain and maintain an exemption if applicable*	Obtain and maintain an exemption if applicable	
Ensure pool barrier is securely closed when not in actual use		Ensure pool barrier is securely closed when not in actual use
Maintain pool barrier, ensure no objects that can be used to climb over the fence are placed next to the fence*	Ensure any work required to maintain the pool barrier is undertaken and undertaken in a timely manner	Maintain pool barrier, ensure no objects that can be used to climb over the fence are placed next to the fence

\*This includes an owners corporation where a pool is located on common property. Where the property is part of an owners corporation but the swimming pool is not on common property the obligations fall on the owner.