



## Pool and Spa Safety

This e-Bulletin is an important reminder to members of the real estate industry, following the inquiry into the drowning death of a young child in Kalgoorlie late last year, and applies to both tenanted properties and those for sale. Fully functional barriers for pools and spas help reduce the risk of a child drowning.

The law requires that private swimming pools are secured by isolation fencing and have correct locking mechanisms on gates. Under the [Building Regulations](#), a private swimming pool is one that the public is not entitled to use and which has the capacity to contain water that is more than 300 mm deep. This can include spa-pools (such as jacuzzis and outdoor hot tubs) but does not include spa baths that are normally emptied after each use.

Concessional treatment for properties with private swimming pools that were constructed, installed or approved prior to 5 November 2001 is available, but the barriers must still be working correctly. At the Kalgoorlie property, the substitution of an internal sliding door for a gate was allowable as it was an older property; however, the door was not functioning properly and the child was able to open the door and gain access to the pool.

While owners and occupiers are both responsible for ensuring that any fence or barrier restricting access to a private swimming pool is maintained and operating effectively, by virtue of the tenancy agreement it is ultimately the owner's responsibility to ensure fencing is adequate for any pools/spas provided with the rental premises. If an owner does not comply with the legal requirements, not only are the lives of young children at risk, but the owner could face substantial fines.

Given the legal requirement on owners to maintain pool fences and barriers, it seems reasonable that owners would benefit from property managers acting in their interests by checking on the state of the barriers during property inspections.

The Department does not expect you to be familiar with all elements of the safety requirements but asks that when inspecting you ensure that gates, locks and barriers appear adequate. In 2014 a CPD course will be offered to provide a basic understanding of pool safety, including information to help you perform a self-assessment of the barriers and access points.

If a property with a private swimming pool is listed for rent or sale, it may be prudent to make enquiries with the owner about whether the barriers comply with current safety regulations, particularly if there is to be a home open at the property. If you are concerned that the requirements are not being met, this information should be brought to the attention of the property owners and occupiers, especially if you identify an urgent repair pertaining to swimming pool safety.

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In summary, it is important that property managers, owners and tenants are aware of the need to:

- maintain safety barriers;
- report any safety barrier issues promptly (best practice is to do so in writing);
- respond to maintenance requests promptly; and
- seek advice promptly if there are any concerns.

Tenants, in particular, may be unaware of the legislative requirements that apply to pools and outdoor spas. To support property managers in providing information to lessors and tenants the Department has gathered a list of resources that may be useful.

### **Local Government**

The relevant local council can be contacted for advice as to whether a particular swimming pool or spa barrier complies with the legislative requirements. The local council should inspect the property after the installation of pool/spa safety barriers and then every four years to ensure the barriers remain compliant; however, they may not be aware of the existence of pools or spas purchased by a tenant. The Department understands that local councils do not accept a pool or spa cover as an approved safety barrier.

A tenant can report their concerns that a barrier is not compliant directly to the local council. The council can then inspect the barriers, and issue infringement notices requiring the owner to rectify the matter.

A building permit is required prior to installing, constructing or altering private swimming pool barriers, including windows, doors and gates that provide access to the pool area. The local council (as the permit authority) is responsible for issuing building permits for private swimming pools and their associated barriers.

### **The Building Commission**

The Building Regulations provide the legal framework for pool barrier safety. An easy-to-read guide on the requirements, "*Rules for Pools and Spas*", is available to download from the Building Commission's website at [www.commerce.wa.gov.au/buildingcommission](http://www.commerce.wa.gov.au/buildingcommission). While this is a general guide, advice as to whether a specific swimming pool barrier complies with the requirements can only be provided by the relevant local council.

### **Urgent repairs**

A tenant with concerns about the safety of pool/spa barriers may notify the property manager that an urgent repair is required. A repair may be considered urgent under the *Residential Tenancies Act 1987* if it would otherwise expose a person to the risk of injury (as long as the need for repair was not caused by the tenant breaching the agreement). A lessor must ensure urgent repairs are carried out by a suitable repairer as soon as practicable after notification.

Tenants have the right to authorise urgent repairs if they are unable to make contact with the lessor within 48 hours of the need for urgent repairs arising, or, if the repairs were not organised as soon as practicable after notification. The tenant must also be reimbursed for all reasonable expenses incurred in arranging and paying for those repairs.

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If pool or spa barriers are damaged, temporary fencing may also be required, so as to minimise the risk of danger.

Please note that for tenancy agreements signed prior to 1 July 2013 the lessor may have contracted out of repairs and maintenance. In this instance, the 48-hour timeframe will not apply for the life of that agreement. However, a tenant may still be able to issue a breach notice or notify the council of the issue, which would require the lessor to rectify the problem as soon as practicable.

### **Tenants who purchase or own a pool**

Tenants may purchase their own pool such as an above-ground pool or wading pool. Alternatively, they may purchase an outside spa, even though it may be a term of the tenancy agreement that the tenant does not install a swimming pool or spa without the consent of the owner.

It is most likely that tenants would purchase a portable pool rather than a traditional in-ground pool. Portable pools are classified as those for personal, domestic or household use that are:

- an inflatable swimming pool, of any depth
- a soft-sided swimming pool, of any depth
- a rigid-sided swimming pool that is not deeper than 300 mm.

While a portable pool that cannot hold more than 300mm of water does not require a mandatory safety barrier, portable pools of any depth can still present a danger, particularly if they are not emptied completely after use.

In order to warn purchasers of portable pools about the risk of drowning, the Consumer Goods (Portable Swimming Pools) Safety Standard came into effect 30 March 2014. Packaging on all portable pools sold after this date must contain information about pool fencing laws and pool dangers. If a portable pool was purchased prior to this date, information about hazards and barrier safety can be found on the Product Safety Australia website at [www.productsafety.gov.au/portablepools](http://www.productsafety.gov.au/portablepools).

If a tenant purchases a spa or portable pool that is capable of being filled to more than 300mm it **must comply with private swimming pool fencing and barrier requirements**. A prudent property manager who becomes aware that the tenant has such a pool should consider notifying the lessor. The lessor could then determine how they will manage this risk, as the Building Regulations place an onus on both the occupier and the owner (of the property) to comply with pool safety law.