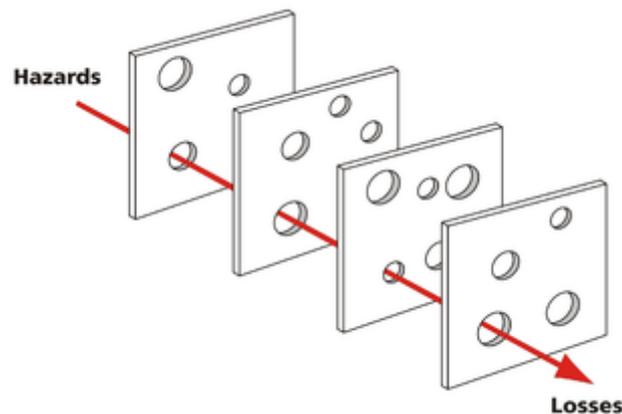


4 Preventing and reducing deaths of children by drowning

In the research literature, the widely-used ‘swiss cheese model of accident causation’ is used for risk analysis and risk reduction. In this model, multiple slices of swiss cheese, stacked side by side, are analogous to different types of preventative factors layered behind one another so that lapses and weaknesses in one preventative factor compensate for lapses and weaknesses in other preventative factors, to prevent a single point of weakness.⁷⁶ As shown in Figure 24, this model suggests that:

In an ideal world each defensive layer would be intact. In reality, however, they are more like slices of Swiss cheese, having many holes – though unlike in the cheese, these holes are continually opening, shutting, and shifting their location. The presence of holes in any one “slice” does not normally cause a bad outcome. Usually, this can happen only when the holes in many layers momentarily line up to permit a trajectory of accident opportunity – bringing hazards into damaging contact with victims...⁷⁷

Figure 24: The swiss cheese model of accident causation



Source: J Reason⁷⁸

The ‘Haddon matrix of injury prevention’,⁷⁹ a widely-used injury prevention model, is based on the swiss cheese model of accident causation, and provides a framework for understanding the prevention of drowning and non-fatal drowning incidents, comprising environmental factors, individual factors and agent of injury factors, as follows:

In the Haddon matrix of injury prevention, safety interventions are aimed at changing the environment, the individual at risk, or the agent of injury (in this case, water). For drowning prevention, the environment and the individual are the prime targets. Experts generally recommend that multiple “layers of protection” be used to prevent drowning, because no single strategy is likely to prevent all submersion deaths and injuries. Such layers might include environmental changes such as adult supervision, pool fencing, pool covers, water-entry alarms,

⁷⁶ Reason, J, ‘Human error: models and management’, *British Medical Journal*, 2000, 320, pp. 768–70.

⁷⁷ Reason, J, ‘Human error: models and management’, *British Medical Journal*, 2000, 320, pp. 769.

⁷⁸ Reason, J, ‘Human error: models and management’, *British Medical Journal*, 2000, 320, pp. 768–70.

⁷⁹ Haddon, W, ‘Options for the prevention of motor vehicle crash injury’, *Israeli Medical Journal*, 1980, 16, pp. 45-65.

lifeguards, and CPR [Cardiopulmonary resuscitation] training. Additional prevention layers focused on the individual would include strategies such as swimming and survival skills training and use of PFDs [Personal Flotation Devices].⁸⁰

Common preventative factors for drowning identified in the research literature are:

- supervision;
- private swimming pool barriers;
- swimming skills; and
- cardiopulmonary resuscitation.

These factors are analysed in turn in detail below.

4.1 Supervision

4.1.1 Research literature

In the research literature, child deaths by drowning have been associated with a lack of, or lapse in, supervision.⁸¹ The research literature further suggests that children aged under five years of age who are known to be 'in, on, or around the water' (such as a bath, shower or swimming pool) require 'active adult supervision', as in the following:

Active adult supervision is essential in protecting your child from drowning. In all cases of drowning in children under five, supervision was either intermittent or lacking altogether. Active supervision means that a child is being constantly watched by an adult who is within arms' reach at all times. All of your attention should be on the child and you should never leave a child alone, or in the care of an older child, when they are in, on, or around the water.⁸²

Active adult supervision is important as '[d]rowning usually occurs silently and rapidly.'⁸³

Even when a child under five is not known to be in, on, or around water, the Queensland Family and Child Commission⁸⁴ (**the Commission**) suggests that it is still important to provide 'a level of supervision' as follows:

When a child is not known to be in, on, or around water it is still important to provide a level of supervision to ensure that the child is protected from all hazards. Young children are unable to appropriately identify and negotiate risks, yet can be highly mobile ... Accordingly, it is essential that children under 5 years are regularly checked on by an active supervisor and that there are other

⁸⁰ Weiss, J, & the Committee on Injury, Violence, and Poison Prevention, 'Technical Report, Prevention of Drowning', *Pediatrics*, Vol 126, 1 July 2010, p. 257.

⁸¹ Petrass, L, Blitvich, J, Finch, C. 'Lack of caregiver supervision: a contributing factor in Australian unintentional child drowning deaths, 2000-2009', *The Medical Journal of Australia*, 2011, 194 (5) pp. 228-231.

⁸² Royal Life Saving Society Australia, *National Drowning Report 2015*, 2015, viewed 15 February 2016, p. 18, <http://www.royallifesaving.com.au/__data/assets/pdf_file/0006/14559/RLS_NDR2015_Report_LR.pdf>.

⁸³ Cantwell, G, and Alcock, J, *Drowning*, viewed 31 July 2017, <<http://emedicine.medscape.com/article/772753-overview>> p1.

⁸⁴ Formerly the Commission for Children and Young People and Child Guardian.

protections to reduce the risk of drowning (or access to other hazards) should there be a lapse in supervision.⁸⁵

The Commission also noted that, in regard to drowning deaths:

It is important to acknowledge that not all drowning deaths are reasonably foreseeable or the result of a breakdown in the elements of supervision occurring for the child. Sometimes a child is not known to be in, on, or around water and is being appropriately supervised by a capable supervisor, but a resourceful and inquisitive child may manage to bypass protections, unbeknown to the supervisor. These child deaths highlight the importance of having many and varied protections in place for the child, inclusive of adequate supervision.⁸⁶

In 2012-13, the Commission for Children and Young People and Child Guardian (which went on to become the Commission)⁸⁷ developed a 'revised drowning supervision model for children under 5 years'⁸⁸ (**the Commission's model**) and used this to analyse the levels of supervision associated with deaths by drowning of Queensland children under five years of age. The Commission described its model as follows:

The model examines drowning deaths in categories based on whether the child was known, or not known, to be in, on, or around water. This is because the threshold of supervision required for children known to be in, on, or around water is higher due to the presence of a significant hazard, than that of children not known to be in, on, or around water.

The key elements of supervision examined are:

- the capacity of the supervisor
- the proximity of the supervisor to the child, and
- the continuity of supervision.⁸⁹

The Office analysed the records of the six children aged under five years who died by drowning, and who were known to be in, on, or around water, to determine whether each child was under active supervision. For this analysis, the Office adopted the Commission's model, along with information from other research literature, as outlined in Figure 25. In the Office's analysis, all three elements (capacity of the supervisor, proximity of the

⁸⁵ Queensland Family and Child Commission, *Annual Report: Deaths of children and young people 2013-14*, 2014, viewed 11 April 2016, <<http://www.qfcc.qld.gov.au/knowledge-and-resource-hub/annual-report-deaths-children-and-young-people-queensland-2013-14>>, p. 49.

⁸⁶ Queensland Family and Child Commission, *Annual Report: Deaths of children and young people 2013-14*, 2014, viewed 11 April 2016, <http://www.qfcc.qld.gov.au/knowledge-and-resource-hub/annual-report-deaths-children-and-young-people-queensland-2013-14>>, p. 45.

⁸⁷ The Commission for Children and Young People and Child Guardian ceased operations on 30 June 2014 with the Commission being established on 1 July 2014, and the child death register functions formerly held by the Commission for Children and Young People and Child Guardian becoming the responsibility of the Commission.

⁸⁸ Commission for Children and Young People and Child Guardian, *Annual Report: Deaths of children and young people Queensland 2012-13*, 2013, viewed on 12 December 2016, <<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2014/5414T4621.pdf>>, p. 44.

⁸⁹ Queensland Family and Child Commission, *Annual Report: Deaths of children and young people 2013-14*, 2014, viewed 11 April 2016, <<http://www.qfcc.qld.gov.au/knowledge-and-resource-hub/annual-report-deaths-children-and-young-people-queensland-2013-14>>, p. 49.

supervisor to the child and continuity of supervision) needed to be in place to meet the definition of 'active supervision' of children known to be in, on, or around water.

Figure 25: Active supervision of children aged under five years known to be in, on, or around water

Element	Characteristics of this element for active supervision of children known to be in, on, or around water
Capacity	Supervisor is a capable adult and their capacity is not impaired by alcohol or other drug use ⁹⁰
Proximity	Supervisor is within arms' reach of the child ⁹¹
Continuity	Supervision of the child is continuous without distraction ⁹²

Source: Ombudsman Western Australia and Commission for Children and Young People and Child Guardian

The findings of the Office's analysis are set out below.

4.1.2 Of the 24 children aged under five years who died by drowning, six children were known to be in, on, or around water

Chapter 3 identifies that, of the 34 children who died by drowning, 24 children were aged under five years. The Office found that six (25 per cent) of these 24 children were known to be in, on, or around water. Five of these six children were in a bath or shower (Figure 26).

Figure 26: Children aged under five years who died by drowning, by known or not known to be in, on, or around water

Location	Child was known to be in, on, or around water	Child was not known to be in, on, or around water
Private swimming pool	0	13
Bath/shower	5	0
Dam/pond/river/ocean/lake	1	5
Total	6	18

Source: Ombudsman Western Australia

⁹⁰ The Western Australian Drug and Alcohol Office states that '[a] person is considered intoxicated on alcohol or other drugs when their functioning is significantly affected or impaired.' Mental Health Commission, *Intoxication*, <<https://vsu.mhc.wa.gov.au/about-vsui/intoxication/>>. The research literature also suggests that the capacity of the supervisor may be impaired if the supervisor is intoxicated or suffering the symptoms of withdrawal from alcohol use, for example '[r]outine tasks such as ... supervising children ... can become difficult when a parent is either intoxicated, hungover or suffering the symptoms of withdrawal from alcohol use.', Australian Institute of Family Studies, *An overview of alcohol misuse and parenting*, CFCA Resource Sheet, January 2015, viewed 3 April 2017, <<https://aifs.gov.au/cfca/publications/overview-alcohol-misuse-and-parenting>>, pp. 4-5.

⁹¹ Royal Life Saving Society Australia, *National Drowning Report 2015*, 2015, viewed 15 February 2016, p. 18, <http://www.royallifesaving.com.au/__data/assets/pdf_file/0006/14559/RLS_NDR2015_Report_LR.pdf>.

⁹² Royal Life Saving Society Australia, *National Drowning Report 2015*, 2015, viewed 15 February 2016, p. 18, <http://www.royallifesaving.com.au/__data/assets/pdf_file/0006/14559/RLS_NDR2015_Report_LR.pdf>.

4.1.3 None of the six children aged under five years who died by drowning, and who were known to be in, on, or around water, were under active supervision

The Office found that none of the six children aged under five years who died by drowning and who were known to be in, on, or around water were under active supervision. The Office's findings are summarised below (Figure 27).

Figure 27: Elements of active supervision for the six children aged under five years who died by drowning and who were known to be in, on, or around water

Child	Capacity	Proximity	Continuity	Active adult supervision in place
1	✓	x	x	x
2	✓	✓	x	x
3	✓	✓	x	x
4	✓	x	x	x
5	✓	x	x	x
6	✓	x	x	x

Source: Ombudsman Western Australia

Further details regarding each of the elements of active supervision for these six children are as follows.

4.1.3.1 Capacity of supervisor

The Office found that, of the six children aged under five years who died by drowning and who were known to be in, on, or around water:

- all six children had adult supervisor/s; and
- for all six children, the records available to the Office during the Investigation did not record that the supervisor/s had consumed alcohol or drugs.

4.1.3.2 Proximity of supervisor

The Office found that, of the six children aged under five years who died by drowning and who were known to be in, on, or around water:

- two children were within arms' reach of the supervisor; and
- four children were not within arms' reach of the supervisor.

4.1.3.3 Continuity of supervision

The Office found that, of the six children aged under five years who died by drowning and who were known to be in, on, or around water:

- for two children, their (sole) supervisor was distracted by household chores or caring for other children;
- for two children, their (sole) supervisor was distracted by a television, personal computer or mobile device; and

- for two children, their supervisor or supervisors were distracted by sleeping, showering, using the toilet or other activities.

The Office's findings set out in this Chapter regarding distractions causing lapses in supervision are consistent with the findings of the New South Wales Child Death Review Team, that a short lapse of supervision rather than a complete absence of supervision, was common in children reported to have drowned.⁹³ In this regard, the New South Wales Child Death Review Team noted that:

While the level of supervision for some of the children who drowned was significantly inadequate, many of the children were unsupervised for relatively short periods of time, often as a result of a momentary lapse in direct supervision by parent(s) or carers.⁹⁴

This is also consistent with international research, which found that:

... in a study of 496 drowning deaths in children younger than 14 years that were reviewed by state child-death review teams, only 10% were completely unsupervised at the time of the drowning.⁹⁵

4.1.4 Two of the six children aged under five years who died by drowning in the bath or shower had been placed in a seat in the bath without active supervision

In its analysis of the circumstances of the deaths of the six children under five years of age who died by drowning and who were known to be in, on, or around water, the Office found that four (67 per cent) of these six children were aged under one year. Two of these four children had been placed in a bath seat or in a floor seat in the bath without active supervision.

The research literature has identified that:

In Australia, on average, 5 children under the age of five drown and 47 are hospitalised due to bathtub drowning incidents each year. One in four hospitalisations results in permanent injury such as brain damage.⁹⁶

⁹³ New South Wales Death Review Team, 'Child deaths: drowning deaths in private swimming pools in NSW, Issues Paper No 1', 2012, viewed 27 July 2015, <https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0019/5752/IP_CDRT01_Private-Swimming-Pools.pdf>, p.2.

⁹⁴ New South Wales Death Review Team, 'Child deaths: drowning deaths in private swimming pools in NSW, Issues Paper No 1, 2012, viewed 27 July 2015, <https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0019/5752/IP_CDRT01_Private-Swimming-Pools.pdf>, p.2.

⁹⁵ Weiss, J, & the Committee on Injury, Violence, and Poison Prevention, 'Technical Report, Prevention of Drowning', *Pediatrics*, 126, 2010, p. 255, citing Cody, B, et al, 'Clear Danger: A National Study of Childhood Drowning and Related Attitudes and Behaviours, 2004.

⁹⁶ Royal Life Saving Society Australia, *Keep Watch @ Bath Time, Prevent your child from drowning*, viewed 12 April 2016, <http://www.royallifesaving.com.au/__data/assets/pdf_file/0018/3942/KW_BathTime_A4toDL_final.pdf>, p. 2.

With respect to bath seats, an association between drowning in the bath and the unsupervised use of bath aids, which include bath seats and rings, has been recognised by the Australian Competition and Consumer Commission (**the ACCC**) as follows:

In Australia, between 1997 and 2005, six infants under 13 months drowned while in a baby bath aid.⁹⁷

The ACCC has identified four hazard scenarios relating to the unsupervised use of bath seats in particular, which can lead to drowning incidents. These are:

- ...
- the child slips off, rolls off or climbs out of the seat
- the child becomes trapped in the seat openings
- another child in the bath plays roughly and pushes the young child out of the bath aid or tips the child over with the bath aid
- the bath seat tips over.⁹⁸

The ACCC also observes that:

Drowning can occur within seconds, silently and even if the water is only a few centimetres deep. If children are revived from near-drowning they may suffer permanent brain injury from lack of oxygen to the brain.⁹⁹

Mandatory standards for bath aids came into effect on 13 May 2005.¹⁰⁰ These mandatory standards are set out in the *Trade Practices (Consumer Product Safety Standard) (Baby Bath Aids) Regulations 2005 (Commonwealth)* and require warnings relating to the need for adult supervision to be provided on bath aids, as follows:

5. Form and content of warning

- (1) Subject to subregulation (4), a baby bath aid and any packaging in which the baby bath aid is supplied must bear a warning containing:
 - (a) a notice stating “WARNING — Children have DROWNED while using bath aids. This is NOT a safety device. ALWAYS keep baby within arm’s reach. NEVER leave baby in care of children.”; and
 - (b) 2 safety alert symbols, placed immediately to the left and right of the notice.

With respect to floor seats, the Coroner investigated the drowning of one child placed in a Bumbo™ [floor seat] in a shower and observed the Bumbo™ seat should not be used in the bath or shower. The Coroner found that:

⁹⁷ Australian Competition and Consumer Commission, *Product Safety Bulletin for business, What you need to know about; Baby bath aids*, 2013, viewed 12 April 2017, <https://www.accc.gov.au/system/files/659_Product%20safety%20bulletin_baby%20bath%20aids_FA2.pdf>.

⁹⁸ Australian Competition and Consumer Commission, Product Safety Australia, *Baby Bath Aids*, viewed 12 April 2017, <<https://www.productsafety.gov.au/products/babies-kids/kids-equipment/baby-bath-aids>>.

⁹⁹ Australian Competition and Consumer Commission, Product Safety Australia, *Baby Bath Aids*, viewed 12 April 2017, <<https://www.productsafety.gov.au/products/babies-kids/kids-equipment/baby-bath-aids>>.

¹⁰⁰ Australian Competition and Consumer Commission, *Product Safety Bulletin for business, What you need to know about; Baby bath aids*, 2013, viewed 12 April 2017, <https://www.productsafety.gov.au/_Product%20February20safety%20bulletin_baby%20bath%20aids_FA2.pdf>, p1.

... the Bumbo seat was expressly not designed for use in water and was unsafe for such use ... [being left unattended is] contrary to the Bumbo seat manufacturer's instructions, and also contrary to general recommendations for child safety around water... [It] is a timely reminder to other parents of why they must remain vigilant whenever their children are near water, whether it is at home or elsewhere.

It should also alert other parents who own a Bumbo seat to the need to carefully read the warnings on the product and be aware that it is not designed for use in the bath or shower.¹⁰¹

In Western Australia, the (then) Department of Commerce (the new Department of Mines, Industry Regulation and Safety) 'provides consumers and traders with access to a fair and competitive marketplace by providing advice and assistance to the community.'¹⁰²

More specifically, the (then) Department of Commerce provided the following services:

Consumer Protection¹⁰³

- provides information and advice to consumers and traders about their rights and responsibilities;
- helps consumers resolve disputes with traders;
- monitors compliance with consumer protection legislation;
- investigates complaints about unfair trading practices;
- prosecutes unscrupulous traders;
- regulates and licenses a range of business activities; and
- develops, reviews and prepares amendments to legislation that protects consumers.¹⁰⁴

The (then) Department of Commerce informed the Office that its officers conduct routine inspections of regulated items in Western Australia, including baby bath aids. Where issues of non-compliance are identified, the (then) Department of Commerce informed the Office that it ensures that the issues are rectified or negotiates the removal of these products via voluntary recalls.

The (then) Department of Commerce informed the Office that where officers identify non-regulated items that pose a safety hazard when used as intended, or where there is a risk associated with a foreseeable misuse, the (then) Department of Commerce also investigates these items and considers ways of having them removed from the marketplace.

With respect to Bumbo floor seats in particular, the (then) Department of Commerce informed the Office that:

Bumbo seats are not subject to regulation within the product safety specific provisions [of Australian Consumer Law], however Bumbo International Trust, the

¹⁰¹ Western Australian Coroner Sarah Linton, *Inquest into the death of TPL (A Child)*, Coroner's Court of Western Australia, Perth, 2 February 2016, pp. 11-12.

¹⁰² Department of Commerce, *Annual Report 2015-16*, 2016, accessed 4 May 2017, <https://www.commerce.wa.gov.au/sites/default/files/atoms/files/doc_ar_2015-2016.pdf>, p. 25.

¹⁰³ Consumer Protection is a division within the Department of Mines, Industry Regulation and Safety.

¹⁰⁴ Department of Commerce, *Annual Report 2015-16*, 2016, accessed 4 May 2017, <https://www.commerce.wa.gov.au/sites/default/files/atoms/files/doc_ar_2015-2016.pdf>, p. 7.

manufacturers of the Bumbo Baby Seat, recognised that whilst the product was safe for its intended use, on the floor and with adult supervision, there were some potential hazards associated with misuse.

In 2012, a voluntary recall of the Bumbo Baby Seat was instituted that enabled consumers to order and install a free repair kit including a restraint belt with a warning label, installation instructions, safe use instructions and a new warning sticker.

Recommendation 1

The Department of Mines, Industry Regulation and Safety continues to develop and implement strategies for educating parents and caregivers regarding the importance of maintaining active supervision of children who are placed in bath seats and of avoiding altogether the use of floor seats in the bath or shower.

In addition, the (then) Department of Commerce informed the Office that it monitors deaths and serious injuries of children using data collected nationally through mandatory reporting, complaints and media monitoring, meets regularly with other Australian Consumer Law regulators to discuss this data and the product safety issues it identifies, and through this mechanism, the (then) Department of Commerce monitors the need for further strategies, including regulatory intervention, to prevent child deaths and serious injuries.

Recommendation 2

The Department of Mines, Industry Regulation and Safety continues to monitor data specifically regarding fatal and non-fatal drowning incidents that occur in the bath and, if warranted, pursue the development of further regulation applicable to the products associated with these incidents.

4.1.5 None of the 18 children aged under five years who died by drowning, and who were not known to be in, on, or around water, were under active supervision

As outlined above, the Commission suggested that even when children aged under five years are not known to be in, on, or around water, it is essential that they are regularly checked on by their supervisor.¹⁰⁵

For completeness, the Office also analysed, for the 18 children aged under five years who died by drowning and who were not known to be in, on, or around water, whether or not these children were under active supervision, using the framework set out at Figure 25. The Office is aware that the framework for active supervision set out at Figure 25 applies a higher standard than being 'regularly checked on'. For this reason, some further qualitative information, particularly regarding continuity of supervision, is also provided.

The Office found that none of the 18 children aged under five years who died by drowning and were not known to be in, on, or around water were under active supervision. This is consistent with the Commission's findings, in relation to drowning deaths of children aged

¹⁰⁵ Queensland Family and Child Commission, *Annual Report: Deaths of children and young people 2013-14, 2014*, viewed 11 April 2016, <<http://www.qfcc.qld.gov.au/knowledge-and-resource-hub/annual-report-deaths-children-and-young-people-queensland-2013-14>>, p. 49.

under five years, who were not known to be in, on, or around water, which the Commission summarised as follows:

While the capacity and proximity of the supervisor were appropriate, there was a noted breakdown in the continuity of supervision in each death.¹⁰⁶

The Office's findings are summarised below (Figure 28).

Figure 28: Elements of active supervision for the 18 children aged under five years who died by drowning and who were not known to be in, on, or around water

Child	Capacity	Proximity	Continuity	Active supervision
1	✓✓	XX	XX	XX
2	✓✓	XX	XX	XX
3	✓✓	XX	XX	XX
4	✓✓	XX	XX	XX
5	✓	X	X	X
6	✓✓	XX	XX	XX
7	✓	X	X	X
8	✓NR	XX	XX	XX
9	✓	X	X	X
10	✓	X	X	X
11	✓	X	X	X
12	✓✓	XX	XX	XX
13	✓NR	XX	XX	XX
14	✓✓	XX	XX	XX
15	✓	X	X	X
16	✓	X	X	X
17	✓	X	X	X
18	✓	X	X	X

Source: Ombudsman Western Australia

Note: xx or ✓✓ denotes that there were two supervisors recorded for this child; ✓NR denotes that there were two supervisors and the proximity of one supervisor was not recorded; NR denotes not recorded.

Further details regarding each of the elements of supervision for these 18 children are as follows.

4.1.5.1 Capacity of supervisor

The Office found, for the 18 children aged under five years who died by drowning and who were not known to be in, on, or around water:

- all of the 18 children had at least one adult supervisor; and
- for all 18 children, the records available to the Office did not record that the supervisor had consumed alcohol or drugs.

¹⁰⁶ Queensland Family and Child Commission, *Annual Report: Deaths of children and young people 2013-14, 2014*, viewed 11 April 2016, <<http://www.qfcc.qld.gov.au/knowledge-and-resource-hub/annual-report-deaths-children-and-young-people-queensland-2013-14>>, p. 49.

4.1.5.2 Proximity of supervisor

The Office found, for the 18 children aged under five years who died by drowning and who were not known to be in, on, or around water:

- none of the 18 children were within arms' reach of the supervisor at the time of the fatal drowning incident. When the children were last sighted:
 - eleven children had been inside the house with the supervisor;
 - six children had been outside the house with the supervisor or outside the house and the supervisor was inside the house; and
 - one child's location was not recorded.

4.1.5.3 Continuity of supervision

The Office found, for the 18 children aged under five years who died by drowning and who were not known to be in, on, or around water:

- none of the 18 children were under continuous supervision;
- two children were last sighted within five minutes of their supervisor or supervisors identifying their absence and their supervisor or supervisors were distracted by a television, personal computer or mobile device, attending to household chores or using the toilet;
- five children were last sighted within five to 10 minutes of the supervisor identifying their absence. For these children, their supervisor or supervisors were distracted by household chores, working outside, caring for additional children, loading items into a car or engaging in a conversation with another person or were sleeping.
- nine children were last sighted more than 10 minutes prior to the supervisor identifying their absence:
 - for six children, their supervisor or supervisors were distracted by household renovation work, household chores, caring for other children, taking a shower or other household tasks; and
 - for three children, one supervisor thought the child was with the other supervisor and vice versa, or it was not recorded why their supervisor or supervisors had not sighted the child.
- for two children, the length of time between the supervisor last sighting the child and the supervisor identifying their absence was not recorded. For both children, two supervisors were recorded and the supervisors were sleeping, resting or engaging in a conversation with another party.

4.1.6 Of the 24 children aged under five years who died by drowning, 18 children were not known to be in, on, or around water

The Office found that, of the 24 children aged under five years who died by drowning, 18 (75 per cent) children were not known to be in, on, or around water. Of these 18 children:

- for 13 children (72 per cent), the location of the fatal drowning incident was a private swimming pool; and
- for five children (28 per cent), the location was a dam, pond, river, ocean or lake.

4.1.7 Of the 10 children aged five years and over who died by drowning, eight children were known to be in, on, or around water, and for six of these children the location of the fatal drowning incident was a river, ocean, lake, dam or pond

The Office found that, of the 10 children aged five years and over who died by drowning, eight (80 per cent) children were known to be in, on, or around water. For six (60 per cent) of the 10 children, the location of the fatal drowning incident was a river, ocean, lake, dam or pond (Figure 29).

Figure 29: Children aged five years and over who died by drowning, by known or not known to be in, on, or around water

Location	Child was known to be in, on, or around water	Child was not known to be in, on, or around water
Private swimming pool	1	2
Bath/shower	1	0
River/ocean/lake/dam/pond	6	0
Total	8	2

Source: Ombudsman Western Australia

The Office also found that, of the eight children who were known to be in, on, or around water, half were aged between five and nine years. The research literature suggests that children of this age must be 'supervised within line of sight at all times'¹⁰⁷ when they are known to be in, on, or around water.

4.2 Swimming pool barriers

4.2.1 Thirteen children aged under five years who died by drowning in a private swimming pool were not known to be in, on, or around water; a suitable swimming pool barrier may have restricted their access to the swimming pool

The analysis set out at section 4.1.6 identifies that, of the 24 children aged under five years who died by drowning, 18 children (75 per cent) were not known to be in, on, or around water. For 13 of these 18 children, the location of the fatal drowning incident was a private swimming pool. The Office also found that while none of these 13 children were under active supervision 'not all drowning deaths are reasonably foreseeable or the result

¹⁰⁷ Watch Around Water, *Welcome to Watch Around Water*, viewed 3 April 2017, <<http://www.watcharoundwater.org.au/>>.

of a breakdown in the elements of supervision occurring for the child. Sometimes a child is not known to be in, on or around water and is being appropriately supervised'.¹⁰⁸ As discussed at section 4.1.1 'when a child is not known to be in, on, or around water it is still important to provide a level of supervision to ensure that the child is protected from all hazards ... It is essential that children under 5 years are regularly checked on by an active supervisor and that there are other protections to reduce the risk of drowning ... should there be a lapse in supervision'.¹⁰⁹

Swimming pool barriers act as a second line of defence for when a child is not known to be in, on, or around water. As discussed in further detail at section 6.1.1, regulation 50(1) of the *Building Regulations 2012* provides that:

50. Barrier to private swimming pool

- (1) Each owner and occupier of premises on which there is a private swimming pool containing water that is more than 300 mm deep must ensure that there is installed or provided around the pool a barrier that restricts access by young children to the pool and its immediate surrounds.

The barrier effectively provides this second line of defence. The *Building Regulations 2012* further provide for how a barrier to a private swimming pool is to be taken to be suitable for this purpose. The research literature has also identified that the strengthening of pool safety requirements over time has been associated with fewer fatal and non-fatal drowning incidents.¹¹⁰

4.2.2 All 13 children aged under five years, not known to be in, on, or around water, who died by drowning in a private swimming pool, died in a private swimming pool with either no barrier, a defective barrier, or a climbable object near the permanent barrier

The research literature also identifies that most fatal drowning incidents in private swimming pools occur where there is no barrier or a faulty barrier between the residence and the swimming pool area.¹¹¹ A review of the research literature, undertaken by the Cochrane collaborative research network, which included three case-control studies researching the efficacy of swimming pool barriers, found that barriers significantly reduce the risk of drowning.¹¹² The Office analysed the effectiveness of the swimming pool barrier for the 13 children aged under five years who died by drowning following an incident in a private swimming pool that were not known to be in, on or around water. The Office found that of these 13 children who died by drowning following an incident in a private swimming pool:

¹⁰⁸ Queensland Family and Child Commission, *Annual Report: Deaths of children and young people 2013-14*, 2014, viewed 11 April 2016, <<http://www.qfcc.qld.gov.au/knowledge-and-resource-hub/annual-report-deaths-children-and-young-people-queensland-2013-14>>, p. 45.

¹⁰⁹ Queensland Family and Child Commission, *Annual Report: Deaths of children and young people 2013-14*, 2014, viewed 11 April 2016, <<http://www.qfcc.qld.gov.au/knowledge-and-resource-hub/annual-report-deaths-children-and-young-people-queensland-2013-14>>, p. 49.

¹¹⁰ Lambert, M, *Independent Review Swimming Pool Barrier Requirements for Backyard Swimming Pools in NSW – Discussion Paper*, State of New South Wales, 2015, p. 6.

¹¹¹ Peden, A, and Mahony, A, *Drowning Deaths of Children Under Five in Private Swimming Pools in NSW: A 13 Year Review*, Royal Life Saving Society Australia, Sydney, 2016, pp. 4-5.

¹¹² Thompson, D, & Rivara, F, *Pool fencing for preventing drowning of children*. Cochrane Database of Systematic Reviews, 1998, p. 2.

- four (31 per cent) children died by drowning following an incident in a private swimming pool without any barrier;
- five (38 per cent) children died by drowning following an incident in a private swimming pool where the permanent barrier gate was propped open or there was a climbable object near the permanent barrier;
- three (23 per cent) children died by drowning following an incident in a private swimming pool where the permanent barrier gate latch or door latch (in the case of a three-sided barrier, which is defined further below) did not close, either because the latch was defective or had been disabled; and
- one (8 per cent) child died by drowning following an incident in a private swimming pool where a section of a temporary barrier had been propped open.

In summary, all 13 of the children aged under five years, not known to be in and around water, who died by drowning in a private swimming pool, died in a private swimming pool with either no barrier, a defective barrier or a climbable object near the permanent barrier. This highlights the importance of private swimming pools being enclosed by a barrier, which effectively restricts access by young children to the swimming pool.

The Office's findings are consistent with the findings of the New South Wales Child Death Review Team's review of swimming pool drowning deaths of 40 children in 39 private swimming pools between 2007 and 2011. This review found that:

Information about the standard of safety barriers was available for 37 of the 39 pools. In most cases this included pool and child safety barrier assessments carried out by police crime scene investigators and/or local council inspectors after the drowning incident. The large majority of pools (33 of the 37), had either no barrier installed, or the existing barrier was defective/non-compliant.¹¹³

Other New South Wales research literature also suggests that, in New South Wales,

Predominantly it is young children, aged under five years, who drown in private swimming pools, with six drowning deaths in 2014-15. Each of these drownings involved inadequate barriers, with the weak link in most cases being the gate and latch. All involved the absence or diversion of attention of adult supervision.¹¹⁴

4.2.3 For six of the eight children who died by drowning following an incident in a private swimming pool with a permanent barrier, this barrier was a three-sided barrier

The relevant literature defines a three-sided and four-sided fence as follows:

3-sided [f]encing - a fence and building wall restricts access to the pool by a toddler but there is restricted access via a house-door from the house to the pool.

¹¹³ New South Wales Child Death Review Team, New South Wales Ombudsman, *Submission to the Swimming Pools Act 1992 Review*, February 2012, pp. 3-4.

¹¹⁴ Lambert, M, *Independent Review of NSW Swimming Pool Barrier Requirements – Discussion Paper*, State of New South Wales, 2015, pp. 9-10.

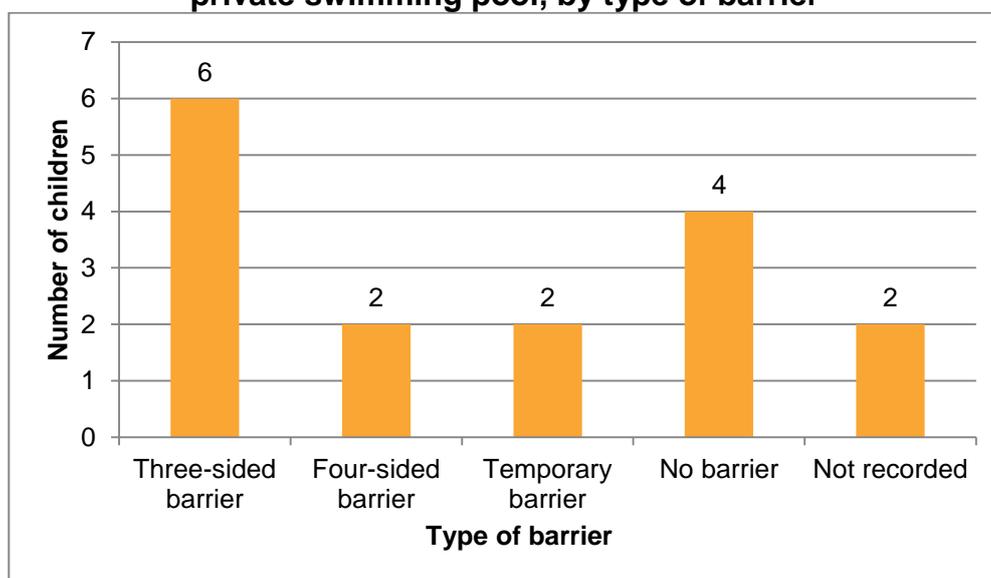
4-sided [f]encing - a fence or building wall restricts access to the pool by a toddler and there is no direct door access from the house to the pool but may include a window.¹¹⁵

The Office found that, of the 16 children who died by drowning following an incident in a private swimming pool:

- six (38 per cent) children died by drowning following an incident in a private swimming pool with a three-sided barrier;
- two (12 per cent) children died by drowning following an incident in a private swimming pool with a four-sided barrier;
- two (12 per cent) children died by drowning following an incident in a private swimming pool with a temporary barrier;
- four (25 per cent) children died by drowning following an incident in a private swimming pool without any barrier; and
- for two (12 per cent) children, the presence of a barrier was not recorded (Figure 30).

That is, for six (75 per cent) of the eight children who died by drowning following an incident in a private swimming pool with a permanent barrier, the private swimming pool had a three-sided barrier with restricted access via a door from the house to the swimming pool.

Figure 30: Children who died by drowning in a private swimming pool, by type of barrier



Source: Ombudsman Western Australia

This issue was also identified in 2013 by the Coroner in an inquest undertaken in the case of a child who died by drowning. The Coroner recommended as follows:

¹¹⁵ Barker, R, Spinks, D, Hockey, R, and Pitt, R. *Pool Fencing Legislation in Australia in 2003: The Way Forward*, Queensland Injury Surveillance Unit, 2003, p. 2.

Recommendation 2:

The Building Commission consider adopting a proposal to phase out the use of child resistant doors as barriers between houses and swimming pools.¹¹⁶

This issue is considered again and discussed in more detail at section 6.6.3.

4.3 Swimming skills

4.3.1 Research literature

In the research literature, the Australian Water Safety Council recognises the general need for children of all ages to have basic swimming skills, stating that:

In order to prevent drowning, every Australian child must have basic swimming and water safety skills and knowledge of how to be safe when they are in, on, or around the water.¹¹⁷

The value of teaching children aged over five years to swim is widely accepted, as follows:

Currently, there appears to be little controversy regarding recommendations to teach older children how to swim. Policies of the American Academy of Pediatrics recommend that over the age of 5 years, all children learn how to swim.¹¹⁸

Few studies have analysed the relationship between swimming lessons and the risk of drowning for children younger than five years of age.¹¹⁹

4.3.2 Of the 34 children who died by drowning, 17 were recorded as having weak or no swimming skills, bearing in mind that 14 of these 17 children were aged under five years

The Office found that, of the 34 children who died by drowning:

- fifteen (44 per cent) children were recorded as having no swimming skills;
- two (six per cent) children were recorded as having weak swimming skills;
- five (15 per cent) children were recorded as being competent swimmers; and
- the swimming ability of 12 (35 per cent) children was not recorded.¹²⁰

However, it should be noted that, of the 17 children recorded as having weak or no swimming skills, 14 were aged under five years.

¹¹⁶ Western Australian Coroner Barry King, *Inquest into the death of name withheld (A Child)*, Coroner's Court of Western Australia, Kalgoorlie, 30 October 2013, p. 35.

¹¹⁷ The Australian Water Safety Council, *The Australian Water Safety Strategy 2012-15*, 2015, Sydney, 2012, viewed 19 January 2015, <http://watersafety.com.au/Portals/0/AWSC%20Strategy%202012-15/AWSC_Strategy2012_Brochure%20-%20Lowres.pdf>, p. 15, citing Royal Life Saving Society Australia, *No Child to Miss Out: Basic Swimming & Water Safety Education – The Right of All Australian Children*, Royal Life Saving Society Australia, 2012, p. 3.

¹¹⁸ Brenner, R, Saluja, G, Smith, G, 'Swimming lessons, swimming ability and the risk of drowning', *Injury Control and Safety Promotion*, 2003, Vol. 10, No. 4, p. 214.

¹¹⁹ See for example, Weiss, J, & the Committee on Injury, Violence, and Poison Prevention, 'Technical Report, Prevention of Drowning', *Pediatrics*, 126, 1 July 2010, pp. 253-262.

¹²⁰ In this section, the Office has developed the categories used based on information recorded in police reports.

The Office also found that, of the 16 children who died by drowning following an incident in a private swimming pool, 10 (63 per cent) children were recorded as having no swimming skills. Nine of these 10 children (90 per cent) were aged under five years.

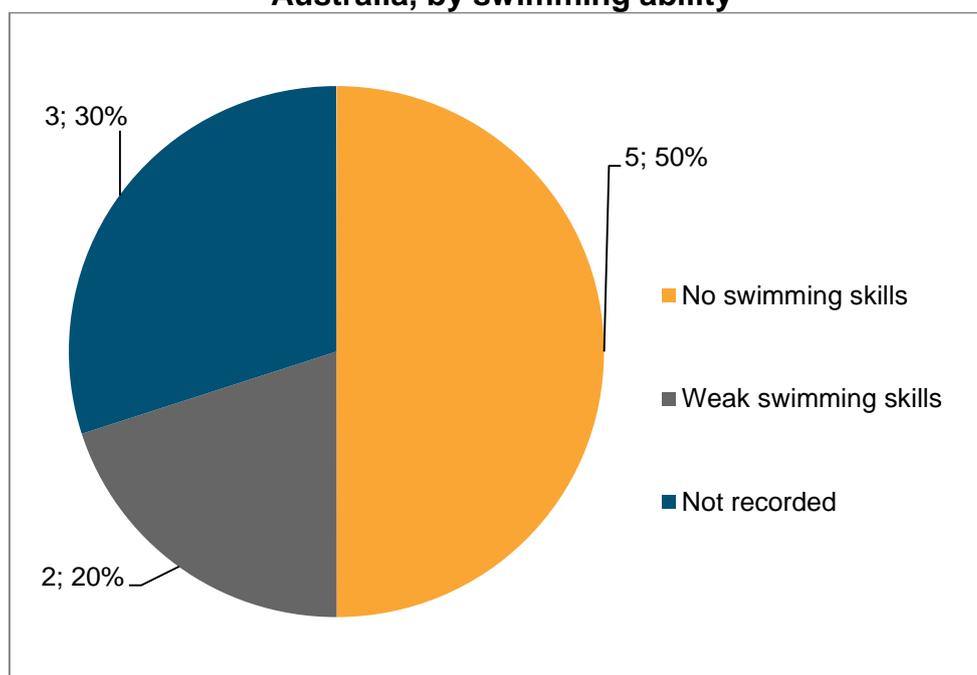
4.3.2.1 Children who were either born outside Australia or had a parent born outside Australia

As outlined in section 3.2.4, of the 34 children who died by drowning, 10 (29 per cent) children were either born overseas or had a parent born overseas. The Office found that, of these 10 children:

- five (50 per cent) children were recorded as having no swimming skills and all of these children were aged under five years.
- two (20 per cent) children were recorded as having weak swimming skills and both of these children were of primary school age; and
- the swimming ability of three (30 per cent) children was not recorded (Figure 31).

In summary, seven (70 per cent) of the 10 children who died by drowning and who were born outside Australia or had a parent born outside Australia were recorded as having weak or no swimming skills.

Figure 31: Children who died by drowning and were born outside Australia or had a parent born outside Australia, by swimming ability



Source: Ombudsman Western Australia

The Office did not find that the recorded swimming ability of the children who were either born outside Australia or had a parent born outside Australia was less than that of other children who died by drowning. The research literature does suggest that there 'is evidence to suggest up to 80% of people from CALD (culturally and linguistically diverse)

communities cannot swim'.¹²¹ In its report on the swimming ability of Victorian primary school students in Victoria, Life Saving Victoria stated that:

40% of parents said their child had never participated in a school-run swimming program and 12% of surveyed school teachers reported their school did not run a swimming program. The case for in-school provision of swimming and water safety education is strong because access to swimming lessons is easier if they are part of the school program. This may enable the participation of children who might otherwise not engage in physical activity such as those from CALD, Indigenous or low socio-economic backgrounds.¹²²

In its 2010-2011 Victorian Drowning Report, Life Saving Victoria also states:

Due to the potential for increased drowning risk for people new to Australia, as well as those with little or no experience with Australian aquatic environments, more work is urgently needed in this area.¹²³

4.3.2.2 *Aboriginal and Torres Strait Islander children*

As outlined in section 3.2.5, of the 34 children who died by drowning, five (15 per cent) were recorded as being Aboriginal and no children were recorded as being Torres Strait Islander. The Office found that, of these five children:

- one child was recorded as having no swimming skills and this child was aged under five years;
- two children were recorded as having weak swimming skills and both of these children were aged five to nine years; and
- the swimming ability of two children was not recorded.

4.3.2.3 *The availability of formal swimming lessons*

With regard to formal swimming lessons for Western Australian children aged five years and over, the Western Australian Department of Education states that:

With swimming pools and beaches a part of the Western Australian lifestyle, ensuring your children can swim competently and safely is a must for all families.¹²⁴

The Department of Education operates an Interm swimming program, which it reports 'is a school-based program for children from Pre-primary to Year 7'.¹²⁵ The Department of Education further describes the program and its uptake, as follows:

¹²¹ Life Saving Victoria, Melbourne, '2010/2011 Victorian Drowning Report', viewed 29 March 2016, <http://www.lifesavingvictoria.com.au/resources/documents/LSV_Drowning_Report_FA_2.0_single_pages.pdf>, p. 6.

¹²² Life Saving Victoria, Birch R and Matthews B, 'Sink or Swim: The state of Victorian primary school children's swimming ability' 2013, viewed 7 April 2016, <<https://lsv.com.au/wp-content/themes/abomb/pdf/research/Sink%20or%20Swim%20executive%20summary.pdf>>, pp. 4-5.

¹²³ Life Saving Victoria, '2010/2011 Victorian Drowning Report', 2011, viewed 29 March 2016, <http://www.lifesavingvictoria.com.au/resources/documents/LSV_Drowning_Report_FA_2.0_single_pages.pdf>, p. 10.

¹²⁴ Department of Education, 'Swimming and Water safety', viewed 7 April 2017, <<http://www.education.wa.edu.au/cwebt/at-school/swimming/interm-swimming>>.

The Department of Education meets the cost of Interm swimming lessons for all primary students in public schools and for primary students in rural and remote areas. The program is also available to primary students in private schools in the metropolitan area on a user pays basis ... Parents and carers usually need to pay a fee to cover transport and entry costs into the swimming venue.¹²⁶

However, at interview, Royal Life Saving Society Western Australia (**RLSSWA**) identified that some private schools do not participate in the Interm swimming program due to the costs of student transport, the cost of additional teachers to provide the necessary levels of supervision and parents' concerns.

With regard to formal swimming lessons for children younger than five years, the Interm swimming program is not available to children before they attend primary school. Therefore, for children aged four years and under, formal swimming lessons need to be sought and paid for by parents. Data on this is not collected systematically.

4.4 Cardiopulmonary resuscitation

The research literature suggests that immediate resuscitation at the site of a drowning incident, even before the arrival of emergency medical services personnel, is an important means of secondary prevention and is associated with a significantly better outcome for people with submersion injuries:

Prevention measures can reduce the incidence of drowning, and immediate, high-quality bystander CPR and early B[asic] L[ife] S[upport] care can improve survival.¹²⁷

The Office found that, of the 34 children who died by drowning:

- thirty one children (91 per cent) were located with sufficient time to commence cardiopulmonary resuscitation and this was commenced for all thirty one children before the arrival of emergency medical services personnel; and
- three children (9 per cent) were not located within sufficient time to commence cardiopulmonary resuscitation (that is, resuscitation was not attempted because there was a protracted amount of time before the child's body was located).

4.5 Other factors

4.5.1 Three of the 34 children who died by drowning were recorded as residing in a rental property

During the Investigation, the Office found that three children who died by drowning were recorded as residing at a rental property, two children were recorded as residing at a property owned by their parents and for 29 children this information was not recorded. Bearing in mind that the ABS 2011 Census of Population and Housing found that '[o]f

¹²⁵ Department of Education, 'Swimming and Water safety', viewed 7 April 2017, <<http://www.education.wa.edu.au/cwebt/at-school/swimming/interm-swimming/>>.

¹²⁶ Department of Education, 'Introduction to Interm Swimming', viewed 7 April 2017, <<http://www.det.wa.edu.au/curriculumssupport/swimming/detcms/navigation/interm-swimming/>>.

¹²⁷ American Heart Association, 'Drowning', *Circulation*, 2005, Part 10.3, 112: IV-133-IV-135.

occupied private dwellings in Western Australia (State/Territory), 29.5% were owned outright, 37.8% were owned with a mortgage and 29.2% were rented¹²⁸ this number may be understated.

Of the three children who died by drowning who were recorded as residing in a rental property:

- two children died by drowning following an incident in a private swimming pool at the rental property where they were residing and relevant information indicates that in both instances, a self-closing door to the house (which formed part of a three-sided swimming pool barrier) was defective. In both instances the Office was informed that the owners and, where applicable, the property manager had been advised about faults to the barriers, however, these faults had not been remediated; and
- one child died following an incident in a location other than a swimming pool at the rental property where this child was residing.

A child's voice¹²⁹

A child's carers were both at the rental property and had seen the child playing in the house some minutes before they noticed the child missing. One of the child's carers noticed that the sliding door was open and went out into the pool area. The carer found the child floating face up in the swimming pool. Although the child's carer pulled the child out of the swimming pool and immediately commenced cardiopulmonary resuscitation until ambulance officers arrived, the child died.

The swimming pool was approved for installation prior to 5 November 2001 and the three-sided fence complied with the Australian Standard AS 1926.1-1993. The security door at the child's house did not function properly, as it did not self-close and was difficult to open.

The Coroner found that the property condition report, completed before the child resided in the property, noted that the 'security sliding door to pool keeps coming off its rail'.¹³⁰ During the time the child resided in the property, the security door was removed on occasion because it would jam. The Coroner found that, despite a request to the property manager to repair the security door, neither the property manager nor the owner arranged for the security door to be repaired.

The Coroner, in an inquest undertaken in the case of one of the children who died by drowning, who was recorded as residing at a rental property, made four recommendations

¹²⁸ Australian Bureau of Statistics, *2011 Census QuickStats*, ABS, Canberra, March 2013, p. 5. Viewed 6 July 2017, <http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/5#mortgage-rent>.

¹²⁹ This case study is drawn from deaths notified to the Ombudsman's office. Each child's death is tragic and the Office endeavours to ensure that every child can be given a voice in its investigations. In doing so, the Office wishes to show respect to the child that has died and the child's family, as well as represent the child's voice in a way that may assist in preventing other child deaths. As part of this respect it is critical that names and other identifying information have been removed or changed.

¹³⁰ Western Australian Coroner Barry King, *Inquest into the death of name withheld (A Child)*, Coroner's Court of Western Australia, Kalgoorlie, 30 October 2013, p. 11.

about the safety and wellbeing of children around private swimming pools, particularly in a situation where the private swimming pool is part of a rental property. Two recommendations referred to the Real Estate Institute of Western Australia (**REIWA**) and the processes surrounding properties with private swimming pools as follows:

RECOMMENDATION 3:

The Western Australian Local Government Association consult with REIWA with a view to adopting a process whereby new tenants at properties at which there is a pool are notified of their right to notify local government as well as to the estate agent about matters relating to the safety of the pool.

...

RECOMMENDATION 4:

REIWA consider taking the appropriate steps to train property managers about the fundamental requirements of pool safety barriers and to encourage them to include basic assessments of such barriers when conducting property inspections.¹³¹

The Office's findings support the Coroner's focus on the important role to be played by the real estate industry, as well as private landlords about matters relating to the safety of private swimming pools at rental properties.

In Western Australia, the *Real Estate and Business Agents Act 1978* and the *Fair Trading Act 2010*, provide the framework for regulating real estate agents and property managers employed by them.

The new Department of Mines, Industry Regulation and Safety administers these responsibilities for regulating real estate agents, and the (then) Department of Commerce informed the Office that:

The Department of Commerce is responsible for regulating the real estate and settlement industry through:

- licensing of agents and sales representatives, including property managers who are regulated as a subset of sales representatives
- monitoring and enforcing compliance with legislation
- investigating complaints against a licensee, as well as all other persons licensed under the *Real Estate and Business Agents Act 1978* and against those performing real estate transactions without being appropriately licensed and/or registered.

The new Department of Mines, Industry Regulation and Safety also administers the *Residential Tenancies Act 1987* that regulates the relationship of lessors and tenants under residential tenancy agreements. Relevantly, the *Residential Tenancies Act 1987* defines 'urgent repairs' as 'repairs that are necessary ... to avoid ... exposing a person to the risk of injury'¹³² and prescribes the timeframes for the completion of those urgent repairs. This definition of 'urgent repair' captures defective swimming pool barriers.

¹³¹ Western Australian Coroner Barry King, *Inquest into the death of name withheld (A Child)*, Coroner's Court of Western Australia, Kalgoorlie, 30 October 2013, pp. 36-38.

¹³² *Residential Tenancies Act 1987*, section 43(1).

To fulfil its statutory obligations, the (then) Department of Commerce developed a range of regulatory strategies and guidelines designed to assist the real estate sector, landlords and tenants to understand their respective responsibilities under residential agreements, including complying with the safety requirements for swimming pool barriers located in rental properties.

These strategies and guidelines¹³³ include:

- codes of conduct;
- real estate agent sector and landlord infringements;
- mandatory continuous professional development for the real estate industry on basic assessment of pool safety and pool safety barriers;
- advice for tenants and landlords renting a property, including repairs and safety responsibilities;
- mandatory information forms that alert tenants to the rules regarding swimming pool barriers;
- amending the tenant's handbook to include information about swimming pool barriers and the tenant's right to undertake urgent repairs if they are not performed by a landlord or property manager;
- landlords tools and checklist, including a 'Lessor's Checklist'¹³⁴ that requires pool fencing to be checked as part of the property condition report and a 'Lessor's Guide'¹³⁵ that refers to the need for compliance with pool safety requirements;
- portable pools factsheets in a number of languages;¹³⁶
- landlord's bulletins,¹³⁷ introduced in March 2017, which have addressed, among other issues, smoke alarms. A further bulletin on safety around the home is planned and is proposed to include swimming pool barriers;
- real estate bulletin on pool and spa safety;¹³⁸
- a number of media releases on pool safety and subsequent media opportunities such as radio, television and print; and
- Frequently Asked Questions.

¹³³ Examples of some of these are available at the (then) Department of Commerce, Western Australia, '*Publications – real estate*', viewed 26 May 2017, <<https://www.commerce.wa.gov.au/consumer-protection/publications-real-estate>>.

¹³⁴ Department of Commerce, Western Australia, 'Landlords tools and checklist' viewed on 26 May 2017, <<https://www.commerce.wa.gov.au/consumer-protection/landlords-tools-and-checklist>>.

¹³⁵ Department of Commerce, Consumer Protection, Western Australia, '*Renting out your property – a lessor's guide*', viewed 26 May 2017, <<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/lessorsguide.pdf>>.

¹³⁶ Available from the Department of Commerce, Western Australia website, Royal Life Saving Society Australia, 'Fact Sheet 01: What is a Portable Swimming Pool?', <<http://www.commerce.wa.gov.au/sites/default/files/atoms/files/rllsmakeitsafeportpool.pdf>>, and Royal Life Saving Australia, 'Fact Sheet 02: Portable Swimming Pool Safety Considerations', <<http://www.commerce.wa.gov.au/sites/default/files/atoms/files/rllsmakeitsafeportpool2.pdf>>.

¹³⁷ Department of Commerce, Western Australia, 'Landlord's bulletins', viewed on 26 May 2017, <<https://www.commerce.wa.gov.au/publications/landlords-bulletins>>.

¹³⁸ Department of Commerce, Consumer Protection, Western Australia, *Pool and Spa Safety*, Real Estate Industry e-Bulletin, Issue 62, 16 May 2014, <<http://www.commerce.wa.gov.au/sites/default/files/atoms/files/issue62poolandspasafety.pdf>>.

4.5.1.1 Approaches used in other jurisdictions

Government agencies in New South Wales and Queensland have also taken steps with regard to private swimming pools and their barriers at rental properties.

New South Wales Fair Trading (which is part of the New South Wales Department of Finance, Services and Innovation) has provided guidelines for consumers, which identify that, effective 29 April 2016, landlords or real estate agents of a rental property must provide a copy of a certificate of compliance for the swimming pool barrier of that property to the tenant at the time that a residential tenancy agreement is entered into, as follows:

From 29 April 2016 onwards, when a residential tenancy agreement is entered into for a property with a swimming pool or spa pool, the landlord or real estate agent must provide the tenant with a copy of the valid certificate of compliance or occupation certificate.

This requirement does not apply to a lot in a strata scheme or in a community scheme if that strata or community scheme has more than two lots.¹³⁹

In October 2016, the Queensland Government, Department of Housing and Public Works published *Guidelines for pool owners and property agents*. Section 4.3 of these guidelines outlines the requirement for property owners to ensure that a valid pool safety certificate is in effect before entering into a lease agreement with a potential tenant. While this certificate does not need to be provided to the tenant, the responsibilities of this process fall to the property manager or agent, as follows:

4.3 Leasing a property with a non-shared pool

Before entering into a lease or other accommodation agreement, property owners must ensure a valid pool safety certificate is in effect. This means a pool safety certificate must be in effect before signing the agreement, regardless of when the tenant starts residing at the property.

A copy of the certificate does not need to be given to the tenant. The responsibilities of agents in this process are outlined in section 4.5 of these guidelines.

...

4.5 Role of property agents

If a property agent collects commissions in connection with a lease or other accommodation agreement where no pool safety certificate has been obtained for a non-shared pool, they may be liable for disciplinary proceedings under the *Property Occupations Act 2014*.

In some cases, owners may request property agents to attend to pool safety matters on their behalf. Property agents need to be aware of three key forms:

¹³⁹ Fair Trading NSW Government, *Fact Sheet: Swimming Pools, Safety guidelines for consumers*, viewed 16 September 2016, <http://www.fairtrading.nsw.gov.au/ftw/consumers/product_and_service_safety/pool_safety/swimming_pools.page#top>.

- Form 23—Pool safety certificate, for pools that comply
- Form 36—Notice of no pool safety certificate (for sales of shared and non-shared pools and leases of shared pools that do not have a pool safety certificate).
- Form 26—Pool safety nonconformity notice (see section 8.7 for information about this form)

Property agents can use the online pool safety register at www.qbcc.qld.gov.au/home-building-owners/pool-safety/registering-your-pool to check whether a valid pool safety certificate is in effect for a pool.

The Real Estate Institute of Queensland and the Queensland Law Society amended the standard sale contracts to include matters relating to pool safety. They have also published guidance material about the current pool safety laws for their members.¹⁴⁰

In Western Australia, several local government survey respondents also suggested that a requirement to provide a certificate of compliance for swimming pool barriers when selling or leasing a property with a private swimming pool could assist in maintaining the safety of children. In addition, if a copy of the certificate of compliance was provided to the new owner or tenant, it could provide contact details for the relevant local government should any further information be requested.

Recommendation 3

Taking into account the findings of the Investigation, and the findings and recommendations of the Coroner regarding private swimming pools at rental properties, the Department of Mines, Industry Regulation and Safety develops and implements further strategies designed to ensure that real estate agents, including property managers, and private landlords, respond appropriately to information regarding swimming pool barriers that do not comply with the *Building Act 2011* and the *Building Regulations 2012*.

Recommendation 4

The Department of Mines, Industry Regulation and Safety considers the introduction of requirements for property managers and private landlords to provide, in the most cost-effective way and resulting in the least regulatory burden, a copy of the most recent inspection form confirming that the swimming pool barrier was found to be compliant, to the potential tenant at the time of entering into a lease agreement.

4.5.2 Three of the 34 children who died by drowning were recorded as having underlying medical conditions

Seizure disorder, including epilepsy, is a known risk factor for drowning, as follows:

Children with epilepsy are thought to be at increased risk for submersion injury. In population-based studies 2.5% to 7.5% of submersion victims and 2.5% to 4.6% of drowning victims had a preexisting seizure disorder. Based on those percentages, the risk of submersion injury among children with epilepsy is hypothesized to be roughly four times that of children without epilepsy. Several

¹⁴⁰ Department of Housing and Public Works, Queensland, *Guidelines for pool owners and property agents*, October 2016, p. 12.

descriptive studies have reported that most drownings among children with epilepsy occur in the bathtub, and relatively few deaths occur while swimming.¹⁴¹

The research literature also notes that '[t]here is some evidence from studies with small numbers of patients that children with autism spectrum disorders are at higher risk of drowning than those in the general population.'¹⁴² The National Autism Society in America notes in a fact sheet that '[d]rowning is among the leading causes of death of individuals with autism'¹⁴³ and includes a link offering 'special needs swimming lessons.'¹⁴⁴

The Office found that, of the 34 children who died by drowning three children were recorded as having been diagnosed with epilepsy and, or, autism spectrum disorder.

4.5.3 One of the 34 children who died by drowning was recorded as having consumed alcohol and drugs prior to the fatal drowning incident

The research literature suggests that alcohol consumption is a risk factor for adolescent drowning, as follows:

Drowning has significantly contributed to unintentional injury deaths for young adult males in Australia, with non-fatal drowning incidents resulting in high rates of injury hospitalisation. Combining alcohol, risky behaviour and aquatic activity has often resulted in serious injuries and death, as borne out by past analysis which indicates 30-50% of adolescent drowning deaths ... involved alcohol consumption.¹⁴⁵

The Office found that the records identified that one of the 34 children who died by drowning, who was aged 17 years, had consumed alcohol and other drugs prior to the fatal drowning incident.

¹⁴¹ Diekema, D, Quan, L, Holt, V, 'Epilepsy as a Risk Factor for Submersion Injury in Children', *Pediatrics*, vol 91, No 3, March 1993, p. 612.

¹⁴² Weiss, J, & the Committee on Injury, Violence, and Poison Prevention, 'Technical Report, Prevention of Drowning', *Pediatrics*, Vol 126, 1 July 2010, pp. e253-e262.

¹⁴³ National Autism Association United States of America, *Autism & Safety Facts*, viewed 16 June 2016, <<http://nationalautismassociation.org/resrouces/autism-safety-facts/>>.

¹⁴⁴ United States of America National Autism Association, *Autism & Safety Facts*, viewed 16 June 2016, <<http://nationalautismassociation.org/resrouces/autism-safety-facts/>>.

¹⁴⁵ The Australian Water Safety Council, *The Australian Water Safe Strategy 2012-15*, Sydney, 2012, p. 16, viewed 19 January 2015, citing research by Howland et al, 'Alcohol as a risk factor for drowning and other aquatic injuries' in Watson R (ed) *Alcohol, Cocaine and Accidents, Drug and Alcohol Abuse Reviews*, 17, Totowa, Humana Press Inc, pp. 85-104.

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