



# Building Newsflash

## Amendments to the *Building Act 1975* – Swimming Pool Fencing

### Questions and Answers Facts Sheet

#### Purpose

The purpose of this Newsflash is to provide advice on the application of the *Building Amendment Bill 2003* to the swimming pool fencing requirements of the *Queensland Building Act 1975* (the Act). A copy of the Bill can be viewed at the following Web site:

<http://www.legislation.qld.gov.au/Bills/50PDF/2003/BuildingAB03.pdf>

#### Background

The *Building Amendment Bill 2003* was introduced to Parliament on 19 August 2003. The objective of the Bill is to improve the level of safety of young children around residential outdoor swimming pools

#### Legislative Provisions

The Bill, when it is passed by Parliament, will amend the *Building Act 1975*. *The proposed provisions are not law yet.*

In addition to amendments to the Act, it is proposed to amend the *State Penalties Enforcement Regulation 2000* (SPER) to enable on-the-spot fines to be issued for breaches of the pool fencing requirements under the Act. *Again, these proposed amendments have not yet commenced.*

#### Questions and Answers

The Department has received a number of enquiries concerning the proposed amendments. The following reflects the commonly asked questions and the Department's answers to them.

**Q** Have the new laws commenced yet?

A No. The Building Amendment Bill was introduced to Parliament on 19 August 2003. The new fencing requirements do not become law until the Bill is passed by Parliament and receives the Governor's assent. Once this occurs, a date for their commencement will be proclaimed at which time the new laws will be enforceable.

**Q Can councils issue on-the spot fines for breaches of the pool fencing requirements of the Building Act?**

A Not yet. On-the spot fines for pool fence offences will commence at a date to be proclaimed. The *State Penalties Enforcement Regulation 2000* needs to be amended to recognise the offences under the Building Act before local governments can issue the fines. Local governments who propose to issue infringement notices must also register their details with the State Penalties Enforcement Register. Contact the Department of Justice and Attorney-General on **(07) 3247 5466** for further information.

**Q What are the main changes proposed to the swimming pool laws?**

A The proposed new laws will:

- Limit exemptions to the requirements for swimming pool fencing that can be given by local governments only to cases where it would not be practicable, because of a disability of an occupant of the building, to provide access in accordance with the pool fencing standards;
- Require the builder and owner of a new residential swimming pool to ensure a sign is installed on the site, warning neighbours about the construction of the pool;
- Require new residential pools and spas on a building to be fenced in accordance with the legislation;
- Clarify that the owner of a residential swimming pool must ensure that a complying pool fence is in place and maintained to appropriate standards at all times while the pool is filled with water.
- Require the installation of sign near a new swimming pool which provides details on the procedures to undertake Cardiopulmonary Resuscitation (CPR)

**Q What type of swimming pools will the new laws apply to?**

A The new laws will only apply to outdoor swimming pools on residential land. They will not apply to public swimming pools or swimming pools on residential premises that are completely enclosed by the walls of the building (indoor swimming pools).

**Q Are there any retrospective provisions in the new laws?**

A There will be no retrospective provisions in the new laws. The new laws will include some new provisions for new pools and provisions that reinforce the application of the existing laws.

**Q If I have an old swimming pool, do I have to have a pool fence around it?**

A Yes. The pool fencing laws since 1991 have required a swimming pool, regardless of when the pool was installed, to have a pool fence constructed around it, unless the local government has granted an exemption.

**Q What standard does the fence have to be constructed to?**

A The standard of the pool fence will be dependent on when the pool was built.

- For a swimming pool constructed before 1991, in a local government area that had a local law that required a swimming pool to be fenced (to a height not less than 900mm) and which required openings from a building to be such that they inhibited access by young children from a building to a swimming pool, the fence and openings would have to be constructed and maintained to that standard. If the council's local law did not require the fence and openings in the building giving access to the pool to inhibit access by young children, the local law is of no effect.

- For a swimming pool constructed before 1991, in a local government area that had no local law requiring a swimming pool to be fenced, the pool fence must be constructed to a height not less than 900mm and any openings from a building must be such that they inhibit access by young children from the building to the swimming pool.
- For a swimming pool constructed after 1991, the fence must be constructed in accordance with the standard specified in the Regulation in force at the time the pool was constructed.

A guideline will be produced before the new amendments commence which will provide details of the various fencing standards that are applicable, depending on when the pool was first constructed.

**Q Who is responsible for ensuring the pool has a complying pool fence around it?**

A For an outdoor swimming pool constructed or installed on the land **before** the new laws commence, the land owner is responsible.

For an outdoor swimming pool constructed or installed on the land **after** the new laws commence, the pool owner is responsible. In the case of an in-ground pool, the pool owner is generally the owner of the land. However, if a person who is renting a property buys a portable pool that requires pool fencing around it, the owner of the portable pool is the pool owner and that person must ensure the pool has a fence around it.

**Q If I remove or demolish my existing fence, do I have to put up a new one?**

A Yes. A Swimming pool must always have a complying pool fence around it, unless the local government has granted an exemption, when the pool has more than 300mm of water in it. If a substantial portion of the fence is demolished or removed, it must be replaced with a new fence. The new fence must comply with the current day pool fencing standards and not the standard that applied at the time the original fence was built.

**Q If a substantial proportion of my existing fence has not been properly maintained and is in such a state of disrepair as to not be practicable to repair it, do I have to build a new fence?**

A Yes. If a substantial portion of the fence is in such a state of disrepair as to not be practicable to repair it, it must be replaced with a new fence. The new fence must comply with the current day pool fencing. If only a small part of the existing fence has fallen into a state of disrepair, it can be repaired to the same standard that applies to the existing fence.

**Q Under what circumstance can a person apply for an exemption of the pool fence standards?**

A **Before** the commencement date of the amendments, a person could apply for an exemption if the local government is satisfied that it is unlikely a young child would gain access to the pool because of:

- i. The physical nature or location of the land concerned; or
- ii. The design or construction of the pool or fencing; or
- iii. The location of the pool or fencing.

**After** the commencement date of the amendments, a person can apply to the local government for an exemption from the requirements for swimming pool fencing only where it would not be practicable, because of a disability of an occupant of the building, to provide access in accordance with the pool fencing standards. For example, a person with a mobility disability may apply for an exemption to allow a pool gate to open into the pool area (rather than away from the pool as required by the pool fence standard) to facilitate access into the pool area. If an exemption is given, the local government may impose any conditions it considers appropriate to prevent a young child gaining access to the pool area unsupervised.

**Q What has to happen if the reason for the exemption being granted in the first place no longer applies, for example, if the person with the disability no longer occupies the building?**

A The owner of the pool must convert the part of the pool fence back to the standard it had to comply with before the exemption was given.

**Q Who will be responsible for ensuring a sign is placed near the site warning neighbours that a pool is being constructed on your property?**

A Both the pool owner or the pool builder will be responsible for the sign. The sign must remain in place until a complying pool fence has been placed around the swimming pool and a building certifier has certified that the fence complies with the pool fence laws. The details required on the sign will be specified in the *Standard Building Regulation 1993*.

**Q Who will be responsible for ensuring a sign, with instruction on how to undertake Cardiopulmonary Resuscitation (CPR), is placed near a new swimming pool?**

A The pool owner will be responsible for the sign.

**Q What details will the warning sign and CPR sign have to contain?**

A The details required on the signs will be specified in amendments to the *Standard Building Regulation 1993* which will commence at the same time as the Act amendments. The CPR sign will need to be durable, placed in a conspicuous place near the pool and will detail the procedures necessary to undertake Cardiopulmonary Resuscitation. The warning sign will warn neighbours that a danger exists on the site, in the form of a swimming pool under construction, and that children should be kept clear. The sign will need to remain in place until a building certifier certifies that a complying pool fence has been constructed around the pool.