



Building Newsflash

COMMENCEMENT OF NEW POOL FENCING LAWS

Purpose

To advise local governments, building certifiers, pool builders and the public that:

1. Changes to the pool fencing laws commenced on 1 October 2003.
2. The ability for councils to impose on-the-spot fines will commence on 1 November 2003.
3. A Guideline for the interpretation of swimming pool fencing requirements is available on the Department's website from 2pm on 1 October 2003.

Legislation

Changes to the *Building Act 1975* (BA) and the *Standard Building Regulation 1993* (SBR) in regard to swimming pool fencing came into effect on 1 October 2003.

The new laws:

- Restrict a local government's ability to grant pool fencing exemptions to only those situations where it would not be practicable, because of a disability of an occupant of the building, to provide access in accordance with the standards.
- Require new pools and spas for which an application for approval is lodged after 1 October 2003, that are "on" residential buildings to be fenced. This means that a new pool or spa on a deck attached to a house will need to be fenced if approval is sought after 1 October.
- Insert a new provision into the BA to require a warning sign to be provided near the road frontage of the property where a swimming pool is to be constructed. The sign is to remain in place until a complying swimming pool fence has been erected on the site and the fence certified by a building certifier.
- Clarify that a pool owner 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.
- Insert a new provision into the BA to require a sign to be placed near a new pool or spa that contains instruction on the application of Cardiopulmonary Resuscitation (CPR).

From 1 November 2003, local governments will have the power to issue on-the spot fines to owners of pools, which have non-compliant fences.

Building Amendment Act 2003

The following provides a summary of the Act changes:

1. Inserts new sections 12T – 12V

- Section 12T clarifies the definition of “construct”. Constructing a pool on land includes installing or placing the pool on the land.
- Section 12U defines the meaning of “fencing standards”. If an existing pool is unfenced or the fencing does not comply substantially with the standards applicable for the pool, the applicable “fencing standards” are the standards for a new pool. That is, an unfenced existing pool or a pool with substantially non-compliant fencing (where no local government exemption applies) must be fenced to the current fencing standard.
- Section 12V defines the meaning of “pool owner”. The pool owner is usually the owner of the land. However, in cases where the occupier of the land owns the pool and not the land owner, the occupier is the pool owner.

2. Replaces sections 14 – 16

- Section 14 – Clarifies that the pool owner of an outdoor swimming pool on residential land must ensure the pool is fenced to the appropriate standards and the fencing is kept in good condition.
- Section 15 – Requires new pools to have a resuscitation sign displayed in accordance with the SBR.
- Section 16 – Clarifies that if a pool fence has been demolished, removed, or in substantial disrepair, the pool owner must ensure a new fence to current standards is constructed around the pool and a certificate is provided by a building certifier stating the fencing complies.
- Section 16A – Requires a warning sign to be displayed in accordance with the SBR before constructing an outdoor swimming pool.
- Section 16B – Requires the pool owner to ensure a pool is fenced and the fencing is certified by a building certifier before the pool is filled with more than 300mm of water.
- Section 16C – Allows a person to apply to the local government for an exemption from complying with the fencing standards if a person with a disability occupies the land and it would be physically impractical for the person with a disability to access the pool. The local government may condition the exemption so as to prevent a young child from accessing the pool.
- Section 16D – Provides requirements about when exemptions end.
- Section 16E – Allows a local government to revoke a previously granted exemption if-
 - the exemption was based on a false or misleading particular given by the applicant;
 - the exemption has ended because the ownership of the pool changed, or the person with a disability is no longer an occupant or can now access a pool with a complying fence;
 - or
 - any conditions attached to the exemption have been contravened.

Where an exemption is revoked, the pool must be fenced in accordance with current standards.

An overview of the amendments to the BA can be downloaded from the following website <http://www.legislation.qld.gov.au/Bills/50PDF/2003/BuildingAB03.pdf>

Standard Building Amendment Regulation 2003

The amendment to the SBR replaced the whole of Part 5 – Swimming Pool Fencing with a new Part 5.

- Section 60 – Prescribes the fencing standards for outdoor swimming pools constructed on or after 1 October 2003.
- Section 61 – Contains the requirements for resuscitation signs in terms of their size, content and location.
- Section 62 – Contains the requirements for warning signs in terms of their size, content and location.
- Section 63 – Specifies that a private certifier cannot approve an application for a pool if an application for an exemption by the local government is sought, until the exemption is granted.
- Part 14 – Provides transitional provisions for applications to private certifiers and for records of exemptions.

An overview of the amendments to the SBR can be downloaded from the following website <http://www.legislation.qld.gov.au/LEGISLTN/SLS/2003/03SL233.pdf>

Guideline

The Department of Local Government and Planning has produced a guideline on the interpretation of swimming pool fencing requirements, which will further highlight the responsibility of pool owners.

For standards of fencing for existing and new pools refer to the guideline. The guideline is available from 2pm on 1 October 2003 on the Department's website: http://www1.dlgp.qld.gov.au/estore/building_codes/.

Contact Officer

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