



Building Newsflash

Using Form 17 – Inspection of Pool and Fencing

Purpose

To clarify issues raised by building certifiers and pool builders in relation to recent changes to the *Building Act 1975* concerning swimming pool fencing.

Legislation

An amendment was made to s14 of the Act (Outdoor swimming pools must be fenced), which came into effect on 7 February 2003.

S14 (2) now reads:

‘(2) Before a person fills the pool with water to a depth of 300 mm or more, the person must ensure—

(a) fencing that complies with the design, construction and performance standards (the “standards”) prescribed under a regulation is constructed around the pool; and

(b) a building certifier has, after inspecting the pool and fencing, issued the owner of the land with a certificate in the approved form stating the pool and fencing comply with the requirements for pools and fencing prescribed under a regulation.’

The standards prescribed under s62 of the Standard Building Regulation are:

- a) AS1926.1-1993, *Swimming pool safety part 1: Fencing for swimming pools* (other than clause 2.14 of the standard) for design, building and performance of swimming pool fencing; and
- b) AS1926.2-1995, *Swimming pool safety part 2: Location of fencing for private swimming pools* (other than clause 1.4.4 of the standard) for the location of pool fencing.

Interpretation

1. When must a building certifier inspect the pool and fencing?

The Act requires that before a person fills the pool with water to a depth of 300 mm or more, the person must ensure a building certifier has, after inspecting the pool and fencing, issued the owner of the land with a certificate in the approved form stating the pool and fencing comply with the requirements for pools and fencing prescribed under a regulation.

The Act defines a swimming pool as an excavation or structure –

- a) capable of being filled with water to a depth of 300mm or more; and
- b) capable of being used for swimming, bathing, wading, paddling, or some other human aquatic activity; and
- c) solely or principally used, or designed, manufactured or adapted to be solely or principally used, for the purposes mentioned in paragraph (b) despite its current use;

and includes a spa pool, spa tub or similar thing (whether portable or fixed) and a wading pool (other than a portable wading pool).

Therefore, if a pool, which is still under construction, is filled to a depth of 300 mm or more, it must have been already fenced and inspected.

2. Can a construction fence be used?

Pool builders have advised that in some situations it may be difficult to build the pool fence before the pool is filled because the landscaping and paving around the pool need to be constructed first. Therefore, pool builders use a construction fence to prevent access to the pool prior to the installation of the final pool fence.

S 14 (2) of the Act states that before a person fills an outdoor pool on residential land to a depth of 300mm or more, the person must ensure fencing in accordance with AS1926.1 and AS1926.2 is constructed around the pool. AS1926.1 requires the fencing to be permanent.

A construction fence is a fence complying with AS1926.1 and AS1926.2, which is used to isolate a swimming pool under construction from the property boundary and a residential building until such time as the final pool fencing is completed. It may be fixed in place or moveable.

If part of the construction fence is removed to allow access for normal construction activities, such as placing concrete, material deliveries etcetera; there must be constant supervision around the pool. At all times when the pool construction site is unattended, a fence complying with the standards must be in place.

3. Can Form 17 include conditions?

If a construction fence is erected around the pool and is to be replaced with a final pool fence, the Form 17 issued by the building certifier for the construction fence should include conditions such as:

- ensure the construction fence is in place at all times;
- limit the time the construction fence is to remain in place;

- require the final pool fence to be inspected as soon as practicable after installation; and
- require a second Form 17 to be issued by the building certifier for the final pool fence.

4. **Must gates be provided in the construction fence?**

The typical pool fencing gate may not be wide enough to permit access for normal construction activities. Panels can be removed to allow access for normal construction activities, material deliveries etcetera, however, there must be constant supervision around the pool. If the pool site is unattended, such as meal breaks or at the end of the day, the fence must be reinstated.

5. **Can competent persons complete Form 17?**

No. The Act requires a building certifier to issue a certificate stating the pool and fencing comply with the requirements for pools and fencing prescribed under a regulation. If for example, the building certifier approves a development application for a pool, they can arrange for another building certifier to inspect and issue the certificate on their behalf. The approving building certifier is still responsible for any corrective action that may be required if the pool and fencing does not comply.

6. **What level of accreditation is required for a building certifier to undertake inspections?**

Section 124 of the Standard Building Regulation outlines the functions permitted for each accredited level of building certifier. As the inspection of the pool and fencing is classified as an inspection of a structure, *only* those building certifiers accredited as a *building surveyor*, an *assistant building surveyor*, or a *building surveying technician* can undertake inspections in relation to swimming pools and fencing.

7. **Does Form 17 apply to pools approved prior to 7 February 2003?**

If a development application for a pool has been approved prior to 7 February 2003 and the pool is filled after 7 February 2003 then the provisions of the Act apply. That is, a Form 17 must be issued.

8. **What to inspect when completing Form 17?**

The Act requires the certifier to inspect the pool and fence construction to ensure compliance against the requirements of a regulation. In effect, the certifier is to perform the following two essential checks:

- a) **Pool construction** – the certifier is satisfied that the construction of the pool is in accordance with the Act (for example, siting of the pool in relation to sanitary sewers and site boundaries); and
- b) **Fence construction** – the certifier declares that the construction of the pool fence is in accordance with AS1926.1 and AS1926.2.

9. **If building certifier inspects and the fence doesn't comply what action should be taken?**

The building certifier should take action to remedy the situation. This may include issuing an enforcement notice under the *Integrated Planning Act 1997*. S 5.3.6 of the *Integrated Planning Act 1997* allows a private certifier to give a notice to a person, reasonably believed to be committing a

development offence, for work, which the private certifier was engaged to perform building certification functions.

If a private certifier becomes aware of a non-complying situation on building work for which the building certifier is responsible for, it is the certifier's responsibility to take appropriate action to have the matter remedied. It is not sufficient to simply refer the matter to the local government to resolve.

If a person fails to comply with a notice served under Part 4 of the Integrated Planning Act and issued by a private certifier, the private certifier must give written notice to the local government. The local government may decide what further action is needed, however the private certifier still needs to attempt to have the matter resolved.

10. If a building certifier refuses to issue Form 17 because pool fence doesn't meet the standard – what rights does owner have?

If an owner is dissatisfied with a decision relating to the fencing around the pool, owners may appeal to the Building and Development Tribunal to have this decision reviewed. The appeal must be lodged within 20 business days of receiving the building certifier's decision. Appeal forms are available on the Department of Local Government and Planning's website www.dlgp.qld.gov.au

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