



SWIMMING POOL FENCING EXEMPTIONS

Purpose

To make building certifiers aware of a number of issues associated with swimming pool fencing.

Only local governments can grant exemptions

Building certifiers should be aware that under section 15 of the *Building Act 1975*, only local governments have the power to grant exemptions from fencing a swimming pool. In dealing with an application involving a proposed fencing exemption, private certifiers must await the decision of the local government before issuing a development permit.

When dealing with applications for exemption, local governments must be satisfied the criteria stipulated in section 15 (2) of the Act are met. Under section 15 -

“The local government may grant the application only if it is satisfied it is unlikely a young child would gain access to the pool because of -

- (a) the physical nature or location of the land concerned; or*
- (b) the design or construction of the pool or fencing; or*
- (c) the location of the pool or fencing”*

Exemptions covered by sections 63 to 66 of the *Standard Building Regulation 1993* (SBR) must be assessed against the specific criteria in the particular section in addition to the criteria under section 15 of the Act. The exemptions are-

- s 63- Exemption for child-resistant doors
- s 64- Exemption for non-complying door or gate
- s 65- Exemption for double doors
- s 66- Exemption for access for persons with disabilities

Exemption from fencing pools on large allotments

Under section 30P of the previous legislation, special consideration could be given to granting an exemption from fencing a swimming pool situated on land greater than 4000 m² in area. Under section 30P, the council had to be satisfied that a young child was unlikely to gain access to the pool. This may have included consideration as to whether a young child resided on or regularly visited the property. Under section 15 of the new Act, the council may grant the exemption only if it is satisfied a young child could not gain access to the pool because of the criteria nominated in s 15 (a), (b), or (c). In other words, the council is no longer able to consider whether young children live on, or are likely to visit the premises.



Exemption conditions

When granting an exemption covered by sections 63 to 66 of the SBR, the local government must ensure the exemption is subject to the prescribed mandatory conditions and to any further conditions the local government considers appropriate to inhibit young children accessing the pool.

There have been instances where the mandatory conditions required under the SBR have not been included in the exemption notice. A certifier must ensure the mandatory conditions relating to the installation standard of the fencing are satisfied at the final inspection.

Doors not to open into swimming pool areas

Exemptions covered by sections 63, 64, and 65 of the SBR may be granted only where it is not physically practicable to provide complying fencing between the doors and the pool, even though the other criteria is satisfied.

Doors permanently fixed closed

An exemption would not be required where a door is bolted or screwed in the closed position as a component of a “fence”, provided it satisfies the strength test stipulated in Appendix C of the Australian Standard AS 1926.1-1993.

Fencing on canals/waterways

The previous legislation did not require fencing to isolate a swimming pool from a watercourse unless the local government decided it was necessary. The current legislation, however, requires fencing.

Under AS 1926.1 – 1993 s 1.2.3 a “fence” comprises components, natural or otherwise, forming an intended barrier to the pool. A building certifier may approve an application only where the Standard nominates the barrier as suitable. For example, a retaining wall complying with section 2.4 of the Standard provides a suitable barrier. If the barrier is not nominated in the Standard, a complying fence must be provided between the pool and the watercourse unless an exemption is obtained from the council. The council may grant the exemption only if satisfied it is unlikely a young child would gain access to the pool.

Gate latches

A complying gate in swimming pool fencing must self-close and self-latch in accordance with AS 1926.1-1993 and AS 2820-1993. Some latching mechanism have failed to positively latch the gate closed. In particular, with a latch operated by lifting a knob at the top of the gate post, there is a likelihood that the knob will work loose unless secured in place (e.g.by a lock nut). This may alter the level of the latch to the extent that it will not engage in the keeper. Hence, a gate could unknowingly be left unlatched to allow young children to access the pool.

Building certifiers should be aware of this possibility and pay particular attention to gate latching mechanisms to ensure they meet the requirements of the Standards.