

Guidelines for pool owners and property agents

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1 Purpose

The purpose of these guidelines are to assist pool owners (including bodies corporate) and property agents to understand their pool safety responsibilities under the *Building Act 1975* (BA).

Under section 258 of the BA the chief executive may make guidelines which help achieve compliance with the BA. It is recommended that the information contained in these guidelines be used to assist pool owners (including bodies corporate) and property agents with pool safety compliance, however strict compliance with the guidelines is not required under the BA.

2 Scope

These guidelines cover a range of matters relating to Queensland's pool safety laws including:

- the pool safety standard
- how the laws affect the pool owner
- compliance considerations
- pools covered by the laws
- neighbouring properties and dividing fences
- the sale and lease compliance system
- the role of property agents
- the pool safety register
- the pool safety inspection system
- minor repairs and maintenance
- conduct of pool safety inspectors
- the Pool Safety Council (PSC)
- building certifiers
- the role of local government
- exemptions and variations
- offences and penalties
- immersion reporting and inspections.

Supporting fact sheets are also available on the Department of Housing and Public Works (the department) website at www.hpw.qld.gov.au/PoolSafety and provide information about the pool safety laws for both the community and industry.

3 Introduction

3.1 Background

Residential swimming pools should be safe places for families to relax and have fun. In 1991, amendments to the Local Government Act and the Standard Building By-laws required every swimming pool, regardless of when the pool was constructed, to have a complying fence around it unless the local council granted an exemption. Since the introduction of mandatory pool fencing the number of child drownings has halved.

From 1991 until December 2010, 11 different standards were applied to swimming pools depending on the year of construction. In 2008, the Queensland Government conducted a comprehensive review of Queensland's pool safety laws. This review focused on reducing the number of drownings and serious immersion injuries in swimming pools involving children less than five years of age. A swimming pool safety review committee was established comprising representatives from the Queensland Government, local government, industry and child and water safety groups. The committee's task was to consider key areas of swimming pool safety, and provide information about how to improve Queensland's swimming pool safety laws.

The committee provided its report in April 2009 with 23 ideas to improve Queensland's swimming pool safety laws. In preparing its report the committee considered submissions from a range of stakeholders in addition to interstate and international regulatory systems for swimming pool safety.

After considering the report and the submissions from the public consultation process, the Queensland Government adopted a two-stage swimming pool safety strategy. The pool safety strategy included amendments to the swimming pool safety laws, education programs about the importance of supervision of children around pools and encouraging people to teach children to swim at a young age.

Stage one commenced on 1 December 2009 and applied mostly to new residential outdoor swimming pools. It included:

- introducing the latest swimming pool safety standards
- regulating temporary fencing for pools
- mandatory final inspections
- introducing the latest cardiopulmonary resuscitation signage standards.

The second and final stage commenced on 1 December 2010 and mostly affected existing swimming pools. The stage two measures included:

- the establishment of an independent PSC
- a training and licensing framework for pool safety inspectors
- replacing 11 different pool safety standards with one pool safety standard for all regulated pools – Queensland Development Code (QDC) Mandatory Part 3.4. Both new and existing pools must comply with the standard by 30 November 2015 or earlier if sold or a lease or other accommodation agreement is entered into.
- a five-year phase out of child-resistant doors used as pool barriers for existing outdoor pools, or earlier if the property is sold or a lease or other accommodation agreement is entered into prior to 30 November 2015
- wider application of pool safety laws to include indoor pools, pools associated with buildings such as hotels, motels, caretaker residences and backpacker hostels (class 3 and 4 buildings – refer to **Appendix C** of these guidelines) and mobile homes, caravan parks and homestay pools
- a sale and lease compliance system, requiring pool safety certificates to be obtained from a licensed pool safety inspector when a property with a pool is sold or a lease or other accommodation agreement is entered into. Pool safety certificates are valid for one year for shared pools and two years for non-shared pools.
- requiring all regulated pools to be included in a state-based pool safety register
- fencing for portable pools and spas deeper than 300 millimetres

- mandatory inspections by local governments for immersion incidents of children under five in swimming pools. Hospitals must report these incidents to Queensland Health. Queensland Ambulance Service may also report the incidents.

3.2 Terms and abbreviations used in these guidelines

A number of terms used in these guidelines have special meanings, including:

Accommodation agreement (or lease)

An accommodation agreement includes residential tenancy, rooming accommodation and homestay, assisted accommodation agreements or other agreements that give a person a right to occupy a premises in exchange for money or other valuable consideration. The agreement can be written, verbal or implied. Agreements with family members, such as a grandchild boarding with their grandparents, are excluded. An accommodation agreement includes things like renting a house or unit or letting a room or bed in a motel, hotel, serviced apartment, resort, backpacker hostel, caravan park or similar premises.

CPR

Cardiopulmonary resuscitation

Indoor pool

An indoor pool is a pool that is completely enclosed by the walls of a building. It also includes a pool on a deck or rooftop of a building if, under the usual ways of entering or leaving the building, the pool is only accessible from inside the building. However, it does not include a pool on a deck that can be accessed from the backyard of a house.

NCZ

Non-climbable zone

Non-shared pool

A pool that may be used only by the residents of one dwelling such as a private house pool or a spa on a unit balcony. The only exception is for pools associated with a hotel, motel, backpacker hostel or other class 3 building (refer to **Appendix C**). Such pools are shared pools, even if they are only accessible to the residents of one dwelling.

Outdoor pool

An outdoor pool is a swimming pool that is not an indoor swimming pool and can be accessed without entering a class 1–4 building. This includes pools in backyards and pools that are only partly enclosed by the walls of a building.

Pool safety standard

The pool safety standard sets out the technical requirements for pool safety barriers and CPR signs. It is contained in the Queensland Development Code Mandatory Part 3.4 (QDC 3.4), Australian Standard 1926-2007 (Parts 1 and 2) and the Building Regulation 2006 (BR).

Shared pool

Where the residents of more than one dwelling – such as a body corporate pool – have the right to use the pool, the pool is a shared pool. Pools situated on land associated with a hotel, motel, backpacker hostel or other class 3 building (refer to **Appendix C**) are shared pools.

Swimming pool

Means an excavation or structure:

- (a) capable of being filled with water to a depth of 300 millimetres or more
- (b) capable of being used for swimming, bathing, wading, paddling or some other human aquatic activity
- (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), but does not include:
 - a. a fish pond or pool solely or principally used, or designed, manufactured or adapted to be solely or principally used, for ornamental purposes or
 - b. a dam or tank solely or principally used, or designed, manufactured or adapted to be solely or principally used, for aquaculture, marine research or storage of water or
 - c. a watercourse or
 - d. a portable wading pool or
 - e. a spa bath situated in a bathroom, other than a spa bath continually filled with water to a depth of more than 300 millimetres or
 - f. a birthing pool used solely for water births.

3.3 Swimming pools covered by the legislation

For the full definition of 'swimming pool' refer to Schedule 2 of the BA or section 3.2 of these guidelines. (Note: The following is a summary only and reference should be made to the BA when determining whether an excavation or structure is a swimming pool.)

Generally a swimming pool is an excavation or structure that is:

- capable of being filled with water to a depth of 300 millimetres or more
- solely or principally used for swimming, bathing, wading, paddling or some other human aquatic activity despite its current use.

Swimming pools include spa pools, spa baths continually filled with a water depth of more than 300 millimetres and wading pools (other than a portable wading pool). Therefore when purchasing a swimming pool, including above-ground and portable pools, owners should be mindful of their obligations to install a compliant pool barrier.

The new laws do not apply to portable pools if they:

- are incapable of being filled with water to a depth of more than 300 millimetres
- have a volume of less than 2000 litres
- have no filtration system.

If a pool meets all three of the above criteria it is a portable pool (not a swimming pool) and does not need to comply with the pool safety laws. However, owners should be mindful of the risks associated with leaving young children unsupervised around water.

If a pool does not meet one or more of the above criteria, it is a swimming pool and you will need to:

- obtain a building approval before erecting or installing the pool
- obtain a certificate from a licensed building certifier stating that the pool complies with the pool safety standard before filling the pool with more than 300 millimetres of water
- ensure the pool is included on the pool safety register.

If a pool is disassembled and does not hold more than 300 millimetres of water, it does not need to comply with the pool safety standard until it is assembled and filled with more than 300 millimetres of water.

Prior to the introduction of the new pool safety laws on 1 December 2010, pool safety laws only applied to outdoor pools associated with houses and units (class 1 and 2 buildings – refer to **Appendix C** of these guidelines).

The pool safety laws apply to a broader range of pools, regardless of when they were constructed or whether they are new, existing, indoor, outdoor, shared or non-shared. They must meet the new standard by 30 November 2015 or earlier on sale or lease.

The pool safety laws now cover indoor pools and pools associated with hotels, motels, hostels, boarding houses, backpacker accommodation, accommodation for the aged, children or persons with disabilities (class 3 buildings – refer to **Appendix C** of these guidelines), caretaker dwellings (class 4 buildings – refer to **Appendix C** of these guidelines) and caravan parks.

3.4 Decommissioned Pools

There will be occasions where a pool owner will decide that they no longer want a swimming pool and will decommission their swimming pool as an alternative to complying with the pool safety standard. For this to occur, the swimming pool structure must be altered in a way that makes the pool incapable of being filled to a depth of 300 millimetres. For example, the floor of a spa may have holes drilled into the water receptacle component to permit water to drain out or one side of a swimming pool may be removed. For swimming pools (including portable spa pools) to be decommissioned the work must result in the swimming pool (including portable spa pools) requiring some repairs to render it capable of holding water to a depth of 300 millimetres.

3.5 Legal obligations of pool owners

The pool safety laws require pool owners to construct and maintain a compliant fence around their swimming pool regardless of when the pool was installed. Under the current laws, pool owners have until 30 November 2015 to meet the present pool safety standard or earlier if they sell or lease their property.

If a property with a non-shared pool i.e. a residential home, is not sold or leased, it must still have a compliant pool barrier. However, until 30 November 2015, the standard that will apply to that swimming pool is the standard that applied when the pool was built. For example, if a pool was constructed in May 1998 and the property has not been sold or leased since 30 November 2010, then the pool will be assessed against the standard that applied in May 1998. However after 30 November 2015 the pool must comply with the current pool safety standard. For information about the history of swimming pool fencing legislation and relevant standards refer to **Appendix F**.

Since 1 December 2010, the pool safety laws have required that properties with non-shared pools, such as houses, have a pool safety certificate before they can be leased or another accommodation agreement is entered into.

Buyers of properties with a non-shared pool need to obtain a pool safety certificate within 90 days of date of settlement if the seller has not given them a valid pool safety certificate. Sellers need to notify prospective buyers that there is no pool safety certificate before entering into a contract of sale and before settlement. This is done by serving a Form 36 – Notice of no pool safety certificate (Form 36).

A two-year phase in period exists for properties sold or leased with shared pools, such as unit complexes and hotels. If a property has a shared pool (long-term accommodation only), the owner (body corporate) has until 30 November 2012 to obtain a pool safety certificate. Until this date a

Form 36 must be given to the purchaser prior to signing the contract or tenant before entering into an accommodation agreement.

For further details about sale and lease requirements refer to section 4 of these guidelines.

3.6 What is the pool safety standard

The pool safety standard is the minimum requirements that a swimming pool barrier must meet to comply with Queensland's pool safety laws. In Queensland the pool safety standard is the QDC 3.4 and the Australian Standard (AS) 1926–2007 Parts 1 and 2 as modified by the QDC. Please note that later versions of the Australian Standard do not apply in Queensland unless they are adopted by a new version of the QDC.

A pool owner's pool fence must comply with the pool safety standard by 30 November 2015 or earlier if they sell or lease their property. The current pool safety standard replaces all the pool safety standards that previously applied to swimming pools.

Appendix A of these guidelines provides some basic information about the pool safety standard. For further details, please refer to the pool safety standard, which is available on the department's website www.hpw.qld.gov.au/PoolSafety.

3.7 Legislation

The principal legislation regulating swimming pool safety in Queensland is the BA. The BA contains provisions about when a barrier is required and refers to subordinate legislation for more technical requirements.

These guidelines should be read in conjunction with the BA, BR, QDC 3.4, AS 1926–2007 Parts 1 and 2 and other relevant legislation and guidelines.

4 Sale and lease compliance system

Under the pool safety laws, pool owners have until 30 November 2015 to meet the pool safety standard unless they sell or lease their property. Where a property is sold or leased the pool barrier will need to comply with the requirements as explained in sections 4.1–4.4 below.

4.1 Sale of a property with a non-shared pool

Since 1 December 2010 the pool safety laws have required that a valid pool safety certificate be obtained if a property with a regulated pool is sold. To ensure this occurs the following obligations have been placed on the seller of the property.

Before entering into a contract

A seller must either:

- give the purchaser a pool safety certificate or
- give the purchaser a Form 36. Form 36 advises that the pool may not comply with the pool safety standard and the steps that must be taken to comply. Form 36 is intended to help prospective buyers make a more informed decision about purchasing the property.

Before settlement

A seller must either:

- give the purchaser a pool safety certificate or
- ensure the purchaser has a Form 36 and provide a copy of the Form 36 to the department.

After settlement

If the purchaser has not been given a valid pool safety certificate before the settlement date, they must obtain one within 90 days of settlement. There is no legislative ability to extend this 90-day period.

For properties being sold by auction, if a valid pool safety certificate is in effect, the seller must give the certificate to the buyer before settlement. Otherwise, the owner or their agent e.g. auctioneer, real estate agent etc, must ensure a Form 36 (accessed online at www.hpw.qld.gov.au/aboutus/ReportsPublications/FormsTemplates) is given to all prospective buyer/s e.g. registered bidders, before entering into a contract of sale.

Pool safety certificates are valid for two years for non-shared pools, regardless of how many times the property is re-sold or re-leased during this period. A new certificate is not required after this period, unless selling or leasing the property. There is no requirement to display pool safety certificates for non-shared pools.

4.2 Sale of properties with a shared pool

For shared pools (long-term accommodation) the following requirements apply.

Before entering into a contract

A seller must either:

- give the purchaser a pool safety certificate or
- give a notice of no pool safety certificate (Form 36). As previously stated, the Form 36 advises that the pool may not comply with the pool safety standard and the steps that must be taken to comply. Form 36 is intended to help prospective buyers make a more informed decision about purchasing the property.

Before settlement

A seller must either:

- give the purchaser a pool safety certificate or
- ensure the purchaser has a Form 36 and also provide a copy of the Form 36 to the department and, if relevant, the body corporate responsible for the pool.

After settlement

If the purchaser has not been given a valid pool safety certificate before the settlement date, the purchaser has 90 days from the date of settlement to comply with the pool safety standard. This timeframe cannot be legally extended. Pool owners are encouraged to have the pool fence inspected with sufficient time to make repairs if needed.

For properties being sold by auction, if a valid pool safety certificate is in effect, the seller must give the certificate to the buyer before settlement. Otherwise, the owner or their agent e.g. auctioneer, real estate agent etc, must ensure a Form 36 is given to all prospective buyer/s e.g. registered bidders, before entering into a contract of sale.

Pool safety certificates are valid for one year for shared pools, regardless of how many times the property is re-sold or re-leased during this period. However, to encourage early uptake, certificates that were obtained before 1 March 2011 for shared pools are valid for two years. A new certificate is not required after this period until the property is next sold or leased.

Pool safety certificates for shared pools must be conspicuously displayed near the main entrance to the premises or at a gate or door accessing the pool.

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.

4.4 Leasing a property with a shared pool

Owners and property agents should note that the date that a lease or other accommodation agreement is entered into may be different from the day the agreement starts. It is only the date that the lease is signed that is relevant to the pool safety laws.

When entering into an accommodation agreement for a shared pool, the pool owner (for example, a unit owner) must either:

- ensure a valid pool safety certificate is in effect before entering into or renewing a lease or other accommodation agreement. A copy of the certificate must also be given to the tenant or occupier, except for short-term accommodation e.g. hotels, motels and backpacker hostels, or
- give a Form 36 to the pool owner (for example the body corporate), the department and the tenant or occupier (except for short-term accommodation) before entering into a lease or other accommodation agreement.

From 30 November 2012, if the property owner gives a Form 36 to the person entering into the accommodation agreement (shared pool) they must obtain a pool safety certificate within 90 days of entering the agreement.

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 Agents and Motor Dealers Act 2000*.

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:

- 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.hpw.qld.gov.au/PoolSafetyRegister 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 have 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.

5 Neighbouring properties and dividing fences

5.1 Neighbouring tree branches and other vegetation

It is always the responsibility of the pool owner (not the neighbour) to ensure their pool complies with the pool safety standard.

If the neighbour's side of the fence does not comply with the pool safety standard, the pool owner must either:

- raise the fence to a height of 1800 millimetres or more and ensure a NCZ is located on their side of the fence or
- construct a separate complying pool barrier entirely within their own property.

If the branches of a neighbour's tree or other vegetation overhang the pool owner's property, the pool owner may be legally able to remove the overhanging parts at their own cost, but the pool owner is not legally entitled to enter the neighbour's land to do this without the neighbour's consent.

It is important to take care not to damage the tree, other vegetation or the neighbour's property when removing overhanging tree branches. It is recommended that pool owners speak to their neighbour first and attempt to reach an agreement before taking any action regarding overhanging tree branches or other vegetation.

Consideration must also be given to any tree or vegetation protection orders that may exist under a state or local law over the neighbour's tree, which may prevent the removal of branches or vegetation without permission from the relevant authority.

Further information about vegetation protection orders, overhanging tree branches and other vegetation can be obtained from your local government.

If a pool owner wants the owner of the tree to take responsibility for lopping the branches of their tree hanging over the boundary, they can serve a Form 3 – Notice for removal of particular overhanging branches (available at www.justice.qld.gov.au). This notice can be used for branches which are more than 50 centimetres over the boundary and less than 2.5 metres above the ground. If the tree owner does not respond to the notice, the neighbour can proceed to have the lopping done and recover from the tree keeper a maximum sum of \$300 per annum. If there is a vegetation or tree protection order over the tree, enquiries would have to be made to the local council before cutting the tree.

If the tree or vegetation is on public land the relevant authority e.g. local government, should be contacted. A permit may be required from the relevant authority before removing branches, trees or vegetation on the public land, such as a footpath, park or walkway, that overhang the pool owner's property.

5.2 Dividing fences

Often boundary fences form part of the pool barrier. In these cases the pool safety standard still applies to the part of the boundary fence being used as part of the pool barrier.

The boundary fence must be a minimum of 1200 millimetres high and have a complying NCZ. However, it is important to note that if the fence is less than 1800 millimetres in height, the NCZ must be on the outside of the fence (neighbour's side). A pool owner is unable to control the actions of a neighbour and therefore has no control of the NCZ. If the fence is 1800 millimetres or higher, the NCZ can be on the inside. Pool owners should consider whether they are able to control the area outside of the pool fence before deciding on a fence height that requires the NCZ on the outside of the fence.

The wall of a building on a common boundary may also be used as part of a pool barrier if it complies with the pool safety standard. The pool owner is prohibited from altering the building without the owner's consent. Where any part of the wall does not meet the requirements of the pool safety standard, the pool owner may need to construct a separate barrier inside their property to comply with the standard.

Part 2A of Chapter 8 of the BA provides the regime for pool owners who propose to use or construct a fence on a common boundary as a pool barrier. This should be read in conjunction with the *Neighbourhood Disputes Resolution Act 2011*.

Pool owners are encouraged to discuss the fencing work with their neighbour before making any decisions. If a pool owner decides to do the fencing work without obtaining an agreement from the neighbour, the pool owner must give the neighbour a notice about proposed work at least 14 days prior to undertaking any work. This notice (Form 39 – Notice of proposed fencing work for a pool barrier) will include information on the type of fence proposed and the materials that will be used. The proposed pool barrier must be consistent with the existing fence e.g. similar materials and colours, unless this would prevent the fence from complying with the pool safety standard.

Details about the costs associated with the fencing work should also be provided to the neighbour on the Form 39. The costs associated with constructing, altering, repairing, replacing and maintaining a regulated pool's fence to make it compliant with the pool safety standard, are to be borne in full by the owner of the land on which the pool is situated.

If there are pools on both sides of the fence and the work or part of the work is done to allow both parties comply, the cost is borne equally by the pool owners.

However, if one pool owner requires fencing work and the other pool owner does not, the costs are borne solely by the pool owner requiring the changes. Details about the costs associated with the fencing work should also be provided to the neighbour on the Form 39.

6 Compliance considerations

6.1 Fencing, gates and latches

The minimum height for a pool fence is 1200 millimetres, measured from ground level (refer to **Appendix A – Figure 1**). The distance between the bottom of the pool barrier and the ground must be less than 100 millimetres and the distance between any vertical members such as palings, rods or wires must also be less than 100 millimetres.

Gates must self-close and self-latch from all positions and must not open inwards towards the pool area. Gate latch releases must be located at least 1500 millimetres above the ground and at least 1400 millimetres above the highest lower rail on the fence, or appropriately shielded.

It is the responsibility of the occupiers and pool owners to ensure that gates and doors giving access to a pool are kept securely closed at all times when they are not in use.

6.2 Non-climbable zone

Since the introduction of pool safety laws in 1991, there has been a requirement to provide a NCZ around the pool barrier. The purpose of the NCZ is to prevent children climbing the barrier or using climbable objects near the pool barrier to access the pool.

The pool safety standard requires a 900 millimetre NCZ around the entire pool barrier. The NCZ extends both upwards and downwards in an arc from the barrier (refer to **Appendix A – Figures 1, 2 and 3**).

The NCZ is to be located on the outside for pool fences that are less than 1800 millimetres high. However, for pool fences 1800 millimetres or more in height, the NCZ can be located either on the outside or on the inside of the fence. This is particularly useful for dividing fences that are also used as pool fences. In this case, if the neighbour's side of the fence has climbable objects within the NCZ, the pool fence can be raised to a height of at least 1800 millimetres and the NCZ can be located on the inside of the pool fence (refer to **Appendix A – Figure 4**).

Objects with a substantially horizontal surface of 10 millimetres or more that allow a young child to gain a foot or hand hold must not be located in the NCZ. This includes climbable trees, outdoor furniture, barbecues, taps, pot plants, lattice, trellis, projections, indentations or retaining walls. Objects such as smooth tree trunks or other non-climbable vegetation are permitted in the NCZ (refer to **Appendix A – Figures 2 and 3**) as they are either not climbable by young children or they create an additional barrier for young children.

The standard specifically allows bushes that are not easily climbable by young children to be located in the NCZ as they can create an additional barrier for young children. Bushes with dense, spiked, thorned, rough or otherwise irritating or hindering foliage that would deter a young child from climbing are acceptable.

Bushes or shrubs that are fragile or crush easily or are so weak that a child could not climb them are also acceptable. They are acceptable even where the bushes conceal or contain thick branches that could hold a young child's weight provided the branches are impractical for a young child to reach or use to climb the barrier.

Where a bush, shrub or tree has a thick (10 millimetres or more in width and substantially horizontal) exposed branch in the NCZ it is acceptable once the substantially horizontal branch is removed. The bush, shrub or tree does not need to be removed. Stumps or bushes that are cut back may be climbable and it is preferable to retain foliage that will deter young children or to remove exposed stumps. Where bushes, shrubs or trees remain inside a NCZ, owners are responsible for monitoring them and trimming any substantially horizontal branches that do become exposed so as to prevent children climbing them.

Refer to **Appendix A** which provides photographs of vegetation that is and is not acceptable.

6.3 Child resistant doors used as a pool barrier

The pool safety standard does not allow self-closing and self-latching child resistant doors which provide direct access from a building into a pool area to be used as a pool barrier, other than for indoor pools. Child resistant doors have not been allowed for new pools in Queensland since 1991. However, some pool owners may have been granted an exemption by their local government. These exemptions (except for valid disability exemptions) end on 30 November 2015, or earlier if the property is sold or leased before then.

Child resistant doors pose a serious risk to children. Queensland Injury Surveillance Unit research indicates that the relative risk of a young child drowning in a pool is almost 11 times higher where child resistant doors are used compared to where a separate fence is provided, assuming that the barrier is properly maintained.

Upgrading of child resistant doors can be achieved by installing a separate fence between the building and pool. Costs can be minimised by installing a small section of fencing and a gate around the child resistant door (refer to **Appendix A – Figure 5**). This does not include installing a pool gate directly across a door. A person must first be able to step outside of the building before being able to open the gate and step into the pool area.

Where strict compliance with the pool safety standard would be impracticable – such as where part of a building would need to be demolished to provide a complying barrier – pool owners can apply to their local government for an impracticability exemption. However, impracticability exemptions cannot be given just because of aesthetic concerns, because no children reside on or visit the property, because the pool is near to another body of water such as a canal or dam, or because the property is rural or remotely located.

6.4 Cardiopulmonary resuscitation signs

A CPR sign (refer to **Appendix D**) must be clearly and conspicuously displayed near the pool. Under the BR, the sign must comply with the Australian Resuscitation Council's Guideline 7 – cardiopulmonary resuscitation, be at least 300 millimetres by 300 millimetres in size, be made of a durable and weatherproof material and clearly state what to do in an emergency e.g. phone 000, ask for ambulance, stay with injured person, call for help and resuscitate.

7 Pool safety register

7.1 What is the pool safety register?

The pool safety register is a state-wide database that keeps a record of all the regulated pools in Queensland and is available online at www.hpw.qld.gov.au/PoolSafetyRegister

The purpose of the register is to provide local governments, pool safety inspectors, the department, the PSC, pool owners, property agents and the general public with a central source of information about pools, pool safety certificates and pool safety inspectors.

Authority to enter data into the register is restricted to local governments, the department, the PSC and pool safety inspectors. The PSC has administrative access to the register to approve pool safety inspector licence applications and other key functions. The PSC can also enter any record of disciplinary action taken against a pool safety inspector, including any tribunal order made against a pool safety inspector. This information is available to the public.

The benefits to the public include the ability to:

- find licensed pool safety inspectors
- obtain information about any disciplinary action taken against a pool safety inspector
- check whether a property has a pool safety certificate.

Note: If the register shows a pool safety certificate is in effect for a pool, a copy of the certificate including the identifying number will be available electronically.

7.2 Pool owner's obligation to ensure their pool is on the register

All pools in Queensland need to be registered. There is no charge to register a pool, however, failure to register your pool can incur a fine of up to \$2200.

To check if your pool is registered, simply conduct a property search on the pool register:

- Go to the pool safety register website at www.hpw.qld.gov.au/PoolSafetyRegister
- Click on 'Search for a property's pool safety certificate'.
- Enter your property details. The register will validate the address and will advise if the pool is registered and if there is a valid pool safety certificate for the property.
- If no pools are recorded against the property, click on 'request the Pool Safety Council add this location to the register' and enter the number of pools and spas located on the property.

If the pool is correctly registered, a pool owner is not required to do anything further unless they sell or lease their property. If a pool owner obtains a pool safety certificate, it will be attached to the property on the register once a pool safety inspector issues it. Similarly, if a Form 36 is issued by a pool owner, it will also be attached to the property on the register (however this occurs once it is supplied to the department.)

8 Pool safety inspection process

8.1 Pool safety certificates

A Form 23 – Pool safety certificate, is an approved form advising a person that a swimming pool described on the form has been inspected by a licensed pool safety inspector and, at the time of inspection, the pool complied with the pool safety standard. A pool safety certificate can only be issued by a licensed pool safety inspector.

Pool safety certificates are only required when selling, buying, leasing or entering into another type of accommodation agreement for a property with a pool. Certificates are valid for one year for shared pools and two years for non-shared pools, regardless of how many times the property is re-sold or re-leased during this period. Once a certificate expires, a new certificate is not required unless the property is sold or leased again.

For shared pools, the pool owner e.g. body corporate, is responsible for obtaining the pool safety certificate and making it available to unit owners. It is not necessary for every unit owner to obtain a separate pool safety certificate for the same shared pool.

Local governments have the authority to cancel a pool safety certificate if they believe the pool does not comply with the pool safety standard. If a certificate is cancelled, a new certificate will be required when the property is sold or leased.

To obtain a pool safety certificate a pool owner will need to engage a licensed pool safety inspector to inspect the pool against the pool safety standard (see section 8.3).

8.2 Building certificates instead of pool safety certificates

At the completion of a new swimming pool, or after other major pool alterations, a building certifier will provide the pool owner with a Form 17 – Final inspection certificate. Form 17 can be used in the place of a pool safety certificate for the purposes of selling or leasing a property. This is also the case for a certificate of classification given for a building that includes a regulated pool or on land where a regulated pool is situated. Both a Form 17 and certificate of classification are valid for the same period of time as a pool safety certificate i.e. one year for shared pools or two years for non-shared pools.

However, the certificates mentioned above are only valid if the certificate was issued against the current pool safety standard which was introduced on 1 December 2009. If the certificate was issued against an older pool safety standard, it cannot be used instead of a pool safety certificate. In this case, a separate pool safety certificate is required.

Building certifiers must, within five business days of issuing a final inspection certificate or a certificate of classification for a swimming pool, provide to the chief executive in the approved way the details of the certificate so they may be entered onto the pool safety register.

8.3 Pool safety inspectors

Pool safety inspectors are persons licensed by the PSC, to carry out inspections to determine if a pool complies with the pool safety standard and issue a pool safety certificate if it does.

Generally, pool safety inspectors are either self-employed or subcontracted by private businesses. They do not represent the government. Therefore the costs and charges may vary between pool safety inspectors and consumers are encouraged to obtain several quotes before engaging the services of a pool safety inspector.

Pool safety inspectors have a code of conduct which is available online at www.hpw.qld.gov.au/PoolSafety Further information about the code of conduct and investigations is given in section 8.11 of these guidelines.

A list of all licensed pool safety inspectors is available on the pool safety register.

8.4 Building certifiers

The role of building certifiers remains relatively unchanged under the current pool safety laws, including deciding building development applications for new pools, inspecting new pools and enforcing the pool safety laws. When performing the role of a pool safety inspector they are bound by the same requirements as all other pool safety inspectors.

Generally, building certifiers hold conditional licences preventing them from carrying out any minor repairs for regulated pools, although this condition can be removed by the PSC if the building certifier can demonstrate their competence to carry out the work.

The pool safety register includes details of building certifiers who are licensed as pool safety inspectors and have advised the PSC they are willing to provide pool safety inspection services.

8.5 Engaging a pool safety inspector

Pool owners have the option of engaging a licensed, private pool safety inspector or a building certifier or contacting the relevant local government to do a pool safety inspection. All local governments are required by law to provide a pool safety inspection service if asked to by a pool owner. If you have any doubt about whether a person is a licensed pool safety inspector, you

should ask to see their pool safety inspector's licence or you may confirm their details on the pool safety register.

Pool safety inspectors only have certain designated responsibilities relating to pool safety, known as pool safety inspection functions. These are:

- inspecting pools to decide whether to give a pool safety certificate
- giving pool safety certificates
- giving nonconformity notices
- carrying out minor works as allowed under the BR, if necessary.

A pool safety inspector carries out these functions under an agreement with the pool owner. It is recommended that these agreements are in writing, but this is not mandatory. The practical details of the agreement including the fees, time of the inspection and whether the pool safety inspector undertakes minor repairs and charges for reinspection, are a matter of negotiation between the pool safety inspector and the pool owner.

Not all pool safety inspectors are permitted to carry out minor repairs. Before a pool safety inspector is permitted to carry out minor repairs they must provide sufficient information to the PSC to demonstrate they are competent for the work being undertaken. This protects the consumer against unqualified persons carrying out minor repairs.

To check if a pool safety inspector is suitably licensed, view the back of the pool safety inspector's licence. If the back of the licence is blank they are permitted to carry out minor repairs, otherwise they will have the words 'not permitted to carry out minor repairs' printed on the back of the licence. For further information on minor repairs, see section 9.3.

If a suitably licensed pool safety inspector is engaged to undertake minor repairs, they can only carry out minor repairs up to a value of \$3300, unless they also have a Queensland Building Services Authority (QBSA) licence. If the cost does exceed \$3300 you should check that they have a QBSA licence. For further information on this topic refer to the QBSA website at www.bsa.qld.gov.au.

Private pool safety inspectors do not have any specific right of entry powers and may only enter onto land to inspect a pool if invited by the pool owner or their agent.

8.6 Changing pool safety inspectors

Once a pool safety inspector has given a pool owner a Form 26 – Pool safety nonconformity notice (Form 26), the BA prevents the pool owner from engaging a different pool safety inspector to inspect the pool during the three months after the Form 26 is given. This requirement is intended to prevent pool owners from 'shopping around' for another pool safety inspector during this period.

The only exception is when the pool owner requests and receives the approval of the PSC to engage a different inspector in this period. The PSC will assess the particular circumstances in the application and, if approved, issue a notice agreeing to this request. For example, if the first pool safety inspector went on holiday for two months and the pool owner needed to obtain compliance during that time, the PSC could agree to the pool owner engaging another pool safety inspector.

Written requests to change a pool safety inspector can be made to the PSC at:

post: GPO Box 907, Brisbane QLD 4001

email: psc@dlgp.qld.gov.au

fax: +61 7 3237 1248

8.7 Inspection

A pool safety inspector must physically inspect a pool before deciding whether or not it complies with the pool safety standard. Exceptions may exist in specially declared remote areas.

Once a pool safety inspector inspects the pool, they must issue either a pool safety certificate or a Form 26 within two business days from inspecting the pool.

If a Form 26 is issued and the owner does not ask the pool safety inspector to reinspect the pool within three months (reinspection period), the pool safety inspector must give the local government a copy of the Form 26 within five business days. A pool owner who engages a second pool safety inspector during the reinspection period without agreement of the PSC commits an offence and may be fined up to \$5500.

Once the local government is provided a copy of the Form 26 they may inspect the pool for compliance with the relevant standard. If, following inspection, the local government finds the pool does not comply with the applicable standard, the local government can take any necessary enforcement action to ensure the pool complies with that standard. This could include giving an enforcement notice, giving an infringement notice, prosecution, other legal proceedings or carrying out remedial work in accordance with the *Local Government Act 2009* or *City of Brisbane Act 2010*. This action is separate to the offence of failing to call the pool safety inspector to reinspect the pool within three months.

If the pool owner does get the pool safety inspector to reinspect the pool within the three months and the pool safety inspector still believes the pool does not comply with the pool safety standard, the three months recommences. (Note: This does not extend the 90-day compliance period from date of settlement that is required upon the sale of a property. The legislation does not allow this date to be extended in any circumstances).

8.8 Conformity

If the pool safety inspector is satisfied the pool complies with the pool safety standard, they must give the owner a Form 23 – Pool safety certificate. The certificate must have a unique identification number and must be recorded on the pool safety register by the pool safety inspector.

A pool safety inspector cannot refuse to give a pool safety certificate only on the following grounds;

- that there is no development approval for the pool or barriers
- the pool or barriers do not comply with the development approval
- failure of a person to pay for the inspection or a contractual dispute.

However, the local government or building certifier may take separate enforcement action for matters relating to the need for a building development approval.

8.9 Nonconformity

If the pool safety inspector is not satisfied the pool complies with the pool safety standard, they must give the owner a Form 26 within two business days of the inspection. The Form 26 states how the pool does not comply with the pool safety standard and what needs to be done to make it comply.

The owner may appeal the pool safety inspector's decision in the Form 26 to a building and development dispute resolution committee. The appeal must be made within 20 business days after the Form 26 is given.

For further information about how to appeal, please contact the Building and Development Dispute Resolution Committees at:

website: www.hpw.qld.gov.au/DisputeResolution

phone: +61 7 3237 0403

fax: +61 7 3237 1248

email: registrar@dlgp.qld.gov.au

post: PO Box 15009, City East QLD 4002

The pool safety inspector is not required to give the pool owner a Form 26 if:

- they reinspect the pool within two days after the initial inspection and are satisfied that the pool now complies or
- the owner and pool safety inspector agree that the pool safety inspector will carry out minor repairs within 20 business days of the original inspection.

If the agreed minor repairs are not undertaken by the pool safety inspector within 20 business days, or if the pool safety inspector reinspects the pool within the two-day period and is not satisfied it complies, the pool safety inspector must, within a further two business days, give a Form 26 to the pool owner.

Once the work required by the Form 26 has been done, the owner needs to arrange for the pool safety inspector to reinspect the pool. The pool safety inspector must carry out the reinspection within five business days, or within a longer period of time agreed to by the owner and inspector.

Pool safety inspectors cannot advise pool owners that remedial work is necessary to comply with the pool safety standard if such work is, in fact, not required. However, they can recommend that such work be carried out, provided they also state that the work is not required by law.

Work needed to make a pool comply can be undertaken by either the pool safety inspector (if authorised), owner, contractor or other people under specific circumstances. The following summarises the work that may be carried out by each party. (Note: For full details refer to the BR.)

Pool safety inspector

A pool safety inspector must be licensed to carry out minor repairs before performing any work on a barrier they are inspecting. They can only repair, replace or adjust a part of the existing barrier that is no longer than five metres in length and no more than six posts. They can also conduct other minor repairs stipulated in schedule 2B of the BR (refer to **Appendix B**).

Pool safety inspectors cannot perform work to a value greater than \$3300 unless they are suitably licensed by the QBSA to do so.

Owners/other people

Owners and other people e.g. maintenance people, can carry out repairs and maintenance on their existing pool barrier. They are restricted in the work they can carry out, for example repairing, replacing and adjusting a part of a barrier. For full details of work able to be carried out by an owner, refer to schedule 2B and 2C of the BR (**Appendix B**).

Owners and other people e.g. maintenance people, cannot perform work to a value greater than \$3300 unless they are suitably licensed by the QBSA or hold an owner builder permit.

It is a requirement under the *Queensland Building Services Authority Act 1991* (QBSA Act) that if you wish to perform or coordinate domestic building work, including a pool barrier, on your property for a single project of a value of more than \$11 000 you must hold an owner builder permit. An owner builder permit is only issued by the QBSA. For more information, visit the QBSA website www.bsa.qld.gov.au

Contractors

A contractor suitably qualified by the QBSA can carry out all work to a pool barrier. However it is important to note that building approval may be required due to the extent of the work. Building contractors are able to carry out work in excess of \$3300 if they are licensed by the QBSA to do so.

A building development approval is required from a licensed building certifier before carrying out any works that exceed the limits set by the BR Schedules 2B or 2C. Please check with your local government or a private certifier before commencing any work to clarify whether a building approval is required.

Schedule 2B of the BR limits the type of work a pool safety inspector can perform on a barrier. Generally this is limited to no longer than five metres and includes no more than six posts, with the exception of installing shielding. Schedule 2C relates to work a pool owner can perform on their barrier. Some exceptions exist where a pool owner is able to replace the entire pool barrier without the need for a development approval. For further details about schedule 2B and 2C refer to section 9.2 of these guidelines.

It is recommended that any new work completed should comply with the current pool safety standard and not the standard applying to the pool that predates the current standard. This will assist pool owners in making their barrier compliant by 30 November 2015 or sooner if sold or leased.

8.10 Remote areas

To help address the logistical difficulties of inspecting pools in remote areas, the remote local governments listed in schedule 2A of the BR can declare parts of their area as remote by passing a resolution. However, there is no obligation for these local governments to declare any area as remote. Please contact your local government if you wish to check whether a particular pool is in an area declared as remote.

Where a pool safety inspector is engaged to inspect a pool in a declared remote area, the pool safety inspector does not need to carry out an on-site inspection of the pool, and may inspect the pool using suitable technology e.g. streamed video footage. The pool safety inspector must still be satisfied that the pool complies using these methods.

For more information about pool safety inspections in remote areas, please refer to the local government swimming pool safety guideline available on the department's website at www.hpw.qld.gov.au/PoolSafetyFactSheets.

8.11 Conduct of pool safety inspectors

Pool safety inspectors are required by law to comply with a range of statutory requirements, including the BA, BR and code of conduct for swimming pool safety inspectors. The code of conduct is available online at www.hpw.qld.gov.au

The code of conduct sets binding standards for the conduct and professionalism of pool safety inspectors and helps inform the community of these standards. A breach of the code of conduct may find a pool safety inspector liable to disciplinary action under the BA.

A pool safety inspector must always act in the public interest, even if doing so would not be in their client's favour. A pool safety inspector would not be acting in the public interest if they:

- sought, accepted or agreed to accept a benefit (whether their own benefit or someone else's) as a reward or inducement to act other than under the BA
- act in a way contrary to a function of the pool safety inspector under the BA
- act outside the scope of their powers under the BA
- contravene the code of conduct for swimming pool safety inspectors
- act in a way, in relation to the pool safety inspector's practice, that is grossly negligent or grossly incompetent.

The following are examples of how a PSI must behave:

Example 1

A pool safety inspector must not give a pool safety certificate in return for obtaining a guarantee of conducting all pool inspections for a particular real estate agent.

Example 2

Where the purchaser engages a pool safety inspector to inspect a pool prior to signing the contract, the pool safety inspector must not add unnecessary items to the Form 26 at the purchaser's request.

Example 3

The pool safety inspector must correctly apply the relevant laws and standard.

Example 4

A pool safety inspector must not perform a pool safety inspection function if there is a conflict of interest. For example, a pool safety inspector would have a conflict of interest if they:

- carried out building work for the pool, other than minor repairs
- are the owner or a lessee of the building on, or the owner of a lot in, the subject land
- have a direct or indirect pecuniary interest in the building on the subject land.

9 Repairing, altering, replacing or constructing the pool barrier

Most new pools, especially those built after 1 December 2009, should already comply with the pool safety standard. Pools built since 1991 should need little or no work to make them comply, provided they have been well maintained and do not allow direct access from a building to an outdoor pool. Pool owners with doors allowing direct access to an outdoor pool ('child-resistant doors'), will be required to erect an isolating barrier by 30 November 2015, or earlier if the property is sold or leased, in order to comply with the pool safety standard.

Other common rectification works may include removing climbable objects from near the pool barrier, adjusting gates to self-close and self-latch, raising the fence height or adjusting gates to swing outwards.

Before performing significant fencing works, pool owners are responsible for ensuring that any necessary building approvals are obtained from a private certifier or a local government.

9.1 Minor repairs and maintenance by pool owners

In general, pool owners and other persons may carry out their own pool safety repairs and maintenance within certain limits without a building approval. These are in sections 1–4 of schedule 2C of the BR (see **Appendix B**). For works exceeding \$3300 in value, the pool owner (or the pool owner's contractor) must be suitably licensed by the QBSA. Where the estimated value of building work (including labour and materials) is \$11 000 or more, a QBSA owner builder permit is required. For more information, visit the QBSA website www.bsa.qld.gov.au

A building approval is not required for these pool barrier repairs and maintenance, but they must still comply with the pool safety standard. Examples of the type of repairs and maintenance that can be carried out include:

- repairing or adjusting a maximum of 2.4 metres and two posts of a pool safety barrier
- affixing shielding (of any length) to make the barrier comply with the pool safety standard (for example, to make the fence non-climbable or to address insufficient strength and rigidity)
- installing capping along the top of a barrier to raise the height of the barrier
- laying paving under a barrier to reduce the gap under the barrier
- repairing, replacing or adjusting a gate
- protecting a window or door, such as installing a fixed security screen on a window
- removing or shielding climbable objects in the NCZ.

A pool owner can also carry out the minor repairs prescribed for pool safety inspectors (see schedule 2B and 9.3 below), but only if the pool owner has a pool safety inspector inspect the work and issue a pool safety certificate for the pool.

9.2 Fences for existing pools associated with houses and townhouses – other work not requiring a building approval (section 5, schedule 2C of the BR)

Red tape reduction measures which took effect on 27 July 2012 now allow, in certain circumstances, a pool owner to construct, replace, repair or adjust the whole or part of a fence for an existing pool without a building approval. (See section 5, schedule 2C, set out in **Appendix B**).

This applies to fences not higher than two metres for existing, non-shared pools on land on which a class 1a building (see **Appendix C** for a full explanation of building classifications) is, or is to be, constructed.

There is an exception to the two-metre height limit – if the fence is higher than two metres only because it is located on an existing retaining wall, class 1a or 10 building (e.g. a shed or garage, or another existing structure). The work can be carried out if the fence itself is no higher than two metres and no part of the fence that is higher than two metres above the natural ground surface is within 1.5 metres of the boundary of the property.

Class 1a buildings are single dwellings including detached houses, one or more attached dwellings, each being a building separated by a fire-resisting wall, including a row house, terrace house, townhouse or villa unit.

The procedure differs depending on whether the pool already complies with the pool safety standard before the work commences.

The owner of a pool that does not already comply must – before starting work on the fence – engage a pool safety inspector to issue a Form 26.

It is an offence for the owner performing work under this procedure not to have the pool reinspected by a pool safety inspector within the three month reinspection period for the Form 26. A penalty of up to \$2200 or an on-the-spot fine of \$220 applies. The issue of a Form 26 helps to ensure that the owner has advice about the works necessary to make the fence comply with the pool safety standard. If the pool still does not comply on inspection, the pool safety inspector will issue a further Form 26, and a further inspection will be required within three months.

The owner of a 'complying pool' – that is, a pool that has a pool safety certificate or a valid building certificate or which already complies with the pool safety standard – must, before starting the work, contact a pool safety inspector and arrange for the pool to be inspected within three months of the date when the owner contacted the pool safety inspector. It is an offence for the owner not to have the pool inspected by a pool safety inspector within three months of the date on which the owner arranged the inspection. A penalty of up to \$2200 or an on-the-spot fine of \$220 applies.

Temporary fencing

If the permanent barrier is removed or partly removed during fencing works, a temporary fence is required to be installed while the works proceed. Local governments enforce this requirement.

Under the pool safety standard, a temporary fence means a fence which is not a permanent structure, has at least one gate, otherwise complies with the pool safety standard and is securely fixed to resist reasonably foreseeable actions to which it may be subjected for example, high winds, collisions etc.

In general, a temporary fence may be used instead of a permanent barrier for a new pool for up to three months, provided it is inspected and approved by a building certifier. It may be used for further periods of up to three months with written approval by a building certifier.

The temporary fencing requirements differ for building work done under schedule 2C, section 5 of the BR. (That is fencing work that a pool owner may perform without a building approval for an existing pool associated with a house or townhouse outlined above.) In these circumstances, a temporary fence may be used instead of a permanent barrier for an initial period of up to three months. A temporary fence may be used for a second three-month period but only if a pool safety inspector has issued a Form 26 and only during the first 3 months after issue of the notice. The fence may be used for further (third and subsequent) periods of up to three months, but only if a pool safety inspector or a building certifier has given written approval for use of the fence for a further three months, has inspected the fence and is satisfied that the safety of young children would not be at risk if the approval were given.

Tips for using a temporary fence

This checklist will help you check if a temporary fence has been properly installed, but a pool safety inspector or a building certifier can give more detailed advice.

- The temporary fence has a gate which opens outwards, away from the pool.
- The gate closes by itself from any open position.
- The gate latches by itself when it closes.
- The gate's latch release is at 1.5 metres above the ground or is shielded so a child cannot open the gate.

- The gate is never propped open or tied back or otherwise obstructed from automatically closing.
- The outside of the temporary fence is at least 1.2 metres high all the way around.
- The bottom of the temporary fence is less than 100 millimetres off the ground all the way around.
- All vertical or near-vertical uprights in the temporary fence are no more than 100 millimetres apart.
- All horizontal or near horizontal fence rails are at least 900 millimetres apart.
- There is no damage to the fence.
- There are no climbable objects near the temporary fence that would allow a child to climb into the pool area such as BBQs, trees, rocks, shrubs and furniture.
- The temporary fence is securely fixed to resist reasonably foreseeable actions to which it may be subjected, for example high winds, collisions (such as a child pushing against the fence) etc.

9.3 Minor repairs by pool safety inspectors

A pool owner and pool safety inspector can agree for the pool safety inspector to carry out minor repairs to make the pool comply with the pool safety standard. However, pool owners and property agents should note that some pool safety inspectors have a condition on their licence preventing them from carrying out minor repairs. Generally a pool safety inspector will be endorsed to perform minor repairs if they have the necessary specific expertise.

Schedule 2B of the BR defines what minor repairs are and shows the limits to the repairs that a pool safety inspector may carry out.

Schedule 2B of the BR is provided in **Appendix B** of these guidelines.

A further requirement is that the pool safety inspector must be suitably licensed by the QBSA before carrying out work that exceeds \$3300 in value.

A building development approval is not required for minor repairs that are permitted to be undertaken by a pool safety inspector, but they must still comply with the pool safety standard. Examples of the types of minor repairs that can be carried out include:

- erecting, repairing, replacing or adjusting a maximum of five metres and six posts of a pool safety barrier
- affixing shielding (of any length) to make the barrier comply with the pool safety standard (for example, to make the fence non-climbable or to address insufficient strength and rigidity)
- installing capping along the top of a barrier to raise the height of the barrier
- laying paving under a barrier to reduce the gap under the barrier
- installing, repairing, replacing or adjusting a gate
- protecting a window or door, such as installing a fixed security screen on a window
- removing or shielding climbable objects in the NCZ.

10 Pool Safety Council

The PSC is an independent statutory body that oversees the pool safety inspector licensing scheme. The PSC has various other functions relating to pool safety inspectors including receiving and investigating complaints, carrying out audits, taking disciplinary action, approving training courses and maintaining the register of licensed pool safety inspectors.

The PSC is supported by departmental staff who attend to the routine administrative duties of the PSC. The PSC's contact details are:

phone: 1800 340 634

fax: 07 3237 1248

email: psc@dlgp.qld.gov.au

post: GPO Box 907, Brisbane QLD 4001

11 Local government role

Local governments in Queensland have long played an important role in supporting swimming pool safety. Under the new laws, local governments continue to perform key functions, such as inspecting pools, enforcing pool safety laws and deciding exemptions.

Local governments are required by law to provide a pool safety inspection service if asked by a pool owner. Local governments can meet this requirement in various ways, such as:

- employing a licensed pool safety inspector in-house
- employing a licensed pool safety inspector on a share arrangement among several local governments
- contracting a private licensed pool safety inspector.

To promote consistency with a single pool safety standard, local governments are no longer able to make local laws about pool safety standards. Existing local government pool safety laws and exemptions (except for valid disability exemptions) will also be phased out by 30 November 2015, or earlier if the property is sold or a lease or other accommodation agreement is entered into before then.

The enforcement responsibilities of private building certifiers for new pools have also been clarified to help minimise the burden of enforcement on local governments.

Under the pool safety laws, local governments are required to:

- inspect pools if asked by a pool owner
- provide records of all existing pools to the department to help establish the pool safety register
- carry out inspections and undertake any necessary enforcement action following an immersion notice from Queensland Health, a complaint notice or a notice from the department
- give pool safety advisory information to pool owners every four years if a pool safety certificate has not been in effect – for example, by sending pool owners a notice or including information on rates notices.

Local governments also have more powers, including:

- strengthened powers of entry to inspect pools
- expanded prosecution powers
- expanded powers to decide impracticality and disability exemptions
- new powers to cancel pool safety certificates for noncompliant pools
- the ability in some cases to declare areas as 'remote' to help minimise inspection costs for pools in remote areas.

The expanded powers of entry allow suitably authorised local government officers to enter properties (other than a home on the property) at any reasonable time and without the occupier's permission to inspect a pool for compliance with the relevant pool safety standards.

For many years local governments have been able to run 'approved inspection programs' for pool safety matters. This is the same under the current laws.

For further information about the role of local governments, refer to the local government swimming pool safety guideline at www.hpw.qld.gov.au

11.1 Cancellation of a pool safety certificate

If a local government inspects a regulated pool that has a pool safety certificate and reasonably believes the pool does not comply with the pool safety standard, they can cancel the pool safety certificate. Before cancelling a pool safety certificate the local government must give the pool owner a show cause notice. This show cause notice will alert pool owners to the pending decision to cancel a pool safety certificate and provide them with an opportunity to make submissions. In making a decision on whether to cancel a pool safety certificate or not, the local government must consider the pool owner's submissions.

For example, a local government could cancel a pool safety certificate for a pool that has not been adequately maintained and no longer complies with the pool safety standard. The owner can appeal against the local government's decision to cancel the pool safety certificate to a building and development dispute resolution committee. The appeal must be made within 10 business days after the decision notice is given. For further information about how to appeal, please contact the Building and Development Dispute Resolution Committees (see section 8.9 for contact details).

A decision to cancel a pool safety certificate takes effect at the end of 10 business days after the information notice is given unless the owner appeals the decision earlier.

If the owner appeals the decision to cancel the pool safety certificate, the decision is stayed until the appeal is withdrawn or dismissed.

If a pool safety certificate is cancelled for a particular property, the local government must inform the department so that the pool safety register can be updated.

11.2 Local government fees

Under the *Local Government Act 2009* and the *City of Brisbane Act 2010*, local governments can charge a cost recovery fee to perform their responsibilities under the pool safety laws, except for responding to immersion notices or complaint notices.

In addition, local governments can issue infringement notices to pool owners under the *State Penalties Enforcement Regulation 2000* or undertake prosecutions for an expanded range of pool safety offences.

12 Exemptions and variations

12.1 Previous exemptions and variations

Any fencing exemptions (other than disability exemptions that are still valid) that were given for pools by a local government are no longer valid once the current pool safety standard applies to the pool (30 November 2015 or earlier if the property is sold or a lease or other accommodation

agreement is entered into). This applies to exemptions given under local government laws and state laws.

Previous exemptions that were given solely on the basis of the occupier's inability to access the pool because of their disability continue to apply in accordance with the requirements of the BA. If, for example, the person with the disability no longer occupies the property, the exemption automatically ends.

Any variations previously given under section 41 of the BA (or under any similar previous provisions) relating to matters covered by the new pool safety standard no longer apply when the current pool safety standard applies to the pool (30 November 2015 or earlier if the property is sold or a lease or other accommodation agreement is entered into).

12.2 New disability exemptions

Pool owners can apply to their local government for an exemption from complying with a part of the pool safety standard relating to barriers on the grounds of a disability.

To support the application, local governments can request medical evidence, which is strongly recommended.

Medical evidence could include a medical certificate as well as a letter from a general practitioner or medical specialist that contains key information, including:

- the form and extent of the disability
- whether the occupant is wheelchair-bound or mobile
- if wheelchair-bound, whether they are able to move the wheelchair unaided
- whether the occupant requires, or has, a full-time carer.

Local governments are required to consider the exemption application and provide a decision within five business days. The exemption can be granted subject to reasonable conditions the local government considers necessary or desirable to prevent a young child accessing the pool.

Written notice of the decision must be given to the pool owner and also to the department within 10 business days to allow the pool safety register to be updated.

The applicant can appeal against the local government's decision to a building and development dispute resolution committee. The appeal must be made within 20 business days after the decision notice is given.

For further information about how to appeal, please contact the Building and Development Dispute Resolution Committees (for contact details see section 8.9).

A disability exemption can only be granted if the local government is satisfied that a person with a disability is, or is to become, an occupier of land on which the regulated pool is situated and it would be physically impracticable for the person to access the pool if it had barriers complying with the pool safety standard.

Local governments can only grant a disability exemption to the extent reasonably necessary to allow the person with the disability to access the pool. For example, if the person's disability only prevented them from opening a pool gate, the exemption could not extend to matters not relating to the gate.

If the occupant with the disability has a full-time carer, local governments are likely to give careful consideration as to whether it is appropriate to grant a disability exemption at all. They are also likely to give careful consideration to any proposal to allow a child-resistant door to form part of the

pool safety barrier, due to the significantly increased risk of child drowning associated with such doors.

As disability exemptions are specific to a person, the exemption ends if the applicant stops being the pool owner or if the person with the disability no longer occupies the property or has recovered sufficiently to enable them to access the pool if it complied with the pool safety standard e.g. if the person recovered from a temporary disability.

Local governments must keep a record of each exemption that is granted. Pool safety inspectors can check with the local government to confirm whether or not a disability exemption is in force.

12.3 Impracticality exemptions

Pool owners can apply to their local government for an exemption from complying with a part of the pool safety standard relating to barriers on the grounds of impracticality.

The application must be accompanied by details identifying which part of the pool safety standard the owner is seeking exemption from and showing that compliance is not practical. Local governments can ask for further information to establish that compliance is not practical. Impracticality exemptions cannot, for example, be given just because of aesthetics, because no children reside on or visit the property, or because the property is rural or remote.

Local governments can only grant an impracticality exemption to the extent reasonably necessary to overcome the impracticality associated with compliance. For example, if the only impracticality issue relates to space for a gate to open outwards, the exemption could not extend to matters not relating to the gate.

The legislation gives local governments a range of considerations when assessing these exemptions, including whether compliance would require the owner to:

- move or demolish a building or part of a building
- change the location or size of the pool
- remove vegetation protected from removal under an Act or a local law.

Local governments can also consider the cost of the barriers or work required to comply with the pool safety standard, having regard to the nature of any existing barriers for the pool. However, local governments are likely to carefully consider whether the cost of installing the barriers is significant enough to warrant an exemption at all. The legislation also provides scope for local governments to consider any other matters they consider relevant.

Unlike disability exemptions, impracticality exemptions continue until the exemption is revoked by the local government. Any conditions applicable to the exemption are also binding on the successors in title.

Local governments are required to consider the exemption application and provide a decision within 40 business days. The exemption can be granted subject to reasonable conditions the local government considers necessary or desirable to prevent a young child accessing the pool.

Written notice of the decision must then be given to the pool owner and also to the department within 10 business days after the exemption is granted to allow the pool safety register to be updated.

The applicant can appeal against the local government's decision to a building and development dispute resolution committee. The appeal must be made within 20 business days after the decision notice is given. For further information about how to appeal, contact the Building and Development Dispute Resolution Committees (for contact details see section 8.9).

Local governments must keep a record of each exemption that is granted. Pool owners, property agents and pool safety inspectors can check with the local government to confirm whether or not an impracticality exemption is in force.

13 Offences and penalties

It is expected that the vast majority of pool owners will comply with their pool safety responsibilities. The legislation provides significant penalties that can be imposed where a pool owner does not comply.

These penalties are generally administered by local governments, although the department and the PSC also have responsibility in some cases.

If a pool owner does not comply with their pool safety obligations, they generally commit an offence. Different offences have different penalties. The maximum penalty that can be imposed by a court for pool safety offences is \$18 150 for individuals and \$90 750 for corporations.

On-the-spot fines of up to \$1760 for individuals or \$5280 for corporations can also be issued to pool owners by local governments and, in some cases, by the department or the PSC.

Local governments can also take any necessary enforcement action to ensure a pool complies with the relevant standard. This could include giving an enforcement notice, giving an infringement notice, prosecution, other legal proceedings or carrying out remedial work in accordance with the *Local Government Act 2009* or *City of Brisbane Act 2010*.

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 are liable for disciplinary proceedings under the *Property Agents and Motor Dealers Act 2000*.

14 Immersion reporting and inspections

A pool immersion incident is an event involving the immersion or partial immersion of a young child (a child under the age of five) under the water in a swimming pool. The incident could result in the child dying, being deprived of air or the health or wellbeing of the child being adversely affected.

When a pool immersion incident occurs, there is a requirement for the Queensland Ambulance Service or the person in charge of a private or public hospital to report it to Queensland Health. Queensland Health must then give notice of the incident to the relevant local government, the PSC, the Commission for Children and Young People and Child Guardian, and the department.

The local government must then inspect the pool for compliance with the relevant standard and cannot charge a fee for this function. If, following inspection, the local government finds the pool does not comply, they must take any necessary enforcement action to ensure the pool is modified to comply.

Local governments are required to keep records of any pool immersion incident notices they receive for a period of at least five years. In addition, the details of the inspections undertaken and any enforcement action taken must be retained for at least five years.

Links and further information

Code of conduct for swimming pool safety inspectors

www.hpw.qld.gov.au/SiteCollectionDocuments/pool-safety-inspector-code-of-conduct.pdf

Fact sheets

www.hpw.qld.gov.au/aboutus/ReportsPublications/FormsTemplates/Pages/PoolSafetyForms.aspx

Forms under the Building Act 1975

www.hpw.qld.gov.au/aboutus/ReportsPublications/FormsTemplates/Pages/default.aspx

Legislation

www.legislation.qld.gov.au

Queensland Development Code 3.4

www.hpw.qld.gov.au/SiteCollectionDocuments/mp-3-4-swimming-pool-barriers.pdf

Queensland Injury Surveillance Unit

www.qisu.org.au

Swimming pool safety guidelines

www.hpw.qld.gov.au/aboutus/ReportsPublications/Guidelines/Pages/PoolSafetyGuidelines.aspx

The Commission for Children and Young People and Child Guardian

www.ccypcg.qld.gov.au

Appendix A

Figure 1: Typical cross-section of a compliant pool fence

This is a compliant pool fence

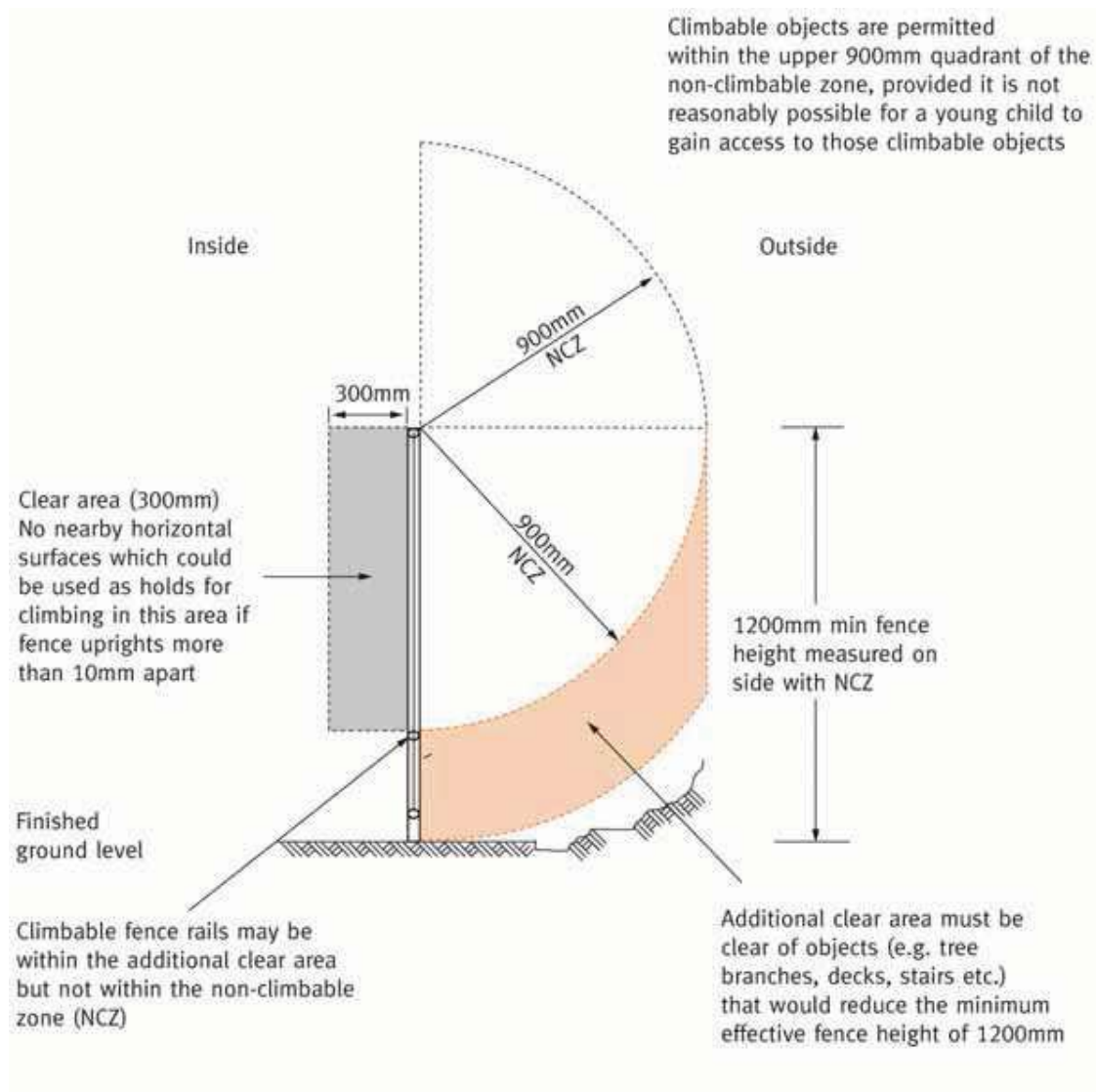


Figure 2: A non-climbable object next to a compliant pool fence

This is a compliant pool fence

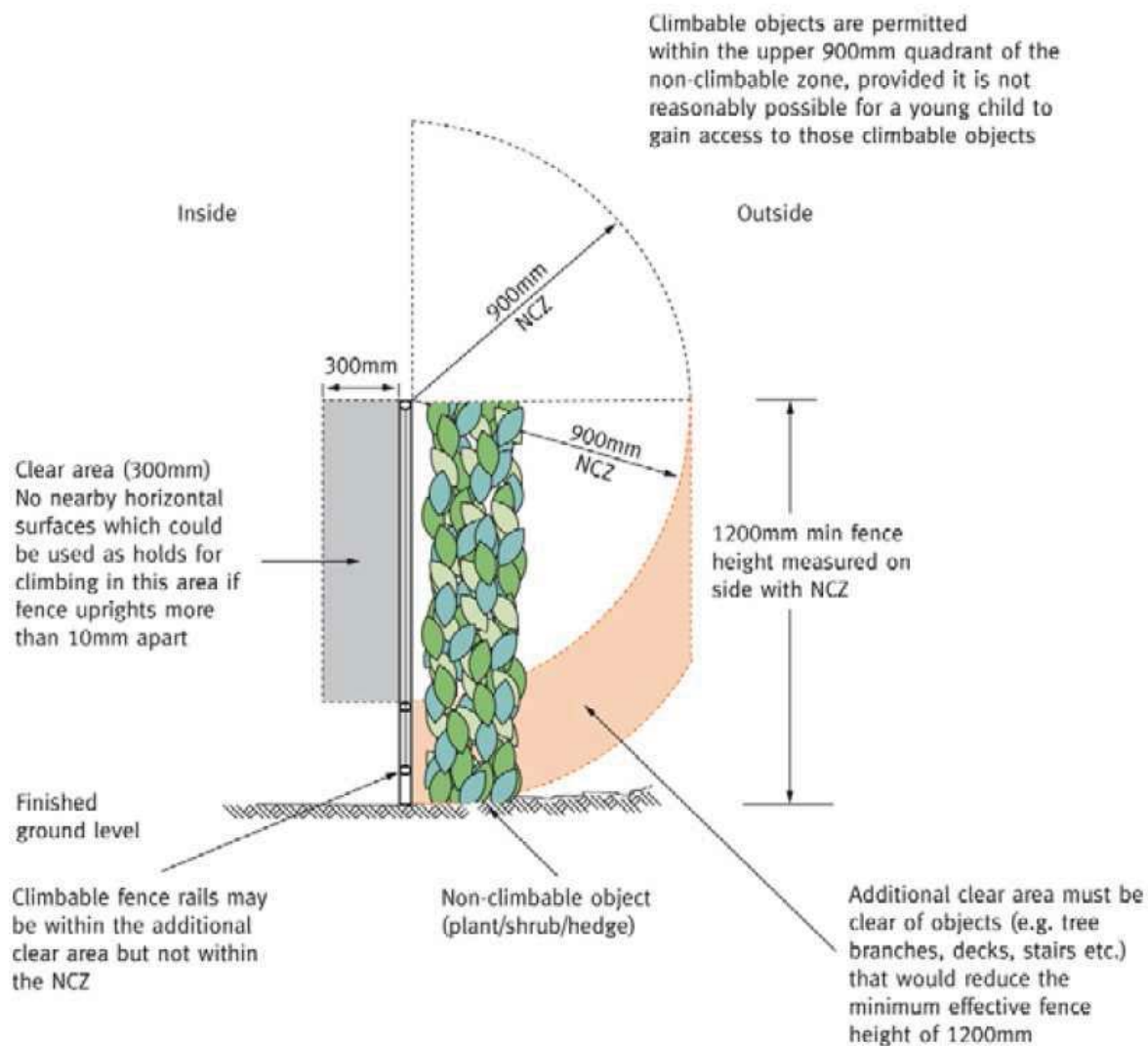


Figure 3: A step in the non-climbable zone

This is **not** a compliant pool fence

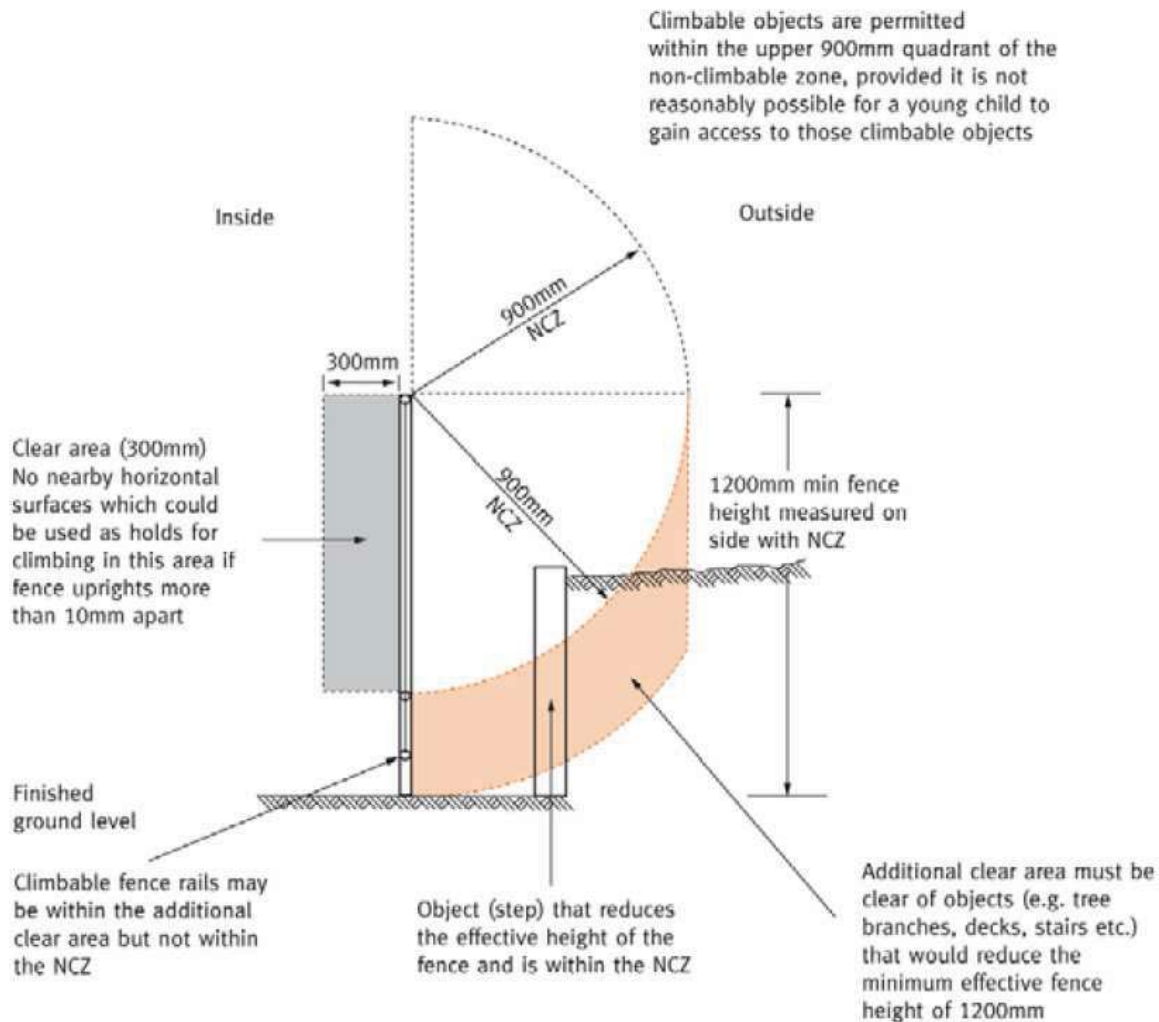
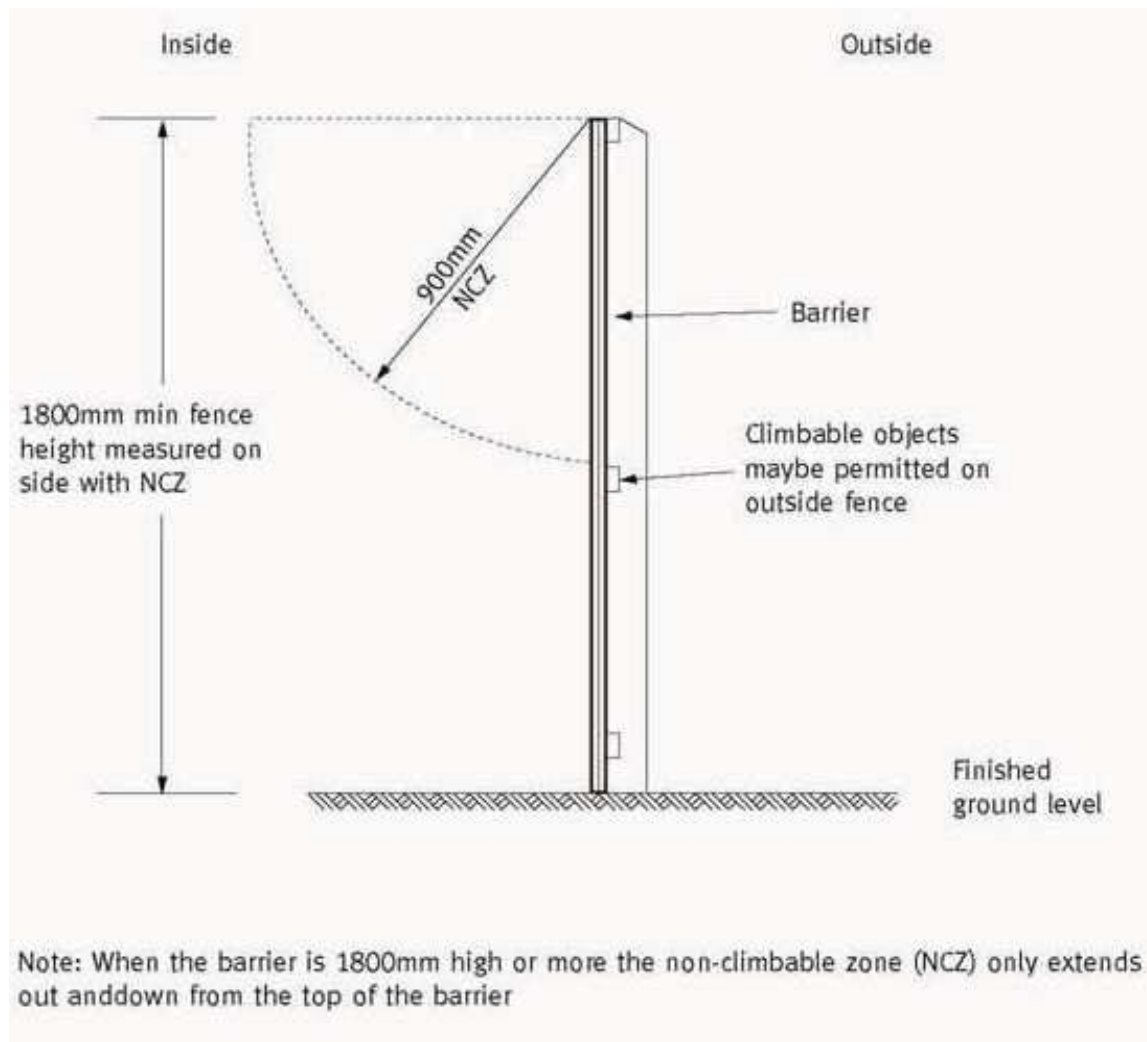


Figure 4: Providing the non-climbable zone on the inside of a pool fence 1800 millimetres high

This is a compliant pool fence





Acceptable – small, thorny branches discourage climbing by a small child.



Acceptable – vegetation unable to support the weight of a small child.



Acceptable – vegetation too dense to allow for climbing.



Acceptable – vegetation too dense to allow for climbing.



Acceptable – vegetation unable to support the weight of a young child.



Acceptable – vegetation too dense to allow for climbing.



Acceptable – vegetation too dense to allow for climbing.



Acceptable – vegetation removed from the inside cleared area.



Acceptable – Vegetation unable to support the weight of a young child. May need to be monitored if the tree grows.



Acceptable – vegetation unable to support the weight of a young child.

Appendix B

This appendix provides an extract of schedules 2B and 2C of the BR. Reference should be made to the latest version of the BR for further information.

Schedule 2B Minor repairs – Work a fully licensed pool safety inspector can perform

1 Minor repairs of barriers for a regulated pool

- (1) Repairing, replacing or adjusting part of the existing barriers for a regulated pool is prescribed if—
 - (a) the repairing, replacing or adjusting of the part is carried out to comply with the pool safety standard; and
 - (b) the part repaired, replaced or adjusted is no longer than a total of 5m and includes no more than 6 posts.
- (2) Subsection (1)(b) does not apply to the following minor repairs to the barriers for a regulated pool—
 - (a) reducing a gap under the barriers other than by lowering the panels or palings of the barriers;
*Example of reducing a gap under the barriers for the pool—
laying paving to reduce the gap under the barriers*
 - (b) increasing the height of the barriers for a regulated pool other than by raising the panels or palings of the barriers;
*Example of increasing the height of the barriers for the pool—
installing capping along the top of the barriers*
 - (c) installing shielding material.
- (3) Also, erecting a new part of the barriers for a regulated pool is prescribed if—
 - (a) the erecting of the part is carried out to comply with the pool safety standard; and
 - (b) the part erected is no longer than a total of 5m and includes no more than 6 posts.
- (4) The work prescribed in subsections (1) and (3) includes the following—
 - (a) repairing, replacing or adjusting loose or damaged palings for the barriers for the pool;
 - (b) raising the panels of the barriers for the pool to increase the height of the barriers;
 - (c) lowering panels of the barriers for the pool to reduce a gap under the barriers;
 - (d) replacing brackets or other fixings for panels of the barriers for the pool;

- (e) erecting a new part of the fencing to join 2 existing parts of the barriers for the regulated pool.

Examples for paragraph (e)

- erecting a new part of the barriers for a regulated pool to create a corral outside a self-closing door that opens into a pool area
- installing a new part of the barriers for a regulated pool between an existing dividing fence for the land and a wall of a building that forms part of the barriers for the pool

2 Minor repairs of gates

- (1) Repairing, replacing, adjusting or installing a gate in the barriers for a regulated pool is prescribed if the repairing, replacing, adjusting or installing of the gate is carried out to comply with the pool safety standard.
- (2) The work prescribed in subsection (1) includes the following—
- (a) replacing, adjusting or installing strikers or latches;
 - (b) tightening, adjusting or installing hinges to ensure they are capable of holding the gate;
 - (c) tightening, adjusting or installing a self-closing mechanism on a gate to ensure the gate self-closes;
 - (d) replacing, repairing, adjusting or installing hinges to ensure a gate self-closes;
 - (e) making alterations to a gate to change the direction of the gate's swing;
 - (f) installing a new gate in a new part of the barriers for the pool.

3 Minor repairs of protected windows and doors

- (1) Protecting a window or door is prescribed if the protecting of the window or door is carried out to comply with the pool safety standard.
- (2) The work prescribed in subsection (1) includes the following—
- (a) permanently disabling a window or door opening;
 - (b) stopping a window or door from opening more than 100mm;
 - (c) installing a security screen for a window or door;
 - (d) inserting rivets, screws or chocks in windows;
 - (e) removing tracks and running gear from a window or door.

4 Non-climbable zone works

- (1) Minor works to protect the barriers for a regulated pool, including the fencing or a gate for the pool, or an object adjacent to the barriers, is prescribed if the minor work is carried out to ensure a person is not able to climb the barriers for the pool.
- (2) The work prescribed in subsection (1) includes the following—

- (a) installing shielding material that is suitably durable to protect footholds in the barriers for the pool;
- (b) adding return barriers to a barrier that is a permanent body of water;
- (c) removing a climbable object adjoining the barriers for the pool;
- (d) installing shielding material that is suitably durable on a part of the barriers for the pool that adjoins a retaining wall;
- (e) closing gaps between a part of the barriers for the pool and another part of the barriers for the pool or a dividing fence for the land;
- (f) installing material to make the barriers for the pool non-climbable;
- (g) installing shielding material that is suitably durable in front of a latch on a gate;
- (h) removing or shielding footholds or other climbable objects that affect the barriers for the pool;
- (i) trimming or removing trees, branches or vegetation on or adjoining the barriers for the pool.

Schedule 2C Repairs and maintenance for regulated pools – work a pool owner can perform

Repairs and maintenance of barriers for a regulated pool

- (1) Repairing or adjusting part of the existing barriers for a regulated pool is prescribed if—
 - (a) the repairing or adjusting of the part is carried out to comply with the pool safety standard; and
 - (b) the part repaired or adjusted is no longer than a total of 2.4m and includes no more than 2 posts.
- (2) Subsection (1)(b) does not apply to the following repairs or maintenance to a barrier for a regulated pool—
 - (a) reducing a gap under the barriers for the pool other than by lowering the panels or palings of the barriers;

*Example of reducing a gap under the barriers for the pool—
laying paving to reduce the gap under the barriers*
 - (b) increasing the height of the barriers for a regulated pool other than by raising the panels or palings of the barriers;

*Example of increasing the height of the barriers for the pool—
installing capping along the top of the barriers*
 - (c) installing shielding material;
 - (d) work mentioned in section 5 of this schedule.
- (3) The work prescribed in subsection (1) includes the following—
 - (a) repairing, replacing or adjusting loose or damaged palings for the barriers for the pool;
 - (b) raising the panels of the barriers for the pool to increase the height of the barriers;
 - (c) lowering panels of the barriers for the pool to reduce a gap under the barriers;
 - (d) replacing brackets or other fixings for panels of the barriers for the pool.

2 Repairs of gates

- (1) Repairing, replacing or adjusting a gate in the barriers for a regulated pool is prescribed if the repairing, replacing or adjusting of the gate is carried out to comply with the pool safety standard.
- (2) The work prescribed in subsection (1) includes the following—

- (a) replacing, adjusting or installing strikers or latches;
- (b) tightening, adjusting or installing hinges to ensure they are capable of holding the gate;
- (c) tightening, adjusting or installing a self-closing mechanism on a gate to ensure the gate self-closes;
- (d) replacing, repairing, adjusting or installing hinges to ensure a gate self-closes;
- (e) making alterations to a gate to change the direction of the gate's swing.

3 Repairs of protected windows and doors

- (1) Protecting a window or door for a regulated pool is prescribed if the protecting of the window or door is carried out to comply with the pool safety standard.
- (2) The work prescribed in subsection (1) includes the following—
 - (a) permanently disabling a window or door opening;
 - (b) stopping a window or door from opening more than 100mm;
 - (c) installing a security screen for a window or door;
 - (d) inserting rivets, screws or chocks in windows;
 - (e) removing tracks and running gear from a window or door.

4 Non-climbable zone works

- (1) Work to protect the barriers for a regulated pool, including the fencing or a gate for the pool, or an object adjacent to the barriers, is prescribed if the work is carried out to ensure a person is not able to climb the barriers for the pool.
- (2) The work prescribed in subsection (1) includes the following—
 - (a) installing shielding material that is suitably durable to protect footholds in the barriers for the pool;
 - (b) removing a climbable object adjoining the barriers for the pool;
 - (c) installing shielding material that is suitably durable on a part of the barriers for the pool that adjoins a retaining wall;
 - (d) closing gaps between a part of the barriers for the pool and another part of the barriers for the pool or a dividing fence for the land;
 - (e) installing material to make the barriers for the pool non-climbable;
 - (f) installing shielding material that is suitably durable in front of a latch on a gate;
 - (g) removing or shielding footholds or other climbable objects that affect the barriers for the pool;
 - (h) trimming or removing trees, branches or vegetation on or adjoining the barriers for the pool.

5 Work for barriers for particular regulated pools

- (1) The following work is prescribed in relation to a regulated pool if the matters in subsection (2) are satisfied—
 - (a) constructing a fence that forms the whole or part of a barrier for the regulated pool;
 - (b) repairing, replacing or adjusting an existing fence that forms the whole or part of a barrier for the regulated pool.
- (2) For subsection (1), the matters are—
 - (a) the regulated pool—
 - (i) is situated on regulated land on which a class 1a building is, or is to be, constructed; and
 - (ii) is not a shared pool; and
 - (b) either of the following applies—
 - (i) the fence is no higher than 2m above its natural ground surface; or
 - (ii) if the fence is situated on an existing retaining wall, on part of an existing class 1a or class 10 building or on another existing structure—the fence is no higher than 2m above the wall, building or structure and no part of the fence that is higher than 2m above its natural ground surface is within 1.5m of a boundary; and

Note—

See QDC, MP 1.1, MP 1.2 and MP 1.3 for siting requirements for buildings and structures.

- (c) either—
 - (i) the work is carried out during the reinspection period stated in a nonconformity notice given for the regulated pool; or
 - (ii) the regulated pool is a specified pool in relation to which no nonconformity notice has been given and, before the work commences, the owner of the regulated pool has arranged for an inspection of the pool by a pool safety inspector on a day that is not more than three months after the day the owner arranged the inspection.

Note—

The owner of a regulated pool must ensure the pool is inspected in the way required under section 16DA.

Appendix C

Building Code of Australia (BCA) classifications

This appendix provides an extract of the building classifications in the Building Code of Australia. Reference should be made to the latest version of the Building Code of Australia for further information.

Class 1:

One or more buildings which in association constitute—

(a) **Class 1a**—a single dwelling being—

(i) a detached house; or

(ii) one of a group of two or more attached dwellings, each being a building, separated by a [fire-resisting](#) wall, including a row house, terrace house, town house or villa unit; or

(b) **Class 1b**—a boarding house, guest house, hostel or the like—

(i) with a total area of all floors not exceeding 300 metres squared measured over the enclosing walls of the Class 1b; and

(ii) in which not more than 12 persons would ordinarily be resident, which is not located above or below another dwelling or another Class of building other than a [private garage](#).

Class 2:

A building containing two or more [sole-occupancy units](#) each being a separate dwelling.

Class 3:

A residential building, other than a building of Class 1 or 2, which is a common place of long term or transient living for a number of unrelated persons, including—

(a) a boarding-house, guest house, hostel, lodging-house or backpackers accommodation; or

(b) a residential part of a hotel or motel; or

(c) a residential part of a [school](#); or

(d) accommodation for the aged, children or people with disabilities; or

(e) a residential part of a [health-care building](#) which accommodates members of staff; or

(f) a residential part of a [detention centre](#).

Class 4:

A dwelling in a building that is Class 5, 6, 7, 8 or 9 if it is the only dwelling in the building.

Class 5:

An office building used for professional or commercial purposes, excluding buildings of Class 6, 7, 8 or 9.

Class 6:

A shop or other building for the sale of goods by retail or the supply of services direct to the public, including—

(a) an eating room, cafe, restaurant, milk or soft-drink bar; or

(b) a dining room, bar area that is not an [assembly building](#), shop or kiosk part of a hotel or motel; or

(c) a hairdresser's or barber's shop, public laundry, or undertaker's establishment; or

(d) market or sale room, showroom, or [service station](#).

Class 7:

A building which is—

(a) **Class 7a**—a [carpark](#); or

(b) **Class 7b**—for storage, or display of goods or produce for sale by wholesale.

Class 8:

A laboratory, or a building in which a handicraft or process for the production, assembling, altering, repairing, packing, finishing, or cleaning of goods or produce is carried on for trade, sale, or gain.

Class 9:

A building of a public nature—

- (a) **Class 9a**—a health-care building, including those parts of the building set aside as a laboratory; or
- (b) **Class 9b**—an assembly building, including a trade workshop, laboratory or the like in a primary or secondary school, but excluding any other parts of the building that are of another Class; or
- (c) **Class 9c**—an aged care building.

Class 10:

A non-habitable building or structure—





- (a) **Class 10a**—a non-habitable building being a private garage, carport, shed, or the like; or
- (b) **Class 10b**—a structure being a fence, mast, antenna, retaining or free-standing wall, swimming pool, or the like.

Appendix D

A cardiopulmonary resuscitation (CPR) sign

Call triple zero (000) in an emergency

ask for ambulance, stay with the injured person and resuscitate

	<h3 style="color: red;">1 Check for danger</h3> <p>Ensure safety for yourself, bystanders and casualty. If safe, remove casualty from water as soon as possible.</p>	<h3 style="color: red;">6 Prepare for resuscitation</h3> <p>Adults and children – tilt head backward. Place one hand on the forehead and use the other hand to lift the chin. Infants under 1 year – do not tilt head. Place one hand on the forehead and use the other hand to support the chin.</p>	
	<h3 style="color: red;">2 Check response</h3> <p>Can you hear me? Open your eyes. What's your name? Squeeze my hand.</p>	<h3 style="color: red;">7 Start breaths</h3> <p>Adults and children – seal nose and give 2 breaths into mouth. Infants under 1 year – give 2 breaths into mouth and nose. Watch for chest to rise.</p>	
	<h3 style="color: red;">3 Clear airway</h3> <p>If water or vomit is present in mouth, roll casualty on side, tilt face downwards and clear mouth with your fingers.</p>	<h3 style="color: red;">8 Start compressions</h3> <p>Adults – place heel of hand in centre of chest. Place other hand on top of first. Children 1 – 8 years – place heel of hand in centre of chest. Infants under 1 year – place 2 fingers in centre of chest. Compress 1/3 depth of chest. Compress 30 times.</p>	
	<h3 style="color: red;">4 Call triple zero (000)</h3> <p>Ask for an ambulance. Remain calm while answering the questions. Stay on phone until you are told to hang up.</p>	<h3 style="color: red;">9 Repeat breaths & compressions</h3> <p>Repeat 2 breaths and 30 chest compressions. Continue until ambulance arrives or person regains consciousness or it becomes impossible for you to continue.</p>	
	<h3 style="color: red;">5 Check for normal breathing</h3> <p>Look and feel for rising and falling chest. Listen and feel for breath sounds.</p>	<h3 style="color: red;">10 Recovery</h3> <p>If injured person shows signs of recovery, roll onto side and check if they are breathing. Reassure the person and bystanders.</p>	



Department of Infrastructure and Planning
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 Remember the ABC of pool safety



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Appendix E

Sample pool safety checklist

Pool barrier		
	YES	NO
I have a pool fence separating my pool from my neighbour that is at least 1.2 metres high all the way around or at least 1.8 metres high where there is something climbable on the outside of the fence i.e. neighbour's side.	<input type="checkbox"/>	<input type="checkbox"/>
My pool fence is well maintained – there are no holes or broken posts or rails.	<input type="checkbox"/>	<input type="checkbox"/>
All the vertical rails on the barrier are less than 100 millimetres apart.	<input type="checkbox"/>	<input type="checkbox"/>
The bottom of my pool fence is less than 100 millimetres off the ground all the way around.	<input type="checkbox"/>	<input type="checkbox"/>
My pool fence is at least 900 millimetres away from any object that would allow a child to climb over the fence such as BBQs, trees, rocks, shrubs, furniture.	<input type="checkbox"/>	<input type="checkbox"/>
Gate		
My gate swings away from the pool area.	<input type="checkbox"/>	<input type="checkbox"/>
My gate swings back to closed position after being opened, without manual force and from any position.	<input type="checkbox"/>	<input type="checkbox"/>
My gate latch is outside the gate and is at least 1.5 metres above ground level.	<input type="checkbox"/>	<input type="checkbox"/>
My gate latch is inside the gate and is 1.2 metres above ground level and at least 150 millimetres below the top of the gate or the edge of any hand hole, or shielded so a child cannot open the gate	<input type="checkbox"/>	<input type="checkbox"/>
Other		
I have a current Cardiopulmonary resuscitation (CPR) sign prominently displayed in the pool area.	<input type="checkbox"/>	<input type="checkbox"/>
My pool is on the pool safety register.	<input type="checkbox"/>	<input type="checkbox"/>
I have a pool safety certificate (where applicable).	<input type="checkbox"/>	<input type="checkbox"/>
My pool safety certificate is valid.	<input type="checkbox"/>	<input type="checkbox"/>
I have a building approval for the swimming pool/portable pool/spa.	<input type="checkbox"/>	<input type="checkbox"/>

Note: This checklist should be used as a guide only.

Appendix F:

History of swimming pool fencing legislation and relevant standards

Time period	Primary legislation	Amending legislation	Relevant building standard
21 December 1979	Local Government Act 1936	Section 31B was inserted by section 6 of the Local Government Act and Another Act Amendment Act 1979, which commenced on 21 December 1979.	Any relevant standard would depend on whether it was mentioned in the local government by-law.
1 February 1991	Section 31B of the <i>Local Government Act 1936</i> specifies by-laws about fencing swimming pools. The legislation declared that local governments have and have always had power to make by-laws that require the erection of a fence around a swimming pool on private land.		
	Local Government Act 1936	Section 49H was inserted by the Local Government Act and Other Acts Amendment Act 1990, which commenced on 1 February 1991.	AS1926–1986: Swimming pool safety – Fencing for swimming pools, as in force on 4 August 1986.
	The amendment repeals section 31B and inserts section 49H covering the control and regulation of swimming pool fencing. Section 49H(4) provided that the owner of residential land on which there is an outdoor swimming pool must construct and maintain fencing around the swimming pool. Section 49H(4)(b) provided that the design, construction and performance of the fencing must comply with the standards prescribed by the Building By-laws. Section By-law 53.1A was inserted into the Standard Building By-laws, which prescribed the standards for the design, construction and performance of swimming pool fencing as AS1926–1986: Swimming pool safety – Fencing for swimming pools, as in force on 4 August 1986.		
14 September 1991	Local Government Act 1936	Sub-sections (i) and (ii) were inserted by the <i>Local Government (Swimming Pool Fencing) Amendment Act 1991</i> , which commenced on 14 September 1991.	AS1926–1986: Swimming pool safety – Fencing for swimming pools
1 January 1992	The amendment inserted new sub-sections (i) and (ii) under section 49H of the <i>Local Government Act 1936</i> . The additions provided that the design, construction and performance of fencing must comply with the Building By-laws standards if constructed before 1 February 1991. In any other case, the fence must comply with the standards prescribed by the Building By-laws. The Standard Building By-laws (Swimming Pool Fencing) Order 1991 set the prescribed standard as AS1926–1986: Swimming pool safety – Fencing for swimming pools as in force on 4 August 1986 as amended by sections 53.1A, 53.1B, and 53.1C.		
	Building Act 1975	By-laws inserted by the <i>Building Act Amendment Act 1991</i> and the Standard Building By-laws Amendment Order 1991, which commenced on 1 January 1992.	<i>Building Act 1975</i> , (schedule) Standard Building By-Laws, sections 11.4 to 11.6 AS1926–1986: Swimming pool safety – Fencing for swimming pools AS2818-1986: Guide to swimming pool safety
	Sections 11.4 to 11.6 of the Standard Building By-laws were inserted into the <i>Building Act 1975</i> covering swimming pool fencing standards. Sections 11.4.(1) subject to sub-sections (2), (3), (4), (6), (7), (8) and (9), for the purposes of section 49H(4)(b)(i) and (ii) of the <i>Local Government Act 1936</i> , stipulated that standards for the design, construction and performance of swimming pool fencing are those set out in AS1926–1986: Swimming pool safety – Fencing for swimming pools, as in force on 4 August 1986.		

Time period	Primary legislation	Amending legislation	Relevant building standard
26 March 1994	Building Act 1975	Part 4B was inserted by section 804 and schedule to <i>Local Government Act 1993</i> , which commenced on 26 March 1994.	<p><i>Building Act 1975</i>, sections 30E to 30Z</p> <p>Standard Building Law, sections 11.4 to 11.6</p> <p>For swimming pools constructed before 1 February 1991 –continue to comply with the standard AS1926–1986: Swimming pool safety – Fencing for swimming pools.</p> <p>Pools constructed after 1 February 1991 must comply with standards applying to fencing after 1 February 1991: AS 1926–1986: Fences and gates for swimming pools.</p> <p>AS2818-1986: Guide to swimming pool safety (referenced)</p>
30 April 1998	Building Act 1975	<p>Section 82 was inserted by the <i>Building and Integrated Planning Amendment Act 1998</i>, which commenced on 30 April 1998.</p> <p>Section 83 authorised the renumbering of the Act in accordance with the <i>Reprints Act 1992</i>.</p>	<p>Part 4B of the <i>Building Act 1975</i> was inserted to consider swimming pool fencing for existing swimming pools constructed or installed before and after 1 February 1991.</p> <p><i>Building Act 1975</i>, sections 13 to 20</p> <p><i>Standard Building Regulation 1993</i>, sections 59 to 68</p> <p>AS 1926.1–1993: Swimming pool safety – Fencing for swimming pools</p> <p>AS 1926.2–1995: Swimming pool safety – Location of fencing for private swimming pools</p>
30 April 1998	Standard Building Regulation 1993	<p>The <i>Standard Building Regulation 1993</i> was amended by the subordinate legislation SL No. 86 <i>Building Legislation Amendment Regulation</i> (No. 1) 1998, which commenced on 30 April 1998.</p>	<p>Part 4B of the <i>Building Act 1975</i> for existing swimming pools constructed or installed before and after 1 February 1991 was amended. A transitional provision was inserted in section 82 stipulating if a swimming pool fence was lawfully constructed and maintained before the commencement of this section, the <i>Standard Building Regulation 1993</i> cannot require the fence to be altered unless the fence is no longer maintained. This was later renumbered as section 59.</p> <p>Section 30H (2) of the <i>Building Act 1975</i> provides for the standards prescribed under regulation. Under section 30H (3), the owner must keep the fence in good condition and at all times ensure the fencing complies with the standards applying at the time of construction. Section 30G, which dealt with local law for fencing of swimming pools, is also relevant.</p> <p><i>Building Act 1975</i>, sections 13 to 20</p> <p><i>Standard Building Regulation 1993</i>, sections 59 to 68</p> <p>AS 1926.1–1993: Swimming pool safety – Fencing for swimming pools</p> <p>AS 1926.2–1995: Swimming pool safety – Location of fencing for private swimming pools</p>
		<p>Part 5 of the <i>Standard Building Regulation 1993</i>, specifically sections 59–68, became the primary legislation covering swimming pool fencing.</p> <p>Section 61 deals with pools built or approved before commencement of part 5.</p> <p>Section 62 deals with pools approved before commencement of part 5. For fencing around swimming pools approved for construction on or after the commencement of this part, the prescribed standard is subject to sections 63 and 66:</p> <p>(a) the standard for the design, building and performance of swimming pool fencing in AS 1926.1–1993: Swimming pool safety–Fencing for swimming pools, other than clause 2.14 of the standard; and</p> <p>(b) the standard for the location of fencing contained in AS 1926.2–1995: Swimming pool safety – Location of fencing for private swimming pools, other than clause 1.4.4 of the standard.</p>	

Time period	Primary legislation	Amending legislation	Relevant building standard
7 February 2003	Building Act 1975	Amendments to section 14 of the <i>Building Act 1975</i> were achieved by the <i>Plumbing and Drainage Act 2002</i> , which commenced on 7 February 2003.	<i>Building Act 1975</i> , sections 13 to 20 <i>Standard Building Regulation 1993</i> , sections 59 to 68 AS 1926.1-1993: Swimming pool safety Fencing for swimming pools AS 1926.2-1995: Swimming pool safety – Location of fencing for private swimming pools.
1 October 2003		Section 14(1) (renumbered from 30H) of the <i>Building Act 1975</i> was amended requiring fencing to be inspected and approved before the pool can be filled. Section 14(2) was amended to clarify that an owner must, at all times, ensure swimming pool fencing complies with the standards prescribed under a regulation. Section 14(3) was amended to omit the phrase 'applying at the time of construction'.	
	Building Act 1975	New provisions were inserted by the <i>Building Amendment Act 2003</i> , which commenced on 1 October 2003.	<i>Building Act 1975</i> , sections 12T to 20 Standard Building Regulation 1993, sections 59 to 64 AS 1926.1-1993: Swimming pool safety Fencing for swimming pools AS 1926.2-1995: Swimming pool safety – Location of fencing for private swimming pools
	New provisions for CPR and warning signs were inserted into the <i>Building Act 1975</i> . The amendments re-defined an indoor pool as a pool that is fully enclosed by the walls of a building, stating that pools on decks and roofs not enclosed by walls must be fenced. The amendment was designed to limit a pool owner's ability to apply for exemptions.		
1 November 2003	State Penalties Enforcement Regulation 2000	Provisions were inserted by the State Penalties Enforcement Amendment Regulation (No. 8) 2003.	<i>Building Act 1975</i> , sections 12T to 20 Standard Building Regulation 1993, sections 59 to 64 AS 1926.1-1993: Swimming pool safety Fencing for swimming pools AS 1926.2-1995: Swimming pool safety –Location of fencing for private swimming pools
		Provisions were inserted to give local governments the power to issue on-the-spot fines for breaches of the pool fencing requirements of the <i>Building Act 1975</i> .	
18 November 2005	Standard Building Regulation 1993	The regulations were amended by the subordinate legislation SL No. 276 Building Amendment Regulation (No. 3) 2005.	<i>Building Act 1975</i> , sections 12T to 20 Standard Building Regulation 1993, sections 59 to 64 AS 1926.1-1993: Swimming pool safety Fencing for swimming pools AS 1926.2-1995: Swimming pool safety – Location of fencing for private swimming pools.

Section 60(2) was inserted to stipulate that the fencing standard does not include clauses 2.3, 2.6 and 2.7 of AS1926.1 for any part of the fencing of the pool if:

- the fence, when measured from the pool side, is at least 1.8 m high above the ground
- a young child could not dig through or under the surface below the pool fence
- there is a clear span of 900 millimetres measured at all angles from the top of the fence
- fencing is constructed from perforated material or mesh with gaps of not more than 13 millimetres in size.

Time period	Primary legislation	Amending legislation	Relevant building standard
1 September 2006	Building Act 1975	Amended definition inserted by the <i>Building and Other Legislation Act 2006</i> , which commenced on 1 September 2006.	<i>Building Act 1975</i> , sections 232 to 246 <i>Building Regulation 2006</i> , sections 14 to 16 AS 1926.1-1993: Swimming pool safety Fencing for swimming pools AS 1926.2-1995: Swimming pool safety –Location of fencing for private swimming pools.
		The amendment to the <i>Building Act 1975</i> clarified the definition of an indoor pool as a swimming pool on a deck or roof of a building which is only accessible from within the building.	
1 December 2009	Building Regulation 2006	The regulation was amended by the <i>Building and Other Legislation Amendment Regulation (No. 3) 2009</i>	<i>Building Act 1975</i> , sections 232 to 246 <i>Building Regulation 2006</i> , sections 14 to 16 AS 1926.1-1993: Swimming pool safety Fencing for swimming pools AS 1926.2-1995: Swimming pool safety –Location of fencing for private swimming pools.
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