

Guideline for pool owners and property agents

Guideline under the *Building Act 1975*

2024



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Scope

This guideline covers a range of topics relating to Queensland's pool safety laws, including:

- the role of pool owners, pool users and premise occupiers, pool safety inspectors, the Queensland Building and Construction Commission (QBCC), local government, building certifiers and property agents
- the regulated pools register, and the pool safety inspectors register
- the pool safety inspection process
- compliance and technical considerations
- repairing, altering, replacing or reconstructing the pool barrier
- exemptions, performance solutions and variations.

Supporting information and guidelines about pool safety laws are also available on the Department of Housing, Local Government, Planning and Public Works website (the department) at [Pool safety | Homes and housing | Queensland Government](#). This information and links are targeted to industry.

[Appendix 1 - Links and further information](#) provides a list of resources that may further assist owners and agent in performing their pool safety functions.

Purpose of this guideline

This guideline's purpose is to assist pool owners, including bodies corporate and property agents, to understand their pool safety responsibilities under the *Building Act 1975* (BA) and Building Regulation 2021 (BR).

Legal status of this guideline

This guideline is made under section 258 of the BA. The department's chief executive may make guidelines to help achieve compliance with the BA. The information in this guideline should be used to assist pool owners, including bodies corporate and property agents, to comply with pool safety requirements.

Note: The pool safety standard is Queensland Development Code (QDC) Mandatory Part 3.4 - Swimming pool barriers (MP 3.4) and any other standard prescribed under a regulation to ensure the safety of young children using a regulated pool.

Introduction

Background

Swimming pools should be safe places for families to relax and have fun.

Owners of regulated pools must ensure their pool complies with the pool safety standard and that all barriers to the pool are always kept in good condition.¹

¹ Section 232 of the BA

The pool safety laws apply to all regulated pools. A regulated pool is a swimming pool situated on regulated land and includes the barriers for the pool.² Regulated land is land on which any of the following is constructed or is to be constructed:

- Class 1 building (e.g., attached and detached dwellings, small boarding houses/hostels)
- Class 2 building (e.g., units)
- Class 3 building (e.g., hotels, motels, boarding houses, guest houses, hostels)
- Class 4 building (e.g., caretakers dwellings)
- Movable dwelling park
- Residential park.

The purpose of pool safety laws is to safeguard young children from drowning or injury in regulated pools. The laws aim to reduce the number of drowning deaths and immersions of young people under the age of five.³

The Queensland Government recommends supervising children, teaching them to swim at an early age, and ensuring effective fencing. These steps may save lives.

Definitions

The following list of terms are used throughout this guideline. They are defined in the BA or QDC MP 3.4. For ease of reference, complete definitions are available in [Appendix 2 - Definitions](#) of this guideline.

Defined term	Location
Accommodation agreement (or lease)	Defined in section 231A of the BA.
Building development application	Defined in section 6(1) of the BA.
Ground for disciplinary action	Defined in schedule 2 of the BA.
Owner	Defined in schedule 2 of the BA.
Pool immersion incident	Defined in section 231A of the BA.
Pool safety standard	Defined in section 231D of the BA.
Regulated pool	Defined in section 231B of the BA.
Shared pool	Defined in section 231A of the BA.
Swimming pool	Defined in schedule 2 of the BA.
Temporary fence	Defined in QDC MP 3.4.

Legislation

Building Act 1975 (BA)

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

² Section 231B of the BA

³ Refer to Chapter 4 in the State of Queensland (Queensland Family and Child Commission) Annual Report, Deaths of children and young people Queensland, 2020-1

The pool safety standard

The pool safety standard provides the minimum requirements that a pool barrier for a regulated pool must meet to comply with Queensland's pool safety laws. In Queensland, the pool safety standard is the QDC MP 3.4, and any other standard prescribed under a regulation for ensuring the safety of young children using a regulated pool.

QDC MP 3.4 prescribes AS1926.1-2007 and AS1926.2-2007.

Later versions of the Australian Standard do not apply in Queensland until they are given effect through the Building Regulation and the QDC.

Pools covered by the legislation

The pool fencing legislation applies to all residential swimming pools in Queensland (pools associated with a class 1, 2, 3 or 4 building) and are defined as a 'regulated pool'.

To be considered a 'regulated pool', it must initially be determined whether or not the structure is a 'swimming pool' as defined in the BA and then determine whether the swimming pool is a 'regulated pool'.

Not all swimming pools are regulated pools; only regulated pools must comply with the legislation pool safety barrier requirements. The pool safety laws apply to all regulated pools regardless of when they were constructed or whether they are new, existing, indoor, outdoor, shared or not shared.

Deciding whether a pool is a swimming pool

For the full definition of 'swimming pool', refer to [Appendix 2 - Definitions](#) of this guideline.

Note: The following is a summary only, and reference should be made to the legal definition in 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 300mm or more, and
- solely or principally used for swimming, bathing, wading, paddling, or other human aquatic activity despite its current use.

Swimming pools include spa pools and some spa baths.

A portable wading pool is not a swimming pool if it meets **all** three following criteria:

- is capable of being filled with water to a depth of not more than 300mm
- has a volume of not more than 2000L
- has no filtration system.

If a pool is disassembled and is incapable of being filled with water to a depth of 300mm or more, it is no longer a swimming pool.

Determining whether a swimming pool is a regulated pool

The below information provides the legislative basis for determining whether a structure is a 'regulated pool' that must comply with the pool's safety laws. Generally, if a swimming pool is associated with a residential dwelling (class 1, 2, 3 or 4 building) it is a regulated pool.

A regulated pool is a swimming pool situated on regulated land and includes the barriers for the pool.

Regulated land is land on which any of the following are constructed or will be constructed:

- Class 1, 2, 3 or 4 building
- a moveable dwelling park
- a residential park.

Class 1, 2, 3 or 4 buildings include, but are not limited to:

- dwellings, including units
- boarding houses, hostels, and backpacker accommodation
- residential parts of schools, healthcare buildings and detention centres
- residential care buildings
- hotels and motels.

The term 'land' includes land adjacent to the land that is in the same ownership or is used in association with the land.

A regulated pool does not include either a:

- swimming pool associated with a Class 3 building **if** an approved pool safety management plan is in force for the pool, or
- public pool.

Offences and penalties

Pool owners are required to comply with the pool safety laws. A failure to comply with pool safety laws could result in significant penalties being imposed. These penalties are generally administered by local government and the QBCC.

A pool owner commits an offence if they do not comply with their pool safety obligations.⁴ The offence committed will determine the penalties that may apply. Some monetary fines exceed \$25,000. However, the traumatic impacts of a young person drowning is immeasurable and is long lasting.

Local governments can also take 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 the *City of Brisbane Act 2010*.

If a property agent collects commissions in connection with a lease or other accommodation agreement for a pool that is not a shared pool where no pool safety certificate has been obtained, they may be liable for disciplinary proceedings under the *Property Occupations Act 2014*.

Roles

Pool owner, pool user and premise occupier role

Requirement to comply with the pool safety standard

The owner of a regulated pool must ensure that the pool complies with the pool safety standard and that all barriers for the pool are kept in good condition at all times.

The owner of a regulated pool may be a body corporate, registered proprietor, a trustee, an owner or an occupier, depending upon the type of land the pool is situated on. For the definition of a 'pool owner', refer to [Appendix 2 - Definitions](#) of this guideline.

The pool safety standard is QDC MP 3.4 and any other prescribed standard.

For a sample pool safety checklist, refer to [Appendix 5 - Sample pool safety checklist](#) of this guideline.

Requirement if selling

Before selling a property with a regulated pool, the owner must either:

⁴ Section 232 of the BA

- obtain a pool safety certificate and give a copy to the purchaser before settlement⁵
- notify prospective buyers that there is no pool safety certificate before entering into a contract of sale⁶ and notify the QBCC before settlement.⁷ For shared pools, the pool owner must also be notified before settlement.⁸ Notification is to be in the form of [Form 36 - Notice of no pool safety certificate](#) (Form 36).
Note: For the definition of a 'pool owner', refer to [Appendix 2 - Definitions](#) of this guideline.

A Form 36 is not an exemption from complying with the pool safety standard, and pool barriers must always be compliant.

Form 36 advises prospective buyers that the pool may not comply with the pool safety standard and the steps that must be taken to comply. It is intended to help prospective buyers to make an informed decision about purchasing the property.

Where no pool safety certificate for a pool that is not a shared pool was provided before the sale of a property, the new owner must obtain the certificate within 90 days of the date of settlement or in cases where the owner is a party to a proceeding before QCAT relating to the barrier for the pool, they have the 90 day period in addition to a period equal to the number of days the person was a party to the proceeding.⁹

For shared pools, if the owner is notified that the pool safety certificate is not in effect before the sale of a property, the owner of the shared pool must obtain the certificate within 90 days of the date of settlement or in cases where the owner is a party to a proceeding before QCAT relating to the barrier for the pool, they have the 90 day period in addition to a period equal to the number of days the person was a party to the proceeding.¹⁰

Note: Pool safety 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. A new certificate is not required after this period, unless the property is being sold or leased.

Requirement to display pool safety certificate

For shared pools, pool safety certificates must be displayed as near as practicable to the main entrance of the premises or on a gate or door that accesses the pool¹¹.

There is no requirement to display a pool safety certificate for a non-shared pool.

Further information is in this guideline's [Sale and lease compliance system](#) section.

Requirement if leasing

Before leasing or entering into an accommodation agreement for a property, the owner must do either of the following:

- for shared pools, either:
 - give the occupier a copy of the pool safety certificate¹² or
 - notify the occupier, the owner of the shared pool and the QBCC that there is no pool safety certificate.¹³ Notification must be made through [Form 36 - Notice of no pool safety certificate](#) (Form 36)
- for pools that are not shared pools, obtain a pool safety certificate.¹⁴

⁵ Section 246ATF(a) of the BA

⁶ Section 246ATM of the BA; section 28 of the BR

⁷ Section 246ATF(b) of the BA

⁸ Section 246ATF(c) of the BA

⁹ Section 246ATJ of the BA. Note that if the new owner becomes a party to a QCAT proceeding relating to the barrier of the pool, the period will be extended by the number of days the person was a party to the proceeding

¹⁰ Section 246ATK(2) of the BA. Note that if the person becomes a party to a QCAT proceeding relating to the barrier of the pool, the period will be extended by the number of days the person was a party to the proceeding

¹¹ Section 246ATH(2) of the BA

¹² Section 246ATH(3) and (4)

¹³ Section 246ATI of the BA

¹⁴ Section 256ATG of the BA

Where no pool safety certificate was obtained before leasing or entering into an accommodation agreement for a property with a shared pool, the regulated pool owner must obtain the certificate within 90 days of the date of settlement or the date the accommodation agreement is entered into.¹⁵

Further information is in this guideline's [Sale and lease compliance system](#) section.

Requirement to close pool gates and doors

Gates or doors that access regulated pools must be securely closed when not in use.¹⁶

This responsibility applies to:

- any person using the gate or door
- the owner of a shared pool
- the occupier of the premises where there is a pool that is not a shared pool.

Requirement if altering barriers

Barriers for regulated pools must not be interfered with in any way that renders the pool noncompliant with the pool safety standard.¹⁷

This does not apply to a person doing any of the following:

- carrying out fencing work on a dividing fence
- attaching something to the barrier that doesn't alter or damage the barrier
- altering a common boundary wall of a building.¹⁸

Pool safety inspector role

The QBCC licenses pool safety inspectors to perform the pool safety inspection functions set out in the BA for regulated pools.¹⁹ Pool safety inspection functions are defined in section 231C of the BA as:

- inspecting a regulated pool to decide whether to give a certificate (a pool safety certificate) that states the pool is a complying pool
- carrying out minor repairs relating to a regulated pool arising from an inspection of the pool
- giving a pool safety certificate for a regulated pool
- giving a nonconformity notice for a regulated pool.

Any work performed outside of the prescribed functions is not a pool safety inspectors function and additional licensing requirements may apply.

A pool safety inspector may be penalised if they commit an offence or if grounds for disciplinary action are established. The BA includes a number of offences where monetary fines apply for breach of the provision. Where a penalty is not stated in the provision (e.g. 165 penalty units), contravention of that section may constitute grounds for disciplinary action. For the definition of a 'ground for disciplinary action', refer to [Appendix 2 - Definitions](#) of this guideline.

Pool safety inspectors do not represent the government. They are typically self-employed or subcontracted by another private business. The costs and charges may vary between pool safety inspectors. Consumers are encouraged to obtain several quotes before engaging the services of a pool safety inspector.

The pool safety inspectors register, available on the QBCC website [Pool Safety Inspector Search | QBCC](#), contains a list of all pool safety inspectors.

The nature of the role of a pool safety inspector often requires active listening skills and an ability to resolve conflict. Should a dispute arise between the owner and pool safety inspector, it is preferable that these are

¹⁵ Section 246ATK(4) of the BA

¹⁶ Section 245T of the BA

¹⁷ Section 245U of the BA

¹⁸ Section 245U(2) of the BA

¹⁹ Section 246BG of the BA

settled through a dispute resolution service to save time and costs for all parties. Dispute resolution services are provided by the Department of Justice and Attorney-General across six centres in Queensland. Further information can be found on the Queensland Government website [Dispute resolution centres | Queensland Government](#).

QBCC role

The QBCC is an independent statutory authority that oversees the pool safety laws.

The QBCC is responsible for the following in relation to pool safety inspectors:

- licensing
- continuing professional development
- receiving and investigating complaints and contraventions
- auditing licensees
- taking disciplinary action
- maintaining the regulated pools register
- maintaining the pool safety inspectors register.

The QBCC may issue penalty infringement notices for certain offences, prescribed in the *State Penalties Enforcement Regulation 2014* or commence court proceedings for a breach of offence provisions, including where pool owners do not obtain the required pool safety certificate.²⁰

The QBCC's contact details are:

web contact: [Feedback & Enquiries | my QBCC](#)
phone: 139 333
email: poolssafety@qbcc.qld.gov.au
post: GPO Box 5099, Brisbane QLD 4001

Local government role

Local governments in Queensland have long played an important role in regulating pool safety. Under pool safety legislation, local governments continue to perform key functions, such as inspecting pools, enforcing pool safety laws and deciding disability and impracticality exemptions.

If asked, local governments are required by law to provide a pool safety inspection service.²¹

Local governments may meet this requirement by:

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

To promote consistency with a single pool safety standard, the state government is the only government authorised to prescribe the pool safety standard for regulated pools. Although local governments are responsible for regulating public swimming pools in their respective areas, provided they are not a regulated pool.

Under the pool safety laws, local governments must:

- inspect pools if asked by a pool owner
- carry out inspections and undertake any necessary enforcement action following an immersion notice from Queensland Health, a complaint notice, or a notice from the QBCC

Local governments also have other powers, including:

- powers of entry to inspect pools
- prosecution powers

²⁰ Section 256 of the BA

²¹ Section 246AH of the BA

- powers to decide impracticality and disability exemptions
- powers to cancel pool safety certificates for non-compliant pools
- the ability, in some cases, to declare areas as 'remote' to help minimise inspection costs for pools in remote areas.

The 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 and barriers or fencing for the pool.

In addition, local governments can issue infringement notices to pool owners under the *State Penalties Enforcement Regulation 2014* or undertake prosecutions for an expanded range of pool safety offences.

Further information about local government responsibilities for regulated pools is in the [Local government pool safety guideline](#).

Inspections

Mandatory inspection due to pool immersion incident notice

Local governments are required to inspect a pool where a pool immersion incident has been reported to them.²² Local governments must take any enforcement action necessary to ensure the pool complies with the relevant standards.²³ For the definition of a 'pool immersion incident', refer to [Appendix 2 - Definitions](#) of this guideline.

Mandatory inspection due to complaint notice

If a local government receives a pool safety complaint notice for a regulated pool, it must inspect the pool for compliance with the relevant standards as soon as practical²⁴, unless it reasonably considers the complaint to be vexatious.²⁵ The complaint notice must be in writing, given to the local government and relate to the pool's safety.²⁶

An example of a vexatious complaint may be where the local government receives ongoing complaint notices about a pool from the same person within a short period. If the local government inspected the pool after the first complaint notice and found that the pool complies with the relevant standards, then the following complaint could be considered vexatious. That is, providing the ongoing complaints relate to the same incident or elements that have already been inspected. Vexatious complaints may occur, for example, when neighbours are in an ongoing dispute about other matters that may not directly relate to the pool.

If, following an inspection, the pool is found not to comply with the relevant standards, then the local government must take the necessary enforcement action to ensure the pool is modified to comply with the relevant standards.²⁷ This could include issuing an enforcement or penalty infringement notice as well as commencing court proceedings, or carrying out remedial work in accordance with the *Local Government Act 2009* or the *City of Brisbane Act 2010*.

Mandatory inspection due to QBCC notice

If the QBCC reasonably suspects that the fencing or other barriers for a regulated pool do not comply with the requirements of the BA, it may notify the local government of its suspicions and provide information about the pool's location.²⁸

For example, this could occur when the QBCC receives a mandatory notice (i.e., Form 36) from a seller that they have sold a property with a regulated swimming pool without a pool safety certificate in effect, and a certificate is still not in effect more than 90 days after settlement.

²² Section 246ADA(1)(a) of the BA

²³ Section 246ADA(2) of the BA

²⁴ Section 246ADA(1)(b) of the BA

²⁵ Section 246ADA(3) of the BA

²⁶ Section 246ADA(6) of the BA

²⁷ Section 246ADA(5) of the BA

²⁸ Section 245UA of the BA

If a local government receives a notice from the QBCC, it must inspect the pool for compliance with the relevant standards as soon as practical.²⁹ If, following inspection, the local government finds the pool does not comply with the relevant standards, it must take the necessary enforcement action to ensure the pool does comply.³⁰ This could include issuing an enforcement notice, issuing an infringement notice, prosecution and other legal proceedings, or carrying out remedial work in accordance with the *Local Government Act 2009* or the *City of Brisbane Act 2010*.

Inspection due to outstanding pool safety certificate

If the owner does not ask the pool safety inspector to reinspect the pool within the reinspection period, the inspector must notify the local government of the failure and give the local government a copy of the nonconformity notice within five business days of the end of the reinspection period.³¹

Once notified, the local government has the power to inspect the regulated pool for compliance purposes.³²

For further information about nonconformity notices, refer to the [Guideline for pool safety inspectors](#).

Cancelling a pool safety certificate

If a local government inspects a regulated pool that has a pool safety certificate and reasonably believes it does not comply with the pool safety standard, it may, after giving the owner a notice, cancel the pool safety certificate.³³

Note: These cancellation powers do not limit the local government's ability to issue an enforcement notice under the BA.³⁴

Grounds for cancelling a pool safety certificate could include the pool barrier not being adequately maintained and no longer complying with the pool safety standard.

Show cause requirements

The show cause procedure makes sure local governments properly document the grounds for any decision to cancel a pool safety certificate and that the pool owner is given notice of the proposed cancellation with an opportunity to respond.

They must state each of the following:

- that the local government proposes cancelling the pool safety certificate for the pool
- the grounds for cancelling the pool safety certificate
- the facts and circumstances forming the basis for the grounds
- that the owner may, within the show cause period, make submissions about why the pool safety certificate should not be cancelled.³⁵

The show-cause period must end a minimum of 10 business days after the owner receives the notice.³⁶

Owner submissions

Within the show cause period, the owner may make submissions to the local government about the show cause notice.³⁷ The local government must consider the submissions and decide whether to cancel the pool safety certificate for the pool.³⁸

²⁹ Sections 246ADA(1)(c) and (2) of the BA

³⁰ Section 246ADA(5) of the BA

³¹ Section 246AC(4) of the BA

³² Section 246AE of the BA

³³ Section 246AF of the BA

³⁴ Section 246AF(5) of the BA

³⁵ Section 246AG(2) of the BA

³⁶ Section 246AG(3) of the BA

³⁷ Section 246AG(4) of the BA

³⁸ Section 246AG(5) of the BA

Notice of decision

If the local government decides not to cancel the pool safety certificate, it must give the owner notice of the decision.³⁹

If the local government decides to cancel the pool safety certificate, it must give the owner an information notice about the decision.⁴⁰ The pool safety certificate will be cancelled 10 business days after the information notice is given, unless the owner appeals the decision sooner.⁴¹

After cancellation, notice must be given to the QBCC within 10 business days of the cancellation to allow the QBCC to record the cancellation in the regulated pools register.⁴²

Owner's appeal rights

The owner can appeal to the Development Tribunal against the local government's decision to cancel the pool safety certificate.⁴³ The appeal must be made within 10 business days of giving the decision notice.⁴⁴

For further information about how to appeal, get in touch with the Development Tribunals:

website: [Development Tribunals](#)
phone: 1800 804 833
email: registrar@epw.gov.au
mail: GPO Box 2457, Brisbane Qld 4001

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.⁴⁵

If the owner appeals the decision to cancel the pool safety certificate, the decision is put on hold until the appeal is withdrawn or dismissed.⁴⁶

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 pool immersion or complaint notices.

Building certifier role

Building certifiers and pool safety inspectors are permitted to assess compliance with the pool safety standard.

Performing a pool safety inspector function

When performing the role of a pool safety inspector, a building certifier can carry out the same functions and is bound by the same requirements as a pool safety inspector.

In acknowledgement of a building certifiers qualification and existing expertise, they may apply for a pool safety inspector licence without completing the training course.

The pool safety inspectors register includes details of building certifiers licensed as pool safety inspectors.

³⁹ Section 246AG(6) of the BA

⁴⁰ Section 246AG(7) of the BA

⁴¹ Section 246AG(8) of the BA

⁴² Section 246AF(3) and (4) of the BA

⁴³ Section 246AO of the BA

⁴⁴ Section 246AO(3)(b) of the BA

⁴⁵ Section 246AG(8) of the BA

⁴⁶ Section 246AG(9) of the BA

Performing a building certifier function for pool-building development applications

When performing the role of a building certifier for a pool building development application, a certifier can assess and decide on the application, inspect the pool and enforce the pool safety laws. Where a building certifier issues a final inspection certificate for a new pool or other major alterations requiring a building development application, this certificate can be used instead of a pool safety certificate.⁴⁷

Where a building certifier can perform the functions of a pool safety inspector, a pool safety inspector cannot perform the functions of a building certifier. The building certifier may assess and advise on matters not dealt with in the pool safety standard, such as wind load capacities and fire safety.

Note: For the definition of 'building development application', refer to [Appendix 2 - Definitions](#) of this guideline.

The approved forms for a final inspection certificate for a swimming pool or swimming pool fence are as follows:

- a [Form 17 - Final inspection certificate - swimming pools/swimming pool fences](#) (Form 17) or
- a [Form 11 - Certificate/Interim certificate of occupancy](#) (Form 11) - noting that Form 11 applies to a building that includes a regulated pool (other than a single detached Class 1a building).

A building certifier must give the QBCC details of either Form 17 or Form 11 within five business days of issuing the final inspection certificate.⁴⁸

A Form 17 or Form 11 is required for a new swimming pool, even if a [Form 23 - Pool safety certificate](#) (Form 23) has been issued, because the Form 17 or Form 11 considers the swimming pool as a whole and not just compliance with the pool safety standard.

When private building certifiers are performing building certification work for a regulated pool can take appropriate enforcement actions against the owner of the pool where the owner has not taken, or is not taking appropriate action to ensure the pool complies with the pool safety standard.⁴⁹

The private certifier can issue an enforcement notice without issuing a show cause notice, as non-compliance with the pool safety standard would be considered dangerous. .

Note: The term enforcement action, as defined, does not include commencing a prosecution.

If the pool owner does not comply with the enforcement notice, the certifier must then give the local government a noncompliance notice. The local government will assess the information provided and consider any appropriate further enforcement action, which may include taking legal proceedings against the owner.

Property agent role

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 pool that is not a shared pool, they may be liable for disciplinary proceedings under the *Property Occupations Act 2014*.

Sometimes, owners may request property agents attend to pool safety matters. Property agents need to be aware of three key forms:

- [Form 23 - Pool safety certificate](#) (for pools that comply)
- [Form 26 - Pool safety nonconformity notice](#) (for pools that do not comply - this is a recommended but non-mandatory form; the pool safety inspector may give their version of this form)
- [Form 36 - Notice of no pool safety certificate](#) (for sales of shared pools, sales of pools that are not shared pools, and leases of shared pools that do not have a pool safety certificate).

⁴⁷ Section 246AN(2) of the BA

⁴⁸ Section 246AP of the BA

⁴⁹ Sections 264ATA and 246ATB of the BA

Property agents can use the online regulated pools register at [Pool Register | QBCC](#) to check whether a valid pool safety certificate is in effect for a pool at a particular property.

Note: For detailed information about obligations relating to the sale and lease of properties, refer to this guideline's [Sale and lease compliance system](#) section.

Pool registers

Regulated pools register

The regulated pools register is a statewide database that records all the regulated pools in Queensland. It is available online at the QBCC website [Pool Register | QBCC](#).

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

The QBCC maintains the register, and is responsible for the data entry into the register.⁵⁰ The public benefits of the register include the ability to check whether a property has a pool with a pool safety certificate and whether a particular pool is registered on the pool safety register.

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

Registration obligations

All pools in Queensland need to be registered. There is no charge to register a pool. However, failure to register a pool is an offence and can incur a fine.

If the property has a current pool safety certificate or building certificate (Form 11 or Form 17), it will be attached to the property on the register.

Similarly, once supplied to the QBCC, [Form 36 - Notice of no pool safety certificate](#) will be attached to the property on the register, but the public cannot view these forms on the register.

Pool owners can check if their pool is registered by simply conducting a property search on the pool register:

- go to the regulated pools register website at [Pool Register | QBCC](#)
- search the register using the property address or the lot on plan. The register will validate the address or lot-on-plan details and advise if the pool is registered and if the property has a valid pool safety certificate.

Note: A building certificate may be used instead of a pool safety certificate to sell or lease a property. A building certificate is a [Form 17 - Final inspection certificate](#) or a [Form 11 - Certificate/Interim certificate of occupancy](#). Form 11 applies to a building with a regulated pool, other than a single detached Class 1a building.

For further information, see this guideline's [Building certificates instead of pool safety certificates](#) section.

If no pools are recorded against the property and there is a pool, the regulated pools register may be updated by:

- clicking 'continue'
- checking the property location and details and clicking on 'register pool'
- providing information about the property and the pool owner's contact information and clicking 'submit'.
The QBCC will contact the pool owner to confirm the details before updating the regulated pools register.

⁵⁰ Section 246AS of the BA

When a pool is correctly registered, a pool owner is not required to do anything further unless they sell or lease their property.

Note: If a property has more than one regulated pool, each pool must be registered on the regulated pools register.

Pool safety inspectors register

The pool safety inspectors register is a statewide database that records all current and former pool safety inspectors in Queensland. It is available on the QBCC website [Pool Safety Inspector Search | QBCC](#).

The register's purpose is to provide pool owners, property agents, the general public, local governments, the department and QBCC with a central source of information about pool safety inspectors.⁵¹

The QBCC has administrative access to the register to approve pool safety inspector licence applications and perform other key functions. The QBCC must 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
- make informed decisions about the engagement of a pool safety inspector, with full knowledge of any disciplinary action taken against a pool safety inspector in the preceding five-year period.⁵²

Inspection process

Generally, a pool safety inspector **must physically inspect a pool**, deciding if it complies with the pool safety standard. Exceptions may exist in specially declared remote areas.⁵³ For more information about remote inspections, refer to this guideline's [Remote inspections](#) section.

Generally, after a pool safety inspector inspects the pool, they must issue either a pool safety certificate⁵⁴ or a nonconformity notice⁵⁵ within two business days of the inspection.

Note: The [Nonconformity](#) section of this guideline provides information about when a pool safety inspector is not required to give the pool owner a nonconformity notice.

[Form 23 - pool safety certificate](#) is the approved form for a pool safety certificate.

[Form 26 - Pool safety nonconformity notice](#) is the recommended form for a nonconformity notice. The pool safety inspector may use their version of this form.

If a nonconformity notice is issued and the owner does not ask the pool safety inspector to reinspect the pool within three months (the reinspection period), the pool safety inspector must give the local government a copy of the nonconformity notice within five business days after the reinspection period expires.⁵⁶ A pool owner who engages a second pool safety inspector during the reinspection period without the agreement of the QBCC commits an offence and may be fined.⁵⁷

After the local government is provided a copy of the nonconformity notice they may inspect the pool for compliance with the relevant standard. If, following the inspection, the local government finds the pool does not comply with the pool safety standard, they can take any necessary enforcement action to ensure the pool complies with that standard. This could include giving an enforcement notice, infringement notice,

⁵¹ Section 246CB(5) of the BA

⁵² Section 246CB of the BA

⁵³ Section 246ACA of the BA

⁵⁴ Section 246AA of the BA

⁵⁵ Section 246AB of the BA

⁵⁶ Section 246AC(4) of the BA

⁵⁷ Section 246AC(5) of the BA

prosecution, other legal proceedings or carrying out remedial work in accordance with the *Local Government Act 2009* or the *City of Brisbane Act 2010*. This action is separate from the offence of failing to ask the pool safety inspector to reinspect the pool within three months.

If the pool owner requests the pool safety inspector to reinspect the pool within the reinspection period and the pool safety inspector still believes the pool does not comply with the pool safety standard, the pool safety inspector must issue a further nonconformity notice and a further three-month reinspection period applies. The pool safety inspector may notify the local government about the pool's noncompliance, for example, where it poses a serious safety risk.

Note: This does not extend the 90-day period within which a pool safety certificate must be issued in the case of the settlement of a property sale. The legislation does not allow this date to be extended under any circumstance.

For further information about nonconformity, refer this guideline's [Nonconformity](#) section.

Engaging a pool safety inspector

Pool owners can engage a pool safety inspector or contact the relevant local government to undertake a pool safety inspection. All local governments must provide a pool safety inspection service if a pool owner asks. If a pool owner has any doubt about whether a person is a pool safety inspector, they should ask to see their pool safety inspector's licence or confirm the pool safety inspector's details on the pool safety inspectors register.

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

- inspecting a regulated pool to decide whether to give a certificate that states the pool is a complying pool
- carrying out minor repairs relating to a regulated pool arising from an inspection of the pool
- giving a pool safety certificate for a regulated pool ([Form 23 - Pool safety certificate](#))
- giving a nonconformity notice for a regulated pool (pool safety inspectors may use [Form 26 - Pool safety nonconformity notice](#) or their version of this form).⁵⁸

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 contractual arrangements and a matter of negotiation between the pool safety inspector and the pool owner.

Generally, a pool safety inspector can only carry out minor repairs up to the value of \$3300. However, dependent on the type and value of the work being performed other standards, regulations and licensing requirements may apply. If a pool safety inspector, pool owner or an agent is unsure about other requirements they are encouraged to discuss the matter with their Local Government or the QBCC.

Note: Refer to schedule 4 of the BR for the full list of work that is defined as minor repairs.

For further information on this topic, refer to the QBCC:

web contact: [Inspect and certify a pool | QBCC](#)
phone: 139 333
post: GPO Box 5099, Brisbane QLD 4001

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

⁵⁸ Section 231C of the BA

Changing pool safety inspectors

If a pool safety inspector has given a pool owner a nonconformity notice, the pool owner commits an offence if they engage a different pool safety inspector to inspect the pool during the three months after the nonconformity notice 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 QBCC's approval to engage a different inspector during this period. The QBCC will assess the 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 needs to achieve compliance during that time, the QBCC may agree to the pool owner engaging another pool safety inspector.

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

web contact: [Feedback and enquiries | QBCC](#)
phone: 139 333
email: poolssafety@qbcc.qld.gov.au
post: GPO Box 5099, Brisbane QLD 4001

Nonconformity

If the pool safety inspector inspects a regulated pool for the purposes of giving a pool safety certificate and is not satisfied that the pool complies with the pool safety standard, they must give the owner a nonconformity notice within two business days of the inspection. The nonconformity notice states how the pool does not comply with the pool safety standard and what needs to be done to make it comply.

Note: A nonconformity notice must be issued each time the pool safety inspector determines that the regulated pool does not comply with the pool safety standard.

The pool safety inspector is not required to give the pool owner a nonconformity notice 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 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 days and is not satisfied it complies, the pool safety inspector must, within a further two business days, give a nonconformity notice to the pool owner.

Once the work required by the nonconformity notice has been done, the owner is responsible for arranging the pool safety inspector to reinspect the pool. The pool safety inspector must conduct the reinspection within five business days or a longer period agreed to by the owner and inspector.

Pool safety inspectors cannot advise pool owners to undertake remedial work for the purposes of compliance if the work is not required. However, they can recommend that the work be carried out, provided they also state that it is not required by law.

The pool safety inspector (if authorised), owner, contractor or other people can undertake elements of work needed to comply with pool safety standards. Details about which work each party may carry out are in the [Minor repairs, maintenance and other work on a pool barrier](#) section of this guideline.

Reinspection period

After receiving a nonconformity notice, a pool owner has three months (the reinspection period) to ask the pool safety inspector to reinspect the pool.⁵⁹ If the owner fails to do this within five business days after the

⁵⁹ Section 246AB of the BA

end of the reinspection period, the pool safety inspector must notify the local government of the failure by providing a copy of the nonconformity notice.⁶⁰

A pool safety inspector cannot disengage a pool owner or elect not to reinspect the pool if requested during the reinspection period. The BA prevents the pool owner from engaging another pool safety inspector for three months without the written approval of the QBCC.⁶¹

If a pool safety inspector conducts a reinspection and determines the pool is still non-compliant, they must issue a further nonconformity notice and a further three-month reinspection period then applies. This sequence may be repeated so long as the owner continues to ask for a reinspection within the reinspection period and the pool continues to be non-compliant. Where this occurs, the pool safety inspector is not obliged to notify the local government about the pool's noncompliance. The pool safety inspector is required to consider their duty to act in the public interest and may decide to notify the local government of the noncompliance, especially where the circumstance poses a serious safety risk.

This practice does not affect any legal obligation that the owner may have to obtain a pool safety certificate within a particular time frame. A nonconformity notice is not a pool safety certificate.

Appealing nonconformity notices

The owner may appeal the pool safety inspector's decision in the nonconformity notice to a development tribunal within 20 business days of the notice being given.

For further information about how to appeal, get in touch with the Development Tribunals:

website: [Development Tribunals](#)
phone: 1800 804 833
email: registrar@epw.gov.au
mail: GPO Box 2457, Brisbane Qld 4001

Conformity

If a pool safety inspector has inspected a regulated pool for the purposes of issuing a pool safety certificate and is reasonably satisfied the pool complies with the pool safety standard, they must give the owner a pool safety certificate within two business days of undertaking the inspection.⁶²

The approved form for a pool safety certificate is [Form 23 - Pool safety certificate](#) (Form 23).

Note: A [Form 17 - Final inspection certificate](#) (Form 17) is required for a new swimming pool, **even if a Form 23 has been issued.**

Form 23 must have a unique identification number, be signed by the pool safety inspector giving the certificate and be recorded on the regulated pools register by the inspector. One pool safety certificate should be issued per property. Where multiple pools are on a single property, all pools must comply before a pool safety certificate is issued.

For more information about the regulated pools register, refer to this guideline's [Regulated pools register](#) section.

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 pools that are not 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.

⁶⁰ Section 246AC of the BA

⁶¹ Section 246AC(5) and (6) of the BA

⁶² Section 246AA of the BA

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. Every unit owner doesn't need to obtain a separate pool safety certificate for the same shared pool.

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

- 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.

The local government or building certifier may take separate enforcement action for matters relating to the need for building development approval. Local governments also 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.

Building certificates instead of pool safety certificates

At the completion of a new regulated pool, or after other major pool alterations, a building certifier will provide the pool owner either with a [Form 17 - Final inspection certificate](#) (Form 17) or a [Form 11 - Certificate/Interim certificate of occupancy](#) (Form 11), noting that the Form 11 is applicable for a building that includes a regulated pool, other than a single detached Class 1a building.

A Form 17 or Form 11 can be used as an alternative to a pool safety certificate when selling or leasing a property.

Both Form 17 and Form 11 are valid for the same period as a pool safety certificate, that is, one year from the date of issue for shared pools or two years from the date of issue for pools that are not shared pools.

Building certifiers must provide a copy of Form 17 or Form 11 to the QBCC for new regulated pools so that the pool details can be entered into the regulated pools register.

Note: A Form 17 or Form 11 is required for a new swimming pool, **even if a [Form 23 - Pool safety certificate](#) (Form 23) has been issued.** Forms 17 and 11 are used to finalise pool building approvals; Form 23 is used to state a pool fence is compliant.

For more information about the regulated pools register, refer to this guideline's [Regulated pools register](#) section.

Remote inspections

To help address the logistical difficulties of inspecting pools in remote areas, local governments prescribed in schedule 3 of the BR can declare parts of their local government area to be remote, for the purposes of performing a pool safety inspector function, by passing a resolution.⁶³ Local governments can only declare an area remote if they are satisfied it is remote from the business premises of persons performing pool safety inspection functions.⁶⁴ Local governments have a discretionary power and are not required to declare any area as remote.

The local government can advise if the pool is in an area declared as remote.

Where a pool safety inspector is engaged to inspect a pool in a declared remote area, they do not need to carry out an on-site inspection. They 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.

⁶³ Section 26 and schedule 3 of the BR; section 246ACA of the BA

⁶⁴ Section 246ACA(2) of the BA

Compliance and technical considerations

Resuscitation sign (CPR sign)

A CPR sign must be displayed at all regulated pools.⁶⁵

The CPR sign must:

- be displayed conspicuously near the pool
- be easily visible
- be at least 300mm x 300mm in size
- be made of durable and weatherproof material
- clearly state what to do in an emergency
- show procedures for performing CPR, in accordance with ANZCOR guideline 8 - Cardiopulmonary resuscitation (CPR) as published in January 2016.⁶⁶

Each statement or diagram on the CPR sign must be clear and legible, and made of durable and weatherproof material.⁶⁷

For an example of a CPR sign, refer to [Appendix 3 - Sample CPR sign](#) of this guideline.

Fencing, gates and latches

The minimum height for a pool barrier is 1200mm, measured from ground level (refer to [Appendix 4 - Extracts from QDC MP 3.4: Figure 1 - Typical cross-section of a compliant pool fence](#) of this guideline). The distance between the bottom of the pool barrier and the ground must be no more than 100mm, and the distance between any vertical members such as palings, rods, or wires must be no more than 100mm.

Gates must self-close and self-latch when released from all open positions and not open towards the pool area. The underside of gate latch releases must be located at least 1500mm above the ground and at least 1400mm above the highest lower rail on the pool barrier or shielded in compliance with the standard.

The occupiers and pool owners are responsible for ensuring that gates and doors giving access to a pool area are kept securely closed when not in use.

Non-climbable zone (NCZ)

Since introducing pool safety laws in 1991, providing a NCZ around the pool barrier has been required. The purpose of the NCZ is to restrict children from climbing the pool barrier or using climbable objects near the pool barrier to access the pool.

The pool safety standard requires a 900mm NCZ around the entire pool barrier. The NCZ extends both upwards and downwards in an arc from the barrier (refer to [Appendix 4 - Extracts from QDC MP 3.4: Figure 1 - Typical cross-section of a compliant pool barrier](#), [Figure 2 - A non-climbable object next to a compliant pool barrier](#) and [Figure 3 - A step in the non-climbable zone \(NCZ\)](#) of this guideline).

The NCZ is to be located outside for pool barriers less than 1800mm high. For pool barriers 1800mm or more in height, the NCZ can be located either on the outside or inside of the barrier. This is particularly useful for dividing fences used as pool barriers. In this case, if the neighbour's side of the fence has climbable objects within the NCZ, the pool barrier can be raised to a height of at least 1800mm, and the NCZ can be located on the inside of the pool barrier (refer to [Appendix 4 - Extracts from QDC MP 3.4: Figure 4 - Providing the non-climbable zone \(NCZ\) on the inside or the outside of a pool barrier 1800mm high](#) of this guideline).

⁶⁵ Section 13(2) of the BR

⁶⁶ Section 13(3) of the BR

⁶⁷ Section 13(4) of the BR

Objects with a substantially horizontal surface of more than 10mm 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 4 - Extracts from QDC MP 3.4: Figure 1 - Typical cross-section of a compliant pool barrier](#) and [Figure 3 - A step in the non-climbable zone \(NCZ\)](#) of this guideline) as they are either not climbable by young children or create an additional pool barrier for young children.

The standard specifically allows bushes that are not easily climbable by young children, which can create an additional pool barrier, to be located in the NCZ. 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, 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 pool barrier.

Generally, when a bush, shrub or tree has a thick (more than 10mm in width and substantially horizontal) exposed branch in the NCZ, it is acceptable to stay after the substantially horizontal branch is removed. Cut back stumps or bushes may be climbable. It is preferable to retain the foliage to deter young children or, if it is not possible, remove exposed stumps. Where bushes, shrubs or trees remain inside the NCZ, owners are responsible for monitoring them and trimming any substantially horizontal branches that become exposed to prevent children from climbing them.

[Appendix 4 - Extracts from QDC MP 3.4: Figure 6 - Acceptable vegetation](#) of this guideline provides examples of acceptable vegetation.

Child-resistant doors

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.

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 pool barrier, pool owners can apply to local government for an impracticality exemption. Impracticality exemptions cannot be given solely because of aesthetic concerns, because no children reside on or visit the property, the pool is near another body of water such as a canal or dam, or the property is located in a rural or remote area.

Decommissioning pools

Occasionally, a pool owner may decide they no longer want a pool. If a pool owner intends to decommission their regulated pool, the pool structure must be altered so it cannot be filled to a depth of 300mm. 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 pool may be removed.

For regulated pools, including portable spa pools, to be decommissioned, the work must result in the pool requiring structural repair work to render it capable of holding water to a depth of 300mm. For example, a wall or the floor of the water receptacle may be demolished. For a portable spa, the drainpipe may be removed, because it would make the spa incapable of holding water without structural repair work, which includes the drainpipe.

A regulated pool that is partially demolished and completely filled with dirt to the point that it is incapable of holding 300mm of water does not satisfy the definition of a regulated pool and does not need to comply with the pool safety standard.

If only cosmetic repair work is required, the pool will not have been validly decommissioned. For example, a spa with a timber lid nailed or glued into place with industrial glue would still be considered a regulated pool.

This is because removing the lid would reveal the spa's structure intact and capable of being filled with water.

If a pool safety inspector is asked by a pool owner how a pool may be decommissioned, it is recommended that the pool safety inspector refer the pool owner to the local government for advice.

Note: The owner of a decommissioned pool should contact the QBCC to request that it be removed from the regulated pool register.

Destruction of pools

If a pool owner is demolishing a regulated pool, they may be required to lodge a building development application depending on the scope of work. The application can be lodged with the local government or a private certifier. If a pool safety inspector is consulted they should advise owners to contact their local government or private certifier to discuss the procedures and charges.

The QBCC will remove a regulated pool from the pool register if a pool safety inspector confirms there is no pool at the property or the pool owner notifies the QBCC in writing that the pool no longer exists.

Pools converted to fishponds

A pool safety inspector may be asked for advice about converting a regulated pool into a fishpond, which removes the requirement for a pool barrier. When providing advice, it is important to consider and apply the definition of 'swimming pool'. The first part of the definition of swimming pool states:

A 'swimming pool' is defined as an excavation or structure:

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

Note: For the full definition of a 'swimming pool', refer to [Appendix 2 - Definitions](#) of this guideline.

According to the definition, if the basic excavation or structure was designed, manufactured or adapted as a swimming pool, it is not a fishpond. This applies regardless of the current use, including whether it contains fish.

Therefore, converting an existing swimming pool to a fishpond may require significant building work, which is likely to require a building development application. If a building development application to convert a swimming pool to a fishpond receives final inspection approval by a local government or a private building certifier, who certifies that the structure is no longer a swimming pool, then the structure no longer meets the definition of 'swimming pool'.

Temporary fencing

New pools

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.⁶⁸ The temporary fence may be used for further periods of up to three months if a building certifier gives written approval for its use and is satisfied that the safety of young children would not be at risk if the approval were given.

For a definition of 'temporary fence', refer to [Appendix 2 - Definitions](#) of this guideline.

⁶⁸ Refer to Schedule 1 of QDC MP 3.4

Existing pools

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

If a permanent barrier is removed or partly removed during fencing works, a temporary fence may be used instead of a permanent barrier for an initial period of 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 if a building certifier gives written approval for its use and is satisfied that the safety of young children would not be at risk if the approval were given.

For building work completed under section 5 of schedule 5 of the BR, a temporary fence may be used for an initial period of up to three months. The fence may be used for a second three-month period if a pool safety inspector has issued a nonconformity notice and only during the first three months after the issue of the notice. The fence may be used for further periods of up to three months if a pool safety inspector or building certifier gives written approval for the use of the fence and the pool safety inspector or building certifier is satisfied that the safety of young children would not be at risk if the approval were given.

For further information about other work completed under section 5 of schedule 5 of the BR, refer to this guideline's [Minor repairs, maintenance and other work on a pool barrier](#) section.

Tips for using a temporary fence

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

- The temporary fence has a gate that 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 1.5m above the ground and 1400mm above the highest bottom rail, or is shielded in compliance with the standard to ensure that 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 1.2m high all the way around.
- The bottom of the temporary fence is less than 100mm off the ground all the way around.
- All vertical or near-vertical uprights in the temporary fence are no more than 100mm apart.
- All horizontal or near horizontal fence rails are at least 900mm apart.
- There is no damage to the fence.
- There are no climbable objects near the temporary fence that would allow a child to enter the pool area, such as BBQs, trees, rocks, shrubs, or 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.

Neighbouring properties and dividing fences

Neighbouring trees and vegetation

It is always the pool owner's responsibility, not the neighbour's, 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 1800mm or more and ensure a NCZ is located on their side of the fence, or
- construct a separate complying pool barrier entirely within their property.

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

When removing overhanging tree branches or vegetation, it is important not to damage the tree, other vegetation, or the neighbour's property. Pool owners should speak to their neighbours first and attempt to reach an agreement before taking action regarding overhanging tree branches or other vegetation.

Consideration must 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 the local government.

If a pool owner wants the tree owner to take responsibility for lopping the overhanging branches, they can deliver a [Form 3 - Notice for removal of particular overhanging branches](#) (Form 3).

Form 3 can be used for branches that are more than 50cm over the boundary and less than 2.5m above the ground.⁶⁹ If the tree keeper, who is generally the owner of the land where the tree is located, does not respond to the notice, the neighbour can proceed to have the lopping done and recover a maximum sum of \$300 from the tree keeper.⁷⁰ If there is a vegetation or tree protection order over the tree, enquiries would have to be made to the local government before cutting the tree.

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

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 used as part of the pool barrier.

Boundary fence requirements

The boundary fence must be a minimum of 1200mm high and have a complying NCZ. It is important to note that if the fence is less than 1800mm in height, the NCZ must be on the outside of the fence (neighbour's side). A pool owner cannot control a neighbour's actions and, therefore, has no control of the NCZ. If the fence is 1800mm or higher, the NCZ can be on the inside. Pool owners should consider whether they can control the area outside the pool fence before deciding on a fence height that requires the NCZ on the outside.

Rights and responsibilities for dividing fences

A building's wall 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 pool 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 with the *Neighbourhood Disputes (Dividing Fences and Trees) Resolution Act 2011*.

Pool owners are encouraged to discuss any fencing work with their neighbours before making any decisions. If a pool owner decides to do the fencing work without obtaining an agreement from their neighbour, the pool owner must give the neighbour a notice about the proposed work at least 14 days before undertaking any work. The [Form 39 - Notice of proposed fencing work for a pool barrier](#) includes 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. For example, similar materials and colours unless this would prevent the fence from complying with the pool safety standard.

⁶⁹ Section 57 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

⁷⁰ Section 58 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

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

Apportioning costs

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

If one pool owner requires fencing work and the other does not, the costs are met solely by the owner requiring the changes. Details about the costs associated with the fencing work should also be provided to the neighbour on [Form 39 - Notice of proposed fencing work for a pool barrier](#).

Disputes

A dividing fence dispute may arise if adjoining property owners disagree about pool fencing. The Queensland Civil and Administrative Tribunal (QCAT) can assist with fencing disputes:

website: [Dividing fence disputes | QCAT](#)
phone: 1300 753 228
email: enquiries@qcat.qld.gov.au
mail: GPO Box 1639, Brisbane Qld 4001

Minor repairs, maintenance and other work on a pool barrier

Pool barriers need to be maintained to retain the protections they offer against young children drowning. Common rectification works may include removing climbable objects near the pool barrier, adjusting gates to self-close and self-latch or raising the barrier height.

Some repairs, alterations and maintenance can be undertaken without a building development approval. However, before performing fencing works, pool owners should check with a private certifier or their local government if there are any specific approvals required.

Minor repairs

Pool safety inspectors, pool owners, and others (including contractors) may undertake minor repairs to regulated pools within certain limits and under certain circumstances.

The work must comply with the pool safety standard,⁷¹ and if the minor repairs are being undertaken as a result of a pool safety inspector inspecting the pool for the purposes of issuing a pool safety certificate, a pool safety certificate **must** be issued.

Pool safety inspectors can undertake minor repairs to a regulated pool if each of the following are met:

- the pool safety inspector inspects the pool
- the pool would be a complying pool if the minor repairs were carried out
- the pool owner agrees that the pool safety inspector will carry out the minor repairs.⁷²

These repairs do not require a building development approval.⁷³

⁷¹ Schedule 4, sections 1(1)(a)(i) and 1(1)(b)(i) of the BR

⁷² Section 246BE of the BA

⁷³ Schedule 1, section 1(2)(a)(i) of the BR

Pool owners and others, including contractors, can also undertake minor repairs arising from a pool safety inspection by a pool safety inspector.⁷⁴ These repairs do not require building development approval, provided that a pool safety inspector issues a pool safety certificate for the minor repairs.⁷⁵

Examples of minor repairs include:

- repairing, replacing or adjusting a barrier to a maximum of 5m and six posts
- erecting a new part of the barrier to a maximum of 5m and six posts
- laying paving under a barrier to reduce the gap under the barrier
- installing capping along the top of a barrier to raise the height of the 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)
- repairing, replacing or adjusting loose or damaged palings for 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.

Refer to schedule 4 of the BR for the complete list of minor repairs.

Where a pool owner is undertaking minor repairs and the estimated value of the work, including labour and materials, is \$11,000 or more, a QBCC owner builder permit is required. Further information is available online at the QBCC website [Owner build | QBCC](#).

If the value of the work, including labour and materials, is \$3300 or more, a person other than the pool owner who undertakes minor repairs must be appropriately licensed by the QBCC. Further information is available online at the QBCC website: [When you need a licence | QBCC](#).

Maintenance and non-climbable zone (NCZ) works

Pool owners and others, including contractors, may undertake maintenance and non-climbable zone (NCZ) works - within certain limits and under certain circumstances - to a regulated pool. This work involves the day-to-day maintenance that should be undertaken to ensure the pool barrier complies with the pool safety standard.

Maintenance work must be carried out to comply with the pool safety standard.⁷⁶ NCZ works must be carried out to ensure young children cannot climb the barriers to the pool.⁷⁷ A pool safety certificate is not required for both maintenance and NCZ works.

Examples of maintenance works include:

- repairing or adjusting a barrier to a maximum of 2.4m and two posts
- laying paving under a barrier to reduce the gap under the barrier
- installing capping along the top of a barrier to raise the height of the 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)
- repairing, replacing or adjusting loose or damaged palings for the barrier
- repairing, replacing or adjusting a gate
- protecting a window or door, such as installing a fixed security screen on a window.

Examples of NCZ works include:

- removing or shielding climbable objects in the NCZ
- closing gaps between barriers
- installing shielding in front of gate latches
- trimming or removing trees, branches or vegetation on or adjoining pool barriers.

⁷⁴ Sections 231C(b) and 246AU of the BA

⁷⁵ Schedule 1, section 1(2)(a)(ii) of the BR

⁷⁶ Schedule 5, sections 1(1)(a), 2(1) and 3(1) of the BR

⁷⁷ Schedule 5, section 4(1) of the BR

Both maintenance works and NCZ works do not require building development approval.⁷⁸

Refer to sections 1 to 4 of schedule 5 of the BR for the complete list of works.

Other work

Pool safety inspectors, pool owners and others, including contractors, may construct, repair, replace or adjust an existing fence that forms the whole of a barrier for an existing regulated pool - within certain limits and under certain circumstances.

Firstly, both of the following must apply:

- no other building assessment provision applies to the work, or if another provision does apply, the work would be accepted building work under the provision
- any fence that is no more than 2m in height above ground or no more than 2m in height above a retaining wall/building/structure and not within 1.5m of a boundary.⁷⁹

Then, the person who is proposing to undertake the works must ensure that either one of the following applies:

- the works will be undertaken within three months of the nonconformity notice being issued
- an inspection by a pool safety inspector is booked to be undertaken within three months of starting work.⁸⁰

This work does not require a building development approval.⁸¹

Refer to section 5 of schedule 5 of the BR for the complete list of works and limitations.

Note: It is an offence not to comply with either of the three-month periods.

Sale and lease compliance system

Pool owners must always comply with the pool safety standard. When a property is sold or leased, the pool barrier must also comply with the below-mentioned requirements.

Sale of a property with a pool that is not a shared pool

A valid pool safety certificate must be obtained if a property with a regulated pool is sold. To ensure this occurs, the following obligations have been placed on the seller and buyer of the property.

Before entering into a contract

If no pool safety certificate is in effect, the seller must give the buyer a [Form 36 - Notice of no pool safety certificate](#).⁸² Form 36 advises that the pool may not comply with the pool safety standard and the steps that must be taken to comply. The Form 36 is intended to help prospective buyers make a more informed decision about purchasing the property.

Note: all relevant details must be provided on the Form 36.

Before settlement

A seller must either:

- give the buyer a pool safety certificate, or⁸³

⁷⁸ Schedule 1, section 1(2)(b) of the BR

⁷⁹ Schedule 5, section 5(2) of the BR

⁸⁰ Schedule 5, section 5(2)(c) of the BR

⁸¹ Schedule 1, section 1(2)(b) of the BR

⁸² Section 246ATM of the BA; section 28 of the BR

⁸³ Section 246ATF(a) of the BA

- give the buyer and the QBCC a copy of the Form 36.⁸⁴

After settlement

If the buyer 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.

Sale of a property with a shared pool

For shared pools, the following requirements apply.

Before entering into a contract

If no pool safety certificate is in effect, the seller must give the buyer a [Form 36 - Notice of no pool safety certificate](#) (Form 36).⁸⁵

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

Note: all relevant details must be provided on the Form 36.

Before settlement

A seller must either:

- give the buyer a pool safety certificate, or⁸⁶
- give the buyer, the QBCC and, if relevant, the body corporate responsible for the pool a copy of the Form 36.⁸⁷

After settlement

If the buyer has not been given a valid pool safety certificate before the settlement date, the buyer 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 barrier inspected with sufficient time to make repairs if needed.

If a valid pool safety certificate is in effect for properties being sold by auction, 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.⁸⁸ 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 providing access to the pool.

Note: Regulated pools must comply with the pool safety standard and keep all barriers for the pool in good condition at all times.

⁸⁴ Section 246ATF(c) of the BA

⁸⁵ Section 246ATM of the BA; section 28 of the BR

⁸⁶ Section 246ATF(a) of the BA

⁸⁷ Section 246ATF(c) of the BA

⁸⁸ Section 246AL(2)(a) of the BA

Property owners must ensure a valid pool safety certificate is in effect before entering into a lease or other accommodation agreement. This means the certificate must be in effect before the agreement is signed, 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 property agents in this process are outlined in this guideline's [Property agents](#) section.

Leasing a property with a pool that is not a shared pool

Property owners must ensure a valid pool safety certificate is in effect before entering into a lease or other accommodation agreement. This means the certificate must be in effect before the agreement is signed, 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 property agents in this process are outlined in this guideline's [Property agents](#) section.

Leasing a property with a shared pool

Owners and property agents should note that the date a lease or other accommodation agreement is entered may differ from the day the agreement starts. Only the date the lease is signed 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 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)
- give a [Form 36 - Notice of no pool safety certificate](#) to the pool owner or the body corporate, the QBCC and the tenant or occupier before entering into a lease or other accommodation agreement.

Where no pool safety certificate was obtained before leasing or entering into an accommodation agreement, the regulated pool owner must obtain the certificate within 90 days of the date of settlement or the date the accommodation agreement is entered into.

Exemptions, performance solutions and variations

Exemptions

Pre-2015 exemptions

Any pool fencing exemptions, granted before 30 November 2015 are no longer valid, other than disability exemptions that remain valid. This applies to exemptions given under local government laws and state laws.

Previous disability exemptions that were given based on the occupier's inability to access the pool because of their disability will continue to apply in accordance with the requirements of the BA. The exemption automatically ends when the person specified in the exemption no longer occupies the property.

Disability exemptions

A pool owner, or if the pool is still to be constructed, the person who will be the pool owner, 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 disability.⁸⁹

⁸⁹ Section 235 of the BA

Local governments should request medical evidence from the pool owner to support the application. Medical evidence could include a medical certificate as well as a letter from a general practitioner or medical specialist that contains key information, including each of the following:

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

Local governments must consider the application and provide a decision within five business days.⁹⁰ The exemption can be granted subject to reasonable conditions the local government considers necessary or desirable to prevent a young child from accessing the pool.

Written notice of the decision must then be given to the pool owner, and any information on an exemption granted must be provided to the QBCC within 10 business days after the exemption is granted. The exemption notice must include the address and real property description of the land where the pool is located.⁹¹

The 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.⁹²

Local government can only grant a disability exemption to the extent reasonably necessary to allow the person with the disability to access the pool.⁹³ For example, if the person's disability only prevented them from opening a pool gate, the exemption could not extend to matters unrelated to the gate.

If the occupant with the disability has a full-time carer, careful consideration should be given to whether it is appropriate to grant a disability exemption. Careful consideration would also need to be given to any proposal to allow a child-resistant door to form part of the pool safety barrier, due to the increased risk of child drownings associated with such doors.

As disability exemptions are specific to a person, the exemption ends if the applicant stops being the pool owner or the person with disability no longer occupies the property or has recovered sufficiently to enable them to access the pool if it complies with the pool safety standard (e.g., if the person recovered from a temporary disability).⁹⁴

Local government must keep a record of each exemption granted while it is in force and for at least five years after it expires. The legislation does not stipulate the form in which the record must be kept.⁹⁵

Impracticality exemptions

A pool owner 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.⁹⁶

The application must include details identifying which part of the pool safety standard the owner is seeking exemption from and showing that compliance to part of the pool safety standard is not practical.⁹⁷ Local government can ask for more information to establish that compliance is impractical.⁹⁸ Impracticality exemptions cannot be given because:

- of impacts on the aesthetics
- no children reside on or visit the property
- the pool is near another body of water, such as a canal or dam
- the property is rural or remote.

⁹⁰ Section 237(1) of the BA

⁹¹ Section 239 of the BA

⁹² Section 237(2) of the BA

⁹³ Section 237(5) of the BA

⁹⁴ Section 241 of the BA

⁹⁵ Section 244 of the BA

⁹⁶ Section 245 of the BA

⁹⁷ Section 245 of the BA

⁹⁸ Section 245A of the BA

Local government can only grant an impracticality exemption to the extent reasonably necessary to overcome the impracticality associated with compliance.⁹⁹ For example, if the only impracticality issue related to space for a gate to open outwards, the exemption could not extend to matters unrelated to the gate. A pool owner may, therefore, still need to comply with the remaining aspects of the pool safety standard.

The legislation gives local government 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.¹⁰⁰

Local governments can also consider the cost of the barriers or work required to comply with the pool safety standard regarding the nature of any existing barriers for the pool. They should carefully consider whether the cost of installing the barriers is significant enough to warrant an exemption at all.¹⁰¹

The legislation also provides scope for local governments to consider any other matters they think are relevant.¹⁰²

Unlike disability exemptions, impracticality exemptions continue until the local government revokes the exemption.¹⁰³ Any conditions applicable to the exemption also bind 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 from accessing the pool.

Written notice of the decision must then be given to the pool owner, and any information on an exemption granted must be provided to the QBCC within 10 business days after the exemption is granted. The exemption notice must include the address and real property description of the land where the pool is located.

Local governments must keep records of each exemption granted, although the legislation does not stipulate the form in which the record must be kept.

Revoking exemptions

Local governments have the power to revoke an exemption under particular circumstances, including where conditions imposed on the exemption have been contravened, or the original exemption decision was based on false or misleading information the applicant gave.¹⁰⁴

The local government must issue a show cause notice to the pool owner in these circumstances.¹⁰⁵ After consideration of any representations made under the show cause notice, the local government may issue a revocation notice to revoke the exemption.¹⁰⁶ The revocation notice must include each of the following:

- information outlining that the pool owner must ensure the pool safety barrier complies with the pool safety standard
- the day by which the owner must comply.¹⁰⁷

The revocation notice must be given to the QBCC within 10 business days of being given.¹⁰⁸

⁹⁹ Section 245B(5) of the BA

¹⁰⁰ Section 245B(2)(a) of the BA

¹⁰¹ Section 245B(2)(b) of the BA

¹⁰² Section 245B(2)(c) of the BA

¹⁰³ Section 245D of the BA

¹⁰⁴ Sections 242 and 245E of the BA

¹⁰⁵ Sections 242(2) and 245E(2) of the BA

¹⁰⁶ Sections 242(3) of the BA

¹⁰⁷ Sections 242(4) of the BA

¹⁰⁸ Sections 243 and 245(F) of the BA

Appeals about exemptions

The applicant can appeal against the local government's decision to refuse an exemption, and a pool owner can appeal against the local government's decision to revoke an exemption. Appeals are to be made to the Development Tribunal. The appeal must be made within 20 business days after giving the decision notice.

For further information about how to appeal, get in touch with the Development Tribunals:

website: [Development Tribunals](#)
phone: 1800 804 833
email: registrar@epw.gov.au
mail: GPO Box 2457, Brisbane Qld 4001

Performance solutions

A building certifier can only apply a performance solution to the pool safety standard during the pool's building development approval stage. Performance solutions can vary widely and are used where acceptable solutions in the pool safety standard cannot be achieved.

Performance solutions must be registered on the regulated pools register and be included in the [Form 17 - Final inspection certificate](#).

Variations

A pool owner may apply to the department's chief executive to vary how the pool safety standard applies. The chief executive will assess the application to determine whether or not the variation will achieve an equivalent degree of safety as the pool safety standard. Applications are assessed case by case, and a decision notice issued to the applicant.

Any variations previously given under section 41 of the BA (or under any similar previous provisions) relating to matters covered by the current pool safety laws ceased to apply on 1 December 2015 or earlier if the property was sold or a lease or other accommodation agreement was entered into.

Where the chief executive approves a variation, the building certifier must assess the building development application in accordance with the variation.

Appendix 1 - Links and further information

Legislation

[Queensland Legislation | Queensland Government](#)

QDC MP 3.4

[Queensland Development Code | Business Queensland](#)

Forms under the BA

[Building forms | Business Queensland](#)

Pool laws and standards

[Pool laws and standards | Business Queensland](#)

Pool safety guidelines

[Pool safety guidelines | Business Queensland](#)

Code of conduct for pool safety inspectors

[Code of conduct for pool safety inspectors | QBCC](#)

QBCC

[Pool fencing information | QBCC](#)

Queensland Injury Surveillance Unit

[Queensland Injury Surveillance Unit](#)

Queensland Family and Child Commission

[Queensland Family and Child Commission](#)

Appendix 2 - Definitions

Accommodation agreement (or lease)

An accommodation agreement means any of the following—

- (a) a residential tenancy agreement within the meaning of the *Residential Tenancies and Rooming Accommodation Act 2008*, section 12;
- (b) a rooming accommodation agreement within the meaning of the *Residential Tenancies and Rooming Accommodation Act 2008*, section 16;
- (c) a homestay or assisted accommodation agreement;
- (d) an agreement, other than an agreement mentioned in subparagraph (a), (b) or (c), under which a person gives to someone else a right to occupy premises in exchange for money or other valuable consideration.

Example for subparagraph(d)—letting a motel or hotel room.

Paragraph (d) applies—

- (a) whether or not the right is a right of exclusive occupation; and
- (b) whether the agreement is—
 - (i) wholly in writing, wholly oral or wholly implied; or
 - (ii) partly in a form mentioned in subparagraph (i) and partly in 1 or both of the other forms.

The term does not include an agreement between members of a family under which a member of the family gives to another member money or other valuable consideration for a right to occupy that other member's residence.

Note: Homestay or assisted accommodation agreement is defined in section 231A of the BA.

Building development application

A building development application is—

- (a) a development application for a development approval—
 - (i) if the local government is the assessment manager for the application—to the extent the application is for building work that, under the *Planning Act 2016*, must be assessed against the building assessment provisions; and
Note—For the functions of a local government in relation to building development applications, see section 51 of the BA.
 - (ii) if a private certifier is the assessment manager for the application—for building work; or
- (b) a change application, other than a minor change application, to change a development approval—
 - (i) if the development approval approves building work—in relation to the building work; or
 - (ii) otherwise—to approve building work.

However, if a local government is the responsible entity for a change application, the application is a building development application only to the extent the building work mentioned in subsection (b)(i) or (ii) must, under the *Planning Act 2016*, be assessed against the building assessment provisions.

A minor change application means a change application for a minor change to a development approval, as defined in the *Planning Act 2016*.

Ground for disciplinary action

A ground for disciplinary action, against a pool safety inspector or former pool safety inspector, includes the following—

- (a) conduct that shows incompetence, or a lack of adequate knowledge, skill, judgment, integrity, diligence or care in performing pool safety inspection functions;
- (b) conduct that compromises the health or safety of a person;
- (c) conduct that is contrary to a function under this Act, including, for example—
 - (i) disregarding relevant and appropriate matters; and
 - (ii) acting outside the scope of the pool safety inspector's powers; and
 - (iii) acting beyond the scope of the pool safety inspector's competence; and
 - (iv) contravening the code of conduct for pool safety inspectors;
- (d) seeking, accepting or agreeing to accept a benefit, whether for the benefit of the pool safety inspector or another person, as a reward or inducement to act in contravention of this Act;
- (e) failing to comply with an order of the QBCC commissioner or the tribunal;
- (ea) failing to comply with a written notice given to the pool safety inspector under the *Queensland Building and Construction Commission Act 1991*, section 50C(2);
- (eb) obstructing an investigator under the *Queensland Building and Construction Commission Act 1991*, section 107A;
- (f) accumulating the number of demerit points prescribed under a regulation for this provision in the period prescribed under a regulation;
- (g) fraudulent or dishonest behaviour in performing pool safety inspection functions;
- (h) other improper or unethical conduct;
- (i) conduct that is of a lesser standard than the standard that might reasonably be expected of the pool safety inspector by the public or the pool safety inspector's professional peers.

Owner

An owner of a building and structure (including a regulated pool) means—

- (a) if the building or structure is subject to the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*—
 - (i) for a single lot in the building or structure—the registered proprietor; or
 - (ii) for 2 or more lots in the building or structure—the primary thoroughfare body corporate; or
- (b) if the building or structure is subject to the *Mixed Use Development Act 1993*—
 - (i) for a single lot in the building or structure—the registered proprietor; or
 - (ii) for 2 or more lots in the building or structure—the community body corporate; or
- (c) subject to paragraphs (a) and (b), if the building or structure is subject to the *Building Units and Group Titles Act 1980*—
 - (i) for a single lot in the building or structure—the registered proprietor; or
 - (ii) for 2 or more lots in the building or structure—the body corporate; or

- (d) if the building or structure is, under the *Body Corporate and Community Management Act 1997*, on scheme land for a single community titles scheme—
 - (i) for a single lot in the building or structure—the registered proprietor; or
 - (ii) for 2 or more lots in the building or structure—the body corporate for the scheme; or
- (e) if the building or structure is, under the *Body Corporate and Community Management Act 1997*, on scheme land for 2 or more community titles schemes—
 - (i) for a single lot in the building or structure—the registered proprietor; or
 - (ii) for 2 or more lots in the building or structure—the body corporate for the community titles scheme that is a principal scheme; or
- (f) if the building or structure is part of a time-sharing scheme and the name and address of a person has been notified under the *City of Brisbane Act 2010* or the *Local Government Act 2009* as the person who will accept service for the owners—the person; or
- (g) if the building or structure is on land being bought from the State for an estate in fee simple under the *Land Act 1994*—the buyer; or
- (h) if the building or structure is on land granted in trust or reserved and set apart and placed under the control of trustees under the *Land Act 1994*—the trustees of the land; or
- (i) if paragraphs (a) to (h) do not apply—the person for the time being entitled to receive the rent for the building or structure or would be entitled to receive the rent for the building or structure if the building or structure were let to a tenant at a rent.

Pool immersion incident

A pool immersion incident means an event involving the immersion or partial immersion of a young child under water in a swimming pool, if because of the immersion or partial immersion—

- (a) the child has died; or
- (b) the child has been deprived of air and the health or wellbeing of the child has been adversely affected.

Pool safety standard

The pool safety standard means QDC MP 3.4 and any other standard prescribed under a regulation for ensuring the safety of persons using a regulated pool.

Note: QDC MP 3.4 prescribes Australian Standard 1926.1-2007 (AS1926.1-2007) and Australian Standard 1926.2-2007 (AS1926.2-2007).

Later versions of the Australian Standard do not apply in Queensland unless a new version of the QDC adopts them.

Regulated pool

A regulated pool is a swimming pool situated on regulated land and includes the barriers for the pool.

The barriers for the pool include any of the following:

- (a) the fencing for the pool;
- (b) the walls of a building enclosing the pool;
- (c) another form of barrier mentioned or provided for in the pool safety standard.

Example—Under QDC MP 3.4, a canal, lake, river, creek, stream, pond, ocean or dam may, in particular circumstances, form part of a barrier.

Other than in part 2A of the BA relating to neighbours' rights and responsibilities for particular dividing fences, a regulated pool does not include a swimming pool situated on either of the following if an approved pool safety management plan is in force for the pool—

- (a) common property in a class 3 building, including a class 3 building that is to be constructed;
- (b) land adjacent to land on which a class 3 building is, or is to be, constructed and that is—
 - (i) in the same ownership as the building; or
 - (ii) used in association with the building.

A regulated pool does not include a public pool.

Shared pool

A shared pool is a pool where the residents of 2 or more dwellings constructed, or to be constructed, on regulated land have, or will have, a right to use the pool situated on the land.

The resident of a dwelling is the person who is the owner or occupier of the dwelling or has a right to use the dwelling.

A dwelling includes a moveable dwelling in a moveable dwelling park and a manufactured home on a site in a residential park.

A shared pool includes a regulated pool situated on land on which a class 2 building is, or is to be, constructed.

Note: An example of a shared pool is a pool located in a unit complex, hotel, motel or backpacker hostel.

Swimming pool

A swimming pool means an excavation or structure:

- (a) capable of being filled with water to a depth of 300mm or more; and
- (b) capable of being used for swimming, bathing, wading, paddling or some other human aquatic activity; and
- (c) solely or principally used, or designed, manufactured or adapted, to be solely or principally used for the purposes mentioned in paragraph (b) despite its current use;
- (d) 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:
 - (e) a fishpond or pool solely or principally used, or designed, manufactured or adapted to be solely or principally used for ornamental purposes; or
 - (f) 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
 - (g) a watercourse; or
 - (h) a portable wading pool; or
 - (i) a spa bath situated in a bathroom, other than a spa bath continually filled with water to a depth of more than 300 mm; or
 - (j) a birthing pool used solely for water births.

Temporary fence

A temporary fence means a fence which is not a permanent structure, has at least one gate, otherwise complies with this part and is securely fixed to resist reasonably foreseeable actions to which it may be subjected.

Appendix 3 - Sample CPR sign



Appendix 4 - Extracts from QDC MP 3.4

Figure 1 - Typical cross-section of a compliant pool barrier

(Figure taken from QDC MP 3.4)

This is a compliant pool barrier.

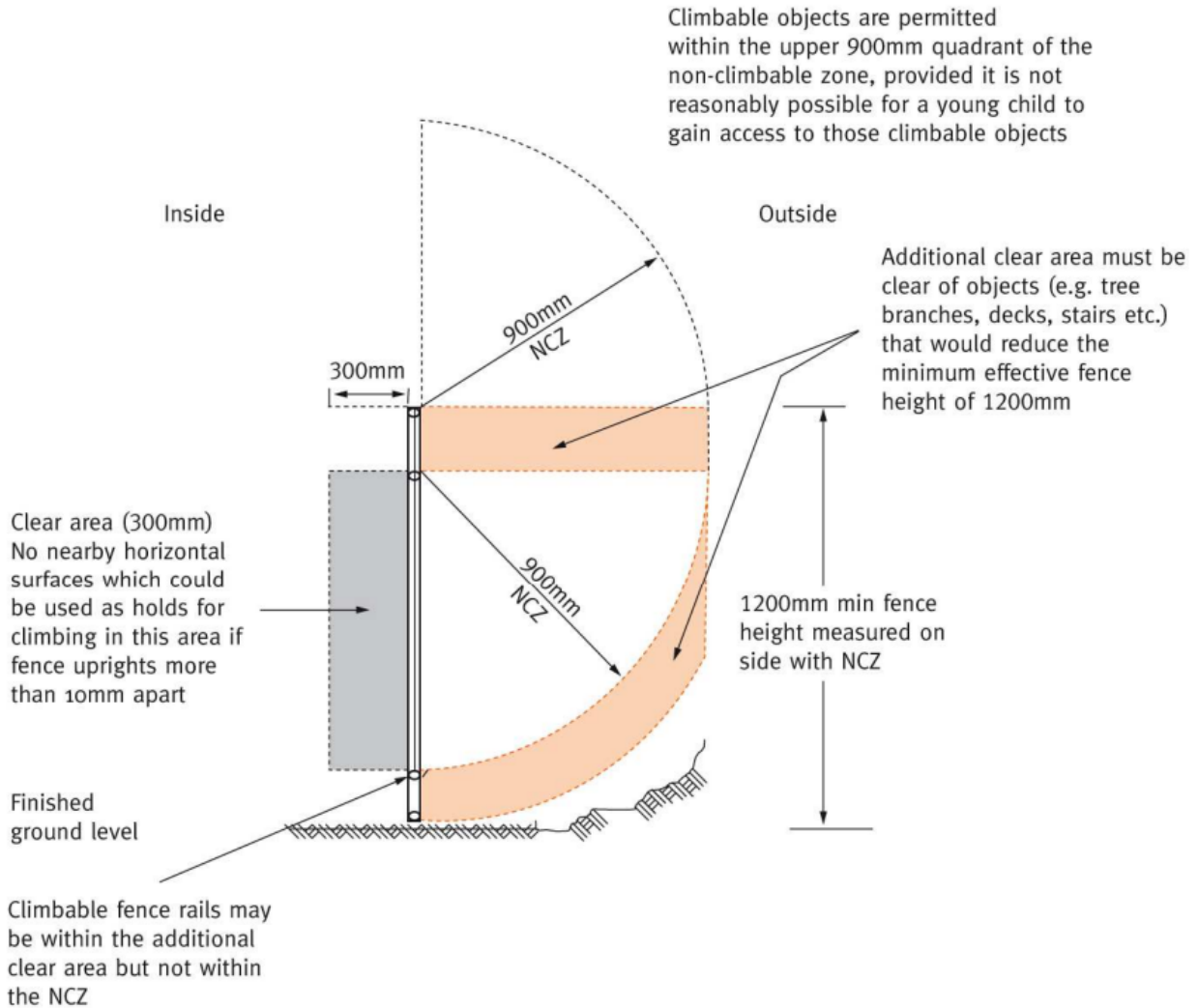


Figure 3
1200mm min high fence NCZ on outside
Acceptable

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

(Figure taken from QDC MP 3.4)

This is a compliant pool barrier.

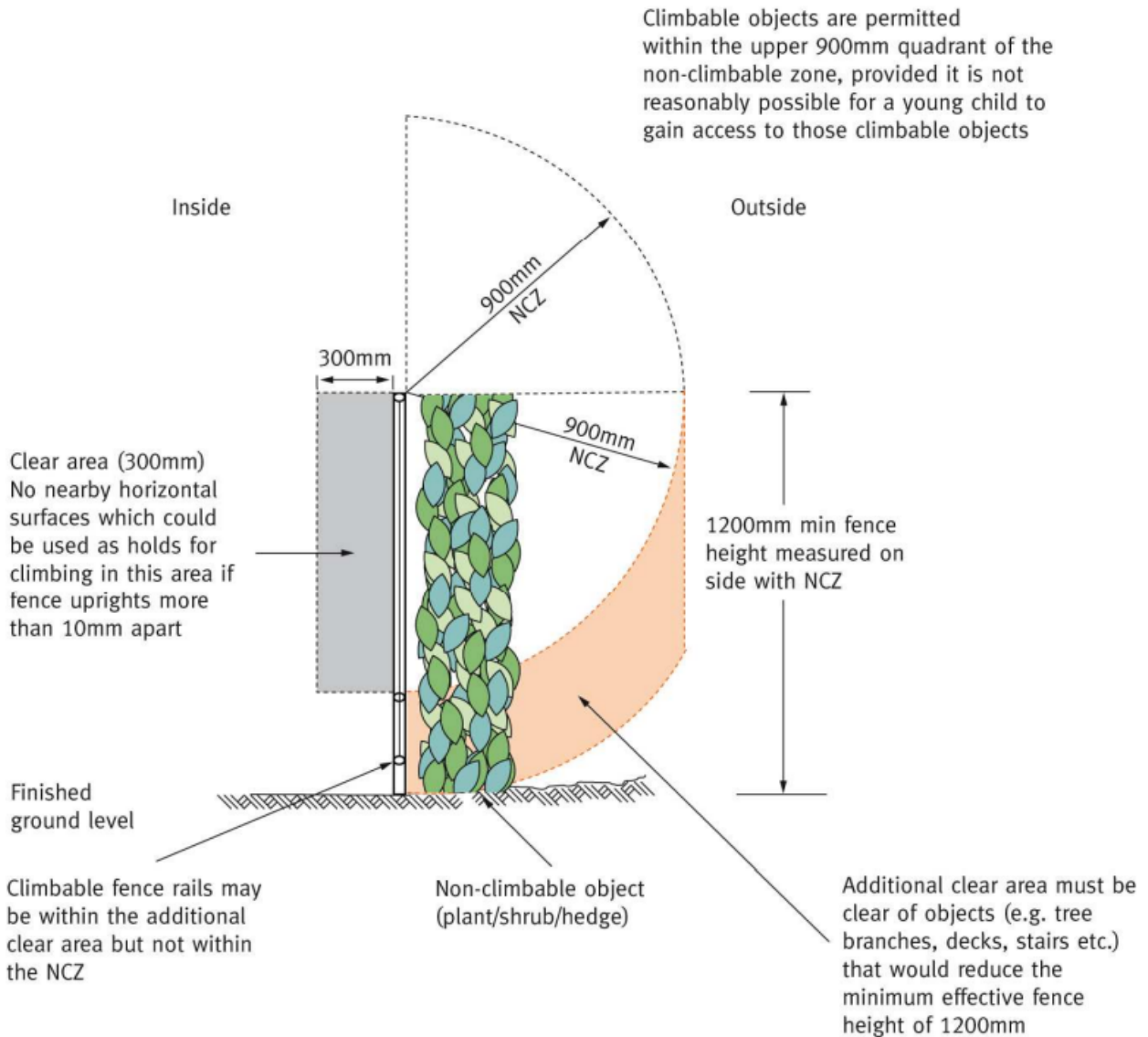


Figure 7
1200mm min high fence NCZ on outside
Acceptable

Figure 3 - A step in the non-climbable zone (NCZ)

(Figure taken from QDC MP 3.4)

This is **not** a compliant pool barrier, as highlighted below.

If the NCZ is provided on the outside of a fence, an additional clear area must be provided immediately adjacent to the outside to maintain its effective height.

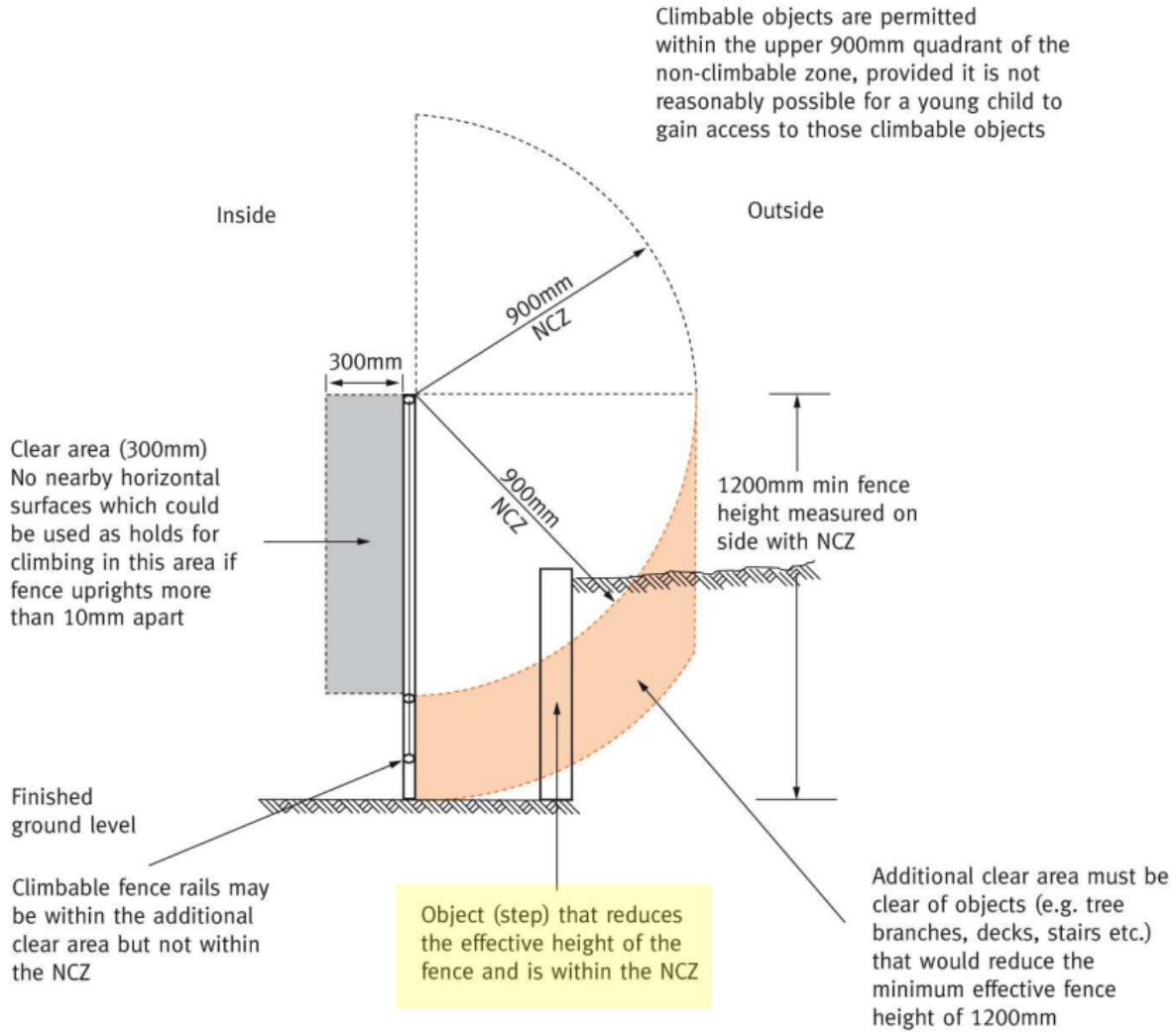


Figure 4
1200mm min high fence NCZ on outside
Not acceptable

Figure 4 - Providing the non-climbable zone (NCZ) on the inside or outside of a pool barrier 1800mm high

(Figure taken from QDC MP 3.4)

This is a compliant pool barrier.

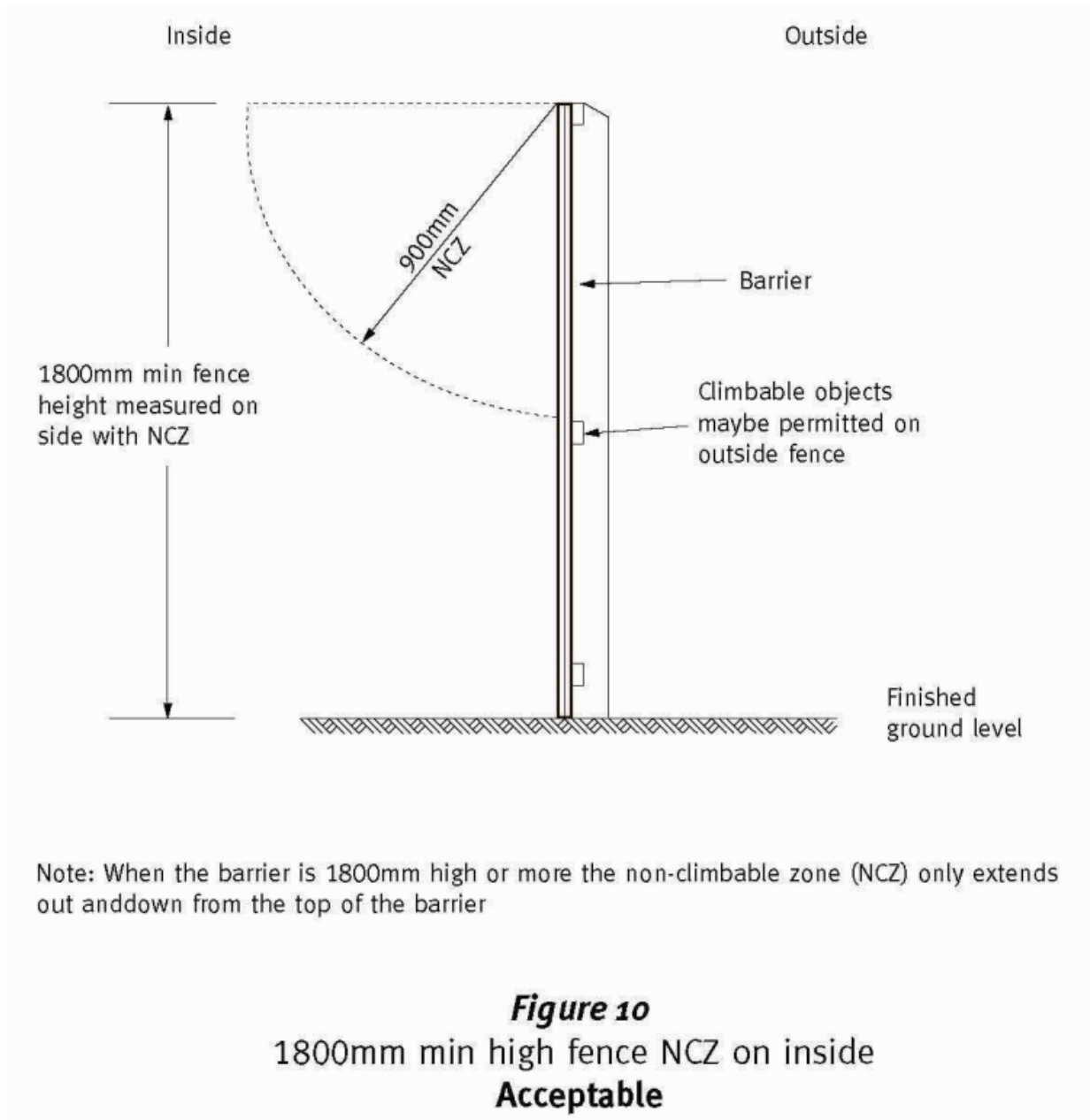
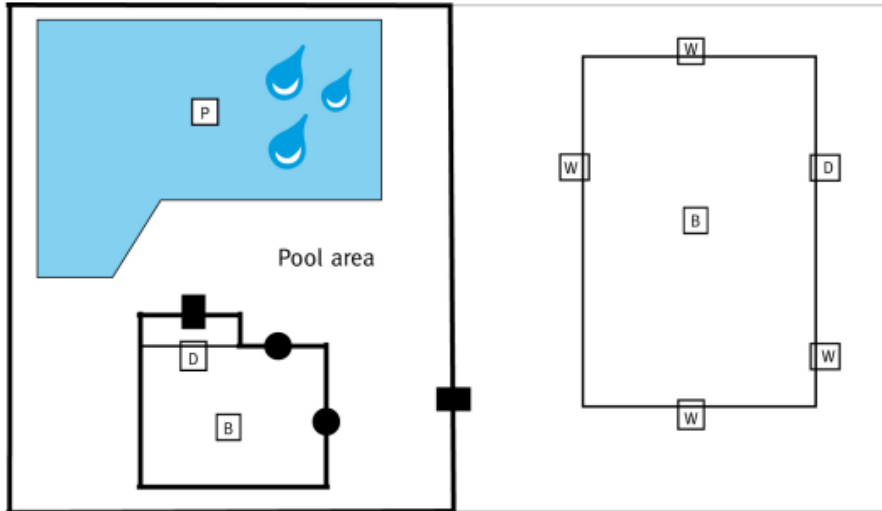


Figure 5 - Example of providing compliant fencing from a building

(Figure taken from QDC MP 3.4)

This is a compliant pool barrier.



LEGEND:

P Pool

B Building

D Door

W Window

Gate complying with this part

Child-resistant openable portion of window

— Property boundary

— Walls or line of the building

— Fence, retaining wall or other barrier complying with this part

If the building within the pool area is a patio, pergola, verandah, deck, balcony or the like (of any class) having at least one side permanently open, it is not required to have a barrier.

Figure 24

Access from a Class 1, 2 or 3 building or Class 4 part of a building within a pool area must be via a barrier complying with this part

Acceptable

Figure 6 - Acceptable vegetation

The photographs below depict examples of acceptable vegetation. However, the vegetation is too dense to allow climbing or to support a young child's weight. Small, thorny, or sharp branches also discourage climbing.



Appendix 5 - Sample pool safety checklist

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

Pool barrier		
	YES	NO
I have a pool barrier separating my pool from my neighbour's property that is at least 1.2m high all the way around or at least 1.8m high where there is something climbable on the outside of the barrier (i.e., the neighbour's side).	<input type="checkbox"/>	<input type="checkbox"/>
My pool barrier is well maintained – no holes, broken posts, or rails exist.	<input type="checkbox"/>	<input type="checkbox"/>
All the vertical rails on the barrier are no more than 100mm apart.	<input type="checkbox"/>	<input type="checkbox"/>
The bottom of my pool barrier is no more than 100mm off the ground all the way around.	<input type="checkbox"/>	<input type="checkbox"/>
My pool barrier is at least 900mm away from any object that would allow a child to climb over the barrier, such as BBQs, trees, rocks, shrubs, and 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 the 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 1.5m above ground level.	<input type="checkbox"/>	<input type="checkbox"/>
My gate latch is inside the gate and is 1.2m above ground level and at least 150mm 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 regulated pools 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 pool.	<input type="checkbox"/>	<input type="checkbox"/>