

Building and Plumbing newsflash number 498

Changes to the pool fencing law

Purpose

To advise that changes to pool fencing laws for existing outdoor pools associated with a house or townhouse (class 1a buildings under the National Construction Code) commenced on 27 July 2012.

Background

Previously, pool owners were required to obtain a building approval for pool fencing work except for prescribed minor repairs such as repairing, replacing or adjusting five metres of fencing or more than six fence posts. For a building approval, a building certifier is required to assess and approve the work.

Prescribed minor repairs are self-assessable (i.e. they can be done without a building approval) but must still comply with the relevant legislation and Queensland Development Code (QDC), including QDC Mandatory Part 3.4 — Swimming Pool Barriers (pool safety standard).

Changes to pool fencing laws

Fencing work not requiring a building approval

The Building Amendment Regulation (No.1) 2012 (the amendment regulation) inserted a new section 5 in Schedule 2C (now entitled 'Repairs, maintenance and other work') of the Building Regulation 2006 (BR). It provides that, in certain circumstances, building work for a fence forming the whole or part of a pool barrier for an existing non-shared pool for a house or townhouse does not require a building development approval.

- Where the pool is already a complying pool, the fencing work will not require a building approval if it is commenced after a pool safety inspector has been engaged to inspect the pool within three months of the engagement. The amendment regulation creates an offence for the pool owner to fail to have the pool inspected by a pool safety inspector within three months of the engagement.

Complying pools include pools for which a pool safety certificate has been issued, pools that have a valid building certificate and pools with no certificate, but which already comply with the pool safety standard.

- Where the pool does not comply with the pool safety standard, the fencing work will not require a building approval if a pool safety inspector has issued a nonconformity notice in relation to the pool. In this circumstance, the work must be conducted within the three month reinspection period of the nonconformity notice.

These changes only apply to existing pools. They do not apply to shared pools or where the fence is higher than two metres above the natural ground surface, subject to some exceptions.

It is an offence for a pool owner performing self-assessable works under a nonconformity notice, not to have the pool reinspected within the three month reinspection period of the nonconformity notice. It is also an offence for an owner performing self-assessable works to the barrier for a complying pool not to have the pool inspected by a pool safety inspector within three months from the day the owner arranged the inspection. The offence carries a maximum penalty of \$2000. It proposed to authorise local governments to issue on-the-spot fines for the offence of \$200.

No change to other pool safety requirements

It is important to note that these changes only determine whether a building approval is or is not required and do not impact on the requirements to obtain a pool safety certificate on sale or lease.

There is also no change to the work which a pool safety inspector may perform under schedule 2B.

Temporary fence approval changes

The regulation adopts a revised version of the pool safety standard which provides new requirements for use of a temporary fence that is used in conjunction with self-assessable work.

- The pool safety standard presently permits the use of a temporary fence instead of a permanent barrier for up to three months provided it is inspected and approved by a building certifier, and for further periods of three months if the building certifier had given written approval and is satisfied that the safety of young children would not be at risk if the approval were given. This still applies to work which requires a building approval.
- The standard has been amended for self-assessable work under section 5 of Schedule 2C. For these works, a temporary fence that complies with the definition of a temporary fence can be used instead of a permanent barrier for a period of up to three months. It may only be used for a second period of up to three months if a nonconformity notice has been issued for the pool and for subsequent periods of three months only if a pool safety inspector or a building certifier has given written approval.

Clarification on affixing shielding

Schedule 2C has been amended to clarify that an owner may install shielding to ensure that the pool complies with the standard, without the need for a building approval. This will apply where this work is done to ensure that the pool complies with the pool safety standard and regardless of the length of the shielding.

Legislation

- Building Amendment Regulation (No.1) 2012
- Building Regulation 2006

Contact for further information

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