

Guideline for pool safety inspectors

Guideline under the *Building Act 1975*

2024



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Scope

This guideline covers a range of topics relating to the application of Queensland's pool safety laws and the performance of pool safety inspection functions, including:

- the role of pool owners, pool users and premise occupiers, pool safety inspectors, the Queensland Building and Construction Commission (QBCC), local government and building certifiers
- 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 also assist pool safety inspectors in performing their functions.

Purpose of this guideline

This guideline's purpose is to assist pool safety inspectors (and building certifiers) to understand and perform their pool safety inspection functions under the *Building Act 1975* (BA) and the 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, including guidelines about complying with the pool safety standard and performing a pool safety inspection function.

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.

Section 246BF of the BA provides that in performing a pool safety inspection function, a pool safety inspector must have regard to the guidelines of the chief executive.

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 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 every swimming pool in Queensland that is a 'regulated pool'.

To determine whether a pool is a 'regulated pool,' first decide whether or not it is a 'swimming pool' and then determine whether the swimming pool is a 'regulated pool'.

If the swimming pool is a regulated pool, then the pool fencing legislation applies.

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.

Note: Not all swimming pools are regulated pools; only regulated pools must comply with the pool safety barrier requirements.

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 **each** of the following three 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

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 safety inspectors should be aware of their obligations under the BA.

The BA provides a number of circumstances where penalties may be incurred and/or disciplinary action may be taken against a pool safety inspector for breaches of the BA.

Where a penalty is not stated under the BA, failure to comply with pool safety inspection functions in the BA is not an offence but may still be grounds for disciplinary action.⁴ The QBCC may also allocate two demerit points⁵ for any demerit contravention under the relevant provisions.⁶

For more information about complaints and disciplinary proceedings against pool safety inspectors, refer to this guideline's [Investigations into pool safety inspectors](#) section.

For the definition of a 'ground for disciplinary action', refer to [Appendix 2 - Definitions](#) of this guideline.

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 upon. 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.

⁴ Section 246BD of the BA

⁵ Section 20 of the BR

⁶ Refer to the definition of 'demerit contravention' and 'relevant provision' under section 18 of the BR

Requirement if selling

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

- obtain a pool safety certificate and give a copy to the purchaser before settlement⁷
- notify prospective buyers that there is no pool safety certificate before entering into a contract of sale⁸ and notify the QBCC before settlement.⁹ For shared pools, the pool owner must also be notified before settlement.¹⁰ 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.¹¹

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.¹²

Note: Pool safety 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. A new certificate is not required after this period unless the property is 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 pool.¹³

There is no requirement to display pool safety certificates for pools that are not shared pools.

Pool safety certificates are available on the regulated pools register on the QBCC website [Pool Register | QBCC](#).¹⁴ Refer to this guideline's [Regulated pools register](#) section for more information about the regulated pools register.

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 certificate,¹⁵ or
 - notify the occupier, the owner of the shared pool and the QBCC that there is no pool safety certificate.¹⁶ 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.¹⁷

⁷ Section 246ATF(a) of the BA

⁸ Section 246ATM of the BA; section 28 of the BR

⁹ Section 246ATF(b) of the BA

¹⁰ Section 246ATF(c) of the BA

¹¹ 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

¹² 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

¹³ Section 246ATH(2) of the BA

¹⁴ Section 246AS of the BA

¹⁵ Section 246ATH(3) and (4)

¹⁶ Section 246ATI of the BA

¹⁷ Section 256ATG of the BA

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.¹⁸

Requirement to close pool gates and doors

Gates or doors that access regulated pools must be securely closed when not in use.¹⁹

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.²⁰

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 does not alter or damage the barrier
- altering a common boundary wall of a building.²¹

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.²² 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.

This definition establishes the limits of the pool safety inspector's role. They must act only within the scope of the powers provided by the BA.

The BA provides a number of provisions where penalties may be incurred by a pool safety inspector for breaches of the BA. Where a penalty is not stated under the BA, contravention of that section may be grounds for disciplinary action, the QBCC decides. For a list of potential disciplinary actions against a pool safety inspector, refer to this guideline's [Disciplinary actions](#) section. 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.

¹⁸ Section 246ATK(4) of the BA

¹⁹ Section 245T of the BA

²⁰ Section 245U of the BA

²¹ Section 245U(2) of the BA

²² Section 246BG of the BA

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 the pool safety inspector, it is preferable that these are 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](#).

Conduct

Code of conduct

A pool safety inspector must adhere to the *Code of conduct for swimming pool safety inspectors* (the code of conduct).²³ Contravention of the code of conduct may be grounds for disciplinary action under the BA.

A copy of the code of conduct can be found on the QBCC website [Code of Conduct | QBCC](#).

Acting in the public interest

A pool safety inspector must always act in the public interest, even if doing so would not benefit their client.²⁴ The term 'public interest' is a legal term defined as the interest to the public at large or a significant portion of the public.²⁵

A pool safety inspector would not be acting in the public interest if they do any of the following:

- seek, accept or agree to accept a benefit (whether their benefit or someone else's) as a reward or inducement to act other than as permitted under the BA
- act in a way contrary to the function of the pool safety inspector under the BA
- act outside the scope of their powers under the BA
- contravene the code of conduct
- act in a way, that is grossly negligent or incompetent about the pool safety inspector's practice.²⁶

The following are examples of how a pool safety inspector conducts themselves:

Example 1: A pool safety inspector must not give a pool safety certificate in return for obtaining a guarantee of conducting all pool inspections for a particular real estate agent.

Example 2: Where the purchaser engages a pool safety inspector to inspect a pool before signing the contract of sale, the inspector must not add unnecessary items to the nonconformity notice at the purchaser's request.

Example 3: The pool safety inspector must correctly apply the relevant laws and standards.

Conflict of interest

A pool safety inspector must not perform a pool safety inspection function if there is a conflict of interest.²⁷

For example, a pool safety inspector has a conflict of interest if they do any of the following:

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

²³ Sections 246AZ and 246BA of the BA; section 29 of the BR

²⁴ Section 246AX of the BA(1)

²⁵ Butterworths Legal Dictionary, 2001

²⁶ Section 246AX of the BA(2)

²⁷ Section 246AY of the BA

Investigations into pool safety inspectors

Complaints and audits

Pool safety inspectors should be aware of what constitutes grounds for disciplinary action. They are set out in full in schedule 2 of the BA and include each of the following:

- conduct that shows a lack of adequate judgement, diligence or care in performing pool safety inspection functions
- accumulating 16 demerit points in three years²⁸
- contravening the code of conduct
- conduct that is of a lesser standard than the standard that might reasonably be expected of a pool safety inspector by the public or the pool safety inspector's professional peers.

A person may complain to the QBCC about a pool safety inspector if they believe there are grounds for disciplinary action against them.²⁹

The QBCC has an auditing program to ensure pool safety inspectors maintain a high standard of ethical and professional conduct in performing pool safety inspection functions.

Mediation process

Where a complaint has been made against a pool safety inspector, the QBCC may recommend that the pool safety inspector and the complainant participate in mediation to resolve the matter.³⁰ Attendance at and participation in mediation is voluntary.

If the mediation process is successful and the parties agree to a resolution to the complaint, the complaint is taken to be withdrawn. It will not require investigation by the QBCC.

If the QBCC does not recommend that the complainant and the pool safety inspector enter mediation or the complaint is not resolved when the mediation ends, the QBCC must investigate the complaint as soon as practicable.³¹

Investigation process

The QBCC investigation process may involve each of the following:

- obtaining the complainant's version of events
- conducting a site inspection
- interviewing the pool safety inspector
- collecting all available evidence

After undertaking the investigation, the QBCC Commissioner must decide whether grounds for disciplinary action against the pool safety inspector have been established.

During an investigation or audit, an investigator may also require a pool safety inspector to produce or provide information about an offence or attend before an investigator to answer questions or produce documents. A pool safety inspector must comply with this request unless they have a reasonable excuse.

²⁸ Sections 18 and 19 of the BR

²⁹ Section 246CK of the BA

³⁰ Section 246CM of the BA

³¹ Section 246CO of the BA

Disciplinary actions

If the QBCC believes grounds for disciplinary action exist, they may do any of the following:

- reprimand the pool safety inspector
- impose conditions it considers appropriate on the pool safety inspector's licence or suspend the pool safety inspector's licence for a period of up to one year
- direct the pool safety inspector to complete the education courses stated by the QBCC
- direct the pool safety inspector to report on their practice to the persons stated by the QBCC
- require the pool safety inspector to pay a monetary penalty to the QBCC
- advise the pool safety inspector it does not intend to take any further action if the QBCC is satisfied that the pool safety inspector is generally competent and diligent
- require the pool safety inspector to refund some or all the fee paid to inspect a regulated pool.³²

A pool safety inspector may apply to review the QBCC's decision.³³ For further information about the review process, contact the QBCC.

The QBCC's contact details are:

web contact: [Internal review process | QBCC](#)
phone: 139 333
post: GPO Box 5099, Brisbane QLD 4001

If the QBCC considers that suspending or cancelling the pool safety inspector's licence for more than one year would be reasonable, it must apply to the Queensland Civil and Administrative Tribunal (QCAT) to do so.³⁴

Disciplinary proceedings

The QBCC may apply for QCAT to decide whether a ground for taking disciplinary action is established.³⁵ If an investigation is conducted, QCAT may make any appropriate order.³⁶

For more information on disciplinary proceedings, refer to QCAT's website [Discipline and regulation of professionals | QCAT](#).

Licensing

The QBCC regulates the application, renewal, restoration and replacement of pool safety inspector licences. For more information about pool safety inspector licences, visit the QBCC website [Maintain a pool safety inspector licence | QBCC](#).

A pool safety inspector licence remains in force for one year unless it is earlier cancelled, suspended,³⁷ or surrendered³⁸ under the BA.³⁹

Continuing professional development (CPD) requirements must also be met as part of the licence renewal process. For more information about CPD requirements, refer to the QBCC website [Continuing professional development—pool safety inspector | QBCC](#).

³² Section 246CY of the BA

³³ Section 86 of the *Queensland Building and Construction Commission Act 1991*

³⁴ Section 246CY(5)

³⁵ Section 246DA of the BA

³⁶ Section 246DC of the BA

³⁷ Refer to sections 246BV to 246C of the BA regarding cancellation and suspension of licences

³⁸ Section 246CD of the BA

³⁹ Section 246BL of the BA

Professional indemnity insurance

A pool safety inspector must have, among other things, a minimum limit of indemnity of \$1 million during one period of insurance that may arise from the performance by the pool safety inspector of a pool safety inspection function.⁴⁰ A complete list of requirements for prescribed professional indemnity insurance is contained in section 32 of the BR.

The QBCC does not have jurisdiction over insurers' or brokers' conduct. If a pool safety inspector has concerns about an insurer or broker's conduct, they may refer them to the relevant ombudsman.

QBCC role

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

The QBCC is responsible for each of 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'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 government performs several key functions relating to enforcing pool safety laws. Where a regulated pool is not a complying pool, local government can take necessary enforcement action to ensure the pool is made to comply. This may result from an inspection following receipt of an immersion notice from Queensland Health, a complaint notice or a notice from the QBCC. Local government may also cancel an existing pool safety certificate for a pool where it reasonably believes it is not a complying pool.

Local governments have other powers relating to pool safety laws, including the ability to decide and grant an exemption from a particular part of the pool safety standard based on disability or impracticality.

All local governments are required to provide a pool safety inspection service.

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

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.

⁴⁰ Section 32 of the BR

Building certifiers 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.

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.

A building certifier can issue a final inspection certificate for a new pool or other major alterations requiring a building development application. 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.⁴¹

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.**

Private certifiers must, in carrying out building certification work for a regulated pool, take appropriate enforcement actions against the owner of a regulated pool that does not comply with the pool safety standard where the owner has not taken, or is not taking appropriate action to ensure the pool complies with the pool safety standard.⁴²

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 private certifier must 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.

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

⁴¹ Section 246AP of the BA

⁴² Sections 246ATA and 246ATB of the BA

Only local governments, the department, building certifiers, and pool safety inspectors may request information to be entered into the regulated pools register. The QBCC maintains the register, and only the QBCC has authority to enter data into it.⁴³

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.

Further information is available on the QBCC website [myQBCC user guide for PSIs - pool register | QBCC](#). The user guide outlines instructions for issuing a pool safety certificate, including how to access and provide documentation to the property owner.

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 at the QBCC website [Pool Safety Inspector Search | QBCC](#).

The register's purpose is to provide local governments, the department, QBCC, pool owners, property agents, and the general public with a central source of information about pool safety inspectors.⁴⁴

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.⁴⁵

Inspection process

A pool safety inspector **must physically inspect a pool** before deciding if it complies with the pool safety standard. Exceptions may exist in specially declared remote areas.⁴⁶ 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 certificate⁴⁷ or a nonconformity notice⁴⁸ 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.

⁴³ Section 246AS of the BA

⁴⁴ Section 246CB of the BA

⁴⁵ Section 246CB(4) of the BA

⁴⁶ Section 246ACA of the BA

⁴⁷ Section 246AA of the BA

⁴⁸ Section 246AB of the BA

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.⁴⁹ 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.⁵⁰

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, 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 to 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](#)).⁵¹

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.

A pool safety inspector can only carry out minor repairs up to \$3300. If the cost exceeds \$3300, pool owners should check that the inspector has the appropriate QBCC licence to undertake the work.

Note: Refer to schedule 4 of the BR for the full list of minor repairs.

⁴⁹ Section 246AC(4) of the BA

⁵⁰ Section 246AC(5) of the BA

⁵¹ Section 231C of the BA

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 any specific right of entry powers and may only enter onto land to inspect a pool if invited by the pool owner or their agent.

Changing pool safety inspectors

If a pool safety inspector has given a pool owner a nonconformity notice, the BA prevents the pool owner from engaging 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

Entering a property

A pool safety inspector has no right of entry powers and may only enter onto land to inspect a pool if invited by the pool owner or their agent. For rental properties, specific entry requirements apply, refer to the Residential Tenancies Authority [here](#) for further information.

Obtaining relevant facts

When undertaking a pool safety inspection, a pool safety inspector must take all reasonable steps to obtain any information or documentation that may affect the assessment of the pool barrier. This information may include exemptions, variations or performance solutions that apply to the pool.

A pool safety inspector may need to seek a copy of a building approval or building development application for the pool, barrier or other building on the property to obtain information relevant to the pool. The pool safety inspector cannot refuse to issue a pool safety certificate for an otherwise complying pool because there is no development approval for the pool work.

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

Buildings permitted within a pool area

Standard modification 29 in schedule 1 and Figure 25 of QDC MP 3.4 provides that Class 5 to 10 buildings are allowed within a pool enclosure.

To determine the class of a building, a pool safety inspector should refer to the classification descriptions in the Part A6 of Building Code of Australia (BCA), which is Volumes One and Two of the National Construction Code (NCC).

If a pool safety inspector is unsure about a building's classification, they can ask the property owner for a copy of the certificate of occupancy. If the property owner does not know the classification, they may wish to enquire with their local council. If neither the property owner nor the local council can provide a certificate of occupancy, the pool safety inspector should consult a building certifier to nominate a classification for the purpose of the inspection using the BCA as a guide.

Example: Can a free-standing food/drink kiosk be located within the pool area of a hotel?

At the time of building approval, a building certifier would classify each building – the hotel is a Class 3 building, and a kiosk is a Class 6 building.

The kiosk may be located within the pool area, provided that access to the pool:

- from the hotel is restricted by a complying pool fence, and
- through the kiosk is not possible.

Note: Direct access cannot be provided to an outdoor pool area through a building of any class. Direct access to an indoor pool may be through a compliant child-resistant doorset or via another barrier that complies with QDC MP 3.4.

Nonconformity

If a pool safety inspector inspects a regulated pool to provide 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.⁵²

The nonconformity notice must state each of the following:

- that the pool is not a complying pool
- how the pool is not a complying pool
- what must be done to make the pool a complying pool
- that the owner may ask the pool safety inspector to reinspect the pool within three months after the giving of the nonconformity notice (the reinspection period)
- that it is an offence for the owner to ask, in the reinspection period, a person other than the following to inspect the pool for the giving of a pool safety certificate for the pool
 - if the owner initially asked the local government to inspect the pool, the local government
 - if the owner initially asked the pool safety inspector to inspect the pool, the pool safety inspector
- that the pool safety inspector must notify the local government if the owner does not ask the pool safety inspector to reinspect the pool within the reinspection period.⁵³

A nonconformity notice must include an information notice about the decision. An information notice is a notice stating each of the following:

- the decision, and the reasons for it
- all rights of appeal against the decision under the *Planning Act 2016*⁵⁴
- how the rights are to be exercised.

[Form 26 - Pool safety nonconformity notice](#) (Form 26) is the recommended form for a nonconformity notice. The pool safety inspector may issue their version of this form that meets the requirements of section 246AB of the BA and states each of the above.

⁵² Section 246AB of the BA

⁵³ Section 246AB(2) of the BA

⁵⁴ Refer to section 246AO of the BA, and section 229 and schedule 1 of the *Planning Act 2016* for more information about appeal rights for decisions about inspections of regulated pools and the giving of pool safety certificates

A pool safety inspector is not required to give the pool owner a nonconformity notice if:

- they reinspect the pool within two days after initial inspection and are satisfied that the pool now complies, or
- the owner and pool safety inspector agree that the pool safety inspector will carry out minor repairs within 20 business days of the original inspection, and the pool safety inspector has carried out the repairs.⁵⁵

If the agreed minor repairs are not undertaken by the pool safety inspector within 20 business days, or if they reinspect the pool within the two days and are not satisfied it complies, the pool safety inspector must, within a further two business days, give a nonconformity notice to the pool owner.⁵⁶

Pool safety inspectors are advised to keep documentation of agreements in the event the QBCC investigates a complaint regarding the failure to issue a nonconformity notice.

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.⁵⁷ If the owner fails to do this within five business days after the 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.⁵⁸

If the pool owner asks the pool safety inspector to reinspect the pool during the reinspection period, the inspector must do the reinspection within five business days, or later if agreed between the pool safety inspector and owner.

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.⁵⁹

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 timeframe. A nonconformity notice is not a pool safety certificate; an accommodation agreement cannot be entered into until the nonconformity is rectified and a pool safety certificate is issued.⁶⁰

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.

⁵⁵ Section 246AB(3) of the BA

⁵⁶ Section 246AB(4) of the BA

⁵⁷ Section 246AB of the BA

⁵⁸ Section 246AC of the BA

⁵⁹ Section 246AC(5) and (6) of the BA

⁶⁰ Sections 246ATG, 256ATH(3) and 246ATI of the BA

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 to provide a pool safety certificate and is reasonably satisfied the pool complies with the pool safety standard, they must give the owner a [Form 23 - pool safety certificate](#) (Form 23) within two business days of undertaking the inspection.⁶¹

Note: A Form 23 is only available for access on the regulated pools register or via a pool safety inspector's myQBCC account.

A pool safety certificate must have a unique identification number, be signed by the pool safety inspector giving the certificate and must be recorded on the regulated pools register by the pool safety inspector.⁶² 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.

Definition of a single property: All properties have a unique lot-on-plan number. For properties consisting of both individually owned units, and common land/property (for example owned by a body corporate), there will be multiple lot-on-plan numbers. One lot-on-plan number will exist for the common property and separate lot-on-plan numbers will exist for each unit.

If a pool safety inspector inspects one or multiple shared pools for a body corporate, they should issue one certificate for the common property. If a person in the unit complex requests an inspection for a pool that is not a shared pool on their individual property (for example, a private spa on a unit balcony), a certificate should be issued reflecting the lot on the plan for that unit alone.

Being 'reasonably satisfied'

A pool safety inspector may give a pool safety certificate for a regulated pool only if they have physically inspected the pool and are 'reasonably satisfied' that the pool is a complying pool.⁶³

The intent of the term 'reasonably satisfied' is not to permit departures or tolerances from the pool safety standard; rather 'reasonably' refers to the level of satisfaction that a pool safety inspector must have before determining that a pool complies fully with the standard.

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.

⁶¹ Section 246AA of the BA

⁶² Sections 246AD and 246AK of the BA

⁶³ Section 246AW(1) of the BA

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 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, the remote local governments listed in schedule 3 of the BR can declare parts of their area as remote by passing a resolution.⁶⁴ 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.⁶⁵ These local governments are not obligated 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.

Administrative and commercial issues

Record keeping

The BA requires a pool safety inspector to keep an inspection record, including any pool safety certificate and nonconformity notice given, for at least five years from the date a pool is inspected, unless the inspector has a reasonable excuse.⁶⁶

In addition to the above, the code of conduct requires the pool safety inspector to properly document reasons for decisions relating to their pool safety inspection functions.

Examples of documentation that must be kept include:

- fact findings, for example, reliance on the results of tests carried out
- details of any exemptions, variations, appeals or alternative solutions that apply to the pool
- photographs, video recordings, drawings and reports.

It would be prudent for a pool safety inspector to be able to substantiate any decision made regarding a pool safety inspection. This may involve keeping comprehensive records of areas of nonconformity or key compliance areas of the pool barrier, such as gate latches and spaces between vertical members.

Furthermore, a pool safety inspector should consider duplicating or making 'backup' records, such as taking written notes at an inspection in addition to dictation on a mobile phone or similar device. The QBCC may ask a pool safety inspector to produce this justification as part of an investigation, for example, where the local government has disputed the validity of a pool safety certificate.

⁶⁴ Section 26 and schedule 3 of the BR; section 246ACA of the BA

⁶⁵ Section 246ACA(2) of the BA

⁶⁶ Section 246AD of the BA

Fees

The BA does not prescribe a fee that pool safety inspectors must charge for a pool safety inspection. Inspection and possible re-inspection charges are matters of negotiation between the pool safety inspector and the pool owner. The time required to undertake an inspection should be reflected in the fees charged, ensuring that underpayment and overpayment are avoided.

The code of conduct prohibits pool safety inspectors from charging excessive or unreasonable amounts for minor repairs or work performed as part of or incidental to inspection functions.

Pool safety inspectors must abide by the professional, moral and ethical standards expected by the community. They should be mindful of this when stipulating the details of any agreement with a client.

Withholding a pool safety certificate

Not paying an account is a contractual matter between a pool safety inspector and the pool owner. If the pool complies, the pool safety inspector must provide a certificate as required under section 246AA of the BA, whether or not they have been paid.

Compliance and technical considerations

Materials

Pool barriers can be made from various materials in various configurations. It is the responsibility of the pool safety inspection to be familiar with trends throughout the pool industry over time, as pool safety inspectors may have to inspect fences ranging from decades-old to more contemporary barriers.

A nonconformity notice must contain information about what must be done to make the pool a complying pool. Familiarity with ongoing trends and developments is important in assisting an inspector to provide various options to make barriers of all ages and configurations compliant with the pool safety standard.

Strength and rigidity (metal barriers with vertical members)

When assessing the strength and rigidity of a barrier, pool safety inspectors should consider whether the barrier is sufficiently strong and rigid to resist access by a child.

Pool safety inspectors should consider the following when assessing pool barriers that are metal fence panels with vertical members.

Assessment methods

Pool safety inspectors should conduct each of the following to assess the strength and rigidity of the barrier.

Visual inspection

A visual inspection will detect whether some members in an otherwise conforming fence have been widened after installation, for example, by an impact such as a ball being kicked into the fence. Inspectors should also be mindful that some older fences will have a 100mm gap between vertical members. These fences are more likely to fail a strength and rigidity test than a recently designed fence with an 80mm gap. Accordingly, for a fence with 80mm gaps, a greater amount of deformation would be allowed for a compliant fence.

Manual 'squeeze test' of vertical members

The pool safety inspector should use their non-dominant (weaker) hand at the midsection of the vertical members and at a randomly selected fence panel. Where the fence appears to be constructed from different types of panels or from panels that have been added to the fence at different times, a pool safety inspector should check each type of panel. The squeezing action should be a moderate-strength action equivalent to

the pressure applied during a firm handshake, not a vigorous or full-strength squeezing action. The pool safety inspector should remember that the required level of resistance to a deforming force only needs to be sufficient to deter a young child from pushing through the barrier.

The 'squeeze' test, which involves manually squeezing upright members together, is conducted at random locations along the fence to show the ease with which the fence can be deformed. The test results could be sufficient to decide whether the barrier would appropriately restrict young children's access and meet the pool safety standard.

AS1926.1-2007 limits spacings to 100mm. It requires the spacing to be maintained below 105mm under a deforming force of up to 150 newtons that is applied by the conical end of a 105mm diameter cylindrical solid-faced test object being pulled through the midspan of a fencing panel. The application of the testing for strength and rigidity described in Appendix A of the AS1926.1-2007 is impractical for maintenance testing in the field.

Pool safety inspectors should use the squeeze test described above for field testing. A pool safety inspector may accept that vertical members remain compliant where the horizontal deformity of vertical members in a direction away from the next adjacent vertical member that is not being squeezed does not result in a gap that exceeds 105mm.

Pull-through cone test

A manual pull-through cone test may be used to determine a barrier's strength and rigidity. However, the test does not replicate the laboratory conditions specified in Appendix A of AS1926.1-2007.

Using an in-situ pull-through test is not recommended unless further testing is indicated after the visual and squeeze tests. Although a pull-through test may provide additional evidence, the on-site pull-through test results are not conclusive.

Depending on how the pull-through cone test is applied, the results may vary, and consequently, the readings may be inaccurate and incorrectly indicate the failure of a compliant barrier. Tests should be done with properly calibrated equipment. Pull-through tests should be conducted at the correct angle, at the panel's midspan, and with an evenly applied and steadily increasing force.

If the pool safety inspector considers that the vertical members fail, taking into account the limitations on the mechanical device used to conduct the test, the pool safety inspector may require further testing or replacing the non-compliant panels with compliant panels. Alternatively, sheeting material may be affixed to the fence to cover the vertical spacings to increase rigidity. Examples of sheeting material include flat aluminium plate and polycarbonate and acrylic sheeting. Where a pool safety inspector advises a pool owner to affix a horizontal rail to the vertical members to increase rigidity, a 900mm non-climbable zone (NCZ) needs to be maintained.

Conclusion from testing results

Where the pool safety inspector follows this procedure and is satisfied the vertical members pass the visual inspection and squeeze tests, it is reasonable for the inspector to conclude that the fence complies with the pool safety standard's strength and rigidity requirements without further testing.

Where the pool safety inspector considers the visual inspection and squeeze test results are inconclusive, they may request the owner obtain evidence of suitability from the manufacturer. Although there is no approved form under the BR for the manufacturer/supplier/installer of products to provide to the pool safety inspector, it is at the discretion of the inspecting person whether to accept an industry certificate/document or manufacturer's statement to support the compliance of the product installed.

If evidence of suitability is available, the pool safety inspector may reasonably accept that the fence panel containing the vertical member complies with the pool safety standard's strength and rigidity requirements without further testing. Where the building certifier/pool safety inspector considers the visual inspection and squeeze test results inconclusive and evidence of suitability is unavailable, an additional step for testing may be regarded as using an in-situ mechanical test.

Rigidity of windows using reinforced glass

Section D2(d) of Appendix D in AS1926.1-2007 states that it is necessary to ensure that sheet material, including reinforced glass, is sufficiently rigid and adequately fixed to its frame.

The pool safety standard does not require glass components forming part of a pool barrier to display any particular safety or identification markings. These components may comply with the pool safety standard despite having no safety or identification markings. Generally, windows installed in Australian buildings meet a specific wind-load rating, which exceeds the pool safety standard requirements for a window used as a component of a pool barrier.

In general, if there is no deformity in the glass, it is reasonable for a pool safety inspector to be satisfied that it is sufficiently rigid. If a pool safety inspector is not reasonably satisfied that the glass components comply with the strength and rigidity requirements of the pool safety standard, the pool safety inspector may request that the pool owner obtain a report from a suitable expert. This could include a professional glazier, who may certify that the glass complies with the relevant requirements of the pool safety standard or provide options for achieving compliance, such as installation of security screens.

Wet edge or infinity edge pools

A 'wet edge' or 'infinity edge' pool gives the illusion that the pool water extends into the horizon and vanishes; refer to **Photograph 1** below. These types of pools often have water running over the edge of a pool into a holding tank or filter tank. These tanks are essential to the pool's normal operation and, although not intended for swimming or aquatic activity, are considered part of the pool. Where holding tanks have a depth of 300mm or more, they must have a complying barrier. Where the holding tank has a depth of less than 300mm, the side of the pool above this tank must meet the requirements for a barrier contained in the pool safety standard if a pool barrier does not prevent access to the side of the pool. For example, the poolside must provide a minimum height of 1200mm and a 900mm NCZ.



Photograph 1: A 'wet edge' or 'infinity edge' pool

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).

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.

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

Climbable vegetation

The pool safety standard specifically allows bushes that are non-climbable to be located in the NCZ. Figures 8 and 9 of the QDC MP 3.4 provide details of climbable and non-climbable trees. Each of the following is also considered acceptable:

- Bushes with dense, spiked, thorned, rough, or otherwise irritating or hindering foliage that would deter a young child from climbing are acceptable. They are acceptable even where the bushes conceal or contain thick branches that could hold a young child's weight, provided the branches are impractical for a young child to reach or use to climb the barrier.
- Bushes or shrubs that are fragile crush easily or are so weak that a child cannot climb them.
- Thick bushes that provide an additional obstacle and prevent the child from seeing the pool make that barrier more effective.
- Palm fronds that bend easily so that they will not support a child's weight.
- A bush, shrub or tree with a thick (more than 10mm width and substantially horizontal) exposed branch in the NCZ is acceptable if the substantially horizontal branch is removed. The bush, shrub or tree does not need to be removed. Stumps or bushes that are cut back may be climbable, and retaining foliage that will deter young children or remove exposed stumps is preferable.

Where bushes, shrubs or trees remain inside a NCZ, owners are responsible for monitoring them and trimming any substantially horizontal branches that become exposed to prevent children from climbing them.

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 their 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.

Additional clear area

The QDC MP 3.4 requires the inclusion of an ‘additional clear area’ where the barrier is less than 1800mm high. The ‘additional clear area’ must be free of objects (tree branches, decks, stairs, rocks, etc.) that would reduce the minimum effective fence height of a barrier to less than 1200mm. Part of a pool safety inspector’s responsibility is to identify these additional clear areas and be familiar with the restrictions applying in these areas.

The ‘additional clear area’, which is 300mm wide, is adjacent to the NCZ. It can be a single width, as depicted in Figure 1 of the QDC MP 3.4, or two separated widths, as depicted in Figure 3 of the QDC MP 3.4, so long as the effective fence height equates to 1200mm.

The following figures are from QDC MP 3.4.

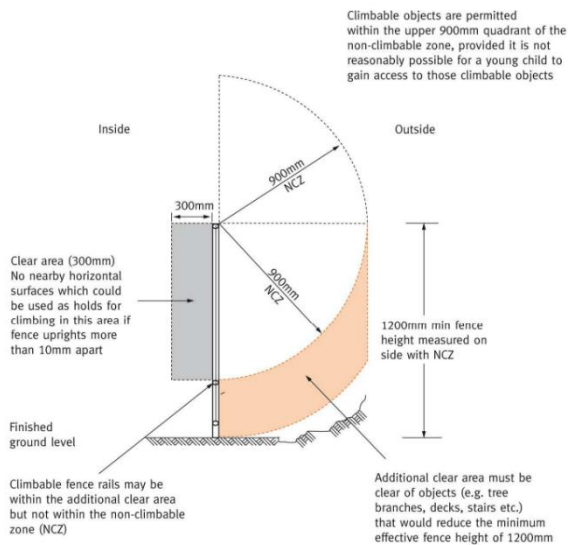


Figure 1
1200mm min high fence NCZ on outside
Acceptable

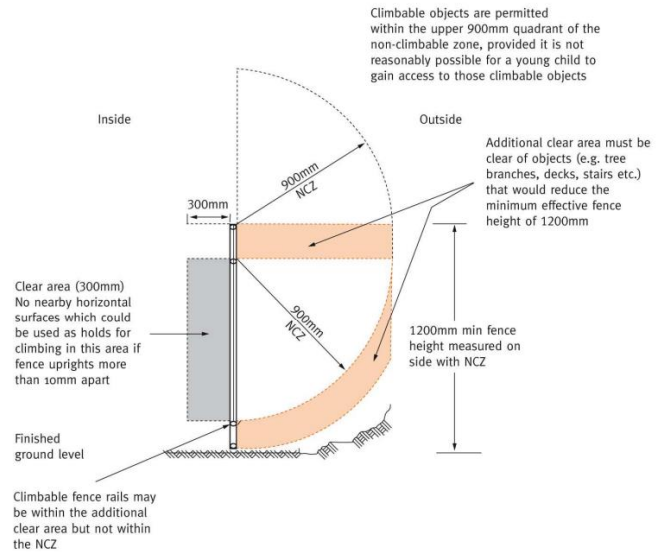


Figure 3
1200mm min high fence NCZ on outside
Acceptable

Unlike the NCZ, the ‘additional clear area’ may have climbable objects within the area, so long as they do not reduce the effective height. For example, climbable fence rails may be within the ‘additional clear area’ but not within the NCZ. The effective height of the fence is the measurement from the ground level to the top of the barrier. Objects that would reduce the effective height of a 1200mm fence could include furniture, large rocks, decks or stairs, and these items are not permitted within the ‘additional clear area’.

To measure the 'additional clear area' at the base of a barrier:

- extend a tape measure 900mm perpendicular to the base of the fence on the side of the NCZ
- mark the 900mm distance to identify the true vertical mark
- mark the tape at 1200mm and extend the tape from the top of the fence
- hold the tape above the true vertical mark
- make an arc with the tape towards the fence
- this will indicate the bottom of the additional clear area.

Taps, power outlets, etc. within the additional clear area of the pool barrier

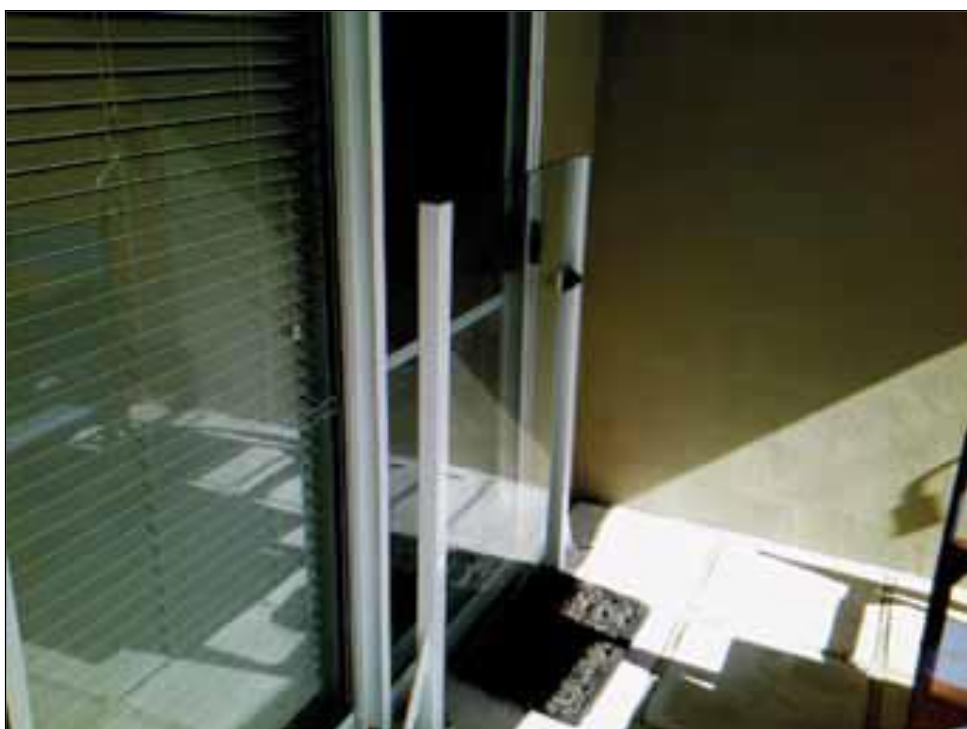
The QDC MP 3.4 states, 'the additional clear area must be clear of objects that would reduce the minimum effective height of 1200mm'.

A pool safety inspector is responsible for making this determination, case by case. For example, objects like taps or power outlets with a projection or indentation of more than 10mm are generally considered climbable but may not reduce the effective height. Objects such as rocks, decks, and stairs within an additional clear area can reduce the effective height because if the height of the fence is measured from the surface of the rock, deck, or stair to the top of the barrier, it would be less than 1200mm.

Chameleon gates

Chameleon gates do not meet the requirements of the pool safety standard and are not permitted to be used in any part of a pool barrier for outdoor pools.

A chameleon gate is a free-standing structure located outside the building line of a house but so close to the house that, when closed, it provides a complete barrier to anyone seeking to exit the house via the opened door (refer to **Photograph 2**).



Photograph 2: Example of a chameleon gate (photograph provided by Phil Montague)

On 17 January 2005, the Queensland Planning and Environment Court (the P&E Court) in [2005] QPEC 001 considered an appeal concerning a development application for a regulated pool and fencing which included 'chameleon pool gates' as part of the fencing. The matter concerned a development application for a pool and fencing at Twin Waters, particularly installing 'chameleon pool gates' as part of the fencing. The local government refused the application upon the basis that the 'gates' in question were, in reality, 'child-resistant doorsets', which are not permitted to be used in Queensland for outdoor pools.

In this case, the P&E Court found that the chameleon gates provided direct access to the pool area from the building, which is not permitted in Queensland.

Although the decision was made some five years before the commencement of the current pool fencing laws (on 1 December 2010), the relevant law regarding 'direct access' has remained unchanged under the current law.

For an acceptable way to provide access from a building to a pool area, refer to [Appendix 4 - Extracts from QDC MP 3.4: Figure 5 - Example of providing compliant fencing from a building](#) of this guideline.

Leaf (swing) gates

Leaf gates can comprise one or two gate leaves, hinged to a fixed point (vertical pillar or post), and can be opened manually or remotely by electronic means.

Under the BA, all pool gates must be self-closing and fitted with a latching device that automatically operates when the gate closes and prevents it from being reopened without being manually released. A twin-leaf gate can only be self-closing and self-latching if one of the leaves is permanently fixed or there is a permanent post or fixture between the two leaves (gates), and each gate leaf is self-closing and self-latching.

Padlocks or drop bolts are not satisfactory for permanently fixing one side for this purpose. A masonry anchor or its equivalent is necessary. Any type of gate that does not self-close and self-latch in accordance with AS1926.1-2007 is not compliant.

Splash-proof fencing

Under the QDC Mandatory Part 1.1 and Part 1.2, a splash-proof barrier must be present if the pool is within the required setback to a boundary fence (refer to **Diagram 1**). Splash-proof fencing is not part of the pool safety standard.

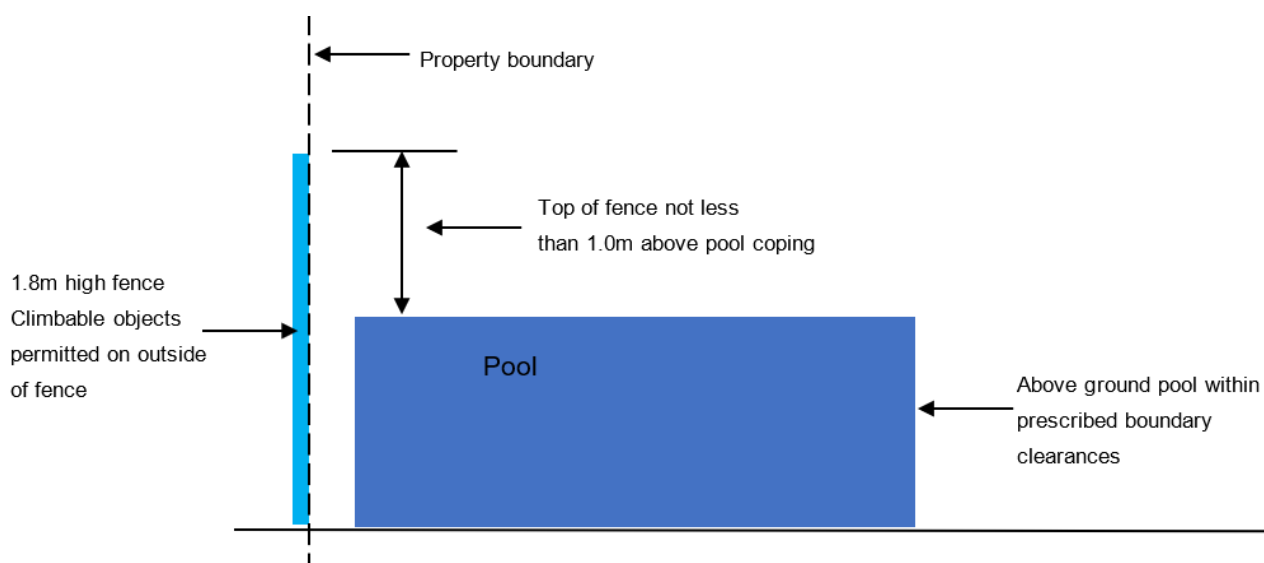


Diagram 1: Splash-proof barrier

The 'splash-proof barrier' must be a solid wall or fence constructed to prevent water entry onto adjoining lots. It must be at least 1800mm high above finished ground level and erected between the pool and the boundary of the lot. The top of the barrier must be at least 1m above the top of the pool coping.

A pool safety inspector cannot decline to give a pool safety certificate solely based on a failure to provide such a barrier. This is provided as general information only.

Fillets for barriers

Section 2.3.4 of AS1926.1-2007 and standard modification 13 of QDC MP 3.4 refer to horizontal climbable members in a barrier less than 1800mm in height. These sections provide that horizontal members cannot be within the NCZ, where the components are located outside the fencing and could be used as holds for climbing. It also states that if the vertical members are spaced to allow an opening greater than 10mm in width, the horizontal members must be a minimum of 900mm apart.

Clause 2.3.5 of AS1926.1-2007 provides an alternative to compliance with clause 2.3.4. It permits the use of fillets on the horizontal members to prevent a child from climbing and the use of vertical member spacings of no more than 10mm. The use of a fillet in these circumstances is depicted in Figure 2.4 of AS1926.1-2007. The top edge of a fillet that complies with Figure 2.4 forms a point and, as such, is not climbable.

Indentations and projections

Clause 2.3.3 of AS1926.1-2007 allows indentations and projections in the NCZ that are no more than 10mm.

The top edge of fillets and projecting clips on downpipes that are no more than 10mm in depth, or are not substantially horizontal, are acceptable under the pool safety standard.

Horizontal surfaces with no more than 10mm depth but a width greater than 10mm should be considered case-by-case for climbable aspects, such as footholds. For example, objects such as cable ties are acceptable if they are no more than 10mm wide or do not provide a substantial foothold or handhold. It would generally be reasonable to conclude that a young child could not use a 12-mm cable tie, affixing a CPR sign to a pool barrier, as a toehold to support their weight.

When assessing whether an object, such as a cable tie, is climbable, its sharpness, material, angle, and strength should be considered.

Measuring the effective height of a loop fence or gate

The effective barrier height must be at least 1200mm. Where the fence, gate panel, or barrier has a horizontal surface at the top and bottom, the effective height is measured perpendicular to the finished ground level.

It is more difficult to identify where the top of the effective height is located on a curved surface, such as a loop fence or gate.

The clear space between vertical members must not exceed 100mm at any point.⁶⁷ Therefore, if a measuring tape is placed on the ground and a measurement is taken to a height of 1200mm, no vertical gaps should exceed 100mm. If the loop at the top of the fence or gate generally creates gaps greater than 100mm, the measurement should not be taken at the top of the loop.

The height should be measured from the finished ground level to the point where the curvature begins at the top of the fence or gate, as demonstrated in **Diagram 2** below.

⁶⁷ Section 2.3.7 of AS1926.1-2007

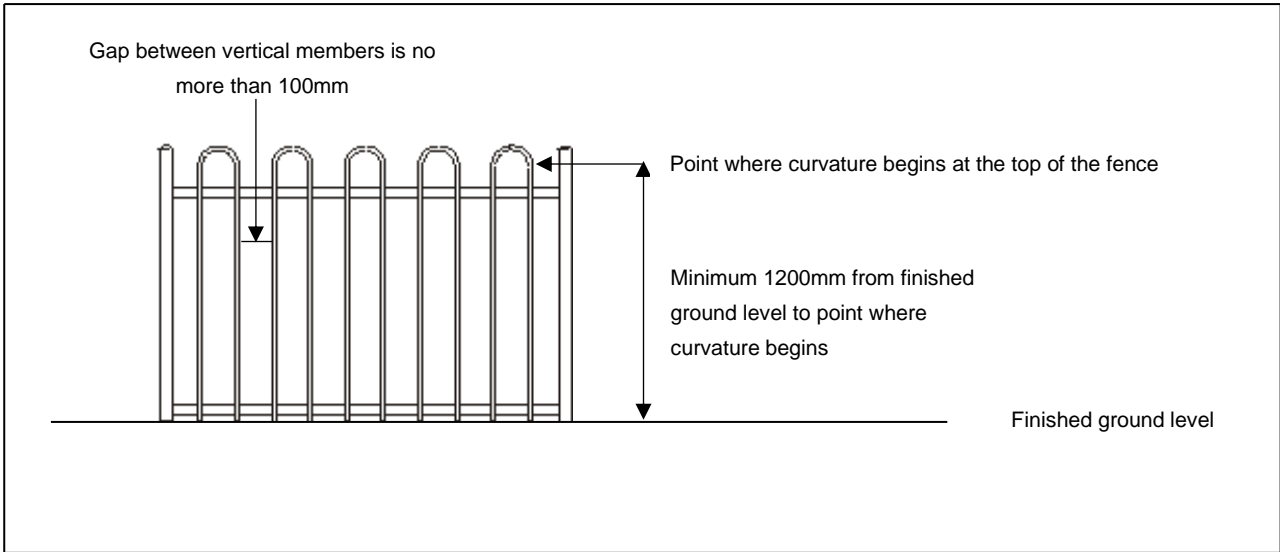


Diagram 2: Measuring the effective height of a loop fence or gate

Resuscitation sign (CPR sign)

A CPR sign must be displayed at all regulated pools.⁶⁸

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 2016.⁶⁹

Each statement or diagram on the CPR sign must be clear and legible, and made of durable and weatherproof material.⁷⁰

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

Entrapping spaces

Among other hazards, a barrier shall be free of entrapping spaces.⁷¹

An entrapping space is a space where a child could trap a part of their body in a way that could potentially cause serious injury or death. An example of an entrapping space could be a gap between the top of a gate support post and an adjacent fencing panel. If a child attempts to open the gate latch with the aid of a chair, the child may fall and trap the child's head in this space. This entrapment space has the potential to cause serious injury or death.

Note: The gap between loops in a loop fence or gate is not an entrapping space.

⁶⁸ Section 13(2) of the BR

⁶⁹ Section 13(3) of the BR

⁷⁰ Section 13(4) of the BR

⁷¹ Section 2.2 of AS1926.1-2007

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 work scope. The application can be lodged with the local government or a private certifier.

In this situation, pool safety inspectors should advise owners to contact their local government or private certifier to discuss the procedures and charges.

The QBCC will remove a pool from the 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 refer to 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 requires significant building work, which requires 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.⁷² 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.

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.⁷³ 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 other 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.

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.

⁷² Refer to Schedule 1 of QDC MP 3.4

⁷³ Refer to Schedule 1 of QDC MP 3.4

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.⁷⁴ 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.⁷⁵ 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. The boundary fence must be a minimum of 1200mm high and have a complying NCZ. It is important to note, 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 inside or outside.⁷⁶

Generally, a dividing fence along a common boundary may also be used as part of a pool barrier if the pool owner and the adjoining owner agree or QCAT orders that the fencing work be carried out.

If the adjoining owner does not agree to carry out the fencing work, the pool owner may still construct part of the pool barrier along the common boundary if each of the following apply:

- the pool barrier complies with the pool safety standard
- the part of the pool barrier along the common boundary will, when complete, be a sufficient dividing fence
- the pool owner gives the adjoining owner a [Form 39 - Notice of proposed fencing work for a pool barrier](#).

A wall of a building along a common boundary may also be used as part of a pool barrier. Where any part of the wall does not meet the requirements of the pool safety standard, the pool owner may need to construct a separate barrier. Any alterations, demolition or replacement must be with the agreement of the owner of the adjoining land.

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.

⁷⁴ Section 57 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

⁷⁵ Section 58 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

⁷⁶ Refer to QDC MP 3.4, standard modification 6(b).

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.

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

Other considerations

Electrical safety

Electrical safety requirements apply to all electrical equipment, pool fencing support structures and other fixed conductive material near a pool. They also cover fencing erected after the pool electrical equipment and ancillary fittings have been installed.

In general, pool fences and support structures closer than 1250mm to regulated pools may require the connection of an equipotential bond (earthing). Equipotential bonding joins all the conductive parts in and near the pool, such as the steel reinforcing in the shell and handrails, to an earthing point. This greatly reduces the risk of electric shock should an electrical fault occur. The installation of an equipotential bond is electrical work and may only be undertaken by a licensed electrical contractor.

The Wiring Rules Standard (Australian Standard 3000) outlines the specific requirements. The requirements depend on a number of factors, including, but not limited to, the arrangement of electrical equipment associated with the pool (such as pool pumps and filters), the existence of an equipotential bond to the reinforcing metal of the pool shell, when the pool fence was installed, and the distance the pool fence is away from the pool. Only a licensed electrical contractor can assess compliance with the Wiring Rules.

To ensure workplace health and safety, pool safety inspectors performing minor works on metal and other conductive pool barriers must be mindful of the barrier's correct earthing. For example, a pool safety inspector may insist on evidence of correct earthing before undertaking minor repairs.

Compliance with the pool safety standard is a separate matter from compliance with the Wiring Rules. Consequently, a pool barrier cannot be deemed noncompliant with the pool safety standard solely because it does not satisfy the Wiring Rules.

Asbestos

Some pool fencing, especially older barriers, may be constructed from hazardous materials such as asbestos. The Queensland Government has strict requirements for removing and working with asbestos and asbestos products. Pool safety inspectors should be aware of the *Work Health and Safety Act 2011*, subordinate legislation and standards if working around fencing constructed of hazardous materials.

For more information on asbestos, refer to the Queensland Government's Asbestos website [Asbestos | Queensland Government](#).

Fire safety

In some circumstances, pool safety laws may impact fire safety measures. A more detailed analysis is required in these cases to develop a solution that accommodates the separate laws. For example, if a building's fire exit provides direct access to an outdoor pool area, a barrier may be required between the pool area and the fire exit to satisfy the pool safety standard.

Fire doors and exits must be marked in accordance with the BCA. Under no circumstances should a fire door or exit be locked or blocked to meet the pool safety requirements. If a pool safety inspector is unsure whether the pool safety requirements will interfere with fire safety measures, they should contact a building certifier for specific advice.

In some instances where it is impossible to meet the requirements of both the pool safety laws and the fire safety laws, the pool owner may apply to their local government for an impracticality exemption (refer to this guideline's [Exemptions, performance solutions and variations](#) section).

Minor repairs, maintenance and other work on a pool barrier

Pool barriers need to be maintained to reduce the risk of 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.

Before performing fencing works, pool owners must ensure that any necessary approvals are obtained from a private certifier or a local government.

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 standard⁷⁷ and 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.⁷⁸

These repairs do not require building development approval.⁷⁹

Pool owners and others, including contractors, can also undertake minor repairs arising from a pool safety inspection by a pool safety inspector.⁸⁰ These repairs do not require building development approval, provided that a pool safety inspector issues a pool safety certificate for the minor repairs.⁸¹

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 NCZ works - within certain limits and under certain circumstances - to a regulated pool. This work involves 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.⁸² NCZ works must be carried out to ensure young children cannot climb the barriers for the pool.⁸³ A pool safety certificate is not required for both maintenance and NCZ works.

⁷⁸ Section 246BE of the BA

⁷⁹ Schedule 1, section 1(2)(a)(i) of the BR

⁸⁰ Sections 231C(b) and 246AU of the BA

⁸¹ Schedule 1, section 1(2)(a)(ii) of the BR

⁸² Schedule 5, sections 1(1)(a), 2(1) and 3(1) of the BR

⁸³ Schedule 5, section 4(1) of the BR

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.

Both maintenance works and NCZ works do not require building development approval.⁸⁴

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.⁸⁵

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.⁸⁶

This work does not require a building development approval.⁸⁷

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

Exemptions, performance solutions and variations

Exemptions

If a valid disability or impracticality exemption is in place for a property, a pool safety inspector must consider this when assessing the pool barrier's compliance with the pool safety standard. Local governments must keep a record of each exemption granted, and pool safety inspectors can check with the local government to confirm whether an exemption is in force before an inspection.

⁸⁴ Schedule 1, section 1(2)(b) of the BR

⁸⁵ Schedule 5, section 5(2) of the BR

⁸⁶ Schedule 5, section 5(2)(c) of the BR

⁸⁷ Schedule 1, section 1(2)(b) of the BR

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.⁸⁸

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.⁸⁹ 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.⁹⁰

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.⁹¹

Local government can only grant a disability exemption to the extent reasonably necessary to allow the person with the disability to access the pool.⁹² 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).⁹³

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.⁹⁴

⁸⁸ Section 235 of the BA

⁸⁹ Section 237(1) of the BA

⁹⁰ Section 239 of the BA

⁹¹ Section 237(2) of the BA

⁹² Section 237(5) of the BA

⁹³ Section 241 of the BA

⁹⁴ Section 244 of the BA

Impracticality exemptions

If a pool safety inspector inspects a pool and believes strict compliance with the pool safety standard would be impracticable, such as if part of a building would need to be demolished to provide a complying barrier, the inspector may recommend that the pool owner apply to their local government for an impracticality exemption.

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.⁹⁵ Local government can ask for more information to establish that compliance is impractical.⁹⁶ 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.

Local government can only grant an impracticality exemption to the extent reasonably necessary to overcome the impracticality associated with compliance.⁹⁷ 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.⁹⁸

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.⁹⁹

The legislation also provides scope for local governments to consider any other matters they think are relevant.¹⁰⁰

Unlike disability exemptions, impracticality exemptions continue until the local government revokes the exemption.¹⁰¹ 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.

⁹⁵ Section 245 of the BA

⁹⁶ Section 245A of the BA

⁹⁷ Section 245B(5) of the BA

⁹⁸ Section 245B(2)(a) of the BA

⁹⁹ Section 245B(2)(b) of the BA

¹⁰⁰ Section 245B(2)(c) of the BA

¹⁰¹ Section 245D of the BA

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.¹⁰²

The local government must issue a show cause notice to the pool owner in these circumstances.¹⁰³ After consideration of any representations made under the show cause notice, the local government may issue a revocation notice to revoke the exemption.¹⁰⁴ 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.¹⁰⁵

The revocation notice must be given to the QBCC within 10 business days of being given.¹⁰⁶

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.

¹⁰² Sections 242 and 245E of the BA

¹⁰³ Sections 242(2) and 245E(2) of the BA

¹⁰⁴ Sections 242(3) of the BA

¹⁰⁵ Sections 242(4) of the BA

¹⁰⁶ Sections 243 and 245(F) of the BA

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 subsubparagraph (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	<p>A ground for disciplinary action, against a pool safety inspector or former pool safety inspector, includes the following—</p> <ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (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 <i>Queensland Building and Construction Commission Act 1991</i>, section 50C(2); (eb) obstructing an investigator under the <i>Queensland Building and Construction Commission Act 1991</i>, 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	<p>An owner of a building and structure (including a regulated pool) means—</p> <ul style="list-style-type: none"> (a) if the building or structure is subject to the <i>Integrated Resort Development Act 1987</i> or the <i>Sanctuary Cove Resort Act 1985</i>— <ul style="list-style-type: none"> (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 <i>Mixed Use Development Act 1993</i>— <ul style="list-style-type: none"> (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 <i>Building Units and Group Titles Act 1980</i>— <ul style="list-style-type: none"> (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 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.

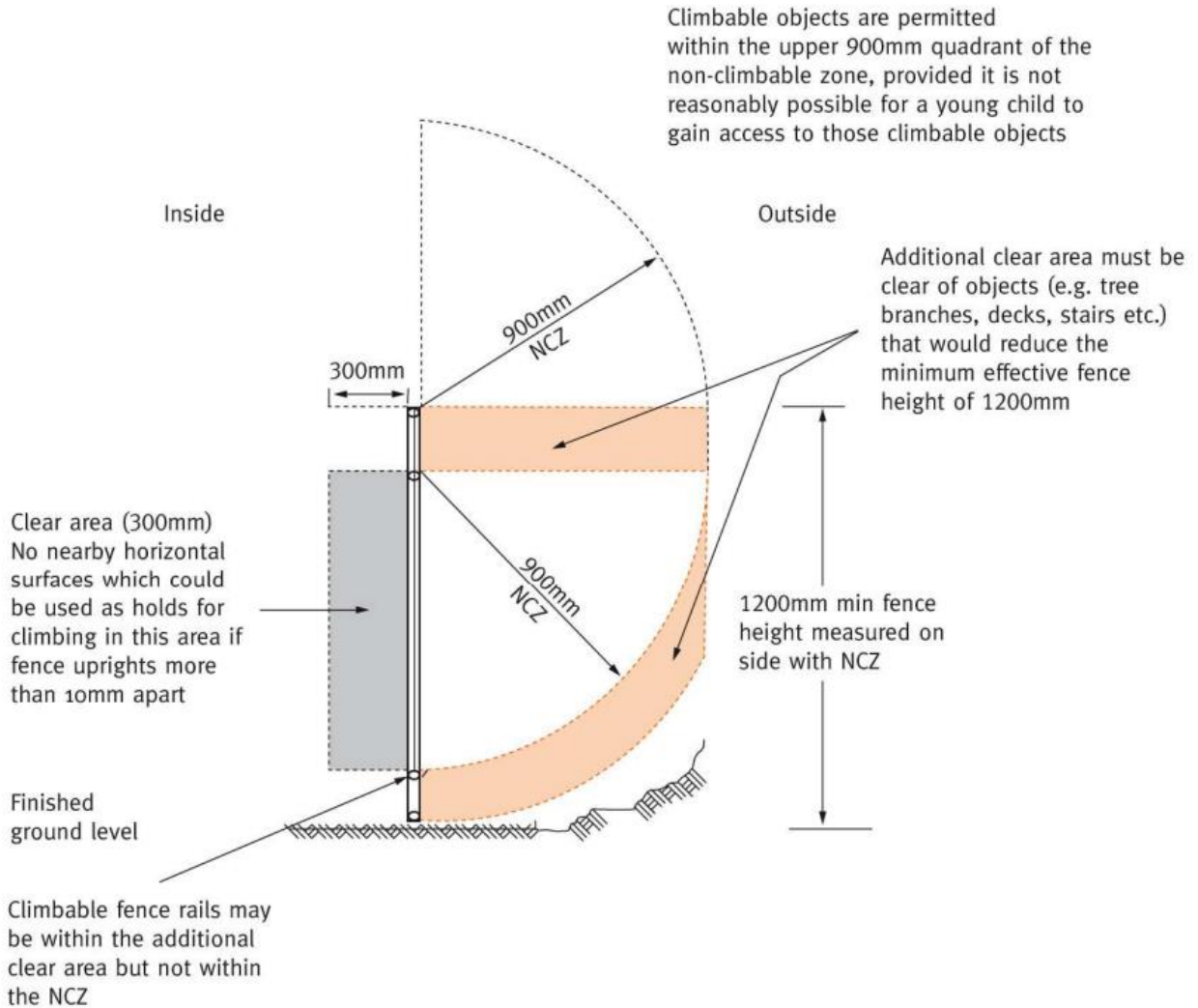


Figure 3
1200mm min high fence NCZ on outside
Acceptable

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.

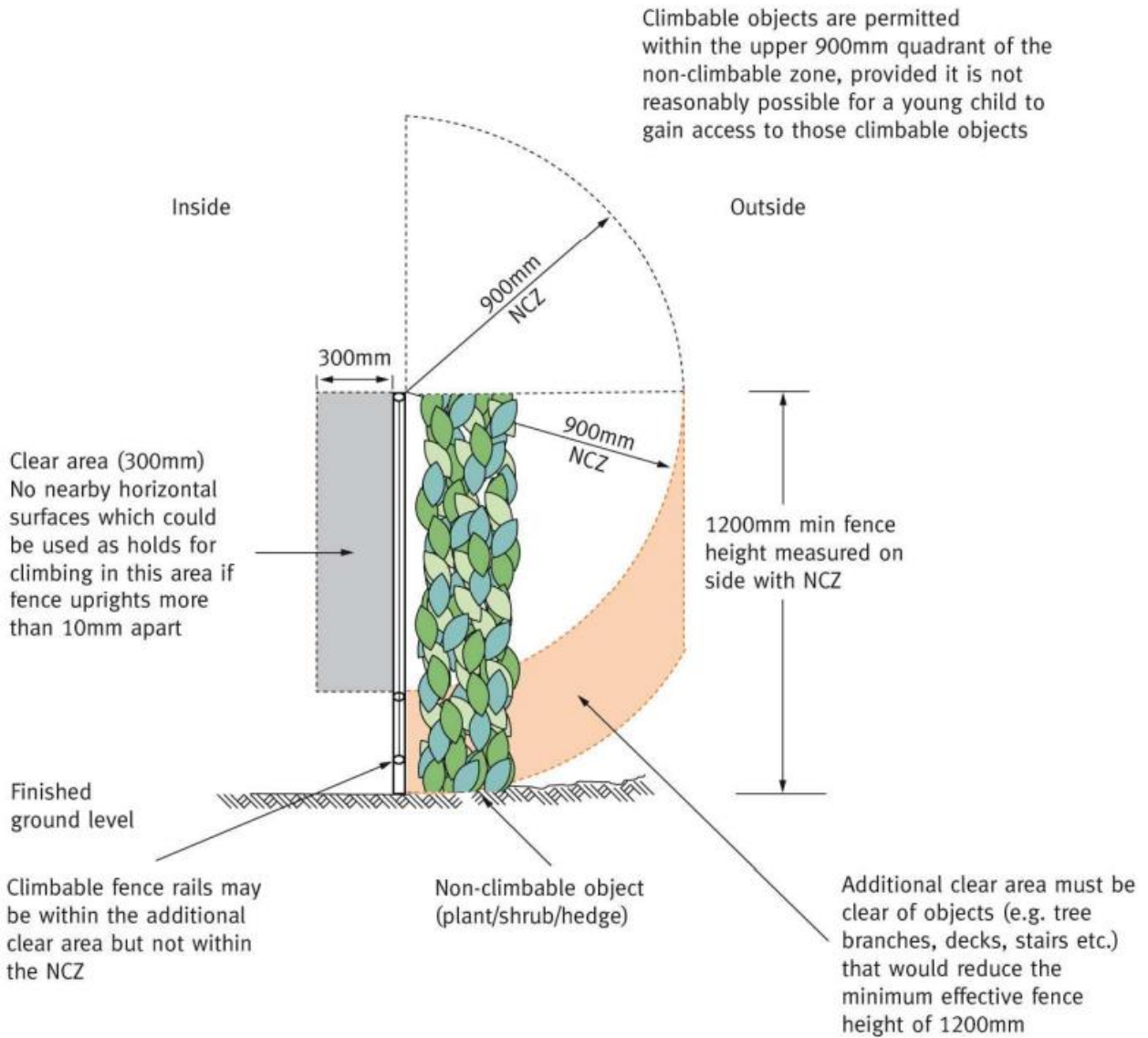


Figure 7
1200mm min high fence NCZ on outside
Acceptable

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.

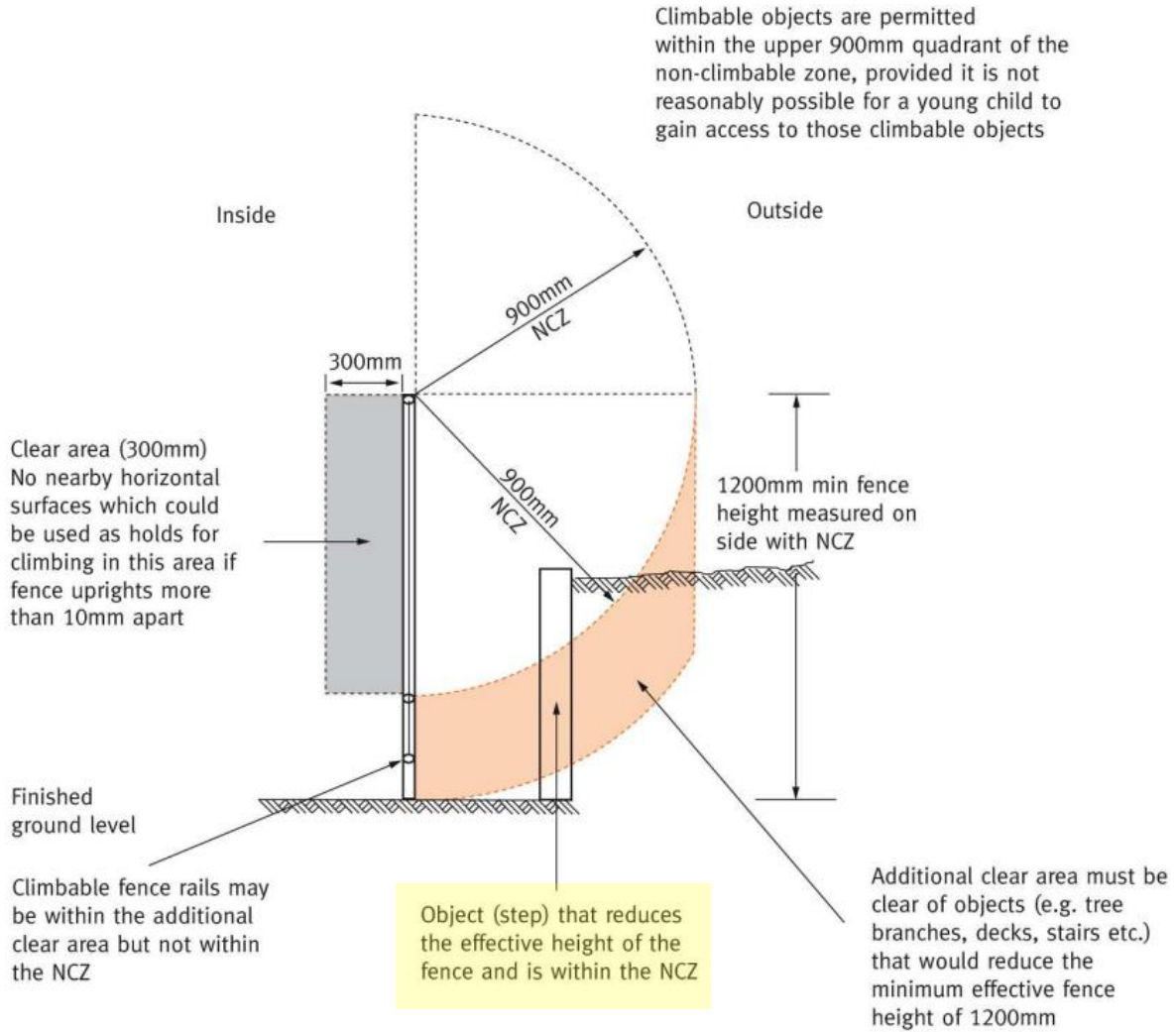


Figure 4
1200mm min high fence NCZ on outside
Not acceptable

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

(Figure taken from QDC MP 3.4)

This is a compliant pool barrier.

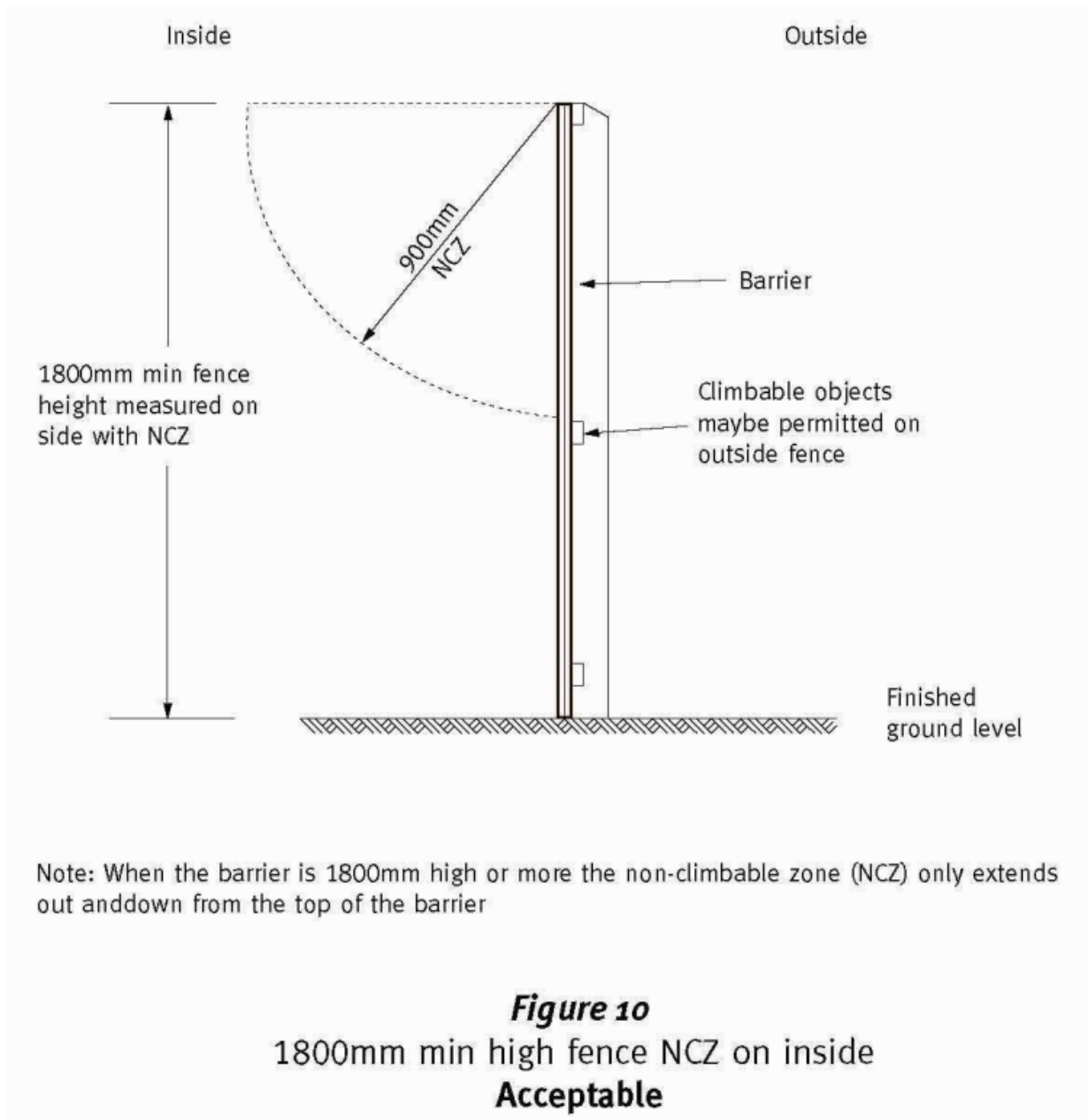
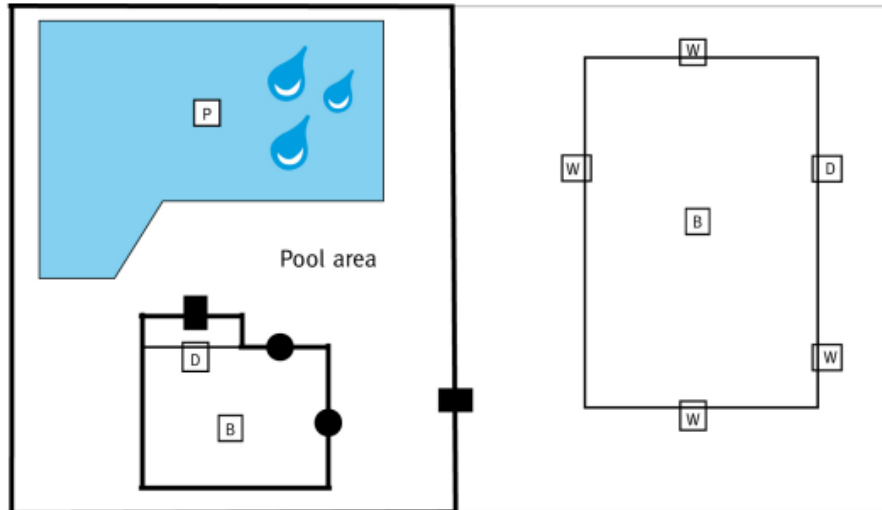


Figure 5 - Example of providing compliant fencing from a building

(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. The vegetation is too dense to allow for climbing or to support a young child's weight. Small, thorny or sharp branches also discourage climbing.

