



Building newsflash number 479

Amendments for residential care buildings, pool safety barriers on common boundaries and release of a disability access guideline

Purpose

To advise that the *Building Act 1975* (BA) has been amended to set new fire safety standards for residential care buildings (constructed before 1 June 2007) and adopt new rules for pool safety barriers on common boundaries and a disability access guideline has been released.

Fire safety requirements in residential aged care buildings

Following the Childers Palace Backpackers fire in June 2000, the state government has implemented a staged fire safety improvement program for high occupancy buildings. Requirements for budget accommodation buildings and residential care buildings (constructed since 1 June 2007) are described in the Queensland Development Code (QDC) mandatory parts 2.1 and 2.2 respectively.

Fire safety standards for residential care buildings constructed prior to 1 June 2007 are now being addressed through changes to the BA that adopt a new mandatory part of the QDC, 'Fire safety in residential care buildings—pre 1 June 2007' (QDC 2.3).

Depending on a building's fire safety risk owners will have either 3 or 5 years to comply with QDC 2.3.

Risk categories are based on the number of stories, types of construction and smoke management. Multi-storey buildings with type B or C construction (not fire resistant building fabric) will have until 1 September 2014 to comply. Single storey buildings and buildings with fire resistant construction materials have until 1 September 2016 to comply.

Owner/operators of residential care buildings constructed prior to 1 June 2007 must have their building assessed against QDC 2.3 by 1 March 2012. The Department of Local Government and Planning is offering a free inspection service. Owners wishing to use this service must register their interest via email to buildingcodes@dlgp.qld.gov.au



Pool barriers on common boundaries

In December 2010, comprehensive swimming pool safety laws were introduced in Queensland. Under these laws, it is common practice for owners to use existing dividing fences or to construct pool barriers on common boundaries. The BA sets out the requirements for pool owners where they intend to use the common boundary fence as a pool barrier. These arrangements impose obligations on pool owners. However, the pool owner has the benefit of not being required to construct a second complying fence inside the boundary fence.

The *Neighbourhood Dispute Resolution Act 2011* (NDRA) was enacted in July 2011 and replaced the *Dividing Fences Act 1956*. The consensual model employed by the NDRA is impractical where pool owners are required by law to build and maintain a pool fence as well as pay for any associated costs.

Therefore, the BA has been amended to complement the commencement of the NDRA. The BA will cover work associated with construction/upgrading of pool barriers on common boundaries.

The changes allow pool owners in certain prescribed circumstances to construct or alter a pool fence without first obtaining the agreement of their neighbour. Consistent with the principles in the NDRA, pool owners will be encouraged to consult with adjoining owners and the BA provides that pool owners must give neighbours notices about proposed work at least 14 days prior to undertaking any work. The notice will include information on the type of fence proposed and the materials that will be used.

Where there is an existing fence the BA provides that pool barrier be consistent with the existing fence, unless this would prevent the fence from complying with the pool safety requirements. The new BA provisions also provide a comprehensive framework to deal specifically with a range of different scenarios when agreement cannot be reached. Scenarios include both neighbours owning a pool or an existing dividing fence that also acts as an enclosure for a regulated dog.

QCAT has been given jurisdiction to hear disputes involving fences on common boundaries, including pool fences. Therefore, QCAT will provide a 'one stop shop' for all issues involving fences on common boundaries.

The changes to the BA dealing with pool fences on common boundaries have not yet taken effect. It is intended that the changes will commence simultaneously with the relevant provisions of the NDRA later in the year.

Disability access guideline

On 1 May 2011 the Disability (Access to Premises—Buildings) Standards 2010 (the Premises Standards), made under the Commonwealth *Disability Discrimination Act 1992* (DDA), commenced. The Premises Standards ensure an appropriate level of access for people with a disability is provided to new buildings and new alterations to existing buildings. The Access Code, which forms part of the Premises Standards, has been replicated in the Building Code of Australia (BCA).

To assist building certifiers with the assessment of building development applications that are required to comply with the new access requirements, the department has published a

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guideline titled *Building certifier responsibilities regarding access for people with a disability* under section 258 of the *Building Act 1975* (BA). A copy of the guideline can be found at www.dlgp.qld.gov.au

Section 133A of the BA requires a building certifier, in performing a function under the BA, to have regard to a guideline made under section 258 of the BA. Having regard to this guideline may reduce the likelihood of a successful complaint being made under the DDA against a building certifier in performing their building certification functions.

Contact for further information

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