

Local government pool safety guideline

Guideline under the *Building Act 1975*

2024



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Scope

This guideline covers a range of local government obligations, responsibilities and powers relating to Queensland's pool safety laws, including:

- the role of pool owners, pool users and premise occupiers, pool safety inspectors, the Queensland Building and Construction Commission (QBCC), local government and building certifiers
- the regulated pools register, and pool safety inspectors register
- compliance and technical considerations
- exemptions, performance solutions and variations.

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

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

Purpose of this guideline

This guideline's purpose is to assist local governments to understand and perform their pool safety responsibilities 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 Mandatory Part (QDC) 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 may have helped reduce the number of drowning deaths and immersions of young people under the age of five.³

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

Definitions

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

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

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

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.

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](#) section 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 owners are expected to comply with their pool safety responsibilities. The legislation provides significant penalties that can be imposed if a pool owner does not comply.

These penalties are generally administered by local government and the QBCC..

A pool owner commits an offence if they do not comply with their pool safety obligations.⁴ Different offences have different penalties and can range from hundreds of dollars to tens of thousands of dollars.

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

Roles

Pool owner, pool user and premise occupier role

Requirement to comply with the pool safety standard

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

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

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

⁴ Section 232 of the BA

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 settlement⁵
- notify prospective buyers that there is no pool safety certificate before entering into a contract of sale⁶ and notify the QBCC before settlement.⁷ For shared pools, the pool owner must also be notified before settlement.⁸ Notification is to be in the form of [Form 36 - Notice of no pool safety certificate](#) (Form 36).

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

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

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

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

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

Note: Pool safety certificates are valid for one year for shared pools and two years for 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.¹¹

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

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,¹² or
 - notify the occupier, the owner of the shared pool and the QBCC that there is no pool safety certificate.¹³ Notification must be made through [Form 36 - Notice of no pool safety certificate](#) (Form 36)
- for pools that are not shared pools, obtain a pool safety certificate.¹⁴

⁵ Section 246ATF(a) of the BA

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

⁷ Section 246ATF(b) of the BA

⁸ Section 246ATF(c) of the BA

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

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

¹¹ Section 246ATH(2) of the BA

¹² Section 246ATH(3) and (4)

¹³ Section 246ATI of the BA

¹⁴ Section 256ATG of the BA

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

Requirement to close pool gates and doors

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

This responsibility applies to:

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

Requirement if altering barriers

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

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

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

Pool safety inspector role

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

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

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

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

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

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

The nature of the role of a pool safety inspector often requires active listening skills and an ability to resolve conflict. Should a dispute arise between the owner and 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

¹⁵ Section 246ATK(4) of the BA

¹⁶ Section 245T of the BA

¹⁷ Section 245U of the BA

¹⁸ Section 245U(2) of the BA

¹⁹ Section 246BG of the BA

services are provided by the Department of Justice and Attorney-General across six centres in Queensland. Further information can be found on the Queensland Government website [Dispute resolution centres | Queensland Government](#).

QBCC role

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

The QBCC is responsible for the following in relation to local government:

- licensing local government pool safety inspectors
- receiving and investigating complaints about local government pool safety inspectors
- auditing local government pool safety inspectors
- taking disciplinary action against local government pool safety inspectors
- 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: poolsafety@qbcc.qld.gov.au
post: GPO Box 5099, Brisbane QLD 4001

Local government role

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

The enforcement responsibilities of private certifiers for new pools help to minimise the burden of enforcement on local governments.

Local government pool safety inspector role

Local governments must, if asked, provide an inspection service by a pool safety inspector.²⁰ Local governments may meet this requirement by:

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

It is recommended local governments employ at least one pool safety inspector to respond to public enquiries, undertake mandatory local government inspections and enforcement action and carry out pool safety inspection functions. The latter is especially important for local government areas not serviced by private pool safety inspectors.

Responding to QBCC information requests

The QBCC can request information from a local government about the details of any inspection carried out in response to a pool immersion incident notice, pool safety complaint notice or QBCC notice.²¹ For example, the QBCC may request information on any enforcement action taken by a local government for data collection, policy development, coronial reporting or targeted pool safety awareness.

²⁰ Section 246AH of the BA

²¹ Section 246AIB of the BA

Inspections

Powers of entry

For compliance purposes, an authorised person from a local government may enter a property, other than a home on the property, without permission from the occupier of the property, to inspect a pool and barriers or fencing for the pool.²²

This may be used, for example, when a local government receives a pool safety complaint notice and needs to urgently inspect the pool but cannot contact the owner or occupier.²³

These provisions have been included to help local government in carrying out its pool safety responsibilities.

Mandatory inspection due to pool immersion incident notice

As soon as practicable after receiving a pool immersion notice²⁴ from the Queensland Health chief executive, the local government must inspect the pool for compliance with the relevant standards.²⁵ If, after inspection, the local government finds the pool does not comply, it must take the necessary enforcement action to ensure the pool is modified to comply.²⁶

When responding to pool immersion incidents, especially where a child has died or suffered serious injury, local government officers should show compassion and empathy that is appropriate in the circumstances. For the definition of a 'pool immersion incident', refer to [Appendix 2 - Definitions](#) of this guideline.

The legislation does not require a pool safety officer to carry out these inspections, but the inspecting officer should be appropriately competent. If the officer inspects the pool for the purpose of assessing compliance and issuing a pool safety certificate (i.e., Form 23), they must be licensed.

Local governments must keep records of any pool immersion incident notice they receive for a period of at least five years.²⁷ The details of the inspections undertaken, and any resulting enforcement action, must also be retained for at least five years²⁸. Local governments can decide in what form these records are kept.²⁹

Mandatory inspection due to complaint notice

If a local government receives a pool safety complaint notice for a regulated pool, it must inspect the pool for compliance with the relevant standards as soon as practical unless it reasonably considers the complaint to be vexatious.³⁰ The complaint notice must be in writing, given to the local government and relate to the pool's safety.³¹

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

If, following an inspection, the pool is found not to comply with the relevant standards, then the local government must take the necessary enforcement action to ensure the pool is modified to comply with the relevant standards.³² This could include issuing an enforcement or penalty infringement notice as well as

²² Section 246AE of the BA

²³ Section 246ADA of the BA

²⁴ Refer to sections 245G-I for information about the hospital's reporting requirements for pool immersion incidents

²⁵ Sections 246ADA(1)(a) and (2) of the BA

²⁶ Section 246ADA(5) of the BA

²⁷ Section 246AIA(1)(a) of the BA

²⁸ Sections 246AIA(1)(b) and (2) of the BA

²⁹ Section 246AIA(2) of the BA

³⁰ Section 246ADA(1)(b) of the BA

³¹ Section 246ADA(6) of the BA

³² Section 246ADA(5) of the BA

commencing court proceedings, or carrying out remedial work in accordance with the *Local Government Act 2009* or the *City of Brisbane Act 2010*.

Local governments must keep records of any pool safety complaint notice they receive for at least five years.³³ They must also retain the details of the inspections undertaken and any resulting enforcement action for at least five years.³⁴ Local governments can decide in what form these records are kept.³⁵

Mandatory inspection due to QBCC notice

If the QBCC reasonably suspects that the fencing or other barriers for a regulated pool do not comply with the requirements of the BA, it may notify the local government of its suspicions and provide information about the pool's location.³⁶

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

If a local government receives a notice from the QBCC, it must inspect the pool for compliance with the relevant standards as soon as practical.³⁷ If, following inspection, the local government finds the pool does not comply with the relevant standards, it must take the necessary enforcement action to ensure the pool does comply.³⁸ This could include issuing an enforcement notice, issuing an infringement notice, prosecution and other legal proceedings, or carrying out remedial work in accordance with the *Local Government Act 2009* or the *City of Brisbane Act 2010*.

Local governments must keep records of any notices they receive from the QBCC for at least five years.³⁹ They must also retain the details of the inspections undertaken and any enforcement action taken for at least five years.⁴⁰ Local government can decide in what form these records are kept.⁴¹

Inspection due to outstanding pool safety certificate

If the owner does not ask the pool safety inspector to reinspect the pool within the reinspection period, the inspector must notify the local government of the failure and give the local government a copy of the nonconformity notice within five business days of the end of the reinspection period.⁴²

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

Exemptions

For information about local government exemptions, refer to this guideline's [Exemptions](#) section.

Local laws

A local government cannot make a local law that regulates the construction or maintenance of barriers for regulated pools, or a matter covered by the pool safety standard.⁴³ For example, local law cannot regulate safety barriers or resuscitation signage for regulated pools, as these matters are covered by the pool safety standard.

³³ Section 246AIA(1)(a) of the BA

³⁴ Section 246AIA(1)(b) of the BA

³⁵ Section 246AIA(2) of the BA

³⁶ Section 245UA of the BA

³⁷ Sections 246ADA(1)(c) and (2) of the BA

³⁸ Section 246ADA(5) of the BA

³⁹ Section 246AIA(1)(a) of the BA

⁴⁰ Section 246AIA(1)(b) of the BA

⁴¹ Section 246AIA(2) of the BA

⁴² Section 246AC(4) of the BA

⁴³ Section 245W of the BA; section 38AA(1) of the *Local Government Act 2009*; section 41A(1) of the *City of Brisbane Act 2010*

Any existing local law provisions of this type that were in force before 1 December 2010 were repealed by 1 January 2017.⁴⁴

Any local law that does not meet these requirements has no lawful effect.⁴⁵

Local governments can still have local laws for swimming pools that are not regulated pools, such as public aquatic centres.

Declaring areas as remote

Under schedule 3 of the BR, local governments have the ability to declare particular areas within their local government boundary as remote, by passing a local government resolution.⁴⁶

Local governments can only declare an area as remote unless if they are satisfied it is remote from the business premises of persons performing pool safety inspection functions.⁴⁷

For a local government to declare an area as remote, the area should be either be:

- more than 100km from the nearest office of the local government or a populated place of more than 48,000 residents
- reasonably difficult to access.

For example, in a large local government area where a home is being sold that is more than 100km from the nearest local government office but is within 100km of a large urban centre of more than 48,000 residents, it would reasonably be assumed that a pool safety inspector could be engaged to inspect a regulated pool and a remote area declaration would not be appropriate.

An area that is reasonably difficult to access could be an island that has limited vehicular ferry service or is subject to seasonal accessibility problems. This may especially be the case in Far North Queensland.

There is no obligation on the prescribed local government to declare any areas as remote - local governments can only choose to opt in by passing a local government resolution.

Where a pool safety inspector is engaged to inspect a regulated pool in a declared remote area, the inspector does not need to carry out an on-site inspection of the pool and may inspect using documents (e.g., detailed photographs) or technology (e.g., streamed video footage). The inspector must still be satisfied that the pool complies with the pool safety standard, even when using these methods.

Cancelling a pool safety certificate

If a local government inspects a regulated pool that has a pool safety certificate and reasonably believes it does not comply with the pool safety standard, it may, after giving the owner a notice, cancel the pool safety certificate.⁴⁸

Note: These cancellation powers do not limit the local government's ability to issue an enforcement notice under the BA.⁴⁹

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

⁴⁴ Section 38AA(2) of the *Local Government Act 2009*; section 41A(2) of the *City of Brisbane Act 2010*

⁴⁵ Section 38AA(3) of the *Local Government Act 2009*; section 41A(3) of the *City of Brisbane Act 2010*

⁴⁶ Section 26 and schedule 3 of the BR; section 246ACA of the BA

⁴⁷ Section 246ACA(2) of the BA

⁴⁸ Section 246AF of the BA

⁴⁹ Section 246AF(5) of the BA

Show cause requirements

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

They must state each of the following:

- that the local government proposes cancelling the pool safety certificate for the pool
- the grounds for cancelling the pool safety certificate
- the facts and circumstances forming the basis for the grounds
- that the owner may, within the show cause period, make submissions about why the pool safety certificate should not be cancelled.⁵⁰

The show-cause period must end at least 10 business days after the owner receives the notice.⁵¹

Owner submissions

Within the show cause period, the owner may make submissions to the local government about the show cause notice.⁵² The local government must consider the submissions and decide whether to cancel the pool safety certificate for the pool.⁵³

Notice of decision

If the local government decides not to cancel the pool safety certificate, it must give the owner notice of the decision.⁵⁴

If the local government decides to cancel the pool safety certificate, it must give the owner an information notice about the decision.⁵⁵ The pool safety certificate will be cancelled 10 business days after the information notice is given, unless the owner appeals the decision sooner.⁵⁶

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

After cancellation, notice must be given to the QBCC within 10 business days to allow the QBCC to record the cancellation in the regulated pools register.⁵⁷

Owner's appeal rights

Under the *Planning Act 2016*, the pool owner has a right to appeal to a development tribunal against the local government decision to cancel a pool safety certificate.⁵⁸

Fees

Local governments have a range of legislative tools available to help recover the cost of performing their pool safety responsibilities under the pool safety laws. Under the *Local Government Act 2009* and the *City of Brisbane Act 2010*, local governments can charge a cost recovery fee to perform their pool safety responsibilities under the BA.⁵⁹ The only exception to this is carrying out an inspection in response to a pool immersion notice or complaint notice.⁶⁰ Local governments can charge owners a fee for performing mandatory inspections after they receive a notice from the QBCC.

⁵⁰ Section 246AG(2) of the BA

⁵¹ Section 246AG(3) of the BA

⁵² Section 246AG(4) of the BA

⁵³ Section 246AG(5) of the BA

⁵⁴ Section 246AG(6) of the BA

⁵⁵ Section 246AG(7) of the BA

⁵⁶ Section 246AG(8) of the BA

⁵⁷ Section 246AF(3) and (4) of the BA

⁵⁸ Table 3, Schedule 1 of the *Planning Act 2016*

⁵⁹ Section 97 of the *Local Government Act 2009* and section 99 of the *City of Brisbane Act 2010*

⁶⁰ Section 264ADA(4) of the BA

In addition, local governments can impose infringement notices under the *State Penalties Enforcement Regulation 2014*, or undertake prosecutions, for a range of pool safety offences. Local governments can retain money received from infringement notices and prosecutions.

Prosecution powers

Local government have prosecution powers for the following sections of the BA:

Section No.	Section Heading
232(1)	Compliance with pool safety standard - regulated pool
233(2)	Constructing regulated pool - requirement for warning sign (before work starts)
233(3)	Constructing regulated pool - requirement for warning sign (until final certificate)
234(2)	Constructing regulated pool - requirement for compliance with pool safety standard
237(4)	Decision on application (applicant must comply with disability exemption conditions)
242(5)	Local government may revoke exemption (applicant must comply with notice)
245B(4)	Decision on application (owner must comply with impracticality exemption conditions)
245E(5)	Local government may revoke exemption (owner must comply with notice)
245G(1)	Requirement to report pool immersion incident
245K	Requirement to have pool safety management plan
245L	Requirement to comply with approved pool safety management plan
245T(1)	Access to regulated pool to be kept secure (person who opens gate must close gate)
245T(2)	Access to regulated pool to be kept secure (owner must ensure gate is closed at all times)
245T(3)	Access to regulated pool to be kept secure (occupier must ensure gate is closed at all times)
245U(1)	Interference with barriers for regulated pools
246AC(5)	Steps after nonconformity notice
246AD(2)	Record-keeping requirements for inspections
246AJ(4)	Identification number for pool safety certificate
246AP(2)	Building certifier's obligation to give notice of regulated pool
246AR(2)	Owner's obligation to give notice of existing regulated pool
246ATF	Offence about sale of regulated premises
246ATG	Offence about entering into accommodation agreement - regulated pool that is not a shared pool

246ATH(2)	Offences about displaying and giving copies of pool safety certificates for shared pools (displaying pool safety certificate)
246ATH(4)	Offences about displaying and giving copies of pool safety certificates for shared pools (giving occupier a copy of the pool safety certificate)
246ATI(2)	Offence about entering into accommodation agreement - pool safety certificate not in effect for shared pool
246ATJ(2)	Requirement to obtain pool safety certificate for regulated pool that is not a shared pool
246ATK(2)	Requirement to obtain pool safety certificate for regulated pool that is a shared pool (obtaining pool safety certificate - sale of premises)
246ATK(4)	Requirement to obtain pool safety certificate for regulated pool that is a shared pool (obtaining pool safety certificate - accommodation agreement)
246AU	Person must not perform pool safety inspection functions without licence
246AV	Person must not perform pool safety inspection functions without prescribed professional indemnity insurance
246AW(1)	Giving pool safety certificates and nonconformity notices (requirement to inspect and be satisfied pool is a complying pool)
246AW(2)	Giving pool safety certificates and nonconformity notices (requirement to inspect and be satisfied pool is not a complying pool)

Building certifier role

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

Performing a pool safety inspector function

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

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

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

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.

If a building certifier issues a final inspection certificate for a new pool or other major alterations requiring a building development application, this certificate can be used instead of a pool safety certificate.⁶¹

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

⁶¹ Section 246AN(2) of the BA

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.⁶²

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

When private building certifiers are performing building certification work for a regulated pool can take appropriate enforcement actions against the owner of the pool where the owner has not taken, or is not taking appropriate action to ensure the pool complies with the pool safety standard.⁶³

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 QBCC maintains the register, and is responsible for the data entry into the register.⁶⁴

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.

Pool safety inspectors register

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

The register's purpose is to provide pool owners, property agents, the general public, local governments, the department and QBCC central source of information about pool safety inspectors.⁶⁵

⁶² Section 246AP of the BA

⁶³ Sections 246ATA and 246ATB of the BA

⁶⁴ Section 246AS of the BA

⁶⁵ Section 246CB of the BA

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.⁶⁶

Inspection process

Building certificates instead of pool safety certificates

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

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

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

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

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

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

Compliance and technical considerations

Resuscitation sign (CPR sign)

A CPR sign must be displayed at all regulated pools.⁶⁷

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 2016.⁶⁸

Each statement or diagram on the CPR sign must be clear and legible and made of durable and weatherproof material.⁶⁹

⁶⁶ Section 246CB(4) of the BA

⁶⁷ Section 13(2) of the BR

⁶⁸ Section 13(3) of the BR

⁶⁹ Section 13(4) of the BR

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

Decommissioning pools

Occasionally, a pool owner may decide they no longer want a pool. If a pool owner intends to decommission their regulated pool, the pool structure must be altered so it cannot be filled to a depth of 300mm. For example, the floor of a spa may have holes drilled into the water receptacle component to permit water to drain out, or one side of a pool may be removed.

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

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

If only cosmetic repair work is required, the pool will not have been validly decommissioned. For example, a spa with a timber lid nailed or glued into place with industrial glue would still be considered a regulated pool. This is because removing the lid would reveal the spa's structure intact and capable of being filled with water.

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

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

Destruction of pools

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

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

Pools converted to fishponds

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

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

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

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

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

Therefore, converting an existing swimming pool to a fishpond may require significant building work, which is likely to require a building development application.

If a building development application to convert a swimming pool to a fishpond receives final inspection approval by a local government or a private building certifier, who certifies that the structure is no longer a swimming pool, then the structure no longer meets the definition of 'swimming pool'.

Temporary fencing

New pools

A temporary fence may be used instead of a permanent barrier for a new pool for up to three months, provided it is inspected and approved by a building certifier.⁷⁰ 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.⁷¹ 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.

Exemptions, performance solutions and variations

Exemptions

Pre-2015 exemptions

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

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

⁷⁰ Refer to Schedule 1 of QDC MP 3.4

⁷¹ Refer to Schedule 1 of QDC MP 3.4

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.⁷²

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.⁷³ 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.⁷⁴

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.⁷⁵

Local government can only grant a disability exemption to the extent reasonably necessary to allow the person with the disability to access the pool.⁷⁶ 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).⁷⁷

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.⁷⁸

Impracticality exemptions

A pool owner can apply to their local government for an exemption from complying with a part of the pool safety standard relating to barriers on the grounds of impracticality.⁷⁹

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.⁸⁰ Local

⁷² Section 235 of the BA

⁷³ Section 237(1) of the BA

⁷⁴ Section 239 of the BA

⁷⁵ Section 237(2) of the BA

⁷⁶ Section 237(5) of the BA

⁷⁷ Section 241 of the BA

⁷⁸ Section 244 of the BA

⁷⁹ Section 245 of the BA

⁸⁰ Section 245 of the BA

government can ask for more information to establish that compliance is not practical.⁸¹ 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 compliance⁸². 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.⁸³

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.⁸⁴

The legislation also provides scope for local governments to consider any other matters they think are relevant.⁸⁵

Unlike disability exemptions, impracticality exemptions continue until the local government revokes the exemption.⁸⁶ Any conditions applicable to the exemption also bind the successors in title.

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

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

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

Revoking exemptions

Local governments have the power to revoke an exemption under particular circumstances, including where conditions imposed on the exemption have been contravened, or the original exemption decision was based on false or misleading information the applicant gave.⁸⁷

The local government must issue a show cause notice to the pool owner in these circumstances.⁸⁸ After consideration of any representations made under the show cause notice, the local government may issue a revocation notice to revoke the exemption.⁸⁹ The revocation notice must include each of the following:

⁸¹ Section 245A of the BA

⁸² Section 245B(5) of the BA

⁸³ Section 245B(2)(a) of the BA

⁸⁴ Section 245B(2)(b) of the BA

⁸⁵ Section 245B(2)(c) of the BA

⁸⁶ Section 245D of the BA

⁸⁷ Sections 242(1)(b) and 245E of the BA

⁸⁸ Sections 242(2) and 245E(2) of the BA

⁸⁹ Sections 242(3) of the BA

- 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.⁹⁰

The revocation notice must be given to the QBCC within 10 business days of being given.⁹¹

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 Tribunals. 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.

⁹⁰ Sections 242(4) of the BA

⁹¹ 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 subparagraph (i) and partly in 1 or both of the other forms.

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

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

Building development application

A building development application is—

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

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

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

Ground for disciplinary action

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

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

Owner

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

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

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

Pool immersion incident

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

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

Pool safety standard

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

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

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

Regulated pool

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

The barriers for the pool include any of the following:

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

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

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

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

A regulated pool does not include a public pool.

Shared pool

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

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

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

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

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

Swimming pool

A swimming pool means an excavation or structure:

- (a) capable of being filled with water to a depth of 300mm or more; and
- (b) capable of being used for swimming, bathing, wading, paddling or some other human aquatic activity; and
- (c) solely or principally used, or designed, manufactured or adapted, to be solely or principally used for the purposes mentioned in paragraph (b) despite its current use;
- (d) and includes a spa pool, spa tub or similar thing (whether portable or fixed) and a wading pool (other than a portable wading pool), but does not include:
 - (e) a fishpond or pool solely or principally used, or designed, manufactured or adapted to be solely or principally used for ornamental purposes; or
 - (f) a dam or tank solely or principally used, or designed, manufactured or adapted to be solely or principally used, for aquaculture, marine research or storage of water; or
 - (g) a watercourse; or
 - (h) a portable wading pool; or
 - (i) a spa bath situated in a bathroom, other than a spa bath continually filled with water to a depth of more than 300 mm; or
 - (j) a birthing pool used solely for water births.

Temporary fence

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

Appendix 3 - Sample CPR sign

