



Tips for pool owners, landlords and real estate agents

FACTSHEET

Swimming pools should be fun. Yet, drowning is a leading cause of death in Queensland for children aged one to four years. Supervising kids and teaching them to swim at a young age can save lives. Effective pool fencing also helps keep kids safe. This is why new pool safety laws have been introduced.

This fact sheet has been developed to assist pool owners, landlords and real estate agents in understanding the new pool safety laws and how they affect sales, leases and other accommodation agreements. Full details of the laws and how it applies to owners, lessors (landlords) and real estate agents can be found on the Department of Local Government and Planning's website, www.dlgp.qld.gov.au

I am a pool owner. How am I affected by the new laws?

You need to ensure your pool complies with the new pool safety standard by 30 November 2015, or earlier if you sell or lease your property before this time.

From 1 December 2010, a pool safety certificate is required if you sell or lease your property (please refer to flood and cyclone related exemptions).

You must comply with the applicable pool safety standard at all times. This will generally be the

standard that applied when the pool was built, but will be the new pool safety standard after 30 November 2015, or earlier if you sell or lease your property before then.

You must ensure your pool is listed on the state-wide pool register by 4 November 2011.

To help check if your pool complies, refer to the Tips to Make Your Pool Safer fact sheet, available on the Department of Local Government and Planning website at

<http://www.dlgp.qld.gov.au/resources/guideline/building/pool-safety-top-tips.pdf>

A pool safety certificate is valid for two years for a non-shared pool (e.g. house) or one year for a shared pool (e.g. hotel, unit complex). You are only required to obtain another pool safety certificate if you buy, sell, or lease a property and the previous pool safety certificate is no longer valid.



Who should I contact if my pool fence has been damaged by the recent floods?

Your local government will be able to advise you on what course of action you can take to ensure your pool complies with the pool fencing standard.

My previously compliant pool fence was damaged by the recent floods; do I have to repair it?

Yes. A pool fence must comply with the pool fencing standards at all times. The fence should be repaired as soon as it is possible and practical to do so.

Can I repair the fence myself?

In some cases, yes you can repair the fence yourself. However, it will depend on the extent of the damage to the fence. The pool fencing laws allow a pool owner to carry out minor repairs on a pool fence. For example, minor repairs are repairs to no more than 2.4 metres of fence which includes no more than two fence posts. Tightening, adjusting or installing a self-closing mechanism on a gate is also considered a minor repair which can be undertaken by the pool owner.

Do I need an approval to carry out minor repairs and do the repairs need to be inspected by a pool safety inspector or a building certifier?

No.

If the pool fence requires more than just minor repairs (for example more than 2.4 metres of fence is damaged or more than two fence post are affected) can I do the repairs myself?

You should speak to your local government or private certifier before any work on repairing the pool fence is carried out to determine if a building approval is required before the work commences. If the value of the work (labour and materials) to repair

the pool fence exceeds \$3300, Queensland Building Services Authority (QBSA) laws may apply. This may mean you need to obtain an owner builders licence to do the work yourself or if contractors are being used to do the work, that the contractors are licensed with the QBSA. You should contact the QBSA to determine if the QBSA laws are applicable in your case.

QBSA

299 Montague Road, West End QLD 4101

tel 1300 272 272

fax (07) 3225 2999

post GPO BOX 5099, Brisbane, Qld 4001

web www.masterbuilders.asn.au

If the repairs to the pool fence do require a building approval, will the fence need to be inspected when the work is completed?

Yes. When repairs are completed, the private building certifier of the local government that issued the building approval must be advised the fence is ready for an inspection. An inspection will then be carried out and if the fence complies with the pool fencing standard, a certificate of compliance will be issued by the inspecting person.

I am a landlord or a tenant of a rental property with a pool. How do the flood and cyclone related exemptions apply to me?

In response to the Queensland floods and Cyclone Yasi, the requirement to obtain a pool safety certificate for rental properties with non-shared pools, such as houses, has been delayed.

This applies from 8 January to 8 July 2011 and allows these properties to be leased without a pool safety certificate.

Instead, the owner must give a Form 37 warning notice to the tenant before entering the lease. The delay applies state-wide and is intended to more easily allow homes to be rented to



evacuees, or people who are assisting with recovery efforts.

Pool owners must still ensure their pool complies with the pool safety laws applicable to when the pool was built.

The delay only applies to rental properties with non-shared pools. All other aspects of the new pool safety laws still apply and are not affected.

Pool owners who take advantage of the six month exemption are encouraged to get their pools inspected as soon as they can to help reduce the risk to young children.

Can home owners enter into a new lease agreement for their property from 8 January until 8 July 2011 without a pool safety certificate?

Yes, for properties with non-shared pools, such as houses. However, the home owner will need to have a pool safety certificate before the next lease agreement is entered into after 8 July 2011. For example, if a six month lease agreement is entered into on 2 June 2011 a pool safety certificate is not required at that time. A certificate will be required if the lease is renewed after the six month lease expires.

What about rental houses with pools that have already been inspected but a pool safety certificate has not yet been issued?

The pool safety inspector provisions have not changed. A pool safety inspector that has inspected a pool before or after 8 January 2011 will still be obliged to issue a non-conformity notice, a pool safety certificate or to reinspect as required under the existing provisions.

How do I register my pool?

To check if your pool is registered, go to www.dlqp.qld.gov.au/pool-safety/pool-safety-register You need to ensure your pool is registered

by 4 November 2011. You can register your pool via the pool safety register, or by via email through registeryourpool@dlqp.qld.gov.au You do not need a pool safety certificate to place your pool on the register.

Is the new pool safety standard much different from the old standards?

The main difference is that self-closing child resistant doors are not allowed to be used as part of a barrier for outdoor pools. Some other more minor changes to bring existing barriers into compliance may include:

- removing climbable objects from near the barrier
- raising the barrier height
- adjusting gates to swing outwards.

If there is a shared pool associated with long term accommodation (e.g. a unit complex) and the pool belongs to the body corporate, when is a certificate required, and by whom?

The body corporate must obtain a pool safety certificate by 30 November 2012 if there is a sale or lease on or before 1 September 2012. If sold or leased after 1 September 2012, the normal 90 day period applies.

If a unit owner needs a copy of the certificate, they can obtain it from the body corporate or download a copy from the pool safety register at www.dlqp.qld.gov.au/pool-safety/pool-safety-register

If there is a shared pool associated with short term accommodation (e.g. a hotel), when is a certificate required, and by whom?

The pool owner must obtain a pool safety certificate by 31 May 2011 if there is a sale, lease or other accommodation agreement (e.g. a hotel stay) or before 2 March 2011. If there is a sale, lease or



other accommodation agreement after 2 March 2011, a certificate is required within 90 days of a sale, lease or other accommodation agreement.

If I am selling my property, what do I need to do to comply with the new laws?

The property owner can either choose to obtain a pool safety certificate before settlement, or to pass responsibility to the buyer to obtain the certificate. To pass the responsibility on to the buyer, the property owner must issue the buyer with a Form 36 before entering the contract and before settlement, to advise the buyer that a pool safety certificate is not in effect and the buyer will assume responsibility for pool safety compliance, inspections and obtaining a certificate within 90 days of settlement.

A unit owner in a complex with a shared pool must issue a Form 36 when they are selling or leasing their property. Although the body corporate will be ultimately responsible for obtaining the pool safety certificate, the Form 36 informs the buyer or tenant that a pool safety certificate is not in place.

If on the settlement date, a pool safety certificate still has not been obtained, the seller must also give the notice to the Department of Local Government and Planning and, for shared pools, to the pool owner (e.g. body corporate).

When a form 36 is issued, who is then responsible for obtaining the pool safety certificate?

When selling a non-shared pool without a pool safety certificate, the buyer must obtain a pool safety certificate within 90 days of settlement. The buyer is responsible for the cost of compliance.

When selling or leasing a shared pool without a pool safety certificate, the pool owner (e.g. body corporate) must obtain a pool safety certificate within 90 days of settlement (subject to any applicable phase-in periods). The pool owner is responsible for the costs that compliance may incur,

as may be the buyer in some cases (e.g. through body corporate fees).

Pool safety inspection

How do I find a pool safety inspector to inspect my pool?

An online register, listing all licensed pool safety inspectors, can be found at www.dlqp.qld.gov.au/poolsafety All local governments are required to provide a licensed pool safety inspector if asked by a pool owner. Fees and charges may apply.

Can a potential purchaser get a pool safety certificate for a pool?

Yes, if the owner has agreed to allow the inspector on the land to carry out the inspection.

An inspector is required by law to give the pool safety certificate or non conformity notice to the pool owner. As such, a potential buyer would need to organise with the inspector to obtain a copy of the pool safety certificate or the non conformity notice once it is issued. The pool safety inspector should also obtain the owner's permission to give this copy of the pool safety certificate or the non conformity notice to the purchaser.

What happens if I get a nonconformity notice?

The owner needs to make the necessary changes to their pool to make it comply.

The owner cannot ask a different pool safety inspector to inspect the pool within a period of three months, without special approval from the Pool Safety Council.

The inspector is obliged to notify the local government if the owner fails to arrange a re-inspection within three months. This could trigger a local government inspection.



If the owner disagrees with the assessment they may lodge an appeal. Fees may apply. Please contact the Department of Local Government and Planning for further details at psc@dlgp.qld.gov.au

Can a Form 11 (certificate of classification) or a Form 17 (final inspection certificate) be used instead of a pool safety certificate?

Yes, a Form 11 or Form 17 can be used instead of a pool safety certificate. However, it must be issued against the current standard to be valid for this purpose. If the certificate of classification or final inspection certificate was issued against an older pool safety standard, it cannot be used instead of a pool safety certificate. The Form 11 or Form 17 must also be lodged with the Department of Local Government and Planning to be entered on the pool safety register.

My spa has a fully lockable, solid cover. Do I still need to have a complying barrier for the spa, and why?

Yes. There is still the potential for the lockable lid to be left open or unlocked. For this reason, a complying pool safety barrier is required for spas and some portable wading pools.

Portable wading pools that hold less than 2000 litres of water, can be filled to no more than a 300 millimetres depth of water and do not have filtration system, are exempt (all three criteria must be met to be exempt).

Does my above ground pool need to have a separate barrier?

You will not need a separate pool safety barrier for an above ground pool if:

- the pool sides are 1.2 metres high and comply with the non-climbable zone requirements of the standard i.e. keeping the barrier clear of objects a child could climb.

- there are no climbable objects around the barrier that would give a child access e.g. pool supports, tree branches etc.
- there is a compliant fence and gate in place around an access point for the above ground pool, even if there are no steps or ladder in place.

Renting a property

Do the new pool inspections need to occur each time a property is tenanted?

No. A pool safety certificate is valid for two years for a non-shared pool and one year for a shared pool. A new certificate is not required for sales or leases that occur during the period of validity for a certificate.

Pool owners entering into new or renewed leases, during a pool safety certificate validity period, do not need an additional inspection or a new certificate.

I am a tenant of a property with no barrier around the pool. The owners refuse to put a barrier in. Who can I report this to?

If a landlord will not provide a complying barrier for the pool they may have committed an offence, and you can lodge a complaint with the relevant local government. If your complaint is made in writing, the local government is required by law to inspect the pool and, if the pool does not comply, take the necessary enforcement action to ensure it complies. The owner is also likely to be in breach of the lease agreement and you may wish to contact the Residential Tenancies Authority at www.rta.qld.gov.au

My neighbour has a pool

I've heard that trees on my property may need to be removed in order for



my neighbour's pool to comply with the new legislation. Is this correct?

No. The new pool safety laws do not place any obligations on neighbours, unless they also have a pool. It is the sole responsibility of the pool owner to take steps to ensure compliance with the laws within their own property. However, if branches of a tree on your property overhang the neighbouring property, your neighbour is legally able to remove the branches to the boundary line. For further information about trees and fences between neighbourhoods, please visit the Department of Justice and Attorney-General website at <http://www.justice.qld.gov.au/justice-services/justice-initiatives/new-laws-for-trees-and-fences>

Exemptions

Are there any exemptions available under the new laws and who can grant them?

Yes.

Disability exemption

Local Governments have the power to grant an exemption where the pool owner has a relevant disability. Disability exemptions that were granted prior to the commencement of the legislation will continue to be effective, and new disability exemptions are available on the same grounds. Local governments continue to be able to grant these exemptions.

Impracticality exemption

The new laws also allow a new exemption for circumstances where it would be impractical for the pool safety standard to apply. Applications can be made to the relevant local government. See www.dlqp.qld.gov.au/local-government-/index.php

Impracticality exemptions cannot, for example, be given because of aesthetics, because no children reside on or visit the property, because the pool is

near to another body of water such as a canal or dam, or because the property is rural or remote.

What about exemptions and variations granted before the new pool safety laws?

Fencing exemptions and variations (other than valid disability exemptions) that were previously granted will have no force or effect from 30 November 2015, or earlier if the property is sold or leased first.

Variations given by the chief executive of the Department of Local Government and Planning (or predecessor departments) under section 41 of the Building Act 1975 for matters covered by the pool safety standard have no force or effect from 30 November 2015, or earlier if the property is sold or leased first.

More information

For more information on pool safety laws relating to pool fencing, visit the Department of Local Government and Planning's website, www.dlqp.qld.gov.au/poolsafety