

Local government swimming pool safety guideline

To assist local governments in understanding and performing pool safety related functions

October 2016

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Purpose

The purpose of this guideline is to assist local governments in understanding and performing their pool safety related functions under the *Building Act 1975* (BA).

Scope

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

- mandatory inspections
- information and record keeping
- pool safety register
- local laws
- deciding and revoking exemptions
- powers of entry
- declaration of remote areas
- cancelling pool safety certificates
- prosecution powers.

General and industry related information about pool safety laws is available on the Department of Housing and Public Works (the department) website www.hpw.qld.gov.au.

Background

The Queensland Government introduced the current pool safety laws as a result of the most comprehensive review of Queensland's pool safety laws in nearly 20 years. Key stakeholders, including the Local Government Association of Queensland, were closely involved in the review. The pool safety laws aim to further reduce the incidences of drowning and serious immersion injuries of young children in swimming pools.

The laws were implemented in two stages. Stage one commenced on 1 December 2009 and applied mostly to new residential outdoor swimming pools. It included:

- introducing the latest swimming pool safety standards
- regulating temporary fencing for pools
- mandatory follow-up final inspections
- introducing the latest cardiopulmonary resuscitation (CPR) signage standards.

Stage two commenced on 1 December 2010 and mostly affected existing swimming pools. The stage two measures included:

- an independent Pool Safety Council
Note: On 10 November 2014, the Pool Safety Council disbanded and the functions moved over to the Queensland Building and Construction Commission (QBCC).
- a training and licensing framework for pool safety inspectors
- replacing 11 different pool safety standards with one pool safety standard for all regulated pools—the Queensland Development Code Mandatory Part 3.4. Both new and existing pools

must comply with the standard within five years, or earlier if sold or a lease or other accommodation agreement is entered into prior to 1 December 2015

- a five-year phase out of child-resistant doors used as pool barriers for existing pools, or earlier if the property is sold or a lease or other accommodation agreement is entered into prior to 1 December 2015
- wider application of pool safety laws to include indoor pools, pools associated with class 3 and 4 buildings such as hotels, motels, caretaker residences, backpackers, hostels, mobile home and caravan park pools and home stay pools
- a sale and lease compliance system, requiring pool safety certificates to be obtained from a licensed pool safety inspector when a property with a pool is sold or a lease or other accommodation agreement is entered into. Pool safety certificates are valid for one year for a shared pool and two years for a non-shared pool.
- requiring all regulated pools to be included in a state-based pool register
- fencing for portable pools and spas deeper than 300 millimetres
- mandatory inspections by local governments for immersion incidents of children under five in swimming pools. These incidents must be reported by hospitals, including voluntary reporting by the Queensland Ambulance Service, to Queensland Health.

Under the laws, pool owners had until 30 November 2015 to meet the current pool safety standard or earlier if they sold or leased or entered into another accommodation agreement for their property before then. Since 1 December 2010, properties with a non-shared pool, such as houses, could not be leased or have another accommodation agreement entered into without a pool safety certificate.

Buyers of properties with a non-shared pool need to obtain a pool safety certificate within 90 days from settlement if the seller has not given them a certificate. Sellers need to notify prospective buyers that there is no certificate before entering into a contract of sale.

Similar requirements apply for properties sold or leased or other accommodation agreements entered into with shared pools, such as unit complexes and hotels. A two-year phase in period for obtaining certificates applied for bodies corporate and a six-month phase in period applied for short term accommodation.

Queensland Building and Construction Commission

The QBCC is an independent statutory body which oversees the pool safety laws. The QBCC receives and investigates complaints, approves training courses and maintains the register of licensed pool safety inspectors.

The QBCC is responsible for the following in relation to pool safety inspectors:

- licensing
- receiving and investigating complaints
- auditing
- disciplinary action
- maintaining a register.

The QBCC is supported by departmental staff who attend to policy and legislation of the QBCC. The QBCC's contact details are:

phone: 139 333

email: poolssafety@qbcc.qld.gov.au

post: GPO Box 5099, Brisbane QLD 4001

Legislation

The principal legislation regulating swimming pool safety in Queensland is the BA, which contains provisions about when barriers are required around a pool and refers to subordinate legislation for more technical requirements.

This guideline is made under section 258 of the BA, which allows guidelines to be made to help achieve compliance. Sections 133A and 246BF of the BA require pool safety inspectors and building certifiers to have regard for guidelines made under section 258 of the BA.

The following legislation is referred to or relevant to this guideline:

- *Acts Interpretation Act 1954*
- *Ambulance Service Act 1991*
- *Building Act 1975*
- *City of Brisbane Act 2010*
- *Local Government Act 2009*
- *Manufactured Homes (Residential Parks) Act 2003*
- *Residential Tenancies and Rooming Accommodation Act 2008*
- *State Penalties Enforcement Act 1999*
- *Sustainable Planning Act 2009*
- *Building Regulation 2006*
- *State Penalties Enforcement Regulation 2014*
- *Sustainable Planning Regulation 2009*
- Queensland Development Code Mandatory Part 3.4—Swimming pool barriers
- Building Code of Australia
- Australian Standard AS 1926-2007 Parts 1 and 2

Interpretation

Acts Interpretation Act 1954

Section 14A of the *Acts Interpretation Act 1954* provides that in interpreting a provision of any piece of legislation (including statutory instruments made under an Act, such as the *Building Regulation 2006* or the Queensland Development Code) the interpretation that will best achieve the purpose of the legislation is to be used over and above any other interpretation.

Local government responsibilities

Mandatory inspection after pool immersion incident notice

A pool immersion incident means an event involving the immersion or partial immersion of a young child (under the age of five) under the water in a swimming pool. The incident could result in the child dying, being deprived of air or the health or wellbeing of the child being adversely affected. Local governments are required to inspect a pool where a pool immersion incident has been reported to them. Local governments must take any enforcement action necessary to ensure the pool complies with the relevant standards.

When a pool immersion incident occurs, there is a requirement for the person in charge of a private or public hospital to report it to the chief executive of Queensland Health. The chief executive of Queensland Health must then give notice of the incident to the local government for the area in which the incident happened, the QBCC, and the Queensland Family and Child Commission.

As soon as practical after receiving the notice, the local government must inspect the pool for compliance with the relevant standards. If, following inspection, the local government finds the pool does not comply, then it must take the necessary enforcement action to ensure the pool is modified to comply.

When responding to pool immersion incidents—especially where a child has died or suffered serious injury—local government officers should exercise appropriate conduct having regard to the circumstances.

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

Local governments are required to keep records of any pool immersion incident notices they receive for a period of at least five years. In addition, the details of the inspections undertaken and any enforcement action taken must also be retained for at least five years. Local governments can decide in what form these records are kept.

Relevant sections

Section 23 of the *Ambulance Service Act 1991*

Section 245G, 245I, 246ADA and 246AIA of the BA

Mandatory inspection after pool safety 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. The complaint notice must be in writing, be given to the local government and relate to the pool's safety. In instances where the local government reasonably considers the complaint to be vexatious, it does not need to inspect the pool.

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 of time. 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 potentially be considered vexatious. This is providing the ongoing complaints relate to the same incident or elements that have already been

inspected. Vexatious complaints may occur, for example, where 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. 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 *City of Brisbane Act 2010*.

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

Local governments are required to keep records of any pool safety complaint notices which they receive for a period of at least five years. In addition, the details of the inspections undertaken and any enforcement action taken must also be retained for at least five years. Local governments can decide in what form these records are kept.

Relevant sections

Section 246ADA and 246AIA of the BA

Mandatory inspection after notice from the Queensland Building and Construction Commission

If the QBCC reasonably suspects the fencing or other barriers for a regulated pool do not comply with the requirements of the BA, it may give a notice to the local government, informing the local government about its suspicions and giving information about the location of the pool.

This could occur, for example, where the QBCC receives a mandatory notice (i.e. Form 36) from a seller that they have sold a property with a regulated pool without a pool safety certificate in effect and a certificate is still not in effect more than 90 days after settlement. Once the QBCC receives a Form 36, a letter will generally be sent to the pool owner reminding them of their obligation to obtain a pool safety certificate within 90 days.

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. 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 complies with the relevant standards. 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 *City of Brisbane Act 2010*.

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

Local governments are required to keep records of any such notices they receive from the QBCC for a period of at least five years. In addition, the details of the inspections undertaken and any enforcement action taken must also be retained for at least five years. Local governments can decide in what form these records are kept.

Relevant sections

Section 245UA, 246ADA and 246AIA of the BA

Queensland Building and Construction Commission 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. For example, the QBCC may request information on any enforcement action taken by local governments for the purposes of data collection, policy development, coronial reporting or targeted pool safety awareness.

Relevant section

Section 246AIB of the BA

Four-yearly notifications

If a pool safety certificate has not been in effect for a pool for at least four years and the pool is on the pool safety register, then local government must, at least once every four years, give the owner the swimming pool safety advisory information prescribed under regulation. This is additional to any obligations the pool owner has to comply with the pool safety standard or obtain a pool safety certificate.

Local government can provide this information however it considers appropriate, such as information on rates notices or a separate flyer to all pool owners, or to all ratepayers, in the local government area. However, a newspaper advertisement would not be adequate, as the local government must ensure the information is given to each pool owner.

Relevant sections

Section 246ATC of the BA

Building Regulation 2006

Pool safety register

The pool safety register is a single state-wide database of regulated pools in Queensland. The purpose of the register is to provide any interested party with a central source of information about regulated pools—including local governments, pool safety inspectors, the department, QBCC, pool owners and the general public. Access to enter data on the register is restricted to local governments, the QBCC, the department and pool safety inspectors. The QBCC has administrative access to the register to approve pool safety inspector licence applications and other key functions. The QBCC can 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 visible to the public.

When obtaining a pool safety certificate number, pool safety inspectors must enter the following information into the swimming pool register:

- the address and real property description of the land on which the pool is situated
- the day the pool safety certificate was given, the period it is to remain in force and its identification number

- alternative solutions approved (if known)
- exemptions granted (if known).

A pool safety inspector will not be given a pool safety certificate identification number until all required information is entered into the register. This is to help ensure that the pool safety certificate in the register is complete and accurate. Under section 246ATE of the BA, if the register shows a pool safety certificate is in effect for a pool, that information can be relied on in most cases.

Local governments have certain responsibilities relating to the register, and were required to provide records of known regulated pools for the register by 4 February 2011—three months after the commencement of section 246AQ of the BA.

Relevant sections

Section 246AQ, 246AS, 246AT, 246ATE and 246AR of the BA

Local laws for pool safety

Local governments 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. For example, a local law cannot regulate safety barriers or CPR signage for regulated pools, as these matters are covered by the pool safety standard.

Any existing local law provisions of this type that were in force before 1 December 2010 must be repealed by 1 January 2017 and must not be amended.

For existing regulated pools, existing local law provisions continued to apply until the current pool safety standard took effect—1 December 2015 or earlier if the property where the pool is located was sold or a lease or other accommodation agreement was entered into.

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

Local governments can still have local laws for pools that are not regulated pools, such as public aquatic centres. To help promote consistency amongst local governments, the department is developing a model local law for these types of pools.

Relevant sections

Section 38A of the *Local Government Act 2009*

Section 41A of *City of Brisbane Act 2010*

Exemptions and variations

Previous exemptions and variations

Any fencing exemptions (excluding valid disability exemptions) that were granted for regulated pools by a local government were no longer valid once the current safety standard applied to the pool—1 December 2015 or earlier if the property where the pool is located was sold or a lease or other accommodation agreement was entered into. This applies to exemptions given under local laws and state laws.

Exemptions that were given solely on the basis of the occupier's inability to access the pool because of their disability continue to apply in accordance with the requirements of the BA. However if the person with the disability no longer occupies the property, the exemption automatically ends.

Any variations under section 41 of the BA (or under any similar previous provisions) relating to matters covered by the current pool safety standard no longer applied when the standard applied to the pool—1 December 2015 or earlier if the property where the pool is located was sold or a lease or other accommodation agreement was entered into.

Relevant sections

Section 245V and 41 of the BA

Disability exemptions

Pool owners 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 a disability.

To support a pool owner's application for an exemption, local governments can request medical evidence, which is strongly recommended. Medical evidence could include a medical certificate as well as a letter from a general practitioner or medical specialist that contains key information including:

- the form and extent of the disability
- whether the occupant is wheelchair-bound or mobile
- if wheelchair-bound, whether they are able to move the wheelchair unaided
- whether the occupant requires a full-time carer.

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

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.

Local governments can only grant a disability exemption to the extent reasonably necessary to allow the person with the disability to access the pool. For example, if the person's disability only prevented them from opening a pool gate, the exemption could not extend to matters not relating to the gate.

If the occupant with the disability has a full-time carer, careful consideration should be given as to whether it is appropriate to grant a disability exemption at all. 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 significantly increased risk of child drowning 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 the disability is no longer occupies the property or has recovered

sufficiently to enable them to access the pool if it complied with the pool safety standard (e.g. if the person recovered from a temporary disability).

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

Relevant sections

Sections 235 to 244 of the BA

Impracticality exemptions

Pool owners 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.

The application must be accompanied by details identifying which part of the pool safety standard the owner is seeking exemption from and showing that compliance is not practical. Local governments can ask for more information to establish that compliance is not practical. Impracticality exemptions cannot, for example, be given just 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.

Local governments can only grant an impracticality exemption to the extent reasonably necessary to overcome the impracticality associated with compliance. For example, if the only impracticality issue related to space for a gate to open outwards, the exemption could not extend to matters not relating to the gate.

The legislation gives local governments 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.

Local governments can also consider the cost of the barriers or work required to comply with the pool safety standard, having regard to the nature of any existing barriers for the pool. Local governments should carefully consider whether the cost of installing the barriers is significant enough to warrant an exemption at all.

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

Unlike disability exemptions, impracticality exemptions continue until the exemption is revoked by the local government. Any conditions applicable to the exemption are also binding on 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 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 a record of each exemption that is granted, although the legislation does not stipulate the form in which the record must be kept.

Relevant sections

Sections 245 to 245FA of the BA

Revoking exemptions

Local governments have the power to revoke an exemption under particular circumstances, including where there has been a contravention of conditions imposed on the exemption or the original exemption decision was based on false or misleading information given by the applicant.

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

- 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.

The pool owner has a right to appeal the local government decision to revoke the exemption to a building and development dispute resolution committee under the *Sustainable Planning Act 2009*.

Notice of the revocation must be given to the QBCC within 10 business days after the revocation notice is given.

Relevant sections

Sections 242 to 243 and 245E to 245F of the BA

Other local government powers

Outstanding nonconformity notices

If a pool safety inspector inspects a regulated pool and is not satisfied it complies, they must issue a nonconformity notice (Form 26) within two business days of the inspection. The nonconformity notice advises pool owners precisely, and in a standard way, how their pool does not comply and what needs to be done to make it comply with the pool safety standard to receive a pool safety certificate.

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

- they reinspect the pool within the two days after initial inspection and are satisfied that the pool now complies
- where there is an agreement that the pool safety inspector will carry out minor repairs within 20 business days of the original inspection.

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

The owner may appeal the pool safety inspector's decision in the nonconformity notice to a building and development committee under the *Sustainable Planning Act 2009*. The appeal must be made within 20 business days after the nonconformity notice is given.

If the owner fails to ask the pool safety inspector to reinspect the pool within three months of being given the nonconformity notice, the pool safety inspector must, within five business days, notify the local government and give the local government a copy of the nonconformity notice.

If a local government receives a nonconformity notice from a pool safety inspector, it is expected that the local government will contact the pool owner as soon as practical and, if necessary, inspect the pool for compliance with the relevant standards.

If, following inspection, the local government finds the pool does not comply with the relevant standards, it is expected they will take the necessary enforcement action to ensure the pool complies with the relevant standards. 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 *City of Brisbane Act 2010*.

Provisions have been included in the BA to restrict pool owners from shopping around for another pool safety inspector just because they disagree with the first pool safety inspector's decision. Following the issue of a nonconformity notice, it is an offence under the BA for the pool owner to ask a different pool safety inspector to inspect the pool for a period of three months. However, a pool owner may apply to the QBCC to approve another person to inspect the pool and issue a pool safety certificate. The QBCC will assess the particular circumstances and, if approved, issue a notice agreeing to this request. The nonconformity notice includes this information for pool owners.

For example, if the licence of the first pool safety inspector was suspended or cancelled before giving a pool safety certificate, the QBCC could agree to the pool owner engaging another pool safety inspector.

Relevant sections

Section 246AB and 246AC of the BA

Powers of entry

The *Local Government Act 2009* and *City of Brisbane Act 2010* have been amended to provide the power for an authorised person from a local government to enter a property (other than a home on the property) without permission from the occupier of the property, to inspect a swimming pool and barriers or fencing for the pool, for compliance purposes.

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

This provision has been included to assist local governments in carrying out its pool safety responsibilities.

Relevant sections

Sections 134A and 135 of the *Local Government Act 2009*

Sections 123A and 124 of *City of Brisbane Act 2010*

Section 246AE of the BA

Ability to declare areas as remote

Specific local governments that are prescribed under Schedule 2A of the *Building Regulation 2006* have the ability to declare particular areas within their local government area as remote, by passing a local government resolution.

The prescribed local governments have been identified as those classified as either remote or very remote under the Accessibility/Remoteness Index of Australia (ARIA). ARIA measures the remoteness of a point based on the physical road distance to the nearest urban centre in one of five size classes. Using the ARIA, local government areas have been given a score between 0 and 15 based on accessibility of goods and services amongst other criteria.

Local governments cannot declare an area as remote unless it is satisfied that the area is remote from the business premises of persons who perform pool safety inspection functions. For a local government to declare an area as remote, the area should be either:

- more than 100 kilometres 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 100 kilometres from the nearest local government office, but is within 100 kilometres 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 pool and a remote area declaration would not be appropriate.

As section 246AH of the BA requires each local government to provide a pool safety inspection service, if asked, this service must be provided from each of a local government's offices. It would therefore not generally be appropriate to declare an area as remote if it is within 100 kilometres of an office of the local government.

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

There is no obligation on prescribed local governments 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 pool in a declared remote area, the pool safety inspector does not need to carry out an on-site inspection of the pool, and may inspect the pool using documents (e.g. detailed photographs) or technology (e.g. streamed video footage). The pool safety inspector must still be satisfied that the pool complies using these methods.

Relevant sections

Section 246ACA and 246AH of the BA

Section 15 and schedule 2A of the *Building Regulation 2006*

Ability to cancel pool safety certificates

If a local government inspects a regulated pool that has a pool safety certificate and reasonably believes the pool does not comply with the pool safety standard, it can cancel the pool safety certificate. Local governments must still comply with the show cause procedure before cancelling a certificate.

This power recognises the traditional local government regulatory role of monitoring swimming pool safety compliance within their local government area. The show cause procedure ensures that 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. Cancellation of a certificate takes effect either at the end of the 10 business day appeal period unless the owner appeals the decision sooner.

Grounds to cancel a pool safety certificate could include where a pool has not been adequately maintained since the pool safety certificate was given and therefore no longer complies with the pool safety standard.

The pool owner has a right to appeal the local government decision to revoke the exemption to a building and development dispute resolution committee under the *Sustainable Planning Act 2009*. Notice of the revocation must be given to the QBCC within 10 business days after the revocation notice is given.

After cancellation, notice must be given to the QBCC within 10 business days to allow the QBCC to record the cancellation in the pool safety register.

These cancellation powers do not limit the power of local governments to issue an enforcement notice under the BA.

Relevant sections

Section 246AF and 246AG of the BA

Prosecution powers

Local government prosecution powers have been expanded to include offences across a broad range of provisions. Local governments also have the power to issue infringement notices under the *State Penalties Enforcement Regulation 2014* against many of these offences.

Local governments have prosecution powers under the following sections of the BA:

Section	Topic
232	Compliance with pool safety standard—regulated pool
233(2)	Constructing regulated pool—requirement for warning sign
233(3)	Constructing regulated pool—requirement for warning sign
234(2)	Constructing regulated pool—requirement for compliance with pool safety standard
237(4)	Decision on application—applicant must comply with exemption conditions
242(5)	Local Government may revoke exemption
245B(4)	Decision on exemption application (impracticability)
245E(5)	Local Government may revoke exemption
245G(1)	Requirement for person in charge of a hospital to report pool immersion incident to the chief executive of Queensland Health
245K	Requirement to have pool safety management plan
245L	Requirement to comply with approved pool safety management plan
245T	Access to regulated pool to be kept secure
246AC(5)	Steps after non-conformity 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 existing 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 entering into accommodation agreement—pool safety certificate in effect for shared pool
246ATH(4)	Offences about entering into accommodation agreement—pool safety certificate in effect for shared pool
246ATI(2)	Offences 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
246ATK(4)	Requirement to obtain pool safety certificate for regulated pool that is a shared pool
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
246AW(2)	Giving pool safety certificates and nonconformity notices

Building certifier role

Under the BA, pool safety inspectors only have certain designated responsibilities relating to pool safety, known as pool safety inspection functions. These include inspecting regulated pools to

decide whether to give a pool safety certificate, giving pool safety certificates, giving nonconformity notices and carrying out minor works prescribed under the *Building Regulation 2006* if necessary.

The traditional role of building certifiers remains basically unchanged under the laws, including deciding building development applications for new pools, inspecting new pools and enforcing pool safety laws.

All licensed building certifiers in Queensland were automatically licensed as pool safety inspectors free of charge for one year from 5 November 2010. Building certifiers do not need to undertake a training course or the government test. If a building certifier's licence is cancelled, suspended or surrendered, the same will automatically occur to their pool safety inspector licence. For renewals of their pool safety inspector licence, building certifiers must apply to the QBCC and pay the licence renewal fee.

The pool safety register contains a publicly accessible register of licensed pool safety inspectors, including those building certifiers who are also licensed pool safety inspectors. The register includes the inspector's name, licence number, date of licence issue and expiry and the inspector's contact details. The register also includes a record of any disciplinary action taken against a pool safety inspector, including any tribunal order made against them, and this is visible to the public.

Building certificates in place of pool safety certificates

A final inspection certificate given by a building certifier for building work that includes the construction of, or alteration to, a regulated pool can be used instead of a pool safety certificate. This is also the case for a certificate of classification given for a building that includes a regulated pool or on land where a regulated pool is situated. Both certificates are valid for the same period of time as a pool safety certificate, i.e. one year for shared pools or two years for non-shared pools.

However, this is only allowed if the certificate was issued against the current pool safety standard. If the certificate was issued against an older pool safety standard, it cannot be used instead of a pool safety certificate. In this case, a separate pool safety certificate is required.

Building certifiers must enter details of final inspection certificates and certificates of classification they issue for swimming pools onto the pool safety register within five days of issuing the certificate.

Pool safety inspector role

Under the BA, pool safety inspectors only have certain designated responsibilities relating to pool safety, known as pool safety inspection functions. These are:

- inspecting regulated pools to decide whether to give a pool safety certificate
- giving pool safety certificates
- giving nonconformity notices
- carrying out minor works as prescribed under the *Building Regulation 2006* if necessary.

A pool safety inspector carries out these functions under an agreement with the pool owner. The practical details of the agreement including the cost, time of the inspection and whether the pool safety inspector undertakes minor repairs are a matter of negotiation between the pool safety inspector and the pool owner. Inspection costs are not specified in the laws and are left to be determined by the market. A pool safety inspector does not have any specific right of entry powers and may only enter onto land to inspect a pool if invited by the pool owner or their agent.

A pool safety inspector cannot refuse to give a pool safety certificate only on the grounds that there is no development approval for the pool or barriers or only on the grounds that the pool or barriers do not comply with the development approval.

Local government pool safety inspectors

Local governments are required to, if asked, provide an inspection service by a licensed pool safety inspector. Local governments can meet this requirement in various ways, such as:

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

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

Fees

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

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

It is expected that the vast majority of owners will obtain a pool safety certificate prior to settlement or entering into a lease or other accommodation agreement. In the limited circumstances where this does not occur, the BA provides the QBCC with prosecution powers for owners not obtaining the required pool safety certificate. The QBCC is also able to impose infringement notices under the *State Penalties Enforcement Regulation 2014* for these offences.

Relevant sections

- Section 246ADA and 256 of the BA
- Section 97 of the *Local Government Act 2009*
- Section 99 of the *City of Brisbane Act 2010*
- *State Penalties Enforcement Regulation 2014*

Links and more information

Fact sheets

www.hpw.qld.gov.au/construction/BuildingPlumbing/PoolSafety/Pages/default.aspx

Legislation

www.legislation.qld.gov.au

Swimming pool safety guidelines

www.hpw.qld.gov.au/aboutus/ReportsPublications/Guidelines/Pages/PoolSafetyGuidelines.aspx

Code of conduct for swimming pool safety inspectors

www.hpw.qld.gov.au/SiteCollectionDocuments/pool-safety-inspector-code-of-conduct.pdf

Queensland Development Code Mandatory Part 3.4

www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/BuildingLawsCodes/QueenslandDevelopmentCode/Pages/QueenslandDevelopmentCodeCurrentParts.aspx

The Queensland Family and Child Commission

www.qfcc.qld.gov.au

Queensland Injury Surveillance Unit

www.qisu.org.au

Forms under the *Building Act 1975*

www.hpw.qld.gov.au/aboutus/ReportsPublications/FormsTemplates/Pages/default.aspx