



Building Newsflash

Local Governments

Building Certifiers

Building Designers

Architects

INSPECTION OF SWIMMING POOL FENCING

Purpose

To alert building certifiers to their duty of care to inspect swimming pool fencing to new swimming pools, within a reasonable period after a development permit has been issued.

Legislation requirements

The *Building Act 1975*, section 14, provides that an owner must construct a fence before filling a swimming pool with water to a depth of 300 mm or more.

The *Standard Building Regulation 1993*, section 85(1) (c), requires that a development approval must impose a mandatory notice of inspection condition. This places an obligation on the person carrying out the building work, to give the building certifier who issued the building approval for a swimming pool, a notice to inspect, on completion of the pool and fencing.

Standard No.1 of the Queensland Building Services Authority Code of Conduct for Building Certifiers, provides that “building certifiers undertake to always act in the public interest, particularly with regard to the safety of building works and structures.” This is reinforced for private certifiers in section 5.3.8 of the *Integrated Planning Act 1997*, which requires that a private certifier must always act in the public interest.

Duty of care

Advice received by the Department indicates that some building certifiers may not be carrying out inspections of swimming pool fencing, unless they receive a notice to inspect.

There is a concern that this practise may be putting young children at risk of drowning, where a pool that contains water, has not been properly fenced.

The requirement to always act in the public interest imposes a duty of care on building certifiers to take any reasonable action within their jurisdiction, to achieve the safety of building work. To minimise the risk an unfenced pool poses to young children, and to fulfil their duty of care, building certifiers should ensure swimming pool fencing is inspected before a swimming pool is filled with water. As building certifiers will have an appreciation of the average time taken to construct a swimming pool and fill it with water, they will be aware of when fencing is likely to be required. Therefore if the inspection of fencing is overdue, the building certifier should contact the pool owner to arrange inspection of the pool fencing.

If it is found that complying fencing has not been provided, or is not yet required, the building certifier should arrange follow-up inspections.

The duty of care to follow-up the fencing of a pool where a satisfactory final inspection has not been carried out, by contacting the property owner and arranging an inspection of the fencing, applies equally to local governments and private building certifiers who have approved swimming pools since the 30 April 1998.

Enforcement

In the event it is found an owner has failed to provide compliant fencing, the local government or private certifier may issue an enforcement notice requiring fencing to be provided.

However, if an owner refuses permission to access a property to inspect pool fencing, and it is not known whether complying fencing has been provided, action should be taken to arrange lawful access. A private certifier should advise the local government in writing of the refusal. The local government can obtain a warrant from the Magistrate's Court to enter land for the purpose of investigating an alleged offence, being the failure of the person carrying out the building work to give a notice for inspection. If the local government finds that compliant fencing has not been provided, the local government may issue an enforcement notice requiring fencing to be provided.

If an owner fails to comply with an enforcement notice, the local government or private certifier who issued the notice may commence prosecution proceedings in the Magistrate's Court. It is however, recommended that legal advice be sought before commencing prosecution proceedings.

Related Newsflashes

- Swimming pool fencing exemptions (Issued 21/2/00)

Please contact Mr John Lamb on (07) 323 71712 should you require further information regarding these matters.