

Queensland



BUILDING AMENDMENT ACT 2003

Act No. 53 of 2003

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Queensland



Building Amendment Act 2003

Act No. 53 of 2003

An Act to amend the *Building Act 1975*

[Assented to 15 September 2003]

The Parliament of Queensland enacts—**1 Short title**

This Act may be cited as the *Building Amendment Act 2003*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act amended

This Act amends the *Building Act 1975*.

4 Amendment of s 3 (Definitions)

(1) Section 3(1)—

insert—

‘**“construct”**, for part 3, see section 12T.

“fencing standards”, for part 3, see section 12T.

“pool owner”, for part 3, see section 12T.’.

(2) Section 3(1), definition “indoor swimming pool”, from ‘—’—

omit, insert—

‘completely enclosed by the walls of a building.’.

(3) Section 3(1), definition “revocation notice”, ‘section 16(3)’—

omit, insert—

‘section 16E(3)’.

5 Insertion of new ss 12T–12V

Part 3, before section 13—

insert—

‘12T Definitions for pt 3

‘In this part—

“construct”, an outdoor swimming pool on residential land, includes install or place the pool on the land.

Examples—

1. A person constructs an outdoor swimming pool on residential land if the person installs the pool above ground level on the land.
2. A person constructs an outdoor swimming pool on residential land if the pool is a portable one and the person places it on the land.

“fencing standards” see section 12U.

“pool owner” see section 12V.

‘12U Meaning of “fencing standards”

‘(1) The **“fencing standards”**, for an outdoor swimming pool on residential land, are—

- (a) for a pool constructed before the commencement of this section—the requirements, including standards, applying under this Act for the fencing of the pool immediately before the commencement; or
- (b) for a pool constructed on or after the commencement of this section—the standards prescribed under a regulation for the fencing of the pool.

‘(2) However, if on the commencement of this section an existing outdoor swimming pool on residential land is not fenced or the fencing does not comply substantially with the fencing standards under subsection (1)(a) for the fencing of the pool immediately before the commencement, the **“fencing standards”** for the pool are the standards prescribed under subsection (1)(b).

‘12V Meaning of “pool owner”

‘(1) The owner of residential land on which there is an outdoor swimming pool is the **“pool owner”** of the pool.

‘(2) However, if the occupier of residential land, or that part of the land, on which an outdoor swimming pool is situated is the owner of the pool but

not the owner of the land, the occupier, and not the owner of the land, is the “pool owner” of the pool.’.

6 Replacement of ss 14–16

Sections 14 to 16—

omit, insert—

‘14 Outdoor swimming pool must be fenced

‘(1) The pool owner of an outdoor swimming pool on residential land must ensure—

- (a) the pool has, around the pool, fencing complying with the fencing standards for the pool; and
- (b) the fencing is kept in good condition.

Maximum penalty—165 penalty units.

‘(2) However, if the pool’s fencing no longer complies with subsection (1)(a) only because the owner or occupier of adjoining land has constructed or placed something on the adjoining land, the pool owner of the pool is not required to construct additional fencing or change existing fencing to comply with subsection (1)(a).

‘15 Resuscitation sign for outdoor swimming pool

‘(1) This section applies to an outdoor swimming pool on residential land if the pool is constructed after the commencement of this section.

‘(2) The pool owner of the pool must, in the way prescribed under a regulation, ensure that there is always displayed for the pool a resuscitation sign complying with the requirements for a resuscitation sign prescribed under a regulation.

Maximum penalty—20 penalty units.

‘(3) In this section—

“**resuscitation sign**” means a sign showing procedures for providing first aid, including, for example, expired air resuscitation and external cardiac compression.

‘16 Replacing fencing

‘If a fence around a pool owner’s outdoor swimming pool on residential land has been demolished or removed, or is in substantial disrepair to the extent that it is impracticable to keep the fencing in good condition as required under section 14(1)(b), the pool owner must ensure—

- (a) there is constructed around the pool a new fence complying with the fencing standards for the pool, as if the pool were a pool constructed at the time the new fence is required to be constructed;¹ and
- (b) a building certifier has provided a certificate in the approved form stating the fencing complies with the fencing standards for the pool.

Maximum penalty—20 penalty units.

‘16A Warning sign required before constructing outdoor swimming pool

‘(1) This section applies to the construction of an outdoor swimming pool on residential land.

‘(2) Each relevant person must ensure that—

- (a) before the construction starts, a warning sign, complying with the requirements for a warning sign prescribed under a regulation, is displayed on the land in the way prescribed under a regulation; and
- (b) the warning sign is displayed until—
 - (i) fencing complying with the fencing standards for the pool has been constructed; and
 - (ii) a building certifier certifies the fencing complies with the fencing standards for the pool.

Maximum penalty—20 penalty units.

‘(3) In this section—

“relevant person” means—

¹ See the *Integrated Planning Act 1997*, section 3.1.4 (When is a development permit necessary).

- (a) the person who is, or is to become, the pool owner of the pool; or
- (b) the builder of the pool.

‘16B Constructing outdoor swimming pool

‘(1) This section applies to a person if—

- (a) an outdoor swimming pool has been constructed, or is being constructed, on residential land; and
- (b) the pool has not been filled with water to a depth of 300 mm or more; and
- (c) the person is, or is to become, the pool owner of the pool.

‘(2) The person must, unless the person has a reasonable excuse, ensure that, before the pool is filled with water to a depth of 300 mm or more—

- (a) fencing that complies with the fencing standards for the pool is constructed around the pool; and
- (b) a building certifier has provided a certificate in the approved form stating the fencing complies with the fencing standards for the pool.

Maximum penalty—165 penalty units.

‘16C Application for exemption from fencing

‘(1) A person may apply to the local government for an exemption from complying with the fencing standards for an outdoor swimming pool on residential land if the person is—

- (a) the pool owner of the pool; or
- (b) if the pool is still to be constructed—the person who is to be the pool owner of the pool.

‘(2) If an application for exemption is made under this section, the local government must decide the application within 5 business days after the application is made.

‘(3) The local government may grant the exemption only if it is satisfied that—

- (a) a person with a disability is, or is to become, an occupier of the land; and

- (b) it would be physically impracticable for the person, because of the person's disability, to access the pool if it had fencing complying with the fencing standards for the pool.

‘(4) The local government may require the applicant to produce medical evidence to support the application.

‘(5) The local government may grant the exemption on conditions it considers necessary or desirable to prevent a young child accessing the pool.

‘16D Steps to be taken after application decided

‘(1) As soon as practicable after making its decision on an application for exemption under section 16C, the local government must give the applicant written notice of the decision.

‘(2) The notice must state the following—

- (a) the reasons for the decision;
- (b) the decision may be appealed to a tribunal under the *Integrated Planning Act 1997*;
- (c) the appeal must be made within 20 business days after the day the applicant receives the notice.

‘(3) If the local government grants the exemption, the fencing standards for the pool continue to apply for the pool to the extent the exemption does not apply.

‘(4) The exemption ends if—

- (a) the applicant stops being the pool owner for the pool; or
- (b) the person because of whom the exemption was granted is no longer an occupier of the land; or
- (c) it would no longer be physically impracticable for the person because of whom the exemption was granted to access the pool if it had fencing complying with the fencing standards for the pool.

‘(5) If the exemption is granted on conditions, the applicant must comply with each condition attached to the exemption.

Maximum penalty for subsection (5)—165 penalty units.

‘16E Revocation of exemption

‘(1) This section applies if—

- (a) a local government has, under section 16C, previously granted an applicant an exemption; and
- (b) the local government is satisfied 1 or more of the following applies—
 - (i) the decision on the application for the exemption was based on a false or misleading particular given by the applicant;
 - (ii) the exemption has ended under section 16D(4);
 - (iii) the exemption was subject to conditions and there has been a contravention of a condition.

‘(2) The local government must give the applicant a show cause notice inviting the applicant to show cause why the decision should not be revoked.

‘(3) After considering any representations made to it under the show cause notice, the local government may, by a further written notice (a “**revocation notice**”) given to the applicant, revoke the decision previously given.

‘(4) The revocation notice must specify—

- (a) that the applicant must ensure the pool has, around the pool, fencing complying with the fencing standards for the pool; and
- (b) the day by which the applicant must comply with the notice.

‘(5) The applicant must comply with the revocation notice.

Maximum penalty—165 penalty units.

‘(6) If the applicant fails to comply with the notice, the failure is taken to be a failure to perform work under the *Local Government Act 1993*, section 1066.²’.

7 Amendment of s 17 (Advice as to compliance)

(1) Section 17(1), ‘The owner of residential land on which there is an outdoor swimming pool’—

2 *Local Government Act 1993*, section 1066 (Performing work for owner or occupier)

omit, insert—

‘The pool owner of an outdoor swimming pool on residential land’.

(2) Section 17, ‘section 14(2)’—

omit, insert—

‘section 14(1)’.

(3) Section 17(2)(b), 3(b) and (4), ‘owner’—

omit, insert—

‘pool owner’.

8 Amendment of s 19 (Apportionment of cost of constructing dividing fence)

(1) Section 19(1), ‘section 14(2)’—

omit, insert—

‘section 14(1)’.

(2) Section 19(1), ‘or installed’—

omit.

9 Amendment of s 20 (Appeals about swimming pool fencing)

Section 20(1), ‘An owner of residential land on which there is an outdoor swimming pool’—

omit, insert—

‘The person who is, or is to become, the pool owner of an outdoor swimming pool on residential land’.

10 Insertion of new pt 7, div 1 hdg

Part 7, before section 54—

insert—

‘Division 1—Transitional provision for Local Government Act 1993’.**11 Insertion of new pt 7, div 2 hdg**

After section 54—

insert—

‘Division 2—Transitional provisions for Building and Integrated Planning Amendment Act 1998’.

12 Replacement of s 59 (Lawfully constructed swimming pool fences protected)

Section 59—

omit, insert—

‘Division 3—Transitional provisions for Building Amendment Act 2003**‘58A Definitions for div 3**

‘In this division—

“amending Act” means the *Building Amendment Act 2003*.

“commencing day” means the day the amending Act, section 12, commences.

“unamended Act” means this Act as in force before the commencing day.

‘58B Existing exemption from fencing swimming pool

‘(1) This section applies if, immediately before the commencing day—

- (a) an application for an exemption from complying with the unamended Act, section 14(2),³ had been granted to a person under the unamended Act, section 15;⁴ and
- (b) the decision had not been revoked under the unamended Act, section 16.⁵

3 Section 14 (Outdoor swimming pools must be fenced)

4 Section 15 (Application for exemption from fencing)

5 Section 16 (Revocation of decisions or previous variations)

‘(2) On and from the commencing day, the unamended Act continues to apply for the exemption as if the unamended Act had not been amended by the amending Act.

‘(3) If the exemption was subject to a condition, the exemption is taken to be subject to the same condition.

‘58C Undecided application for exemption from fencing swimming pool

‘(1) This section applies if—

- (a) a person has, under the unamended Act, section 15, applied to the local government for exemption from complying with the unamended Act, section 14(2); and
- (b) immediately before the commencing day, the application had not been decided.

‘(2) The unamended Act continues to apply to the application, and to any exemption, including any condition of the exemption, applying as a result of granting the exemption, as if the unamended Act had not been amended by the amending Act.

‘58D When resuscitation sign for outdoor swimming pool not required

‘(1) This section applies to an outdoor swimming pool constructed on residential land if—

- (a) the lawful carrying out of the work started before the commencing day; or
- (b) approval to carry out the work was given before the commencing day, but the work does not start before the commencing day; or
- (c) application to carry out the work was made before the commencing day, but the application was not decided before the commencing day.

‘(2) Section 15⁶ does not apply to the pool.

6 Section 15 (Resuscitation sign for outdoor swimming pool)

‘59 Revocation of decisions or previous variations

‘The unamended Act, section 16, continues to apply to the following as if it had not been repealed by the amending Act—

- (a) a decision made under the unamended Act, section 15;
- (b) a variation given under section 30M as in force immediately before the commencement of the *Building and Integrated Planning Amendment Act 1998*, part 2.⁷.

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⁷ Section 30M (Variations) was repealed by the *Building and Integrated Planning Amendment Act 1998*.