



Building newsflash number 484

New laws for pool fences on common boundaries

Purpose

Amendments to the *Building Act 1975* (BA) relating to pool fences on common boundaries commence on 1 November 2011.

Background

The amendments provide that all rules relating to pool fences on common boundaries are now found in the BA. The amendments also provide some new rules for pool fences on common boundaries.

New rules

The changes allow pool owners in prescribed circumstances to construct or alter a pool fence without first obtaining the agreement of their neighbour. However, pool owners are encouraged to consult with adjoining owners and the BA provides that pool owners must give neighbours notices about proposed work at least 14 days prior to undertaking any work. The notice (Form 39—notice of proposed fencing work for a pool barrier) must include information on the type of fence proposed and the materials that will be used.

Agreement—new and existing fences

The changes provide that where there is no pool on the adjoining land a pool owner can construct a pool barrier on the common boundary without having to first obtain agreement from their neighbour. However, where the adjoining owner also has a pool, the pool owner proposing fencing work is required to obtain consent from their neighbour prior to undertaking constructing a new fence or work on an existing fence. This is to ensure the proposed fence can comply for both pools.

Existing fences—colours and materials

Where there is an existing fence the BA provides that the pool barrier must be consistent with the existing fence for matters such as materials and colours, unless this would prevent the fence from complying with the pool safety standard. If a pool owner proposes to significantly vary the character of an existing fence, they must obtain either consent from their neighbour or an order from the Queensland Civil and Administrative Tribunal (QCAT) allowing them to build a different type of fence.

Access and options for neighbours

Many pool owners will be able to make their pool fence comply with the pool safety standard without accessing their neighbour's land, particularly for fences that are 1800 mm or more in height. In addition, most pool owners will also not be able to claim any financial contribution to the cost of the work. In these cases, Form 39 advises neighbours that if they agree with the proposal they need take no action.

Where access to the neighbour's land is necessary, the pool owner must get consent from their neighbour or apply to QCAT for an access order.

Where neighbouring owners do not agree with the proposed work or access arrangements they should advise the person proposing the work as soon as possible and before work is due to commence.

If a neighbour is not satisfied with the final look of a fence, the new laws do not prevent the neighbour from painting or otherwise changing the appearance of their side of the fence, so long as they do not materially alter or damage the fence.

Cost of fencing work

In general, the pool owner is responsible for the cost of building and maintaining pool barriers. Exceptions apply where two pools will benefit from the fencing work (i.e. there is a pool on both sides of the common boundary) or where there is a special fence (e.g. a fence for a regulated dog). In these cases, details about the costs associated with the fencing work, and the proposed contributions, should also be provided to the neighbour on the Form 39.

Disputes

The new BA provisions provide a comprehensive framework to deal specifically with a the range of different scenarios likely to arise with pool fences on a common boundary, including one pool, two pools and special fences (e.g. a fence for a regulated dog). Under the BA, QCAT has been given jurisdiction to hear any dispute involving pool barriers on common boundaries.

For more information about the changes to the BA, refer to the [New rules for dividing fences which also serve as a pool barrier fact sheet](#). For information about fencing disputes that do not involve pool fencing, visit the [Department of Justice and Attorney-General website](#).

Contact for further information

Department of Local Government and Planning
Building Codes Queensland Division
tel +61 7 3239 6369
buildingcodes@dlgp.qld.gov.au

DISCLAIMER: The information contained in this newsflash is provided by the State of Queensland in good faith. The material is general in nature and before relying on the material in any important matter, users should carefully evaluate its accuracy, currency, completeness and relevance for their purpose. It is not intended as a substitute for consulting the relevant legislation or for obtaining appropriate professional advice relevant to your particular circumstances. The State of Queensland cannot accept responsibility or liability for any loss, damage, cost or expense you might incur as a result of the use of or reliance on information contained in this Newsflash. It is not intended to be, and should not be relied upon as the ultimate and/or complete source of information.