

Leasing a property with a pool

New pool safety laws—does your pool pass the test?



Swimming pools should be fun. However, drowning is the leading cause of death in Queensland for children aged one to four years. Supervision of 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 is for landlords, tenants and real estate agents and relates to leases of properties with pools. There is a separate fact sheet provided for short-term accommodation arrangements such as accommodation in hotels, motels and backpacker hostels.

Pools affected by the laws

The new pool safety laws apply to pools associated with houses, townhouses, units, hotels, motels, backpacker hostels, homestay accommodation and caravan parks (Classes 1–4 buildings).

Pool owners have until 30 November 2015 to comply with the new pool safety laws, or earlier if they sell or lease their property before this time.

Lease arrangements

Different rules apply depending on whether the pool is a shared or non-shared pool.

Spas that are capable of being filled with 300 millimetres or more of water, have a volume of 2000 litres or more and a filtration system, are covered by the new laws. However, this does not include bathroom spas that are used as baths.

Non-shared pools

If a pool is only accessible to residents of one dwelling such as a private house or private spa on a unit balcony, it is a non-shared pool.

Before entering into a new or renewed lease for a property with a non-shared pool, the owner must ensure a pool safety certificate is in effect for the pool.

Shared pools

If residents of two or more dwellings can use a pool, such as a body corporate pool, it is a shared pool.

For shared pools, the owner must give the person who will be the tenant a copy of a pool safety certificate if one is in effect.

If there is no certificate in effect, the owner must give a Notice of no pool safety certificate—Form 36 to the person who will be the tenant, to the body corporate and to the Department of Infrastructure and Planning before entering into the lease. Form 36 advises that the pool may not comply and the steps that must be taken to comply. The body corporate has 90 days to obtain a pool safety certificate for the pool.

However, for leases entered into on or before 1 September 2012, a phase in period applies—the body corporate has until 30 November 2012 to obtain a pool safety certificate for the pool. If a new or renewed lease is entered into on or after 2 September 2012, the 90 day requirement to obtain a pool safety certificate applies.

Pool safety certificates

How do I get a pool safety certificate?

Only pool safety inspectors who are licensed by the Pool Safety Council can issue pool safety certificates.

If you have any doubt about whether a person is a licensed pool safety inspector, you should ask to see their pool safety inspector licence card. You can also check their licence on the pool safety register.

The pool safety register provides a list of all licensed pool safety inspectors and is available at www.dip.qld.gov.au/poolsafetyregister. The register includes inspector contact details and displays the Local Government areas in which they work.

You can also use the register to check if a pool safety certificate is in effect for a pool. You can search the register by property address or lot number.

For recently built pools, a final inspection certificate or certificate of classification given by the building certifier can be used as a pool safety certificate for one year from its date of issue for shared pools and two years for non-shared pools. However, this only applies if the certificate was given against the latest pool safety standard.

All licensed building certifiers in Queensland are automatically licensed as pool safety inspectors until 4 November 2011. However, it is not mandatory for them to undertake pool safety inspections if they choose not to. Inspectors who do not wish to undertake pool inspections can be removed from the register.

Any complaints about a pool safety inspector should be made to the Pool Safety Council.

Does the pool safety certificate need to be displayed?

Pool safety certificates for shared pools must be conspicuously displayed near the main entrance to the premises or at a gate or door accessing the pool. Owners of non-shared pools do not need to display their pool safety certificates.

Where there is a shared pool, does every unit owner need to have the pool inspected separately?

No. The owner of the shared pool, usually the body corporate, needs to obtain the certificate and make it available to unit owners.

Does the tenant need to receive a copy of the pool safety certificate?

For non-shared pools, owners do not need to give their tenants a copy of the pool safety certificate.

For shared pools, unit owners need to provide either a copy of the certificate or a Notice of no pool safety certificate—Form 36 to the prospective tenant.

Is a pool safety certificate required when a fixed term lease becomes a periodic agreement?

Under Queensland's residential tenancy laws, if a new fixed term lease agreement is not signed or extended, it automatically becomes a periodic agreement.

Similar to the model adopted for replacement and testing of smoke alarms, the pool safety laws do not require a pool safety certificate to be obtained in this scenario.

However, if the original terms and conditions of the agreement change at any point (e.g. a rent increase), a pool safety certificate will need to be obtained before entering into the new or renewed lease.

Is a new pool safety certificate required before each new lease?

Pool safety certificates are valid for one year for shared pools and two years for non-shared pools regardless of how many times the property is re-leased during this period.

Noncompliance

What happens if the pool doesn't comply at inspection?

If a pool safety inspector inspects a pool and is not satisfied that it complies, they must issue a Pool safety nonconformity notice—Form 26. Form 26 advises the pool owner how their pool does not comply and what work needs to be done to comply. Some pool safety inspectors are licensed to carry out certain minor repairs. Pool owners can also carry out some repair and maintenance work.

The Building Regulation 2006 sets out the repairs and maintenance work pool owners can carry out themselves, and minor repairs that appropriately licensed pool safety inspectors can carry out. Examples of repairs and maintenance work pool owners can carry out can be found in the Tips to make your pool safer flyer available at www.dip.qld.gov.au/poolsafetyguidelines

Once a pool safety inspector has given a Pool safety nonconformity notice—Form 26 the pool owner has three months to undertake the repairs and arrange a reinspection of the pool. It is an offence for the pool owner to ask a different inspector to reinspect the pool within this period. However, in some circumstances, such as where the inspector becomes ill, the pool owner can apply to the Pool Safety Council to allow another inspector to reinspect the pool.

If the pool owner does not ask the inspector to reinspect the pool within three months, the inspector must notify the Local Government. The Local Government can then take the necessary enforcement action to ensure the pool complies with the relevant standards.

Pool owners can appeal against a Form 26 if they disagree with it.

What are the penalties for noncompliance?

Penalties of up to \$16 500 for individuals and \$82 500 for corporations apply for noncompliance with the pool safety laws. On-the-spot fines of \$1600 for individuals and \$4800 for corporations can also apply. Enforcement action is taken by Local Governments and, in some cases, by the Department of Infrastructure and Planning.

If a real estate agent collects commissions in connection with a new lease where no pool safety certificate has been obtained for a non-shared pool, they may face disciplinary proceedings under the *Property Agents and Motor Dealers Act 2000*.

Occupiers of a property, including tenants, must ensure that gates and doors giving access to a pool are kept securely closed at all times when they are not in use. Occupiers and tenants should also ensure there are no climbable objects, such as pot plants or loose outdoor furniture, that would allow children to access the pool. Tenants who install their own pool, such as a portable pool or spa, must ensure the pool complies with the pool safety standard and obtain all required building approvals. Permission from the property owner may also be required.