

Dividing fences which also serve as a pool barrier



In Queensland, dividing fences also commonly serve as a pool barrier as this is often the most efficient way to comply with the state's pool safety laws. This fact sheet is to assist pool owners and their neighbours to understand the laws for pool fences that are also used as dividing fences.

As a pool owner, I want to alter or replace a part of the dividing fence to make my pool barrier compliant. What do I need to do?

Pool owners are encouraged to discuss the fencing work with their neighbour before making any decisions. If you decide to do the fencing work without obtaining an agreement from the neighbour, you must give the neighbour a notice 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*, will include information on the type of fence proposed and the materials that will be used. The proposed pool barrier must be consistent with the existing fence (e.g. similar materials and colours), unless this would prevent the fence from complying with the pool safety standard.

Who is responsible for the cost of fencing work?

The pool laws adopt a user-pays system. Therefore, where the fencing work is required for a pool fence to be compliant with the pool safety laws, the full cost is borne by that pool owner. If there is a pool on both sides of the dividing fence and both pool owners need the change to make the barrier compliant, the cost is shared equally. However, where one pool owner requires fencing work and the other pool owner does not, the costs are borne solely by the pool owner requiring the changes. Details about the costs associated with the fencing work should also be provided to the neighbour on the Form 39.

My neighbour and I cannot agree on how to share the cost of fencing work. What should I do?

If an owner wants an adjoining owner to contribute to fencing work, the owner must give the adjoining owner a Form 39.

The Queensland Civil and Administrative Tribunal (QCAT) resolves disputes between adjoining owners about carrying out fencing work for a dividing fence forming part

of a pool barrier. If, within one month after the Form 39 is given, the neighbour and the pool owner have not agreed about the proposed fencing work or the contributions to the proposed fencing work, the neighbour or pool owner may apply to QCAT to make a decision. The application must be made within two months of the Form 39 being given.

There is no fence along the common boundary line and I want to construct a pool barrier. What do I need to do?

Where no fence exists, the pool owner or proposed pool owner may construct part of a pool barrier along the common boundary without agreement from the adjoining owner. However, the pool owner or proposed pool owner must still give a Form 39 notice about proposed work at least 14 days prior to undertaking any work and the pool fence can only be made from prescribed materials.

What are prescribed materials?

For the purpose of constructing a pool barrier, prescribed materials include wood, chain wire, metal panels or rods, bricks, rendered cement, concrete blocks and other material of which a dividing fence is ordinarily constructed. It will not include a hedge or vegetative barrier or any material that does not comply with the requirements of the pool safety standard. This is because a hedge or vegetation may provide climbing points or is not sufficiently strong to keep a child out of the pool enclosure.

My neighbour owns a pool. What happens if they undertake fencing works without giving me 14 days notice?

Where the pool owner commences work without giving proper notice, this fencing work is considered unauthorised. In this situation, you may apply to QCAT for an order. For further information, please visit the QCAT website at www.qcat.qld.gov.au.

My neighbour owns a pool. Can I stop them from replacing the fence?

If a pool owner proposes to significantly vary the character of an existing fence, they must obtain consent from their neighbour or obtain an order from QCAT allowing them to build a different type of fence.

If you as a neighbour are not satisfied with the final look of a fence, you are able to paint or otherwise change the appearance of their side of the fence, so long as they do not materially alter or damage the fence.

I have a special purpose-built fence (e.g. for my regulated dog). How do the laws apply to me?

The amendments to the *Building Act 1975* ensure that the pool owner must respect existing fence construction and, in particular, comply with the requirements for a special purpose. For example, it is common practice for dog enclosures to be built so that a child cannot reach into the dog enclosure. In this case, the pool owner will need to ensure that the completed pool barrier also prevents a child from reaching into the dog enclosure. This will ensure that a dog owner is not disadvantaged by the use of a common boundary as a pool barrier.

What are the rules for buildings that are built on the common boundary?

The wall of a building on a common boundary may be used as part of a pool barrier if it complies with the pool safety standard. A pool owner is prohibited from altering the building without the owner's consent. Where any part of the wall does not meet the requirements of the pool safety standard, the pool owner will need to construct a separate barrier, unless the neighbour agrees to the changes.

Is a pool owner or contractor allowed to access my property to construct part of a pool barrier?

Where entry to an adjoining property is necessary to construct part of a pool barrier, the pool owner must first obtain their neighbour's consent or an order from QCAT.

Are options available to a pool owner concerned with an overhanging branch?

If a pool owner is concerned about branches of a neighbour's tree overhanging the swimming pool, then an option to remedy the situation may be available under the *Neighbourhood Disputes Resolution Act 2011*.

For more information, please visit the Department of Justice and Attorney-General website at www.justice.qld.gov.au/corporate/justice-initiatives/neighbourhood-disputes-resolution-act-2011.

What is urgent fencing work?

If all or part of a dividing fence is damaged or destroyed, urgent fencing work may be required. If it is impracticable to give notice, an owner may, without giving notice to the neighbour, carry out the fencing work required to restore the dividing fence to a reasonable standard.

For more information

visit: www.hpw.qld.gov.au/PoolSafety

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