



Form 39—Notice of proposed fencing work for a swimming pool barrier

Version 4 - November 2014

Notes: Please keep a copy of this document for your records and make a note of the date that it was provided to your neighbour. Please attach separate sheets if there is insufficient space in this form.

Section 245XL(1) of the *Building Act 1975* encourages adjoining owners to resolve issues about fencing work to avoid a dispute arising. Adjoining owners can arrive at any agreement in relation to a pool barrier on a common boundary, notwithstanding the provisions of the *Building Act 1975*. For example, owners can agree to reduced notice times, use of non-prescribed materials or altered contribution amounts.

If you can not come to an agreement you may apply to the Tribunal for orders about fencing work under section 245XQ of the *Building Act 1975*.

This form is made under section 245XM of the *Building Act 1975*.

1. From person proposing fencing work _____

Name

Address

2. To adjoining owner _____

Name

Address

3. Location and extent of proposed pool barrier _____

This part may be left blank if neither situation applies

If the pool barrier is not on the common boundary between the above two addresses – describe the common boundary the proposed pool barrier will be located on:

If the proposed pool barrier does not extend along the entire common boundary - describe the extent of the pool boundaryⁱ

4. Options for adjoining owner _____

- If you reach agreement about the proposal
 - No further action is required.
- If you would like to **comment** on the proposed work
 - Contact the person proposing the fencing work or write comments on the back of this form and give the form to the person.
- If you **do not agree** with the proposal
 - You should inform the person proposing the fencing work as soon as possible.
 - If there is a pool on your land, your neighbour must not start fencing work on any part of the barrier for the pool unless you agree to the proposal or the Queensland Civil and Administrative Tribunal orders that the work can start.
 - Where there is no pool on your land your neighbour may start fencing work on any part of the fence forming a barrier for their pool 14 days after giving this notice unless you obtain an order from the Tribunalⁱⁱ

5. Proposed start date for fencing work _____

If there is a pool on both sides of the common boundary or only on your neighbour's side at least one month's notice must be given – in all other cases 14 days' notice must be given.

Date

6. Proposed work

Please tick one option

Proposed work will involve replacing or raising the existing dividing fence using similar materials and colours. The resulting fence will be 1800 millimetresⁱⁱⁱ or _____ millimetres high and on the same line as the existing fence.

OR

The fencing work proposed is: Describe the work^{iv} including the design, dimensions, materials, and colour to be used. If replacing or constructing a fence, identify the line on which it will be constructed.

7. Costs^v

Please tick one option.

I/we will bear all costs (pool owners are usually responsible for the costs of pool barriers).

I/we would like you to contribute \$_____ as half the estimated total cost of \$_____.

I/we would like you to contribute \$_____ and I/we will contribute \$_____.

8. Access to your land

The fencing work can be completed without accessing your land.

Access to your land will be required for the fencing work. I/we seek your permission to enter the following parts of your land at the following times^{vi}.

9. Signature of person proposing fencing work

Signature

Date

/ /

10. Comments

ⁱ Clearly identify where on the common boundary the pool barrier will be located—e.g. the proposed pool barrier will extend along the common boundary from two metres inside the street corner to one metre inside the back corner.

ⁱⁱ In general where there is only one pool involved the pool owner can build a pool barrier on a common boundary if they provide 14 days' notice, the proposed fence meets the requirements of the pool safety standard and the fence is constructed from prescribed materials (set out in section 13(3) of the *Neighbourhood Disputes Resolution Act 2011* and listed on the *New rules for dividing fences which also serve as a pool barrier* fact sheet). Where there is an existing dividing fence the pool owner is also required to use similar materials and colours to those of the existing fence, unless this would prevent compliance with the pool safety standard. In addition where the existing fencing is more than 1800 millimetres high, the replacement fence must be the same height unless otherwise agreed. If access to your land is needed to carry out the work, your neighbour will require your consent or an order by the Tribunal. For a more detailed explanation of the relevant rules please refer to the fact sheet.

ⁱⁱⁱ Where a pool barrier is 1800 millimetres high, climbing objects on the adjoining land do not affect compliance with the pool safety standard.

^{iv} Fencing work can include construction of a new fence, repair of an existing fence, replacement of a fence, and modification of a fence. Fencing work can also include surveying or preparation of land and trimming, lopping or removal of vegetation along the common boundary.

^v In general a pool owner is responsible for the cost of building and maintaining a pool barrier. Exceptions apply where there is a pool on both sides of the common boundary or the fence acts as a special purpose fence (e.g. a dangerous dog enclosure.) See the fact sheet at www.hpw.qld.gov.au for the rules about contributions in particular cases. If you are seeking a contribution from the adjoining owner you may wish to use the Agreement to contribute for fencing work for a pool barrier—form 41.

^{vi} Any request for access should be reasonable and limited to the part of the adjoining land necessary to do the fencing work – e.g. two metre strip next to the proposed fencing work. Reasonable access times should be proposed—e.g. times between 7am and 7pm.