

# Industry Bulletin 158

## Building Amendment Regulations 2023

### Commencement and transition

The Building Amendment Regulations 2023 (Amendment Regulations) will implement decisions from the Government's [Decision Paper – Swimming Pool and Safety Barrier Control \(Decision Paper\)](#) published in 2021.

The Amendment Regulations were published on 20 December 2023 on the [Western Australian legislation website](#). To allow sufficient time for local government and industry administrative arrangements and for updated information to be provided to the public, the bulk of the amendments will commence operation from 21 June 2024 (six months after publication).

Provisions commencing immediately from 21 December 2023 are those providing the manner for authorising contracted persons to inspect swimming pool barriers and associated transitional arrangements for those currently authorised, and the boundary barrier alternative compliance option.

### What's new?

The [Building Amendment Regulations 2023](#) make various reforms to the swimming pool and safety barrier requirements in the [Building Regulations 2012](#) (the Building Regulations).

### Spa Baths – amended definition of *private swimming pool*

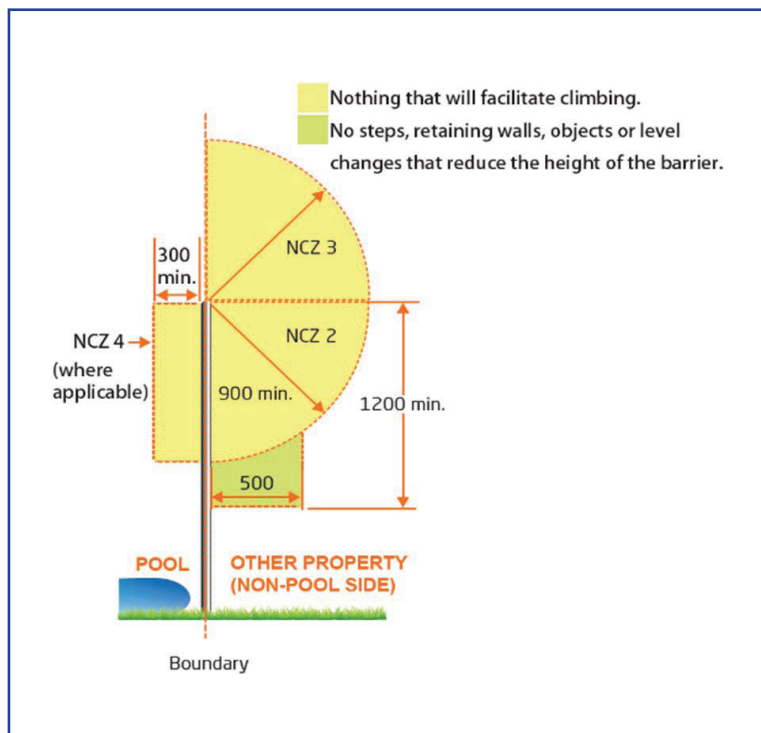
- ▶ Regulation 3 of the Building Regulations is amended to put beyond doubt that spa-baths are excluded from the definition of a 'private swimming pool' and therefore are not subject to swimming pool and safety barrier regulatory requirements, clarifying the current interpretation.
- ▶ Spa-pools are specifically included in the definition, ensuring they continue to be subject to the swimming pool and safety barrier regulatory requirements.

### Clarifying *authorised person* provisions for contractors

- ▶ New regulations implement a specific and separate manner for local governments to appoint a contractor (private practitioners and employees of other local governments) as an authorised person for the purpose of conducting safety barrier inspections.
- ▶ Regulation 4A of the Building Regulations prescribes the manner of authorisation in which these persons (contractors) can be appointed for the purpose of section 93(2)(d) of the *Building Act 2011* (the Building Act), and regulation 4B of the Building Regulations provide for identity cards to be issued to these persons (aligned with the existing authorised person provisions of Part 8 Division 2 of the Building Act).
- ▶ All contractors with current authorisation will be re-authorised under the new provisions, which commence operation immediately along with the associated regulation 54 transitional provision of the Building Regulations. This allows local governments to re-authorise contractors while current authorisations continue for a period of six months until the bulk of the Amendment Regulations commence operation.
- ▶ Employees of individual local governments continue to be authorised under section 96 of the Building Act and all current authorisations continue.

### Boundary barriers – alternative compliance option

- ▶ Amended regulation 15B of the Building Regulations modifies the technical requirements of clause 2.2.4 of AS 1926.1-2012, providing boundary barriers an alternative compliance option that utilises the non-pool side of the boundary (for example, compliance can now be achieved using either the pool side or the non-pool side options).
- ▶ New sub-regulation 15B(a) of the Building Regulations has the effect of permitting the use of the non-pool side of a boundary barrier where it is at least 1200mm in height, complies with NCZ 1, 2, 3, (and where relevant NCZ 4), and does not have any steps, retaining walls, objects or level changes within 500mm of the boundary barrier that would otherwise reduce the 1200mm minimum barrier height.
- ▶ The use of this option does not impose any obligations on neighbouring properties to preserve the barrier function of the boundary fence. The pool owner remains solely responsible for the ongoing compliance of their safety barrier in accordance with their obligations under regulation 50 of the Building Regulations; if at any time the non-pool side becomes non-compliant the onus is on the pool owner to demonstrate compliance on the pool-side.



- ▶ This option is expected to alleviate known difficulties in complying with the boundary barrier technical requirements by providing an alternative pathway which may assist where ground levels or other structures on the pool side of the boundary fence make it problematic to achieve compliance.
- ▶ Caution needs to be exercised when considering the use of the new non-pool side boundary barrier option between two adjoining private properties. Compliance on the non-pool side relies on the adjoining property side of the boundary barrier, which is not typically within the control of the owner of the swimming or spa pool, and as such may be difficult to achieve and maintain.

The use of the non-pool side of the boundary barrier is better suited where it abuts a verge, park, public land, or where the pool is on the high side of a significant retaining wall, or similar circumstances, where the owner has more control and/or where compliance can be more easily maintained.

### Modified prescribed building standards

- ▶ Prescribed building standards are modified to resolve inconsistencies in the operation of the applicable building standards that apply on completion of building work and the specified building standards that apply thereafter to existing swimming pools and their safety barrier inspections.
- ▶ The technical requirements are aligned across regulations 31C, 31E, 31G, 31H and 50A of the Building Regulations to permit compliance with the safety barrier performance requirement (and associated deemed-to-satisfy provisions) in any edition of the Building Code of Australia (BCA) in effect on or after the time of application for a building permit or commencement of construction of the associated swimming pool.
- ▶ The amended prescribed building standards provide the required flexibility for when future editions of the BCA are adopted that contain updated technical requirements applicable to safety barriers.
- ▶ A drafting note is included to regulations 31C and 50A of the Building Regulations to highlight the building standards that are modified by regulation 15B of the Building Regulations.

### **Specified building standards – use of buildings within or as part of a pool barrier**

- ▶ Modified requirements in sub-regulation 50A(1) clarify access restriction requirements for buildings located within or as part of a swimming pool barrier, removing uncertainty by applying the requirements uniformly to all swimming pools regardless of age; previous sub-regulations 50(2) and (3) of the Building Regulations applied specifically to pre-May 2016 pools only.
- ▶ Buildings (other than Class 10 buildings) that are located within, or form part of, a pool barrier must have restricted access from that building to within the pool area.
- ▶ A note included to regulation 50A of the Building Regulations clarifies that any building that forms part of a barrier must comply with the technical requirements, so that access is restricted through that building to within the pool area.

### **Clarification on owner and builder responsibilities for safety barriers**

- ▶ The regulation 50 of the Building Regulations which prescribes an ongoing requirement for owners to provide a safety barrier to private swimming pools containing more than 300mm of water is amended to clarify that it applies only to completed swimming pools.
- ▶ Amendments clarify and put beyond doubt that it does not apply to pools that are under construction, regardless of the level of water, while the site is under the control of a builder and within the jurisdiction of work health and safety laws.
- ▶ Specifically, regulation 50 does not apply to a private swimming pool construction site that the *Work Health and Safety Act 2020* and Work Health and Safety (General) Regulations 2022 require the builder to secure from unauthorised access.
- ▶ Concerns about the security and safety of a swimming pool construction site should be referred to the builder and, where the circumstance warrants, to WorkSafe. Failure to adequately secure a swimming pool construction site may result in enforcement action from WorkSafe and/or local governments (for example through building orders).

### **Modified references in disability door concession**

- ▶ References have been updated in regulation 51 of the Building Regulations in relation to door concession provisions for persons with a disability that causes difficulty in operating a pool gate.
- ▶ Previously the provisions referred to a 'certificate' confirming a person's 'disability'. National Disability Services (NDS) now provides written confirmation of its view that a person's disability or medical condition impacts on their ability to comply with the technical requirements for a pool barrier gate.
- ▶ Amendments are made to remove the reference to the superseded 'certificate' and replace this with more general wording, and to include the wider descriptor of a person's medical condition.
- ▶ This is an administrative amendment with minimal impact. Generally, any alternatives to the prescriptive requirements are best dealt with through the performance solution framework.

### **Modified building permit exemptions**

- ▶ In the Building Regulations Schedule 4 'Building work that does not require a Building Permit' Clause 2 Table is amended by removing the exception for fences forming part of a pool barrier and inserting a definition of 'fence' that specifically includes fences forming part of a pool barrier.
- ▶ Subject to listed exceptions, this removes the building permit requirement for construction, assembly or placement of a fence forming part of a safety barrier to a swimming pool, aligning requirements for all types of fencing.

- ▶ Fences that form part of a safety barrier to a private swimming pool only require a building permit if they:
  - a) also act as a fall protection barrier (also known as a balustrade), where people could fall 1m or more from a floor or roof or through an opening (other than through an openable window) in the external wall of a building, or due to a sudden change of level within or associated with a building; or
  - b) are not constructed in accordance with a relevant local law; or
  - c) are constructed of masonry and over 0.75 m in height\*; or
  - d) are constructed of a material other than masonry and over 1.8 m in height\*; or
  - e) are located in Wind Region C or D (as detailed in the AS/NZS 1170.2, as referenced in the edition of the BCA in effect at the time)\*.

\* unless constructed in accordance with a relevant Local Government local law.

Some examples below:

- A pool fence that also acts as a BCA required fall protection barrier (balustrade) will always require a building permit.
- A pool fence that complies with a relevant local law will not require a building permit.
- A pool fence that does not comply with a relevant local law will require a building permit.
- A 1.2m glass pool fence that is not subject to a relevant local law and is located in wind region A (such as Perth) will not require a building permit.
- A 1.2m glass pool fence that is not subject to a relevant local law and is located in wind region D (such as Exmouth) will require a building permit.
- A 1.8m (or less) steel pool fence that is not subject to a relevant local law and is located in wind region A (such as Perth) will not require a building permit.
- A 1.8m (or less) steel pool fence that is not subject to a relevant local law and is located in wind region D (such as Exmouth) will require a building permit.
- A steel pool fence that is greater than 1.8m that is not subject to a relevant local law and is located in any wind region will require a building permit.
- A 1.2m masonry wall (pool fence) that is not subject to a relevant local law and is located in any wind region will require a building permit.

For information on local laws please contact your relevant local government. A register of local laws is available from the [Department of Local Government, Sport and Cultural Industries](#).

### **Initial inspection of safety barrier to new swimming pools**

- ▶ To support the Building Permit modifications above, local governments are required to conduct an initial inspection of barriers installed to new swimming pools and/or those swimming pools that have never had a safety barrier inspection.
- ▶ New sub-regulation 53(2)(a) of the Building Regulations requires an initial inspection within 30 calendar days of the local government becoming aware of a new swimming pool or one that has never had a safety barrier inspection. This could be following receipt of a Notice of Completion for a swimming pool (or barrier, where applicable), notification by the owner, or by some other means.
- ▶ On commencement of the Amendment Regulations, the requirement to conduct an initial inspection will include recently installed pools that have not yet been inspected by the local government as part of the periodic (four-yearly) inspection program.

- ▶ Sub-regulation 53A(2) of the Building Regulations provides a new fee for service for an initial inspection, charged up to a maximum of \$312 inclusive of any required re-inspections, limited to not exceeding the cost to local government of carrying out an initial inspection. This charge can be invoiced to the owner or added to the rates notice as per the annual charge.
- ▶ Previous requirements for a builder to inspect and submit an inspection certificate on completion of the safety barrier no longer apply and have been removed.
- ▶ Safety barrier compliance documentation may be requested by the local government pool inspector to assist in determining compliance at the initial inspection, such as compliance reports required by the Australian Standard (AS 1926.1) and certificates verifying appropriate safety glass pertaining to glass fence panels.

### **Reinspection of non-compliant safety barriers**

- ▶ A new sub-regulation 53(2)(c) in the Building Regulations prescribes a requirement to reinspect non-compliant safety barriers.
- ▶ Where a safety barrier does not comply, a reinspection is to be arranged within a maximum period of 60 calendar days. The local government must continue to reinspect the safety barrier until compliant.
- ▶ The 60-day timeframe is a maximum, and it is expected that local governments will continue to reinspect at intervals determined by their risk assessment of the circumstances of the non-compliance and in accordance with their enforcement strategy.
- ▶ The cost of reinspecting is to be factored into the local government's inspection charging model and is not an additional separate charge to pool owners.

### **Charges imposed for ongoing safety barrier inspections**

- ▶ The periodic (four-yearly) inspection annual charge has been amended and relocated to sub-regulation 53A(3) of the Building Regulations.
- ▶ The maximum annual charge has increased from \$58.45 to \$78 and continues to be limited to not exceeding the estimated average cost to the local government of carrying out periodic inspections in that year.
- ▶ The increased charge reflects the inclusion of any related re-inspections required where a non-compliant barrier is detected.
- ▶ Local governments continue to apply a single annual charge to owners of properties with a private swimming pool that is subject to the periodic inspection program and requirements of Part 8 Division 2 of the Building Regulations. The charge continues to be applied to each owner each financial year, so long as inspections were conducted in that year.
- ▶ Sub-regulation 53A(3)(c) of the Building Regulations clarifies that the charge is payable by each pool owner regardless of whether an inspection was carried out on that property in that year. This reflects the fact that annual charging relates to the cost of the entire periodic inspection program in that year and is charged to all pool owners.

### **Local government reporting to the Building Commissioner**

- ▶ New regulation 53B of the Building Regulations introduces a mandatory reporting obligation on local governments, formalising the current voluntary arrangement of the past six years.
- ▶ Local governments are required to report annually to the Building Commissioner to demonstrate progress with the four-yearly safety barrier inspection program for the preceding financial year, with the data required to be provided before 1 August each year.

- ▶ Data to be reported is unchanged from the voluntary arrangement, being:
  - The total number of swimming pools located in the district that are subject to the private swimming pool safety barrier requirements of Part 8 Division 2 of the Building Regulations;
  - The number of swimming pools referred to above that were inspected during the preceding financial year; and
  - The number of swimming pools that were not inspected within four years of a previous inspection at the end of the reporting period.

**Disclaimer** – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

### **Building and Energy**

Department of Energy, Mines, Industry Regulation and Safety

**1300 489 099**

8.30am – 4.30pm

Level 1 Mason Bird Building

303 Sevenoaks Street (entrance Grose Avenue)

Cannington Western Australia 6107

M: **Locked Bag 100, East Perth WA 6892**

W: [www.demirs.wa.gov.au/building-and-energy](http://www.demirs.wa.gov.au/building-and-energy)

E: [be.info@dmirs.wa.gov.au](mailto:be.info@dmirs.wa.gov.au)

### **Regional Offices**

Goldfields/Esperance (08) 9021 9494

Great Southern (08) 9842 8366

Kimberley (08) 9191 8400

Mid-West (08) 9920 9800

North-West (08) 9185 0900

South-West (08) 9722 2888

National Relay Service: 13 36 77

Translating and Interpreting Service (TIS): 13 14 50

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