

Newsplash

Saving precious lives

Issue 6, July 2013

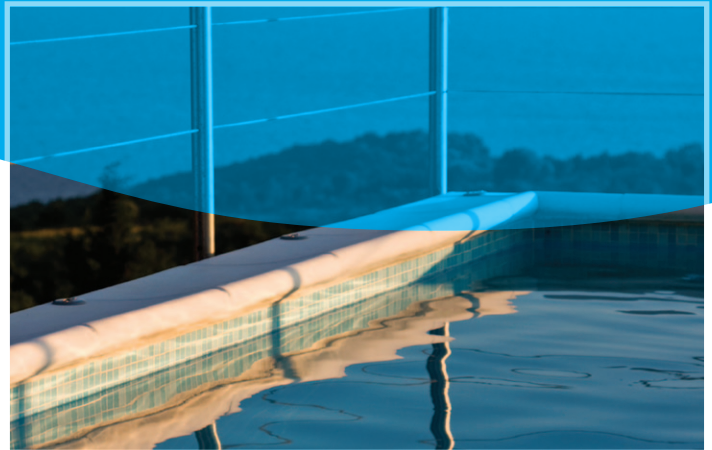
Barriers and ground clearance

When assessing gaps between the bottom of a barrier and the finished ground level, a pool safety inspector (PSI) must ensure that the finished ground is solid and unlikely to be disturbed by a young child.

The Pool Safety Council (PSC) recently considered a case where a pool safety certificate was given for a pool with gaps exceeding 100 millimetres between the bottom of the barrier and the finished ground level, in breach of section 2.4 of Australian Standard 1926.1-2007 (AS1926.1). The aluminium barrier was located over a bed of pebbles parallel to the pool coping. The gap exceeding 100 millimetres was located between the pebbles and the lower part of the aluminium fencing panel. While the inspector added more pebbles to the existing bed of pebbles to reduce the gap, this is not considered an acceptable solution.

The purpose of section 2.4 of AS 1926.1 is to prevent a young child from squeezing under a fence barrier and gaining access to the pool area. When applying this section, inspectors should consider this intention.

Section 2.4 of AS 1926.1 includes a note stating that “the surrounding area of the pool shall be stable and remain intact at all times. Loose sand is not acceptable”. This note can be applied to all loose surfaces, including leaf or garden mulch, pine bark, loose pebbles, loose soil or decorative gravel or similar moveable



materials. A young child can easily remove such materials to create a gap exceeding 100 millimetres and for this reason, they are generally not considered a stable surface that will remain intact.

This nonconformity can be rectified by affixing some form of appropriate ‘hard standing material’ under the pool fence, for example concrete (mower/whipper snipper type) edge, pavers laid on concrete bed, rocks cemented firmly into place, decorative pebbles set into concrete beam. It could also be achieved by a timber sleeper, a Koppers log or timber board secured with pins, stakes or hoops that are secured to prevent removal by a child.

However, depending on the configuration of the barrier, pool and surrounding structures, moveable materials may be acceptable in some instances. For example, if the moveable material is located in a narrow channel for decorative purposes it may be acceptable if the gap diagonally is less than 100 millimetres. Refer to **Diagrams 1.1 and 1.2**

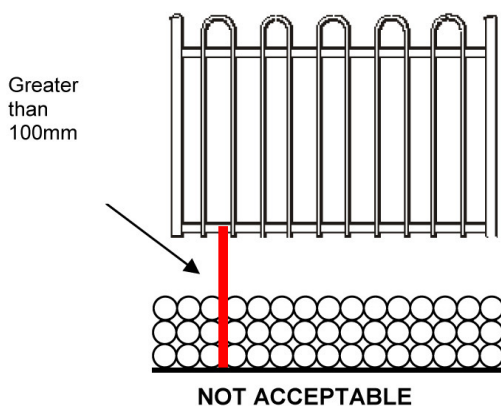


Diagram 1.1 Pebbles can easily be removed to create a gap in excess of 100mm.

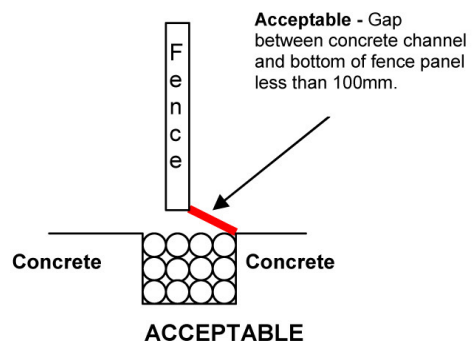


Diagram 1.2 Pebbles cannot be removed to create gap in excess of 100mm because concrete channel restricts gaps.

GPO Box 907, Brisbane Qld 4001

tel: 1800 340 634

fax: (07) 3237 1248

email: psc@qld.gov.au

[www.hpw.qld.gov.au/construction/
BuildingPlumbing/PoolSafety](http://www.hpw.qld.gov.au/construction/BuildingPlumbing/PoolSafety)

Cardiopulmonary resuscitation (CPR) signs

The Pool Safety Council (PSC) has received a number of telephone enquiries about current Queensland Ambulance Service (QAS) CPR signs. In December 2010, the Australian Resuscitation Council (ARC) amended its CPR guideline to reverse the order of giving breaths and compressions during CPR. The current QAS CPR signs reflect this version of the guideline.

However, the PSC continues to support the practice outlined in section 13A of the *Building Regulation 2006*. The PSC believes that Guideline 7—cardiopulmonary resuscitation, published by the ARC in February 2006, provides guidelines specific to immersion incidents. Newer QAS CPR signs that do not reflect Guideline 7 are therefore not supported for immersion incidents.

Pool safety inspectors should be aware that the December 2010 changes to the CPR guidelines have not affected the standard applied in Queensland. Inspectors should therefore check that CPR signs reflect the giving of breaths before compressions are administered.

Review of Australian Standards

On 6 November 2012, Standards Australia published the Australian Standard 1926.1 and 1926.2 of 2012. However, this standard does not apply in Queensland and does not impact on your functions or the standard you apply when inspecting a pool barrier for compliance against the pool safety standard.

Pursuant to section 231D of the *Building Act 1975*, the pool safety standard consists of the Queensland Development Code (QDC), MP 3.4. The Code references only the versions of the Australian Standard that are specifically referred to in the QDC (i.e. AS1926.1 of 2007 and AS1926.2 of 2007). Because Queensland does not reference AS1926.1 and AS1926.2 of 2012, this standard does not apply in Queensland. There is no intention to change the pool safety standard at this time.



Potential complaints – 90 day period following a sale or lease and nonconformity notices (Form 26)

A pool safety certificate need only be obtained when a property with a regulated swimming pool is sold or an accommodation agreement (e.g. a lease) is entered into.

Nonconformity notices

The Pool Safety Council (PSC) has received a number of complaints from pool owners who allege that a pool safety inspector (PSI) has misled them by stating that a Form 26 ‘resets’ or ‘extends’ the 90 day period in which they must obtain a pool safety certificate on sale or lease.

There is no flexibility in the 90 day sale or lease period – it is imposed by the *Building Act 1975*.

The three month reinspection period triggered by a Form 26 is separate from the 90 day sale and lease requirements discussed above. The three months is the time available to PSIs to reinspect the property, if asked to do so, before they must give a copy of the Form 26 to the local government.

Disciplinary action

A complaint by a pool owner that a PSI has provided incorrect information could result in disciplinary action. PSIs should ensure that information provided to a pool owner – whether verbally or in writing – is explicitly clear and factually correct.





Investigations of former pool safety inspectors

When relevant information comes to its attention, the Pool Safety Council (PSC) investigates the conduct of former inspectors as well as licensed inspectors.

The PSC will only investigate conduct that the former inspector engaged in while licensed.

If the PSC decides grounds for disciplinary action are established, it may:

- reprimand the former inspector
- issue demerit points
- require the former inspector to refund some, or all, of a fee paid for an inspection
- require the former inspector to pay to the PSC, within a reasonable stated period, an amount of not more than \$6,600 per breach
- take no further action.

Investigations – recent decisions

Since the last newsletter in December 2012, the Pool Safety Council (PSC) has finalised 15 complaints about pool safety inspectors. The PSC decided to:

- not take further action in five cases
- impose monetary fines in three cases
- formally reprimand and issue demerit points in two cases
- impose a monetary fine and issue demerit points in four cases
- a monetary fine, issue demerit points and require a partial refund of the inspector's inspection fee in one case. This same inspector was also reprimanded for another matter identified during the investigation. Examples of the types of complaints dealt with by the PSC are detailed in the following four cases:

Case 1

A pool safety inspector issued a pool safety certificate in circumstances where they could not have been reasonably satisfied that the pool was compliant. Three areas of non-compliance were substantiated, including gate hinges located less than 900 millimetres apart without a cap, vertical members with gaps that exceeded 100 millimetres at rest and the gate latch height failing to meet the pool safety standard requirements. A penalty of \$1,600 was imposed.

Case 2

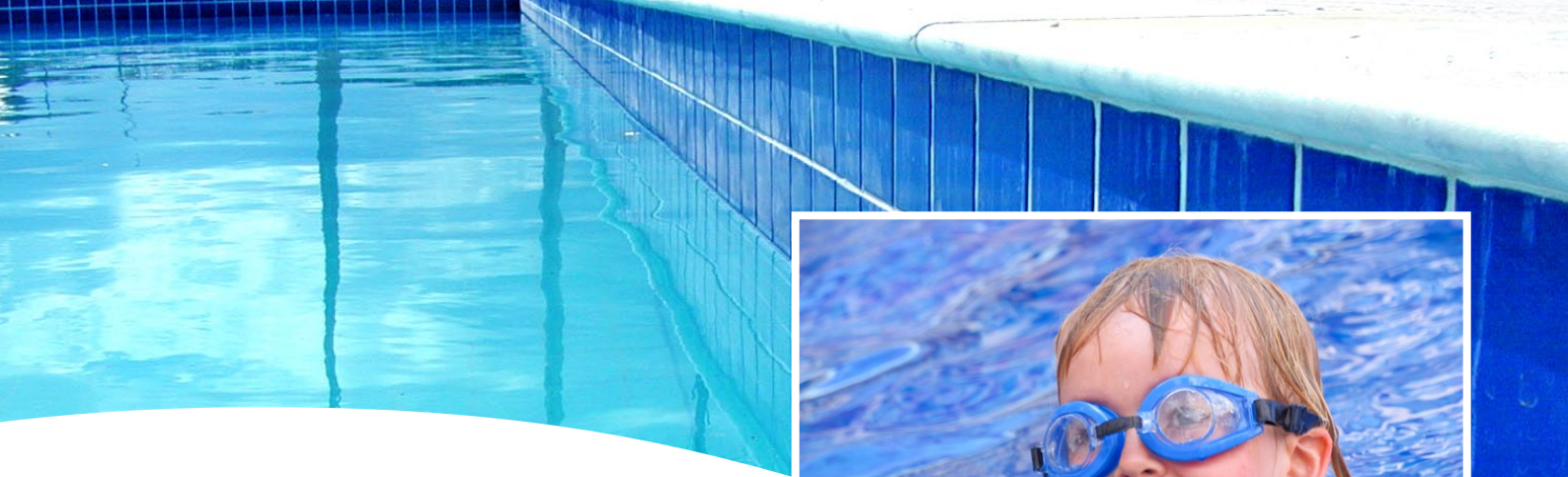
A pool safety inspector who had inspected a property and identified a number of non-conformities recommended that a particular fencing company be engaged to quote for the work necessary to make the barrier compliant. When the fencing contractor attended the property, the pool owner requested a quote for the repairs. The quote that was provided stated that the inspector was also the salesperson. The inspector had been previously employed by the same fencing company. Although the pool owner used another fencing contractor, the PSC found that the inspector had a potential conflict of interest by participating in the fencing company's quotation process. A fine of \$300 was imposed.

Case 3

A pool owner alleged that a pool safety inspector had been engaged in an advisory capacity only and not as an inspector. They also alleged that the same inspector had trespassed on neighbouring property and conducted himself in an unprofessional manner. After investigating the matter, the PSC found that the inspector had entered the neighbour's property after being advised that the pool owner had implied consent to enter the property. The PSC concluded that the inspector had been engaged as an inspector and not in an advisory capacity and the PSC found that the inspector had acted reasonably considering all the circumstances and decided not to take any further action.

Case 4

A pool safety inspector inspected a property and was asked to provide a quotation for minor repairs (the inspector was suitably licensed to perform minor repairs). The quotation included the cost of an initial inspection and reinspection of the pool. The pool owner arranged for another person to perform the repairs. Upon reinspecting the property, the inspector advised the pool owner that the repairs failed to comply with the pool safety standard. A disagreement occurred about the payment of the fee without the issue of a pool safety certificate (the pool owner requested a refund). The PSC found that the inspector had documented evidence that clearly communicated the terms of the contract and that the inspector had not behaved improperly. No further action was taken.



Class 3 compliance program

The Pool Safety Council audit announced in the last *Newsplash* has lifted compliance rates for class 3 buildings in the four targeted local government areas.

PSC staff are progressing the audit across Queensland, sending reminder letters and taking enforcement action where non-compliance exists.

To assist with the audit, pool safety inspectors are encouraged to advise the PSC about non-compliant pools associated with class 3 buildings.

Record keeping

Complying pools

The *Building Act 1975* requires a pool safety inspector to keep properly documented reasons for decisions relating to their pool safety inspection functions. An inspector must, for at least five years from the date a pool is inspected, keep an adequate record of the inspection.

The Pool Safety Council (PSC) has found in recent disciplinary matters that some pool safety inspectors are failing to keep adequate records about complying pools. In one case, the pool safety inspector (PSI) said they did not believe it was necessary to keep detailed records for complying pools because the barriers already met the pool safety standard and did not require alterations or further inspection.

It is important for a PSI to be able to substantiate any decision made with respect to a pool safety inspection. For complying pools, this may involve keeping comprehensive records of the key compliance areas of the pool barrier, such as gate latches and spaces between vertical members. Many complaints received by the PSC relate to the validity of a pool safety certificate and a PSI may be asked to produce this documentation as part of an investigation by the PSC.

Terms of engagement

It is also important for a PSI to keep adequate records in relation to their business and administrative processes, for example, their terms of engagement. The PSC continues to receive complaints from pool owners claiming that PSIs have failed to provide a nonconformity notice following an inspection. In many cases, however, the PSI believed that they were attending the property on an advisory/consultancy basis only. By clearly documenting the terms of their engagement, a PSI can reduce confusion and may avoid a complaint to the PSC.

For more information on acting on an advisory/consultancy basis, refer to section 8.1 of the PSI guidelines.

Engaging a second pool safety inspector within the reinspection period

The *Building Act 1975* provides that during the reinspection period a pool owner may only ask the pool safety inspector (PSI) who performed the initial inspection to reinspect. This requirement aims to prevent pool owners from 'shopping around' for a PSI who may provide a more favourable assessment. Using the same PSI also ensures that a pool owner receives consistent advice and interpretation of the standard.

However, in some cases it may not be possible for the initial PSI to conduct a reinspection. When this occurs, it is not appropriate for the PSI to nominate another inspector to reinspect the pool on their behalf. The PSI should instead advise the pool owner to apply in writing to the Pool Safety Council (PSC) for a change of PSI. The PSC will assess the application and advise the pool owner and the initial PSI of its decision.



GPO Box 907, Brisbane Qld 4001

tel: 1800 340 634

fax: (07) 3237 1248

email: psc@qld.gov.au

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