

Using dividing fences as a pool barrier

In Queensland, dividing fences are often used as a pool barrier as it's the most efficient way to comply with the state's pool safety laws.

Here are some frequently asked questions to help pool owners and their neighbours understand the laws for dividing fences being used as pool barriers.

I am a pool owner and need to replace part of the dividing fence to make my pool barrier compliant. What do I need to do?

Discuss the fencing work with your neighbour before making any decisions. If you are unable to, or decide against discussing the work with your neighbour, you must give the neighbour a notice about proposed work at least 14 days prior to starting any work.

Form 39 - Notice of proposed fencing work for a pool barrier, will include information about 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 prevents 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. Where the fencing work is required for a pool fence to be compliant with the pool safety laws, the full cost must be paid by the pool owner.

If there is a pool on both sides of the dividing fence and both pool owners need 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 full cost must be paid by the pool owner requiring the work.

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 a pool owner wants the adjoining neighbour to contribute to fencing work, the owner must give the neighbour a Form 39.

If, within one month of the Form 39 being given, the neighbour and the pool owner have not agreed about the proposed fencing work or the contributions towards the proposed work, the neighbour or pool owner may apply to the Queensland Civil and Administrative Tribunal (QCAT) to resolve the dispute.

The application to QCAT must be made within 2 months of the Form 39 being given. For more information, visit the QCAT website at www.qcat.qld.gov.au

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 starting any work, and
- Ensure the pool fence is only made from prescribed materials.

What are the prescribed materials for a pool fence?

Prescribed materials for constructing a pool fence include: wood, chain wire, metal panels or rods, bricks, rendered cement, concrete blocks, and other materials normally used in constructing a dividing fence.

It does 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 start fencing work without giving me proper notice?

Where the pool owner starts work without giving the proper notice of at least 14 days, the fencing work is considered unauthorised (unless the work is considered urgent). In this situation, you may apply to QCAT for an order.

What is urgent fencing work?

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

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 may paint or change the appearance of your side of the fence, as long as you 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, e.g. it is common for dog enclosures to be built so that a child cannot reach into the enclosure.

In this case, the pool owner must ensure that the completed pool barrier also prevents a child from reaching into the dog enclosure. This ensures that the 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.

Need more information?

Contact:

- Queensland Building and Construction Commission (QBCC)
Phone: 139 333 (24 hours/7 days)
Web: www.qbcc.qld.gov.au

- Queensland Civil and Administration Tribunal (QCAT)
Level 9, BOQ Centre
259 Queen Street, Brisbane QLD 4000
GPO Box 1639, Brisbane 4001
Phone: 1300 753 228
Email: enquiries@qcat.qld.gov.au
Web: www.qcat.qld.gov.au