

Queensland



# LOCAL GOVERNMENT (SWIMMING POOL FENCING) AMENDMENT ACT 1991

## TABLE OF PROVISIONS

Section		Page
1	Short title .....	2
2	Commencement .....	2
3	Amended Act .....	2
4	Amendment of s.49H (Control and regulation of swimming pool fencing) .	2
5	Amendment of s.52 .....	9

Queensland



**Local Government (Swimming Pool  
Fencing) Amendment Act 1991**

**Act No. 49 of 1991**

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**An Act to amend the *Local Governemt Act 1936***

*[Assented to 10 September 1991]*

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

### **Short title**

1. This Act may be cited as the *Local Government (Swimming Pool Fencing) Amendment Act 1991*.

### **Commencement**

2. This Act commences on a day to be fixed by proclamation.

### **Amended Act**

3. The *Local Government Act 1936* is amended as set out in this Act.

### **Amendment of s. 49H (Control and regulation of swimming pool fencing)**

4. (1) Section 49H(1)(a)—

*insert—*

‘ **“existing building”** means a Class I or II building for which Local Authority approval to construct is obtained under the *Building Act 1975* before 1 April 1992;

‘ **“watercourse”** means—

(a) a river, creek, stream, canal or watercourse in which water flows permanently or intermittently; or

(b) a lake or other natural collection of water (whether permanent or intermittent);’.

(2) Section 49H(1)(a) (paragraphs (i), (ii), (iv) and (v) of definition **“swimming pool”**)—

*renumber* as paragraphs (c), (d), (f) and (g) respectively.

(3) Section 49H(1)(a) (paragraph (iii) of definition **“swimming pool”**)—

*omit, insert—*

‘(e) a watercourse; or’.

(4) Section 49H(1)(a) (subparagraphs (A), (B) and (C) of paragraph (f) (as renumbered) of definition “**swimming pool**”)—

*renumber* as subparagraphs (i), (ii) and (iii) respectively.

(5) Section 49H(4)(a)—

*omit, insert—*

**‘(4) Outdoor swimming pools to be fenced.** (a) Subject to subsections (5), (6), (6A), (7), (8), (9), (9A), (9B) and (9C), the owner of residential land on which there is an outdoor swimming pool must construct fencing around the swimming pool so that—

(i) the swimming pool is isolated from—

(A) adjoining lands; and

(B) watercourses that wholly or partly form the boundary of the residential land; and

(ii) access to the swimming pool is prevented from buildings (other than Class X buildings wholly enclosed by the fencing).’.

(6) Section 49H(4)(b)—

*omit, insert—*

‘(b) The design, construction and performance of the fencing must—

(i) if the fencing was constructed before the commencing day—comply with the standards prescribed by the Building By-laws for the purpose of this subparagraph; or

(ii) in any other case—comply with the standards prescribed by the Building By-laws for the purpose of this subparagraph.

‘(c) The owner must maintain the fencing—

(i) in good order and repair; and

(ii) to comply with the standards mentioned in paragraph (b)(i) or (ii).

‘(d) Despite paragraph (c)(ii), if the fencing ceases to comply with the

standards mentioned in paragraph (b)(i) or (ii) because the owner or occupier of adjoining land has constructed or placed any thing on the adjoining land, the owner of the residential land on which the swimming pool is constructed or installed is not required to make any alterations to the fencing in order to comply, or to erect additional fencing to comply, with the standards.’.

(7) Section 49H(5)(a) and (b)—

*omit, insert—*

‘comply with the standards prescribed by the Building By-laws for the purposes of this subsection.’

(8) Section 49H(6)—

*omit, insert—*

**(6) Incorporation of building as part of fencing—existing swimming pools.** If an existing swimming pool on residential land is enclosed in part by—

(a) the exterior wall of an existing building and—

(i) there is no opening in the wall providing access from the building to the swimming pool; or

(ii) each opening in the wall providing access from the building to the swimming pool complies, and is maintained to comply, with the standards prescribed by the Building By-laws; or

(b) the exterior wall of a Class X building and each opening in the wall merely provides access from the building to the swimming pool; or

(c) the exterior wall of any other building and—

(i) there is no opening in the wall providing access from the building to the swimming pool; or

(ii) each opening in the wall providing access from the building to the swimming pool complies, and is maintained to comply, with the standards prescribed by the Building By-laws;

the owner of the residential land is not required to construct fencing around the part of the swimming pool that is enclosed by the wall.

**‘(6A) Incorporation of building as part of fencing—new swimming pools.** If a new swimming pool on residential land is enclosed in part by—

- (a) the exterior wall of an existing building and there is no opening in the wall providing access from the building to the swimming pool; or
- (b) the exterior wall of an existing building and—
  - (i) each window in the wall providing access from the building to the swimming pool complies, and is maintained to comply, with the standards prescribed by the Building By- laws; and
  - (ii) there are no other openings in the wall providing access from the building to the swimming pool; or
- (c) the exterior wall of an existing building and—
  - (i) there is a door in the wall providing access from the building to the swimming pool; and
  - (ii) the Local Authority concerned determines that it is physically impracticable to construct fencing to prevent access from the building to the swimming pool; and
  - (iii) each opening in the wall providing access from the building to the swimming pool complies, and is maintained to comply, with the standards prescribed by the Building By- laws; or
- (d) the exterior wall of a Class X building and each opening in the wall merely provides access from the building to the swimming pool; or
- (e) the exterior wall of a Class I or II building (other than an existing building) and—
  - (i) there is no opening in the wall providing access from the building to the swimming pool; or
  - (ii) each window in the wall providing access from the building to the swimming pool complies, and is maintained to comply, with the standards prescribed by the Building By- laws, and there are no other openings in the wall providing access from the building to the swimming pool; or
- (f) the exterior wall of any other building and—
  - (i) there is no opening in the wall providing access from the

building to the swimming pool; or

(ii) each opening in the wall providing access from the building to the swimming pool complies, and is maintained to comply, with the standards prescribed by the Building By- laws;

the owner of the residential land is not required to construct fencing around the part of the swimming pool that is enclosed by the wall.’.

**(9)** Section 49H(8)(a)—

*omit—*

‘, on written application made to it by the owner of residential land on which there is an existing swimming pool, vary the requirements of subsection (4) in respect of the swimming pool,’.

*insert—*

‘vary the requirements of subsection (4) in respect of an outdoor swimming pool on residential land on which there is an existing building’.

**(10)** Heading to section 49H(9)—

*omit, insert* **‘Exemptions—general.’.**

**(11)** After section 49H(9)(a)—

*insert—*

‘(aa) A Local Authority may, on written application made by the owners of adjoining parcels of residential land on which there are constructed or installed outdoor swimming pools, determine that the owners are not required to construct fencing to prevent access by young children from one swimming pool to the other if the owners have otherwise complied with this section.’.

**(12)** After section 49H(9)—

*insert—*

**‘(9A) Exemptions—waterfront land.** (a) The owner of residential land—

(i) that adjoins a watercourse; and

(ii) on which—

(A) there is an existing swimming pool; or

(B) a new swimming pool is to be constructed or installed; is not required to construct fencing to isolate the swimming pool from the watercourse unless the Local Authority determines that the fencing is necessary to inhibit access by young children to the swimming pool.

(b) If the Local Authority makes a determination, it must give written notice to the owner of the reasons for the determination and of the day by which the owner is required to construct the fencing.

**‘(9B) Exemptions—land over 4 000 square metres.** (a) A Local Authority may, on written application made to it by the owner of residential land—

(i) that is more than 4 000 square metres in area; and

(ii) on which—

(A) there is an existing swimming pool; or

(B) there is an existing building and a new swimming pool is to be constructed or installed;

determine that subsection (4) does not apply to the swimming pool if it is satisfied that it is unlikely that a young child would gain access to the swimming pool.

(b) A determination may be made without conditions or subject to such conditions as the Local Authority considers appropriate to ensure that reasonable provision is made for inhibiting access by young children to the swimming pool.

**‘(9C) Exemptions—fencing enclosing swimming pool and existing building.** (a) A Local Authority may, on written application made to it by the owner of residential land on which—

(i) there is an existing building; and

(ii) there is an existing swimming pool, or a new swimming pool is to be constructed or installed;

determine that subsection (4)(a) does not apply to the swimming pool.

(b) A Local Authority may make a determination only if—

(i) each of the openings in the building complies, and is maintained to comply, with the standards prescribed by the Building By-laws; and

(ii) paragraph (c) or (d) applies.

(c) If the swimming pool is an existing swimming pool, the building and the swimming pool are fully enclosed by fencing that—

(i) if the fencing was constructed before the commencing day—complies with the standards mentioned in subsection (4)(b)(i); or

(ii) in any other case—complies with the standards mentioned in subsection (4)(b)(ii).

(d) If the swimming pool is a new swimming pool—

(i) the building and the swimming pool are, or will be when the swimming pool is constructed or installed, fully enclosed by fencing that complies with the standards mentioned in subsection (4)(b)(ii); and

(ii) the Local Authority concerned determines that it is physically impracticable to construct fencing to prevent access from the building to the swimming pool.

(e) A determination may be made without conditions or subject to such conditions as the Local Authority considers appropriate to ensure that effective provision is made for inhibiting access by young children to the swimming pool.’.

**(13)** Section 49H(10)(a)(i)(A)—

*omit, insert—*

‘(A) the variation was granted on the basis of a false or misleading particular given by the owner; or’.

**(14)** Section 49H(10)(a)(ii)—

after ‘(9)’—

insert ‘, (9B) or (9C)’.

**(15)** Section 49H(11)(a)—

*omit, insert—*

‘(a) Subject to paragraph (b), the owner of residential land on which there is an existing swimming pool must comply with subsection (4) before 1 April 1992.’.

(16) Section 49H(11)(b)—

*omit, insert—*

‘(b) A Local Authority may, subject to such reasonable conditions as it considers appropriate, extend the time for compliance to a date later than 31 March 1992, if it is satisfied on written application made to it, that compliance before 1 April 1992, or the date to which time for compliance has been previously extended, would cause the owner financial hardship.’.

(17) Section 49H(13)—

*omit.*

(18) Section 49H(18)(a)(ii)—

after ‘(9)’—

*insert ‘, (9B) or (9C)’.*

(19) Section 49H(18)(a)(iii)—

after ‘subsection’—

*insert ‘(9A) or’.*

## **Amendment of s. 52**

5. After section 52(13)—

*insert—*

‘(13A) **Protection of Local Authority from liability.** Subsection (13) does not abrogate any right of action that would otherwise be available against a Local Authority, but a Local Authority is not liable for any act done or omitted to be done in good faith and without negligence under this Act.’.

