

## LEGAL NEWS ALERT No 4

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### POOL SAFETY REFORMS



The Queensland Government has introduced Australia's toughest new pool safety laws as a result of the most comprehensive review of Queensland swimming pool safety laws in nearly 20 years.

The Building and Other Legislation Amendment Bill (No.2) was passed on 15 September 2010 and details the relevant changes to pool safety and the new requirement for pool safety certificates that will apply to new and existing pools in Queensland. Although the new laws have been passed, they do not take effect until **1 December 2010**.

#### What do these new laws mean?

- Under the new laws, all existing pool and spa owners will have up to 5 years, after the new laws start, within which to upgrade their pools or spas to comply with the new safety standards unless the property is sold or leased first. However, shorter time frames will apply for body corporate setups and/or short term rentals.
- Pool safety certificates, issued by a licensed pool safety inspector, will be required when selling or leasing a property with a pool. These pool safety certificates will be valid for either one or two years depending on whether the pool is shared (one year if shared).
- There will now be a consolidation of multiple pool safety standards with one standard for all pools (the Queensland Development Code Mandatory part 3.4).
- All pools are to be included in a pool register, managed by the State, within 6 months of commencement of the legislation (the register is currently being populated with information from Local Governments. Pool owners will need to check the register within six months after the new laws start to ensure their pool is registered).

#### What do these safety standards consist of?

For a comprehensive guide on the new standard, visit <http://www.dip.qld.gov.au/pool-safety/pool-safety-laws.html>

However, the standard includes:

- A five-year phase out of child-resistant doors used as pool barriers for existing pools (self closing and self-latching doors);
- Mandatory safety barriers for all portable pools and outdoor spas deeper than 300 millimetres, above 2000 litres capacity and have a filtration system;
- Mandatory inspections by local government for immersion incidents of children under five in swimming pools



### Thinking of selling your property with an existing pool or spa within the 5 year phase-in period?

If you are selling a property before the 5 year phase-in, with its own pool or spa, a pool safety certificate must be obtained before settlement of the contract or, alternatively, a notice must be issued before contract and before settlement advising the buyer that a certificate must be obtained within 90 days of settlement. If you are leasing your property, a pool safety certificate must be obtained before entering into the lease. The applicable forms to be completed by owners are either a Form 23 (for a certificate) or a Form 36 (no certificate). However, on this point, it will ultimately become the selling agent's responsibility to ensure these notices are available to the prospective purchaser before contract signing. **The maximum penalty for failing to provide the notice is 165 penalty units (currently \$16,500).**

If a purchaser contracts to buy land with a pool and there is no pool safety certificate, they must within 90 days of settlement, obtain a pool safety certificate for themselves. **Again, a breach carries a maximum penalty \$16,500.**

There are slightly different rules when dealing with 'shared pools', for example if you are buying a unit with a shared pool. In this case the 'owner' of the pool is the body corporate (unless, of course if the pool is wholly situated on a single lot in the Community Titles Scheme). The seller of a lot that has access to a shared pool (i.e. a pool on common property) must give notice to the buyer and Council if there is no pool safety certificate in place and must also give notice to the body corporate. Following settlement, the 90 day requirement to obtain a certificate will not be placed on the new owner but rather on the body corporate of the complex. In this case the penalty for non-compliance falls on the body corporate (as they are the 'owner').

To read more about the new laws and read the consolidated pool safety standard discussed above, visit [www.dip.qld.gov.au/poolsafety](http://www.dip.qld.gov.au/poolsafety)

Please do not hesitate to contact either Adam Robinson or Ian Portas on (07) 3123 5700 if you are considering selling or leasing your property and have concerns about compliance issues with your pool or spa.

Please note that the above information is a general guide only, and should not be relied upon without checking the application of the new laws to your situation with one of our solicitors.

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