Newsplash

Saving precious lives

Pool Safety Council

Issue 5, December 2012

Meaning of 'effective height'

The term 'effective height' is referred to in the Pool Safety Standard. For example, section 2.1 of Australian Standard 1926-2007 part 1 (AS1926.1) provides that 'the effective height shall not be less than 1200 millimetres...'. The Queensland Development Code Mandatory Part 3.4 also requires that if the barrier is less than 1800 millimetres high and the non-climbable zone is located on the outside of a barrier, an additional clear area must exist immediately adjacent to the fence to maintain the effective height of the fence. The Pool Safety Council has been asked to clarify the applicability of the term 'effective height' in the context of an 1800 millimetre high barrier, where the non-climbable zone may be on the inside of the barrier.

The barrier acts as a deterrent for a young child trying to gain access to the pool area and serves two purposes depending upon the location and height of the barrier and the location of the non-climable zone on the barrier.

When the non-climbable zone is located on the:

- outside of the barrier, the effective height of the barrier and the non-climbable zone act as a deterrent for a young child to climb into the pool area by being difficult to climb and, in some instances, due to the height of the barrier
- inside of the barrier, the effective height and the non-climbable zone deter a young child from wanting to jump or climb down into the pool area.

Non-climbable zone on the outside of barrier

Generally, the effective height of a barrier is the measurement from the finished ground level to the top of the barrier. The ground surface can often be uneven or rough and minor irregularities should not compromise the height of a barrier.

However, where there are objects adjacent to the barrier which could compromise the barrier's effective height (for example a deck) then the effective height of the barrier may need to be measured from the top of the object rather than the ground level.

When assessing whether an object could compromise the effective height of a barrier, a pool safety inspector should consider the following two criteria:

1. Will the object carry the weight of the child?
2. Is the object a hard, stable, even surface which would allow a young child to stand on, and thereby reduce the height of, the barrier?

If the object is unable to carry the weight of a young child (approximately 25 kilograms) or is a sufficient deterrent (for example vegetation with thorns) then the pool safety inspector can be satisfied it will not reduce the effective height of the barrier. For example, tree branches and bushes that crush easily are unlikely to reduce the effective height and the pool safety inspector will not need to assess the second criteria.

Non-climbable zone on the inside of barrier

Where a barrier is 1800 millimetres or higher, the non-climbable zone can be located on the inside of the fence measured from the top of the barrier. The Queensland Development Code Mandatory Part 3.4 and the Australian Standard clearly show that to measure the height, the distance from the top of the barrier to the ground surface immediately inside the enclosure must be used. However, apart from showing a blank space adjacent to the barrier, the Queensland Development Code Mandatory Part 3.4 and the Australian Standard provide no further guidance about how objects may encroach into the space immediately adjacent to the fence. Therefore further guidance is required. Research and experience have indicated that both the height of the fence and, particularly the prospect of a fall, is considered to be a significant deterrent and provide an adequate level of safety for a young child.

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Where the non-climbable zone is located on the inside of the barrier, the fence height may not measure 1800 millimetres on the outside–for example where a retaining wall separates properties. It may also be the case that objects are placed against the barrier that compromise the height on the outside of the fence–for example a ladder. It is for these reasons that the falling disincentive is maintained on the side of the non-climbable zone. Where an object is attached or adjacent to the barrier and underneath the non-climbable zone, a pool safety inspector should assess the object's ability to reduce this deterrent element.

If the object's surface is flat, stable and sufficiently large that a young child could confidently jump on to the top of it, then it will reduce the deterrent element. For example, if a small shed, pool equipment enclosure or similar object is placed next to the barrier (under the non-climbable zone), a child is more likely to jump down onto the shed and then into the pool area.

For objects that do not present a flat and substantial horizontal surface such as a pool pump, the deterrent effect for a young child is likely to be maintained due to the prospect of injury from jumping because of the complex and uneven surface. For example, a pool filter which is not covered with an enclosure and which has pipes, valves and other deterring surfaces would be acceptable.

The standard also allows bushes that are not easily climbable by young children to be located next to a barrier and within the non-climbable zone as they can create an additional barrier for young children. Bushes with dense, spiked, thorned, rough or otherwise irritating or hindering foliage that would deter a young child from climbing or jumping onto it are acceptable.

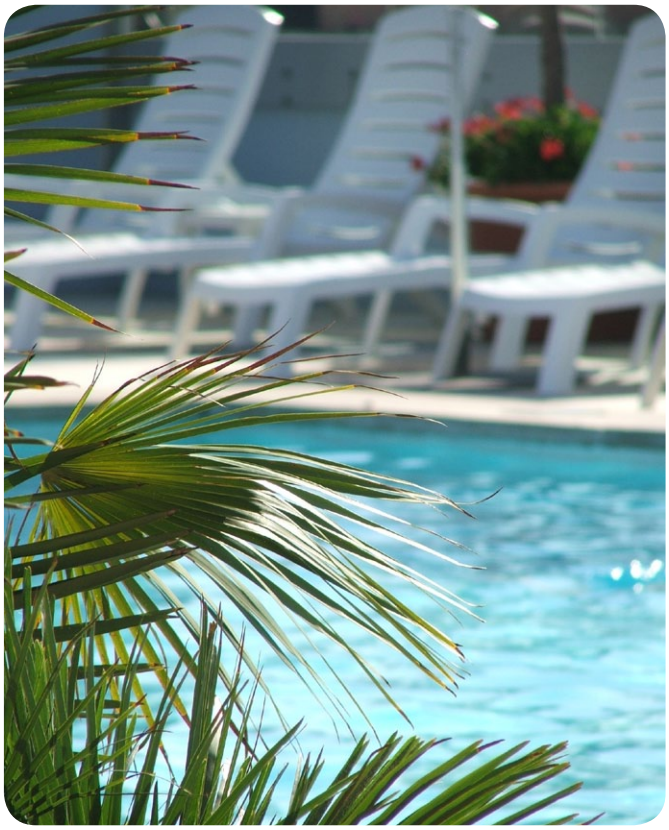
Bushes or shrubs that are fragile or crush easily or are so weak that a child could not climb them are also acceptable. They are acceptable even where the bushes conceal or contain thick branches that could hold a young child's weight provided the branches are impractical for a young child to reach or use to climb down or jump onto the barrier.

Pool safety inspectors should take a practical approach when assessing the height of a 1800 millimetre barrier and where they consider an object will be sufficient to reduce the height of a barrier and reduce the deterrent element they should provide options for compliance. For example, if a small shed is adjacent to the fence (under the non-climbable zone) then a pool safety inspector may suggest moving or isolating the shed from the pool area or alternatively placing an 1800 millimetres high corral around the shed.

Pool safety inspectors should consider the following factors when determining whether an object will reduce the deterrent element for a young child:

- the size of the surface
- the space between the barrier and the object
- whether the surface is flat or uneven
- the drop between the top of the barrier and the top of the object
- whether the height of the barrier is a full 1800 millimetres on the outside of the enclosure (for example the ground surface on the outside if the barrier may be much higher than the ground surface on the inside, thereby comprising the other aspect of the barrier that contributes to safety).

Note: the information above does not affect the requirement to ensure the non-climbable zone is free of objects that would facilitate climbing and that the additional clear area is free of objects that would reduce the minimum effective fence height.



New pool safety inspector guidelines

The Department of Housing and Public Works published *Pool safety inspector guidelines* in November. These comprehensive guidelines cover a range of topics relating to the application of Queensland's pool safety laws and the performance of pool safety inspection functions including:

- fencing structures and maintenance
- compliance and technical considerations
- the pool safety inspection process
- minor repairs
- the pool safety inspector code of conduct
- administrative and commercial matters.

The *Building Act 1975* provides that in performing a pool safety inspection function, pool safety inspectors must have regard to the guidelines made under section 258 that are relevant to performing the function.

The guidelines can be accessed on the department's website: www.hpw.qld.gov.au/aboutus/ReportsPublications/Guidelines .

Report on deaths of children and young people

The *Annual Report: Deaths of children and young people, Queensland 2011–12* by the Commission for Children and Young People and Child Guardian is now available.

According to the report:

- drowning is no longer the leading cause of death for children aged one to four years (transport is now the leading cause of death)
- drowning is at its lowest recorded rate since reporting began in 2004-05
- the Commission is highly supportive of moves to introduce uniform fencing standards for residential pools
- the introduction of pool fencing laws has had a major impact on the number of toddler drownings
- there was a decrease in the overall number of immersion incidents compared to 2010–2011.

The Pool Safety Council will continue to monitor the pool safety program that was introduced in December 2010. It is very encouraging that the number of drownings of young children in regulated pools continues to decrease despite the fact that there are more than 317 000 pools registered in Queensland, with more being built each year.

Pool safety latches

It has come to the attention of the Pool Safety Council that some pool gate latches have been designed to permit the gate to be locked in the 'open' position. The Pool Safety Council is aware of two different types of gate latching devices where the gate can be locked open by opening the gate and turning the key to lock the latch.

Section 2.5.4.1 of Australian Standard 1926-2007 (part 1) states the following:

Gates shall be fitted with a latching device that will automatically operate on the closing of the gate and will prevent the gate from being re-opened without being manually released.

The latching device shall not be able to be:

- inadvertently adjusted during operation
- locked in the 'open' position
- adjusted without the use of tools.

When in the closed position, the latching mechanism shall not be able to be released by inserting any implement in the 10 millimetre gap shown in Figure 2.6(a) in the Standard.

Pool safety inspectors should be aware when testing a latching device that there may be a need to check that the device cannot be locked in the open position.

Class 3 compliance program

Under the pool safety laws, owners of class 3 buildings associated with swimming pools are required to have either a pool safety certificate or an approved pool safety management plan.

Pool Safety Council staff are auditing these swimming pools for compliance with the pool safety laws. Where noncompliance is identified, the pool owner will be sent a letter to remind them of their obligations. If the pool owner continues to fail to comply with the pool safety laws, enforcement action may be taken.

Officers are finding that class 3 buildings are showing a high level of compliance with the pool safety laws. However, officers have identified that some pool owners have incorrectly provided information, for example a lot on plan number. This incorrect information has resulted in the pool owner receiving a letter and officers unnecessarily investigating otherwise compliant barriers.

Investigations

Since the last *Newsplash* in September, the Pool Safety Council has finalised 16 complaints against pool safety inspectors. The Pool Safety Council decided:

- that no grounds for disciplinary action existed in seven of the matters investigated
- to impose a monetary penalty (ranging from $200 to $1600) in seven cases
- to require one pool safety inspector to undertake further training
- to require one pool safety inspector to refund an inspection fee and impose four demerit points.

The following cases have recently been dealt with by the Pool Safety Council:

Case 1: A pool safety inspector inspected a swimming pool and issued a nonconformity notice. The inspector then reinspected the property at a reduced fee because of an error in the initial nonconformity notice. Upon reinspecting the pool, the inspector failed to issue a nonconformity notice to the pool owner within two business days of the inspection in breach of section 246AB(2) of the *Building Act 1975*. This pool safety inspector then refused to conduct a third inspection when asked to do so by the pool owner and failed to keep records of the inspections. The Pool Safety Council decided to impose four demerit points and order the inspector to refund the inspection fee to the pool owner. The Pool Safety Council took into consideration that the department intended to issue the pool safety inspector with an infringement notice for failing to keep records.

Case 2: A pool safety inspector was being investigated for allegations of issuing a pool safety certificate when a pool barrier was not compliant. A Pool Safety Council investigator attempted to contact the inspector on numerous occasions, leaving messages via telephone and email and with his partner. The pool safety inspector failed to respond to any of the messages. The Pool Safety Council found there were insufficient grounds to substantiate the complaint of issuing a certificate to a nonconforming pool barrier. However, the Pool Safety Council found that grounds for disciplinary action had been established because the pool safety inspector failed to co-operate in the investigation. The Pool Safety Council imposed a monetary penalty for this breach.

Current figures

As at 21 December 2012

Registered pools	**318 119**
Licensed pool safety inspectors	**850**
Pool safety certificates issued	**60 674**

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