

Shared pool

Where the residents of more than one dwelling—such as a body corporate pool—have the right to use the pool, the pool is a shared pool. Pools situated on land associated with a hotel, motel, backpacker hostel or other class 3 building (refer to **Appendix C**) are generally considered shared pools.

Swimming pool

Means an excavation or structure:

- (a) capable of being filled with water to a depth of 300 millimetres or more
- (b) capable of being used for swimming, bathing, wading, paddling or some other human aquatic activity
- (c) solely or principally used, or designed, manufactured or adapted to be solely or principally used, for the purposes mentioned in paragraph (b) despite its current use;

and includes a spa pool, spa tub or similar thing (whether portable or fixed) and a wading pool (other than a portable wading pool), but does not include:

- (d) a fish pond or pool solely or principally used, or designed, manufactured or adapted to be solely or principally used, for ornamental purposes or
- (e) a dam or tank solely or principally used, or designed, manufactured or adapted to be solely or principally used, for aquaculture, marine research or storage of water or
- (f) a watercourse or
- (g) a portable wading pool or
- (h) a spa bath situated in a bathroom, other than a spa bath continually filled with water to a depth of more than 300 millimetres or
- (i) a birthing pool used solely for water births.

3.3 Swimming pools covered by the legislation

For the full definition of 'swimming pool' refer to Schedule 2 of the BA or section 3.2 of these guidelines. (Note: The following is a summary only and reference should be made to the BA when determining whether an excavation or structure is a swimming pool.)

Generally a swimming pool is an excavation or structure that is:

- capable of being filled with water to a depth of 300 millimetres or more
- solely or principally used for swimming, bathing, wading, paddling or some other human aquatic activity despite its current use.

Swimming pools include spa pools, spa baths continually filled with a water depth of more than 300 millimetres and wading pools (other than a portable wading pool). Therefore when purchasing a swimming pool, including above-ground and portable pools, owners should be mindful of their obligations to install a compliant pool barrier.

The laws do not apply to portable pools if they:

- are incapable of being filled with water to a depth of more than 300 millimetres
- have a volume of less than 2000 litres
- have no filtration system.

If a pool meets all three of the above criteria it is a portable wading pool (not a swimming pool) and does not need to comply with the pool safety laws. However, owners should be mindful of the risks associated with leaving young children unsupervised around water.

If a pool does not meet one or more of the above criteria, it is a swimming pool and you will need to:

- obtain a building approval before erecting or installing the pool
- obtain a certificate from a licensed building certifier stating that the pool and the pool barrier comply with the pool safety standard before filling the pool with more than 300 millimetres of water
- ensure the pool is included on the pool safety register.

If a pool is disassembled and does not hold more than 300 millimetres of water, it does not need to comply with the pool safety standard until it is assembled and filled with more than 300 millimetres of water.

Prior to the introduction of the current pool safety laws on 1 December 2010, pool safety laws only applied to outdoor pools associated with houses and units (class 1 and 2 buildings – refer to **Appendix C** of these guidelines).

The current pool safety laws apply to a broader range of pools, regardless of when they were constructed or whether they are new, existing, indoor, outdoor, shared or non-shared. They must meet the current standard by 30 November 2015 or earlier on sale or lease.

The pool safety laws now cover indoor pools and pools associated with hotels, motels, hostels, boarding houses, backpacker accommodation, accommodation for the aged, children or persons with disabilities (class 3 buildings—refer to **Appendix C** of these guidelines), caretaker dwellings (class 4 buildings—refer to **Appendix C** of these guidelines) and caravan parks.

3.4 Decommissioned pools

There will be occasions where a pool owner will decide that they no longer want a swimming pool and will decommission their swimming pool as an alternative to complying with the pool safety standard. For this to occur, the swimming pool structure must be altered in a way that makes the pool incapable of being filled to a depth of 300 millimetres. For example, the floor of a spa may have holes drilled into the water receptacle component to permit water to drain out, or one side of a swimming pool may be removed. For swimming pools (including portable spa pools) to be decommissioned the work must result in the swimming pool (including portable spa pools) requiring some repairs to render it capable of holding water to a depth of 300 millimetres.

3.5 Legal obligations of pool owners

The pool safety laws require pool owners to construct and maintain a compliant fence around their swimming pool regardless of when the pool was installed.

Since 1 December 2010, the pool safety laws have required properties with non-shared pools, such as houses, to have a pool safety certificate before they can be leased or another accommodation agreement is entered into.

Buyers of properties with a non-shared pool need to obtain a pool safety certificate within 90 days of date of settlement if the seller has not given them a valid pool safety certificate. Sellers need to notify prospective buyers that there is no pool safety certificate before entering into a contract of sale and before settlement. This is done by serving a *Form 36—Notice of no pool safety certificate* (Form 36).

For further details about sale and lease requirements refer to section 4 of these guidelines.