



Western Australia

Building Act 2011

Building Amendment Regulations 2023

Building Amendment Regulations 2023

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Building Amendment Regulations 2023

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Building Amendment Regulations 2023*.

2. Commencement

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published on the WA legislation website (*publication day*);
- (b) Part 2 — on the day after publication day;
- (c) the rest of the regulations — on the day that is 6 months after publication day.

3. Regulations amended

These regulations amend the *Building Regulations 2012*.

Part 2 — Amendments commencing on day after publication

4. Regulation 3 amended

In regulation 3 insert in alphabetical order:

AS 1926.1-2012 means Australian Standard 1926 —
Swimming pool safety Part 1: Safety barriers for
swimming pools (2012 edition);

5. Regulation 5A replaced

Delete regulation 5A and insert:

4A. Authorised persons (s. 93(2)(d))

- (1) In this regulation —
specified Part 8 provisions, in relation to a designation under subregulation (2), means provisions of Part 8 that are specified in the designation.
- (2) A local government may, by instrument in writing, designate a person as an authorised person to inspect or test existing buildings located in the district of the local government for the purpose of monitoring whether specified Part 8 provisions are being complied with.
- (3) A person may be designated under subregulation (2) for a fixed or indefinite period.
- (4) A local government may, by instrument in writing, revoke a designation under subregulation (2) at any time.

4B. Identity cards

- (1) A local government must give an identity card to each person designated by it as an authorised person under regulation 4A.
- (2) The identity card must —
 - (a) identify the person as an authorised person under regulation 4A; and
 - (b) contain a recent photograph of the person.
- (3) The person must carry the identity card at all times when performing functions or exercising powers as an authorised person under regulation 4A.
- (4) The person must, within 14 days of ceasing to be an authorised person under regulation 4A, return the identity card to the local government.
Penalty for this subregulation: a fine of \$5 000.
- (5) Subregulation (4) does not apply if the person has a reasonable excuse.

6. Regulation 15B replaced

Delete regulation 15B and insert:

15B. Modifications to AS 1926.1-2012 (s. 150)

For the purposes of these regulations, AS 1926.1-2012 as referenced in the Building Code —

- (a) is modified to delete clause 2.2.4 and insert:

2.2.4 Boundary barriers

A boundary barrier to a pool must satisfy either paragraph (a) or paragraph (b):

- (a) A boundary barrier satisfies this paragraph if —
 - (i) it has a height on the inside of not less than 1800 mm; and
 - (ii) it has NCZ-5 formed as a quadrant of 900 mm radius down from the top of the inside of the barrier (see Figure 2.2(a)), subject to the qualification that NCZ 5 is not invalidated by the intersection of a compliant internal barrier if —
 - (I) where the width of the top rail or surface of the internal barrier is not more than 50 mm wide at any point within NCZ 5 — the internal barrier intersects at an angle of between 45 and 135 degrees to the 1800 mm boundary barrier (see Figure 2.2(b)); or
 - (II) where the width of the top rail or surface of the internal barrier is greater than 50 mm at any point within NCZ 5 — the internal barrier has a height not less than 1800 mm extending not less than 900 mm from the intersection (see Figure 2.2(c)).
- (b) A boundary barrier satisfies this paragraph if —
 - (i) it has a height on the outside (the non-pool side) of not less than 1200 mm; and

- (ii) within 500 mm of the outside of the boundary barrier there are no steps, retaining walls, objects or level changes that would reduce the height of the outside of the boundary barrier below 1200 mm; and
 - (iii) NCZ 1, 2, 3 and, if the boundary barrier has vertical openings of 10-100 mm in width, NCZ 4 (as described in clause 2.2.2) are present on the boundary barrier.
- (b) is modified in clause 2.3.5(a) to insert after “plane”:
- and vertical members are spaced to provide a clear opening of not more than 10 mm
- (c) is modified in Figure 2.6 to delete “100 mm” and insert:

10 mm

7. Regulation 54 replaced

Delete regulation 54 and insert:

54. Transitional provision — persons authorised by regulation 5A

- (1) In this regulation —
regulation 5A means regulation 5A as in force immediately before repeal day;

repeal day means the day on which the *Building Amendment Regulations 2023* regulation 5 comes into operation.

- (2) A person who, immediately before repeal day, was an authorised person under regulation 5A is to be taken to be an authorised person for the purposes of section 93(2)(d) for the period commencing on repeal day and ending on the earlier of —
- (a) the day that is 6 months after repeal day; and
 - (b) the day on which the person is designated as an authorised person under regulation 4A.

Part 3 — Amendments commencing 6 months after publication

8. Regulation 3 amended

- (1) In section 3 delete the definitions of:
Building Code pool barrier requirements
private swimming pool

- (2) In regulation 3 insert in alphabetical order:

AS 1926.1-1993 means Australian Standard 1926 — Swimming pool safety Part 1: Fencing for swimming pools (1993 edition) incorporating Amendment No. 1 only;

Building Code pool barrier requirement means a performance requirement set out in the Building Code that requires a barrier to be provided to a swimming pool that restricts access by young children to the swimming pool and its immediate surrounds;

deemed-to-satisfy solution has the meaning given in the Building Code Volume One;

private swimming pool —

- (a) means a swimming pool that —
- (i) is associated with a Class 1a building, or less than 30 sole-occupancy units in a Class 2 building, or a Class 4 part of a building; and
 - (ii) has the capacity to contain water that is more than 300 mm deep;

and

- (b) includes a spa-pool; but
- (c) does not include a spa-bath;

9. Regulation 28 deleted

Delete regulation 28.

10. Regulation 29 amended

In regulation 29(1) delete “or 28”.

11. Regulation 31C replaced

Delete regulation 31C and insert:

31C. Applicable building standards for swimming pools and barriers to swimming pools (s. 3, 19(3), 37(1) and (2), 51(3) and 57(3))

- (1) For the purposes of the definition of *applicable building standard* in section 3, the building standards set out in the Table are prescribed as applicable building standards for the purposes of sections 19(3) and 37(1) in respect of —
- (a) a type of swimming pool referred to in the Table; and
 - (b) a barrier to a type of swimming pool referred to in the Table.

Table

Type of swimming pool	Building standard
All swimming pools other than private swimming pools	The requirements mentioned in regulation 31A(2) other than the Building Code pool barrier requirements.

Type of swimming pool	Building standard
<p>Private swimming pools other than pre-May 2016 private swimming pools</p>	<p>The requirements mentioned in regulation 31A(2)(a) and 50A(1) except that —</p> <ul style="list-style-type: none"> <li data-bbox="874 533 1256 1115">(a) a Building Code pool barrier requirement (and its associated deemed-to-satisfy solution) in effect at or after the time the application for a building permit to construct the pool was made may be substituted for a Building Code pool barrier requirement mentioned in regulation 31A(2)(a); and <li data-bbox="874 1137 1256 1429">(b) a performance solution cannot be used to comply with a Building Code pool barrier requirement unless the performance solution is an approved barrier solution.
<p>Pre-May 2016 private swimming pools</p>	<p>The requirements mentioned in regulation 31A(2)(a) and 50A(1) except that —</p> <ul style="list-style-type: none"> <li data-bbox="874 1585 1256 1653">(a) a Building Code pool barrier requirement

Type of swimming pool	Building standard
	<p>(and its associated deemed-to-satisfy solution) that was in effect at or after the time the application for a building permit to construct the pool was made may be substituted for a Building Code pool barrier requirement mentioned in regulation 31A(2)(a); and</p> <p>(b) the requirements for a barrier to a private swimming pool set out in regulation 50A(4) and (5) may be substituted for a Building Code pool barrier requirement; and</p> <p>(c) a performance solution cannot be used to comply with a Building Code pool barrier requirement unless the performance solution is an approved barrier solution.</p>

- (2) For the purposes of the definition of ***applicable building standard*** in section 3, the building standards set out in the Table are prescribed as applicable building standards for the purposes of section 37(2) in respect of —
- (a) a type of swimming pool referred to in the Table; and
 - (b) a barrier to a type of swimming pool referred to in the Table.

Table

Type of swimming pool	Building standard
All swimming pools other than private swimming pools	The requirements mentioned in regulation 31E(2) other than the Building Code pool barrier requirements.
Private swimming pools other than pre-May 2016 private swimming pools	The requirements mentioned in regulation 31E(2) and 50A(1) except that — <ul style="list-style-type: none"> (a) a Building Code pool barrier requirement (and its associated deemed-to-satisfy solution) that was in effect at or after the time the construction of the pool commenced may be substituted for a Building Code pool barrier requirement mentioned in regulation 31E(2); and

Type of swimming pool	Building standard
	(b) a performance solution cannot be used to comply with a Building Code pool barrier requirement unless the performance solution is an approved barrier solution.
Pre-May 2016 private swimming pools	The requirements mentioned in regulation 31E(2) and 50A(1) except that — (a) a Building Code pool barrier requirement (and its associated deemed-to-satisfy solution) that was in effect at or after the time the construction of the pool commenced may be substituted for a Building Code pool barrier requirement mentioned in regulation 31E(2); and (b) the requirements for a barrier to a private swimming pool set out in regulation 50A(4) and (5) may be substituted for a Building Code pool

Type of swimming pool	Building standard
	barrier requirement; and (c) a performance solution cannot be used to comply with a Building Code pool barrier requirement unless the performance solution is an approved barrier solution.

- (3) For the purposes of the definition of *applicable building standard* in section 3, the building standards set out in the Table are prescribed as applicable building standards for the purposes of section 57(3) for an application mentioned in section 51(3) in respect of —
- (a) a type of swimming pool referred to in the Table; and
 - (b) a barrier to a type of swimming pool referred to in the Table.

Table

Type of swimming pool	Building standard
All swimming pools other than private swimming pools	The requirements mentioned in regulation 31G(2) other than the Building Code pool barrier requirements.

Type of swimming pool	Building standard
Private swimming pools other than pre-May 2016 private swimming pools	The requirements mentioned in regulation 31G(2) and 50A(1) except that — (a) a Building Code pool barrier requirement (and its associated deemed-to-satisfy solution) that was in effect at or after the time the construction of the pool commenced may be substituted for a Building Code pool barrier requirement mentioned in regulation 31G(2); and (b) a performance solution cannot be used to comply with a Building Code pool barrier requirement unless the performance solution is an approved barrier solution.
Pre-May 2016 private swimming pools	The requirements mentioned in regulation 31G(2) and 50A(1) except that — (a) a Building Code pool barrier requirement (and its associated deemed-to-satisfy

Type of swimming pool	Building standard
	<p>solution) that was in effect at or after the time the construction of the pool commenced may be substituted for a Building Code pool barrier requirement mentioned in regulation 31G(2); and</p> <p>(b) the requirements for a barrier to a private swimming pool set out in regulation 50A(4) and (5) may be substituted for a Building Code pool barrier requirement; and</p> <p>(c) a performance solution cannot be used to comply with a Building Code pool barrier requirement unless the performance solution is an approved barrier solution.</p>

Note for this regulation:

See also regulation 15B which, for the purposes of these regulations, modifies AS 1926.1-2012 as referenced in the Building Code.

12. Regulation 31G amended

- (1) In regulation 31G(1) delete “31BA” and insert:

31BA, 31C

- (2) In regulation 31G(2) delete “made, except that a performance solution cannot be used to comply with a Building Code pool barrier requirement unless the performance solution is an approved barrier solution.” and insert:

made.

13. Regulation 31H amended

In regulation 31H(1) delete “are prescribed” and insert:

are, except to the extent that regulation 31C otherwise provides, prescribed

14. Regulation 48 amended

- (1) In regulation 48 delete the definitions of *access through a building*

AS 1926.1

- (2) In regulation 48 insert in alphabetical order:

access, in relation to a pool, means direct or indirect access by young children to the pool and its immediate surrounds;

pool barrier, in relation to a pool, means a barrier that complies with the requirements of regulation 50A;

15. Regulation 50 replaced

Delete regulation 50 and insert:

50. Barrier to private swimming pool

- (1) This regulation does not apply in respect of a private swimming pool in —
 - (a) a construction site (as defined in the *Work Health and Safety (General) Regulations 2022* regulation 5) to which the *Work Health and Safety (General) Regulations 2022* regulation 298 applies; or
 - (b) a work area to which the *Work Health and Safety (General) Regulations 2022* regulation 306 applies.
- (2) Each owner and occupier of premises on which there is a private swimming pool containing water that is more than 300 mm deep must ensure that a pool barrier restricting access is installed or provided around the pool.

Penalty for this subregulation: a fine of \$5 000.

50A. Pool barrier requirements

- (1) If all or part of a building (other than a Class 10 building) is within the area bounded by a pool barrier, that pool barrier or another pool barrier must restrict access from the building.

- (2) Subject to subregulations (3) and (4), a pool barrier must comply with a Building Code pool barrier requirement that was in effect —
- (a) if a building permit applies to the construction of the pool — at or after the time the application for a building permit to construct the pool was made; or
 - (b) otherwise — at or after the time the construction of the pool commenced.

Note for this subregulation:

See also regulation 15B which modifies AS 1926.1-2012.

- (3) For the purposes of subregulation (2), a performance solution cannot be used to comply with a Building Code pool barrier requirement unless the performance solution is an approved barrier solution.
- (4) If the pool is a pre-May 2016 private swimming pool, the pool barrier need not comply with subregulation (2) if —
- (a) it is in accordance with —
 - (i) the requirements of AS 1926.1-1993; or
 - (ii) approved alternative requirements;and
 - (b) any wall comprising part of the pool barrier has no means of access through a building other than —
 - (i) a window that is in accordance with the requirements of AS 1926.1-1993; or
 - (ii) an approved door.

- (5) For the purposes of subregulation (4)(a), a boundary fence of the premises that is part of the pool barrier is in accordance with the requirements of clauses 2.3, 2.6 and 2.7 of AS 1926.1-1993 if all those requirements are satisfied in relation to either side of the fence.

Note for this regulation:

If a wall or any other part of a building is included in a pool barrier, that wall or other part must comply with the requirements of this regulation.

16. Regulation 51 amended

Delete regulation 51(1) to (3) and insert:

- (1) In this regulation —
- person with a disability*** means a person who in the view of National Disability Services (ACN 008 445 485), registered under the *Corporations Act 2001* (Commonwealth), has a disability or medical condition that makes it difficult for the person to use a gate of the kind that would be required by these regulations in a swimming pool barrier.
- (2) A permit authority may approve requirements alternative to the requirements of regulation 50A(4)(a)(i) if it is satisfied that the alternative requirements will restrict access as effectively as if there were compliance with AS 1926.1-1993.
- (3) A permit authority may approve a door for the purposes of regulation 50A(4)(b)(ii) if the door is in accordance with the requirements of AS 1926.1-1993 and —
- (a) in the opinion of the permit authority, a fence or barrier satisfying regulation 50A between the

building and the private swimming pool would cause —

- (i) a significant problem of a structural nature; or
 - (ii) a significant problem of any other nature, the cause of which is not within the control of the owner or occupier;
- or
- (b) the private swimming pool is totally enclosed by a building; or
 - (c) in the opinion of the permit authority, a fence or barrier satisfying regulation 50A between the building and the private swimming pool would create a significant problem for a person with a disability who is resident at the premises and wishes to have access.

17. Regulation 52 amended

- (1) In regulation 52(2) delete “regulation 50(1),” and insert:

regulation 50(2),

- (2) In regulation 52(3) delete “AS 1926.1.” and insert:

AS 1926.1-1993.

18. Regulation 53 replaced

Delete regulation 53 and insert:

53. Inspection of barrier to private swimming pool

- (1) The local government for the district in which a private swimming pool containing water that is more than 300 mm deep is located must arrange for an authorised person to inspect the barrier to the private swimming pool on the days and at the intervals described in subregulation (2), for the purpose of monitoring whether the provisions of regulations 50, 50A and 52 are being complied with.
- (2) For the purposes of subregulation (1), the days and intervals for inspections of a barrier to a private swimming pool are —
 - (a) if the local government has never arranged for an authorised person to inspect the barrier — a day that is no more than 30 days after the day on which the first of the following occurs —
 - (i) the local government receives a notice of completion under section 33 stating that the building work in respect of the barrier or the private swimming pool is completed;
 - (ii) the local government receives details of a notice of completion under section 7(2)(b) indicating that the building work in respect of the barrier or the private swimming pool is completed;
 - (iii) the local government otherwise becomes aware that it has never arranged for an authorised person to

inspect a barrier to the private swimming pool;

and

- (b) if the local government has previously arranged for an authorised person to inspect the barrier to a private swimming pool (the *relevant inspection*) —
 - (i) if the authorised person is not satisfied that the provisions in regulation 50, 50A and 52 are being complied with — on a day that is within 60 days after the day of the relevant inspection; and
 - (ii) in any other case — on a day that is within 4 years after the day of the relevant inspection.

Note for this subregulation:

If subregulation (2)(b)(i) applies, the local government must arrange 1 or more further inspections until an authorised person is satisfied that the provisions in regulations 50, 50A and 52 are being complied with.

53A. Charges may be imposed for inspection of barrier

- (1) In this regulation —
 - initial inspection* means an inspection arranged under regulation 53(1) to which regulation 53(2)(a) applies;
 - periodic inspection* means an inspection arranged under regulation 53(1) to which regulation 53(2)(b)(ii) applies;
 - re-inspection* means an inspection arranged under regulation 53(1) to which regulation 53(2)(b)(i) applies.
- (2) A local government may fix the charge to be imposed on an owner of land on which there is a private

swimming pool containing water that is more than 300 mm deep for an initial inspection, but —

- (a) a single charge is to be imposed covering both the initial inspection and any related re-inspections; and
 - (b) the amount of the charge must not exceed the lesser of —
 - (i) the estimated average cost to the local government of carrying out an initial inspection and any related re-inspections; and
 - (ii) \$312.
- (3) A local government may, for a financial year, fix the charge to be imposed on each owner of land on which there is a private swimming pool containing water that is more than 300 mm deep, in respect of the cost in that financial year of carrying out periodic inspections, but —
- (a) a single charge is to be imposed in respect of periodic inspections and any related re-inspections; and
 - (b) the amount of the charge must not exceed the lesser of —
 - (i) the estimated average cost to the local government of carrying out periodic inspections and related re-inspections in that year; and
 - (ii) \$78;and
 - (c) the charge is payable by an owner whether or not a periodic inspection is conducted in respect of a pool on that owner's land in the financial year.

53B. Local governments to give Building Commissioner information

- (1) In this regulation —
reporting period means the period commencing on 1 July and ending on the next following 30 June.
- (2) Each local government must, before 1 August each year, give the Building Commissioner the following information in respect of the immediately preceding reporting period —
 - (a) the number of swimming pools in respect of which this Division applies that are located in the local government's district at the end of the reporting period;
 - (b) the number of swimming pools referred to in paragraph (a) that were inspected by an authorised person during the reporting period at an inspection arranged under regulation 53;
 - (c) the number of swimming pools referred to in paragraph (a) that, at the end of the reporting period, have not been inspected by an authorised person at an inspection arranged under regulation 53 within the interval specified in regulation 53(2)(b)(ii).
- (3) The information referred to in subregulation (2) must be provided to the Building Commissioner electronically.

19. Schedule 4 amended

In Schedule 4 clause 2 —

- (a) insert in alphabetical order:

fall prevention barrier means a barrier that a performance requirement set out in the Building Code requires to be provided where people could fall;

fence includes a fence that is, or is part of, a pool barrier as defined in regulation 48;

- (b) In the Table delete item 4 and insert:

4.	<p>Construction, erection, assembly or placement of a fence, screen or similar structure, other than a fall prevention barrier, if —</p> <p>(a) the fence, screen or similar structure is constructed in accordance with a local law made under the <i>Local Government Act 1995</i> section 9.60 that applies to the construction of the fence, screen or similar structure in the district in which the fence, screen or similar structure is, or is to be, located; or</p>
	<p>(b) the fence, screen or similar structure is, or is to be, located in a district in which there is no local law of a type referred to in paragraph (a) and the fence, screen or similar structure —</p> <p>(i) if constructed of masonry — is no more than 0.75 m in height; and</p> <p>(ii) if constructed of a material other than masonry — is no more than 1.8 m in height; and</p> <p>(iii) is not located in wind region C or D as defined in AS 1170.2.</p>

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Part 3 Amendments commencing 6 months after publication

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V. MOLAN, Clerk of the Executive Council

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