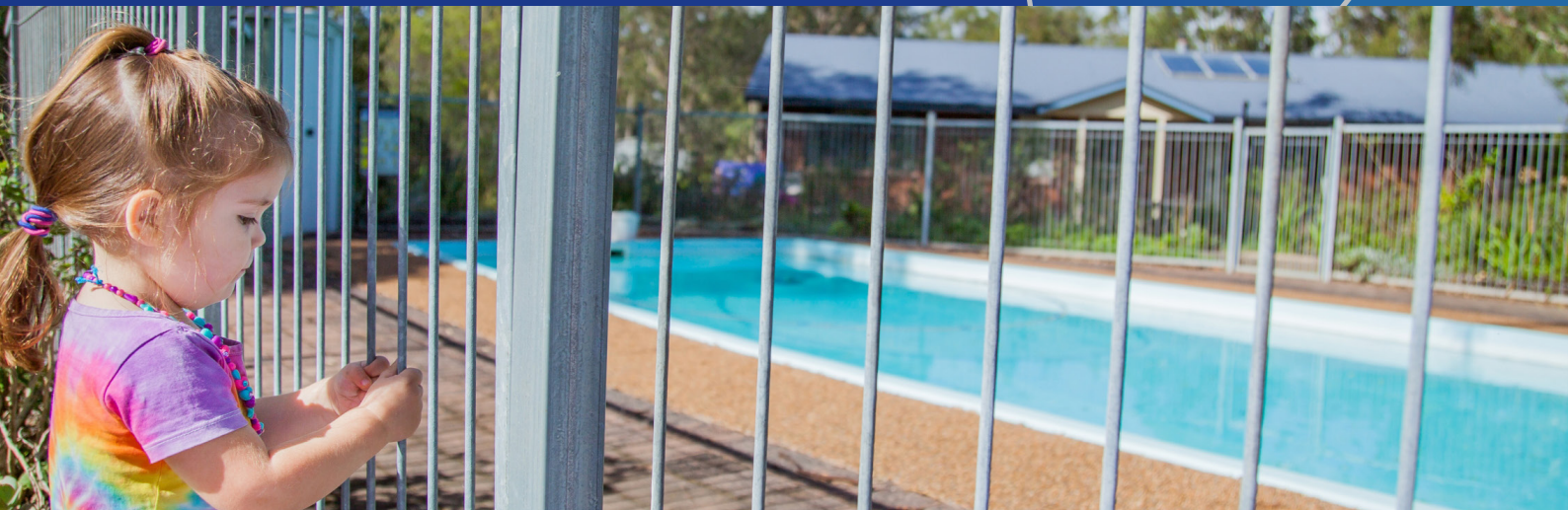


## Guidance – excluded areas – local government



# Extending pool safety barrier requirements

This document provides guidance to local governments that have areas within their district that are excluded from the safety barrier requirements for existing private swimming and spa pools (swimming pools) in the [Building Regulations 2012](#) (the Regulations), and encourages them to consider having these exclusions removed.

## 1. Why is this being targeted now?

Drowning is a leading cause of accidental death for young children (under five years of age). The majority of these drowning incidents occur in swimming pools.

The Ombudsman WA (Ombudsman) tabled its report, [Investigation into ways to prevent or reduce deaths of children by drowning](#) (Report), in Parliament in November 2017. This instigated a review by the Department of Local Government, Industry Regulation and Safety (then the Department of Energy, Mines, Industry Regulation and Safety) Building and Energy division (Building and Energy) of the safety barrier requirements for swimming pools within WA.

The Report highlighted the increased risk of drowning of young children in swimming pools that are not required to comply with the safety barrier requirements in Part 8 Division 2 of the Regulations due to being located in an

excluded area. It also identified that some local governments have been providing incorrect information and advice by informing residents that a safety barrier is not required for new swimming pools constructed in those excluded areas.

### Recommendation 25 of the Report states:

‘The Building Commissioner considers an amendment to the Building Regulations 2012 to remove excluded areas so that regulation 50(1) of the Building Regulations 2012 applies to all owners and occupiers of premises throughout Western Australia. Alternatively, if such an amendment is not considered appropriate, the Building Commissioner works with relevant local governments in excluded areas to provide accurate advice regarding the need to provide swimming pool barriers as part of the relevant building permit’.

## 2. Government decision

As part of a review, Building and Energy recognised that with regard to excluded areas it is more appropriate for local governments to lead regulatory decisions for their local community. As such, Building and Energy decided to not amend the Regulations to extend the safety barrier requirements across currently excluded areas without local government direction.

Building and Energy is encouraging, and will continue to actively promote, that affected local governments consider removing their excluded areas in Schedule 5, thereby requiring those areas to comply with Part 8 Division 2 of the Regulations.

Specifically, the outcome of the regulatory review detailed in the Government's '[Swimming Pool and Safety Barrier Control Decision Paper, April 2021](#)', in relation to this matter was to:

- **Amend the Regulations** on formal request by affected local governments to require safety barriers for all private swimming pools in all areas of their geographic district.
- **Actively engage** with affected local governments to remove excluded areas from their district.
- **Provide guidance** to these affected local governments on:
  - the processes required to remove the regulatory exclusion and satisfy the Government's commitment to best practice regulation; and
  - the existing requirement for all new swimming pools in all areas of the State, regardless of excluded areas, to have compliant safety barriers at the time of completion of building work, regardless of whether or not a building permit is required.
- **Provide guidance** to owners on the merit of voluntary pool barriers for those pools located in excluded areas of WA.

## 3. Clarification of the requirements

The [Building Act 2011](#) (the Act) and the Regulations have differing requirements for new and existing swimming pools, located in Part 4 and Part 8 Division 2 of the Regulations respectively. Generally, a swimming pool is considered new at the time of completion of the swimming pool and considered existing thereafter.

### 3.1 New swimming pools

All **new** swimming pools, regardless of Schedule 5 and the property's location within WA, are required to have compliant safety barriers at the time of completion of the building work for the swimming pool where its depth of water exceeds 30 cm. This applies irrespective of whether a building permit is required.

The Act requires all **new** swimming pools to comply with the applicable building standards, which includes the requirement for safety barriers. There are **no exclusions or exemptions** from this requirement; this should not be confused with the building permit exemptions under Schedule 4 or the exclusions for **existing** swimming pools under Schedule 5.

### 3.2 Existing swimming pools

The requirements for **existing** swimming pools to have safety barriers, and for those safety barriers to be inspected by local governments, only apply to areas of the State that are listed in Schedule 5. Areas not listed in the Schedule are excluded from these requirements. Areas subject to these exclusions are typically in regional and remote areas. Of the 139 local governments in WA, 71 have areas that are excluded.

While the inspections do not apply to swimming pools located in excluded areas, general enforcement powers remain available and may be used by local governments where a swimming pool is reasonably believed to be in a dangerous state, which may include (depending on circumstances), where a safety barrier is defective, not provided or has been removed.

In such cases the local government may make a Building Order under Part 8 Division 5 of the Act that could require the installation or repair of a safety barrier.

## 4. Considering the options

Local governments with excluded areas in their district have two options:

### 4.1 Option 1: Remove excluded areas

Extend the safety barrier and inspection requirements to currently excluded areas, including:

- Provision of compliant safety barriers to all existing swimming pools containing a depth of water of more than 30 cm (regulation 50 (2));
- Local government initial inspection of safety barriers to all new and previously uninspected swimming pools within 30 days (regulation 53 (2)(a));
- Local government periodic inspections of safety barriers to existing swimming pools at intervals not exceeding four years (regulation 53 (2)(b)(ii)); and
- Associated fees for service (regulation 53A).
- Local governments that also have building permit exclusions under Clause 1 of Schedule 4 of the Regulations should consider the impact they may have and may wish to consider including the removal of those exclusions through this same process.

An information sheet (Extending pool safety barrier requirements – Information for residents) is available that may be useful for local governments when consulting with residents who reside in excluded areas.

### 4.2 Option 2: No regulatory change – encourage voluntary installation of barriers

Retain currently excluded areas and instead actively encourage those residents to voluntarily install and/or maintain safety barriers to existing swimming pools.

An information sheet (Safety barriers for private swimming and spa pools in excluded areas) is available for local government reference/distribution to residents residing in excluded areas that encourages the voluntary installation and maintenance of safety barriers to existing swimming pools.

Consideration of the options should include any specific local challenges such as geographical size, extended travel times, budget and resources. Some local governments with remote areas may find it difficult to undertake safety barrier inspections due to travel distances. However, those local governments in a position to share resources with other local governments, and those with only very few swimming pools in excluded areas, may find inspections feasible.

Building and Energy supports the extension of safety barrier requirements across the State and encourages local governments to consider Option 1 and seek removal or reduction of excluded areas.

## 5. Regulatory impacts

Extending the provision of safety barriers to swimming pools in excluded areas will not be without difficulty. Depending on circumstances, retrospective application of safety barrier requirements can change how the swimming pool area is used and can be of significant expense to the swimming pool owner.

Importantly, affected residents and stakeholders in excluded areas need to be identified and consulted on the proposed changes prior to any implementation being determined. This includes residents without a swimming pool as they may have young children exposed to the dangers of a neighbouring unfenced swimming pool or may wish to have a swimming pool installed at some point in the future.

The regulatory impacts of any decision to extend safety barrier requirements within individual local government areas need to be considered in terms of the technical and administrative requirements of Part 8 Division 2 of the Regulations.

Guidance on the technical requirements can be found in the [Rules for Pools and Spas](#) publication and on the webpage [www.lgirs.wa.gov.au/poolsandspas](http://www.lgirs.wa.gov.au/poolsandspas).

## 6. State Government requirements for amending the Regulations to remove excluded areas

For those local governments that decide to remove or reduce their excluded areas, Building and Energy will follow the process previously agreed with the [Department of Treasury and Finance's Better Regulation Unit](#), which entails:

1. Local government **consultation** with affected residents and stakeholders and **analysis** of extending safety barrier requirements;
2. Formal **council resolution** supporting removal of excluded areas.
3. **Formal request** to Building and Energy to remove those excluded areas.
4. Building and Energy liaising with Parliamentary Counsel to **amend the Building Regulations 2012 Schedule 5**, extending safety barrier requirements in line with the local government's request.

## 7. Local government process for requesting removal of excluded areas

Local governments considering removing excluded areas from their locality must:

1. **Consult** with affected residents and stakeholders.
2. **Analyse** the net cost-benefit of imposing any proposed change.
3. **Consider** a transition period (where required).
4. **Obtain** formal resolution of Council to support a decision to remove excluded areas.
5. **Make** a formal request to Building and Energy to amend Schedule 5 of the Regulations.

### 7.1 Consult with affected residents and stakeholders

Consultation will assist the local government in considering whether to extend safety barrier requirements across their currently excluded areas. The main impacts of removing excluded areas are:

- owners to provide and maintain safety barriers to swimming pools;
- local governments to conduct an initial inspection of all new swimming pools for safety barrier compliance; and
- local governments to conduct periodic inspections of safety barriers for existing swimming pools at intervals not exceeding four years.

Consultation with affected residents is required to identify the number of properties with swimming pools, the likely cost impacts, and the responses of those potentially affected, to inform your decision.

Evidence of consultation is necessary to support a decision to remove excluded areas and assists in determining the likely cost impacts and the necessity for any transitional arrangements.

Where any regulatory change is being considered, it is important that those potentially affected are adequately consulted and informed. Targeted consultation is likely to include owners of swimming pools, local pool fence suppliers and installers, and the general community.

A broad consultation is always recommended particularly for those local governments that are unaware of the location of many of these swimming pools due to building permit exemptions. For broad consultation local governments may wish to consider the use of community newspapers, community radio, website content, emails and letters sent out with Rates Notices.

The decision on the extent of consultation undertaken rests with each local government, who are best placed to understand the most effective way to communicate with their residents and stakeholders. However, local governments should ensure that consultation is sufficient and meets the community's expectations.



<b>Important considerations</b>	
<b>Response time</b>	The period of time you are going to consult. This will be governed by the type of consultation offered. Broad consultation is likely to require a longer consultation period than targeted consultation.
<b>Diversification</b>	A variety of consultation media types will improve the effectiveness of the consultation.
<b>Accessibility</b>	Consultation media should be designed to be accessible. Successfully consulting with people in remote areas can be challenging and may need further consideration.
<b>Size/effectiveness</b>	Consider the size of the target audience. How much and what type of data will be collected? Does the local government have the capacity to support the number of responses expected from the particular consultation method?
<b>Resource availability and budget</b>	What resources are necessary? Ensure a sufficient budget for the consultation proposed.
<b>Transparency</b>	The consultation process, results and decision should be open and transparent.
<b>Privacy</b>	Adhere to the <a href="#">Australian Privacy Principles</a> . Do not disclose personal information, ensure it is secure and protected. This includes, but is not limited to, names, date of birth, sensitive information, IP address, location, address, phone numbers, etc.

### Consultation results

Once all the data has been collected the local government will need to evaluate and interpret the information, and review and summarise the outcomes. Additional consultation may be required if previously unidentified areas of concern are raised (and the like).

### 7.2 Analyse the net cost-benefit

After consultation has been completed, the local government should estimate the total cost to the community and the average individual cost to affected property owners for making any regulatory change. To support a proposal for removing excluded areas, the benefit to the community should outweigh the costs.

It should be noted that the benefits of requiring safety barriers, in terms of potentially reducing child drownings, are highly likely to outweigh the costs.

### 7.3 Consider a transition period

Amendments to the Regulations will not come into effect until after any agreed transition period has been completed. This gives the local government time to ensure that its affected

residents and stakeholders are aware of the pending requirements and time frames.

A four-year transition period has been suggested to be appropriate in most circumstances, however this will need to be determined by each local government individually in collaboration with Building and Energy's Policy Branch.

### 7.4 Obtain formal resolution of Council on the decision made

The local government should provide to the Council, at a Council meeting, the proposal to remove excluded areas, including the consultation results and the proposed transition arrangements.

The final decision needs to be that of the whole of Council in a [formal resolution](#).

### 7.5 Make formal request to Building and Energy

Once consultation has been completed and a formal resolution of council reached, the local government's Chief Executive Officer should write to Building and Energy requesting the amendment of the Regulations. The request is to include:

- details of the consultation outcomes, cost benefit analysis and any proposed transition arrangements; and

- a copy of the Council resolution.

A request template and example are enclosed that may be useful for local governments requesting removal of excluded areas.

Building and Energy will consider the submissions on a case-by-case basis and will contact the local government prior to commencing drafting instructions for Parliamentary Counsel to amend the Regulations.

[Local government name]		<b>Proposal to remove excluded areas for:</b> <input type="checkbox"/> <b>building permits for certain work; and/or</b> <input type="checkbox"/> <b>safety barrier requirements for existing private swimming pools</b>			
<b>Title of Regulation</b>	<b>Area covered</b> [name, location, size of community]	<b>Rationale for removal of the exemption</b>	<b>Consultation summary</b> [who has been consulted, concerns, how these will be addressed]	<b>Impact Assessment – summary of benefits and costs</b> [impact of removing the exemption on the community, businesses, local government and any other stakeholders]	<b>Implementation timeframe and transitional arrangements</b>
<p>Schedule 4, clause 1. Areas where building permit not required for certain work.</p> <p>Schedule 5 – Areas of State where Part 8 Division 2 applies</p>	<p>Shire of XXX</p> <p>Mid West Region of WA</p> <p>Area: 182,156 km<sup>2</sup></p> <p>Population: 1,279 (est)</p>	<p>The purpose for the Council resolution requesting removal of the excluded areas in Schedules 4 and 5 of the Regulations was primarily to improve the safety of young children that reside in properties with private swimming pools.</p> <p>Removal of the excluded areas from both Schedules means building permits will be required for new class 10 buildings and incidental structures including swimming pools, and swimming pool safety barriers will need to be provided and maintained thereafter. The local government will be able to extend the periodic safety barrier inspection program to capture previously excluded pools.</p> <p>Council seeks to apply the same regulatory burden on owners and builders in remote regional areas as applies to those in townships.</p> <p>Council was also concerned about potential liability through inaction.</p>	<p>Council consulted with residents through its website, advertising in the community newspaper and local notice boards.</p> <p>Letters were posted to all properties within the excluded areas.</p> <p>Most concerns related to costs and aesthetics.</p> <p>Council considers the lives of young children and general safety of the community to supersede these concerns and proposes to implement a four-year transition period to allow sufficient time for residents and businesses to prepare.</p>	<p>Maintaining the status quo could result in:</p> <ul style="list-style-type: none"> <li>- injury or death to owners and general public, and/or potential financial losses to owners, associated with non-compliant class 10 buildings and structures constructed without a building permit; and</li> <li>- drowning incidents, injuries or deaths of young children associated with swimming and spa pools that do not have a compliant safety barrier.</li> </ul> <p>The net-cost benefit revealed that the potential injury or death of persons, including young children, outweighs the potential extra cost that owners will have to bear to obtain a building permit to construct compliant buildings and structures, and/or install a compliant safety barrier.</p> <p>Further, it is considered that the cost of a safety barrier is part of the cost of owning a swimming pool. Costs to pool owners include the purchase and installation of safety barriers and ongoing maintenance, and the ongoing cost of inspections by local government. Costs to owners of proposed class 10 building work includes building permit fees.</p> <p>Local businesses which install safety barriers will benefit from new business. The community will benefit from compliant buildings and structures and safer swimming pools.</p> <p>Copy of Council Resolution attached.</p>	<p>Council would like to implement a four-year transitional arrangement.</p> <p>This period will be used to promote the changes and provide information on the regulatory and technical requirements for building permits and for swimming pool safety barriers (with reference to Rules for Pools and Spas).</p>

[Local government name]		<b>Proposal to remove excluded areas for:</b> <input type="checkbox"/> <b>building permits for certain work; and/or</b> <input type="checkbox"/> <b>safety barrier requirements for existing private swimming pools</b>			
<b>Title of Regulation</b>	<b>Area covered</b> <i>[name, location, size of community]</i>	<b>Rationale for removal of the exemption</b>	<b>Consultation summary</b> <i>[who has been consulted, concerns, how these will be addressed]</i>	<b>Impact Assessment – summary of benefits and costs</b> <i>[impact of removing the exemption on the community, businesses, local government and any other stakeholders]</i>	<b>Implementation timeframe and transitional arrangements</b>
Schedule 4, clause 1. Areas where building permit not required for certain work.  Schedule 5 – Areas of State where Part 8 Division 2 applies					

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