

Building (Pools) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill will amend the Building Act 2004 and repeal the Fencing of Swimming Pools Act 1987 to reduce the compliance burden currently imposed on pool owners and territorial authorities in relation to residential pools while maintaining child safety.

The Fencing of Swimming Pools Act 1987 (**FOSPA**) has contributed to reducing the number of drownings of children aged 0–4 years in home swimming pools. Drownings of young children in home pools have decreased from 100 drownings in the 10-year period before FOSPA was enacted, to 30 drownings in the 10 years to 2012.

However, FOSPA contains inconsistent, duplicate, and often cumbersome provisions that have, in some instances, created unnecessary compliance costs while contributing little to child safety. This Bill aims to remove these aspects from pool safety legislation and increase child safety by—

- deeming child-resistant covers on spa pools and hot tubs to be an adequate means of restricting access, without requiring spa pools or hot tubs to have an additional means of restricting access:
- clarifying that councils should inspect swimming pools 5-yearly to ensure that owners maintain the means of restricting access to their pools:
- replacing the current offence provisions involving court prosecutions with a more cost-effective graduated enforcement regime that includes prosecutable offences:
- relying on performance-based standards in the Building Code to specify the requirements for restricting access to pools, rather than the current duplicate and inconsistent requirements:
- requiring retailers and manufacturers to inform buyers about their obligations under the Act when they buy spa pools, hot tubs, and portable pools, so as to

encourage voluntary compliance underpinned by the new enforcement regime, rather than relying on councils to locate and inspect all spa pools, hot tubs, and portable pools.

It is estimated that the changes in this Bill will result in a \$17 million (net present value—NPV) reduction in compliance costs, mainly because spa pools and hot tubs with child-resistant covers will no longer need another means (for example, a fence) to restrict access, and the possible avoidance of a further 6 drownings every 10 years through the periodic inspection regime.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2015&no=63>.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced 2 regulatory impact statements in November 2013 and July 2015 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of the regulatory impact statements can be found at—

- <http://www.building.govt.nz/fospa-index>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill will come into force on **1 January 2017**.

Clause 3 provides that this Bill amends the Building Act 2004 (the **principal Act**).

Part 1

Amendments to Building Act 2004

Clause 4 amends section 5, the overview section, to reflect changes made by this Bill.

Clause 5 amends section 7, the interpretation section, to insert new definitions of abode (or place of abode), hot tub, immediate pool area, pool, portable pool, residential pool, and spa pool.

Clause 6 amends section 8 to provide that the definition of building, for the purpose of the principal Act, includes a means of restricting or preventing access to a residential pool.

Clause 7 inserts a *new subpart 7A* of Part 2.

New section 162A sets out the purpose of *new subpart 7A*, which is to prevent unsupervised access to residential pools by young children.

New section 162B provides that the new subpart applies to pools with a maximum depth of water of 400 mm or more.

New section 162C requires specified persons to ensure that residential pools have a means of restricting access that complies with the requirements of the Building Code.

New section 162D requires every person who manufactures or sells a new spa pool, hot tub, or portable pool to supply with the pool a notice of the responsibilities of owners and occupiers under *new section 162C*.

New section 162E provides that territorial authorities may not prescribe requirements in relation to means of restricting access to pools that are additional to, or more restrictive than, those are prescribed in the principal Act.

Clause 8 amends section 163, the definition of specified person, to provide that a specified person for the purpose of subpart 8 of Part 2 includes persons who are responsible for ensuring that residential pools have a means of restricting access that complies with *new section 162C*.

Clause 9 amends section 165 to provide that a notice to fix may require that a non-compliant pool be emptied until such time as it has a means of restricting access that complies with *new section 162C*.

Clause 10 amends section 168 to prescribe an offence for failing to comply with a notice to fix in relation to a means of restricting access to a residential pool.

Clause 11 amends section 222 to allow territorial authorities to inspect residential pools to determine if the requirements in *new section 162C* are being complied with.

Clause 12 inserts *new section 222A* to require territorial authorities to inspect residential pools every 5 years to determine if the requirements in *new section 162C* are being complied with.

Clause 13 inserts transitional and savings provisions for existing residential pools.

Clause 14 amends Schedule 1 to provide that means of restricting access to residential spa pools, hot tubs, and portable pools do not require a building consent and to make other consequential amendments as a result of the changes made in this Bill.

Part 2

Final and miscellaneous provisions

Clause 15 repeals the Fencing of Swimming Pools Act 1987.

Clause 16 makes consequential amendments to other enactments as a result of the changes made in this Bill. The Fencing Act 1978 is amended to update references to

the Fencing of Swimming Pools Act 1987 (which is being repealed by this Bill). The Building Code is being amended to prescribe requirements for residential pools and to remove the requirements for non-residential pools to have barriers.

Hon Dr Nick Smith

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Building (Pools) Amendment Act **2015**.
- 2 Commencement**
This Act comes into force on **1 January 2017**. 5
- 3 Principal Act**
This Act amends the Building Act 2004 (the **principal Act**).

Part 1
Amendments to Building Act 2004

- 4 Section 5 amended (Overview)** 10
After section 5(2)(b)(iv), insert:
(v) provisions relating to residential pool safety:
- 5 Section 7 amended (Interpretation)**
In section 7, insert in their appropriate alphabetical order:
- abode or place of abode—** 15
- (a) means any place used predominantly as a place of residence or abode, including any appurtenances belonging to or enjoyed with the place; and
- (b) includes—
- (i) a hotel, motel, inn, hostel, or boarding house:
- (ii) a convalescent home, nursing home, or hospice: 20
- (iii) a rest home or retirement village:
- (iv) a camping ground:
- (v) any similar place
- hot tub** means a heated pool that—
- (a) is designed for therapeutic or recreational use; and 25
- (b) has a water surface area of 5 m² or less; and

- (c) has sidewalls—
 - (i) that are not (at any point) less than 760 mm above the adjacent ground; and
 - (ii) the outside surfaces of which are constructed so as to inhibit climbing

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immediate pool area means the land in or on which the pool is situated and so much of the surrounding area as is used for activities carried out in relation to or involving the pool

pool means—

- (a) any excavation or structure of a kind normally used for swimming, paddling, or bathing; or
- (b) any product (other than an ordinary home bath) that is designed or modified to be used for swimming, wading, paddling, or bathing

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portable pool means any soft-sided pool (whether inflatable or not) that is designed to be installed on a temporary basis

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residential pool means a pool that is—

- (a) in a place of abode; or
- (b) in or on land that also contains an abode; or
- (c) in or on land that is adjacent to other land that contains an abode if the pool is used in conjunction with that other land or abode

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spa pool means a pool that—

- (a) has a water surface area of 5 m² or less; and
- (b) is designed for therapeutic or recreational use; and
- (c) incorporates a water jet or an aeration system:

6 Section 8 amended (Building: what it means and includes)

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Replace section 8(1)(b)(ii) with:

- (ii) any means of restricting or preventing access to a residential pool; and

7 New subpart 7A of Part 2 inserted

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After section 162, insert:

Subpart 7A—Special provisions for residential pools

162A Purpose

The purpose of this subpart is to prevent unsupervised access to residential pools by young children.

162B Application of subpart

This subpart applies to pools with a maximum depth of water of 400 mm or more.

162C Residential pools must have means of restricting access

- (1) Every residential pool that is filled or partly filled with water must have physical barriers that restrict access to the pool by unsupervised children under 5 years of age. 5
- (2) The means of restricting access referred to in **subsection (1)** must comply with— 10
- (a) the applicable requirements of the building code (subject to any waiver or modification granted under section 67); or
- (b) if the pool was constructed, erected, or installed before **1 January 2017, section 450B**.
- (3) The following persons must ensure compliance with this section: 15
- (a) the owner of the pool:
- (b) the owner of the land on which the pool is situated:
- (c) the occupier of the property in or on which the pool is situated:
- (d) if the pool is subject to a hire purchase agreement (as that term is defined in the Income Tax Act 2007), the purchaser of the pool:
- (e) if the pool is on premises that are not subject to a tenancy under the Residential Tenancies Act 1986 but the pool is subject to a lease or is part of premises subject to a lease, the lessee of the pool or the premises. 20
- (4) In this section, **applicable requirements** means the requirements that applied when the pool was constructed, erected, or installed. 25
- Compare: 1987 No 178 s 8

162D Manufacturers and retailers must supply notice

- (1) Every person who manufactures, sells, or offers for sale in New Zealand any new product that is designed to be used for swimming, wading, paddling, or bathing, other than an ordinary home bath, must ensure that there is supplied with the pool a notice approved by the chief executive setting out or summarising the responsibilities of owners and occupiers under **section 162C(3)**. 30
- (2) The chief executive may, by notice in the *Gazette*, approve the form of notices for the purpose of **subsection (1)**.
- (3) Every person who fails to comply with **subsection (1)** commits an offence.
- (4) An offence against **subsection (3)** is an infringement offence. 35

162E Bylaws

A territorial authority may not make any bylaw that has the effect of requiring any residential pool to have any means of restricting access additional to or more restrictive than that required under this Act.

Compare: 1987 No 178 s 13A

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8 Section 163 amended (Definitions for this subpart)

In section 163, replace the definition of **specified person** with:

specified person means—

- (a) the owner of a building;
- (b) if a notice to fix relates to building work being carried out,—
 - (i) the person carrying out the building work; or
 - (ii) if applicable, any other person supervising the building work;
- (c) if a notice to fix relates to a residential pool, a person referred to in **section 162C(3)**.

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9 Section 165 amended (Form and content of notice to fix)

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After section 165(1)(f), insert:

- (g) if it relates to a residential pool, it may direct that the pool be drained of water and be kept empty (until the requirements of **section 162C** are complied with).

10 Section 168 amended (Offence not to comply with notice to fix)

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(1) Before section 168(1), insert:

(1AA) A person commits an offence who fails to comply with a notice to fix a means of restricting access to a residential pool.

(1AB) A person who commits an offence against **subsection (1AA)** is liable on conviction to a fine not exceeding \$5,000.

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(2) In section 168(1), replace “a notice to fix” with “any other notice to fix under this Act”.

(3) In section 168(2), replace “this section” with “**subsection (1)**”.

11 Section 222 amended (Inspections by territorial authority)

(1) After section 222(1)(a)(iii), insert:

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(iv) any residential pool (or the immediate pool area); and

(2) In section 222(1)(b)(ii), after “Part 2”, insert “; or”.

(3) After section 222(1)(b)(ii), insert:

(iii) the purpose of determining whether **section 162C** is being complied with.

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- (4) In section 222(4), replace “223” with “**222A**”.
- (5) In section 222(4), definition of **inspection**, after paragraph (a)(ii), insert:
- (ia) **section 162C** is being complied with; or

12 New section 222A inserted (Periodic inspections of pools)

After section 222, insert:

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222A Periodic inspections of residential pools

- (1) Every territorial authority must ensure that every residential pool within its jurisdiction, other than a spa pool, hot tub, or a portable pool, is inspected by an authorised officer under section 222 once every 5 years, within 3 months before or after the pool’s anniversary date. 10
- (2) In this section,—
- anniversary date**, in relation to a pool, means—
- (a) the date of issue of the code compliance certificate or the certificate of acceptance in respect of the pool; or
- (b) in the case of an existing pool that did not require a building consent,— 15
- (i) the date when notice was given under section 7 of the Fencing of Swimming Pools Act 1987; or
- (ii) if no notice was given, the date when the existence of the pool came to the knowledge of the territorial authority

existing pool means a pool that was constructed, erected, or installed before **1 January 2017**. 20

Compare: 1987 No 178 s 10

13 New sections 450A and 450B inserted

After section 450, insert:

450A Transitional provision for residential pools

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- (1) Fencing of a residential pool in accordance with clauses 1 to 10 of the Schedule of the Fencing of Swimming Pools Act 1987 (as that schedule was in force immediately before **1 January 2017**) is an acceptable solution for establishing compliance with the building code for the purpose of **section 162C**.
- (2) Sections 22(2) and (3), 23, 24, and 25A apply to the acceptable solution in **subsection (1)** as if it had been issued by the chief executive under section 22(1) of this Act. 30
- (3) In this section and the Schedule of the Fencing of Swimming Pools Act 1987,—
- fence** includes any part of a building, and any gate or door, that forms part of a fence 35

fencing means any barrier or barriers used to enclose a pool (or an immediate pool area) so as to restrict or prevent access to the pool.

450B Savings provision for residential pools

- (1) This section applies to a residential pool that was constructed, erected, or installed before **1 January 2017** (an **existing pool**). 5
- (2) An existing pool is deemed to comply with **section 162C(2)(a)** if it continues to comply with the requirements of the Fencing of Swimming Pools Act 1987 as that Act was in force immediately before **1 January 2017** subject to—
- (a) any exemption that—
- (i) had been granted under section 6 or clause 11 of the Schedule of that Act; and 10
- (ii) was subsisting immediately before **1 January 2017**; and
- (b) the conditions of any such exemption.
- (3) An existing pool is deemed to comply with **section 162C(2)(a)** if all of the following apply: 15
- (a) the outside surface of the side walls of the pool is constructed so as to inhibit climbing; and
- (b) no part of the top of any side wall of the pool is less than 1.2 m above—
- (i) the adjacent ground level; and
- (ii) any permanent projection from the ground outside of the pool and within 1.2 m of the walls of the pool; and 20
- (iii) any object standing on the ground outside of the pool and within 1.2 m of the walls of the pool; and
- (c) any ladder or other means of access to the interior of the swimming pool— 25
- (i) can be readily removed or made inoperable; and
- (ii) is removed or made inoperable whenever the pool is not intended to be in use.

Compare: 1987 No 178 s 5(a)

14 Schedule 1 amended 30

- (1) In the Schedule 1 heading, replace “s 42(1)(b)” with “s 12”.
- (2) In Schedule 1, replace clause 21(2) with:
- (2) Subclause (1) does not include a fence or hoarding to restrict access to a residential pool.
- (3) In Schedule 1, after clause 21, insert: 35

21A Means of restricting access to spa pools, hot tubs, and portable pools

Building work in connection with the means of restricting access to a spa pool, hot tub, or a portable pool that is a residential pool.

- (4) In Schedule 1, heading to clause 23 , delete “**(excluding swimming pools)**”.
- (5) In Schedule 1, clause 23, delete “(except a swimming pool as defined in section 2 of the Fencing of Swimming Pools Act 1987)”. 5

Part 2**Final and miscellaneous provisions****15 Repeal of Fencing of Swimming Pools Act 1987**

The Fencing of Swimming Pools Act 1987 (1987 No 178) is repealed. 10

16 Consequential amendments to other enactments

Amend the enactments specified in the **Schedule** as set out in that schedule.

**Schedule
Consequential amendments**

s 16

**Part 1
Amendments to Fencing Act 1978** 5

Fencing Act 1978 (1978 No 50)

In the heading to section 9A, replace “where fence required by Fencing of Swimming Pools Act 1987” with “where Building Act 2004 requires pool to have means of restricting access”.

In section 9A, replace “Fencing of Swimming Pools Act 1987” with “**subpart 7A of Part 2 of the Building Act 2004**”. 10

**Part 2
Amendments to legislative instruments**

Building (Infringement Offences, Fees, and Forms) Regulations 2007 (SR 2007/403) 15

In Schedule 1, replace the item relating to section 168 with:

s 162D	Supplying a pool product without an approved notice	500
s 168(1AA)	Failing to comply with a notice to fix in relation to a means of restricting access to a residential pool	500
s 168(1)	Failing to comply with any other notice to fix	1,000

Building Regulations 1992 (SR 1992/150)

In Schedule 1, delete clauses F4.3.3, F4.3.4(f), and F4.3.5.

In Schedule 1, after clause F8, insert:

Clause F9—Means of restricting access to residential pools 20

	Limits on application
Objective	
F9.1	The objective of this provision is to prevent injury or death to young children involving <i>residential pools</i> .
Functional requirement	
F9.2	<i>Residential pools</i> having a depth of water greater than 400 mm at any point must have means of restricting access that prevents unsupervised access by a child under 5 years of age.
Performance	

Building Regulations 1992 (SR 1992/150)—continued

Provisions	Limits on application
F9.3.1 <i>Residential pools</i> must be provided with a barrier or barriers able to restrict the entry of children into a <i>pool</i> or the <i>immediate pool area</i> .	
F9.3.2 Barriers must either—	Performance F9.3.2(b) applies only to those <i>spa pools</i> or <i>hot tubs</i> where—
(a) surround the <i>immediate pool area</i> ; or	(a) the top surface of every wall of the <i>pool</i> is at all points not less than 760 mm above the adjacent floor or ground and the walls of the <i>pool</i> inhibit climbing; and
(b) in the case of a <i>spa pool</i> or <i>hot tub</i> , cover the <i>pool</i> itself.	(b) the area of the water surface is not greater than 5 m ² .
F9.3.3 A barrier surrounding an <i>immediate pool area</i> must have no permanent objects or projections on the outside that could assist children in negotiating the barrier.	
Any gates must—	
(a) open away from the <i>pool</i> ; and	
(b) not be able to be readily opened by children; and	
(c) automatically return to the closed position after use.	
F9.3.4 Where a <i>building</i> forms part of an <i>immediate pool area</i> barrier,—	
(a) doors between the <i>building</i> and the <i>immediate pool area</i> must not be able to be readily opened by children, and must either—	
(i) emit an audible warning when the door is open;	
or	
(ii) close automatically after use;	
(b) windows opening from a <i>building</i> into the <i>immediate pool area</i> must be constructed or positioned to restrict the passage of children.	
F9.3.5 Where a cover is provided as a barrier to a <i>spa pool</i> or <i>hot tub</i> , it must—	
(a) restrict the entry of children when closed; and	

Building Regulations 1992 (SR 1992/150)—continued

Provisions	Limits on application
(b) be able to withstand a reasonably foreseeable load; and	
(c) be able to be readily returned to the closed position; and	
(d) have signage indicating its child safety features.	