

Building (Pools) Amendment Bill

Government Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Building (Pools) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The Building (Pools) Amendment Bill would amend the Building Act 2004 and repeal the Fencing of Swimming Pools Act 1987. The bill's intention is to maintain child safety as a priority. The bill would standardise compliance processes for territorial authorities and residential pool owners.

The bill would continue to allow barriers other than fences to be used for restricting access to residential pools. The only new barrier that would be allowed under this bill would be natural cliffs, provided they do not increase the risk of unsupervised pool access by young children.

Water bodies that are not normally used for swimming, paddling, or bathing such as garden ponds are not considered to be pools for the purposes of this legislation. Under the Fencing of Swimming Pools Act these are caught under the definition of "pools". This provision is not routinely enforced.

To ensure consistent and regular territorial authority processes, the bill proposes a nationwide standardised residential pool inspection cycle.

The bill would strengthen compliance and safety by introducing a graduated enforcement regime that includes notices to fix and infringement notices, as well as prosecutable offences.

The bill would introduce a mandatory requirement for manufacturers and retailers to inform buyers of their obligations to restrict access under the Building Act when they purchase any pool product such as a spa pool, hot tub, or portable pool.

This commentary covers the main amendments that we recommend to the bill. It does not cover minor or technical amendments.

Spa pools and hot tubs

Merging the spa pool and hot tub definitions

We recommend that spa pools and hot tubs be treated in the same way throughout the bill.

As a result, we recommend replacing the definitions of “spa pool” and “hot tub” in clause 5 with a new definition of “small heated pool”. This definition would capture both spa pools and hot tubs.

Consequently, we recommend that all references to spa pools and hot tubs throughout the bill be replaced with the term “small heated pool”.

Restricting access to small heated pools

We recommend amending clause 7 to insert new section 162C(2A) in the Building Act. The purpose of this new section is to allow for small heated pools that have a cover complying with the Building Code to not be required to have a barrier restricting access at all times; only when the pool is not in use.

We also recommend amending clause 14, new clause 21A of Schedule 1 of the Building Act, to specify that the installation of a safety cover as a means of restricting access to a small heated pool would not require a building consent.

Treating small heated pools in the same way as residential pools

We have given careful thought to the potential risk of children drowning in small heated pools (spa pools and hot tubs) that are not fenced. The majority of us note that small heated pools:

- present a low drowning risk to young children
- often have safety covers
- often are portable, and therefore difficult for territorial authorities to locate.

Additionally, we note that approximately 96 percent of these pools in New Zealand are currently unfenced.

For the above reasons, we do not recommend amending the bill to require small heated pools to be treated in the same way as other residential pools.

Provisions for residential pools

Enforcing compliance with manufacturer and retailer notice

We recommend inserting clause 6A to amend section 11 of the Building Act.

This new clause would specify that the Ministry of Business, Innovation and Employment would be responsible for enforcing the requirements in new section 162D rather than territorial authorities. New section 162D requires every person who manufactures, sells, or offers for sale any pool product designed for swimming, wading, paddling, or bathing to supply a notice summarising the responsibilities of owners, pool operators, and occupiers to restrict access.

We consider that the ministry would be best placed to provide efficient and nationwide enforcement of compliance with the notice requirements in new section 162D.

Role of local authorities

We recommend inserting clause 6B, which would amend section 12 of the Building Act, to further emphasise that local authorities are responsible for enforcing strict compliance with pool barrier requirements.

Waivers and modifications

We recommend inserting clauses 6C and 10A, which would insert new section 67A and amend section 188 of the Building Act.

These new clauses would allow territorial authorities and the chief executive of the Ministry of Business, Innovation and Employment to grant waivers and modifications of the pool barrier requirements set out in clause 7, new section 162C. Any such waiver or modification must take into account all of the circumstances relevant to that particular residential pool. It must not significantly increase danger to children less than 5 years of age.

We were advised that the criteria for these waivers and modifications are the same as those currently in section 6 of the Fencing of Swimming Pools Act.

Pool operators

We recommend strengthening clause 7 by inserting new subsection 162C(3)(ab) to include any person who operates a pool as a person who must ensure compliance with new section 162C. This amendment would also allow territorial authorities to take action, if necessary, against such a person.

As a consequence of this amendment, we recommend including a definition of “pool operator” in clause 5 of the bill.

Bylaws

We recommend amending clause 7 to delete proposed new section 162E. This new section is unnecessary as its provisions are already covered by section 152 of the Local Government Act 2002.

Use of the term “physical barrier”

We note concerns about the bill’s use of the term “physical barrier” rather than “fence”, and the concern that this wording would allow for unproven ways to restrict

access. We considered whether the use of the term “physical barrier” instead of the word “fence” would increase the risk to young children.

The majority of us are comfortable with the use of the term “physical barrier”, and do not consider that its inclusion in the bill would create an increased risk of danger to young children from swimming pools. The only new physical barrier envisaged is a natural cliff. It would need to comply with the requirements of the Building Code and be able to restrict pool access to unsupervised children under the age of 5, having the same effect as a fence.

Additionally, the present definition of “fence” in the Fencing of Swimming Pools Act already includes a wide range of structures other than conventional fences that restrict access to pools, such as retaining walls.

Requiring prescriptive standards for restricting pool access

A number of submitters suggested that swimming pools should have fences that are built according to prescribed standards, and that these standards should be the only way to comply with fencing requirements.

Prescribed standards for fences specifically set out how fences must be constructed and include details such as the exact height requirements of a fence (for example, the Schedule to the Fencing of Swimming Pools Act requires that a fence must be at least 120 cm high).

Under current legislation, as well as under the bill, people would be able to follow a prescribed standard to comply with legislation. The very specific fencing design details set out in the Schedule to the Fencing of Swimming Pools Act are currently, and would continue to be, the prescribed standard.

At present, people are not restricted to this prescribed standard, and this would continue under the bill. Instead, people may propose an alternative way to restrict access to a pool using different materials and barrier configurations. Alternative barrier solutions would be accepted as compliant by a territorial authority if they were at least as effective as the prescriptive standards at restricting access by children under the age of five.

The majority of us consider that it would be impractical to set prescriptive standards for fencing by listing all forms of pool barriers. Such a list would be extensive and would be unlikely to capture every possibility. Prescriptive standards would also preclude the use of innovative and potentially safer barrier solutions that may already exist or arise in the future.

Four-sided fencing

We considered suggestions from submitters to require four-sided fencing which would prevent direct access from a dwelling to a pool area. Submitters argued that four-sided fencing is safer, based on research conducted in Australia.

Drowning figures in New Zealand do not indicate that four-sided fences are safer than fences that include a doorway as part of a wall of a house. The drownings in the Aus-

tralian context were mainly caused by the lack of self-closing mechanisms or a malfunction.

Additionally, the 3-yearly inspection cycle proposed under this bill would better ensure that pool doors are checked to be compliant and that any malfunction of a self-closing mechanism is detected, thus safeguarding child safety.

The majority of us do not agree that four-sided fencing is safer than fencing that includes a wall with a door from a house as part of the fence.

Regular inspections of residential pools

Three-yearly inspections

Currently, the majority of pools (approximately 60 percent) are inspected on a 3-yearly basis. However, some local authorities do not regularly inspect residential pools at all.

We recommend amending clause 7 to insert new section 162CA so that there is a consistent requirement for all residential pools to be inspected on a 3-yearly basis. This amendment differs from the 5-yearly inspection cycle proposed in the bill as introduced.

We consider that 3-yearly inspections would improve compliance and, consequently, child safety. We were advised that the lives of six children under the age of five are expected to be saved per decade as a result of the suggested 3-yearly inspection regime.

While the requirement of a 3-yearly inspection regime would increase inspection costs by an estimated \$1 million a year, this amendment should not create an excessive burden for territorial authorities considering that the majority of residential pool inspections in New Zealand are already carried out on a 3-yearly basis.

We also recommend amending this proposed new section to extend the time period in which councils must inspect pools to six months either side of the pool's anniversary date, instead of three months either side as suggested in the bill as introduced. This longer window would allow territorial authorities to distribute their inspection workload throughout the year more effectively.

As a result of our proposed amendment to clause 7, we recommend that clause 12 be deleted as it would be redundant.

Independently qualified pool inspectors

Our proposed new subsection 162CA(2), inserted by clause 7, would allow pool owners and territorial authorities to choose to have periodic inspections carried out by independently qualified pool inspectors. These inspectors would be persons approved by the Ministry of Business, Innovation and Employment as qualified to undertake inspections of pool barriers.

We consider that this would give pool owners greater choice, and would also allow local authorities to outsource periodic inspections if they do not wish to undertake inspections in-house.

The Building Act contains a similar regime for inspectors of critical safety systems in buildings, such as fire sprinklers. It also provides safeguards to assure the performance of inspectors. These safeguards would apply in this bill; for example it would be an offence for an inspector to make a false or misleading statement about a pool barrier.

As a consequence of this amendment, we recommend including a definition of “independently qualified pool inspector” in clause 5. We also recommend including a “certificate of periodic inspection” definition in new section 162CA, as the term is used in this new section.

Inspection of applicable small heated pools

All small heated pools (spa pools and hot tubs) are theoretically required to be fenced under the Fencing of Swimming Pools Act. In practice, however, most people do not comply with this requirement and territorial authorities find it difficult to enforce.

The bill as introduced would not have required small heated pools to be inspected.

Our proposed new subsection 162CA(1)(b), inserted by clause 7, would instead only allow small heated pools that have a safety cover as a means of restricting access (and therefore a low risk of access by small children) to be exempt from inspection.

All other small heated pools would need to be periodically inspected to verify that their barriers continue to perform adequately and in compliance with the Building Code. They also would require a building consent for their barriers.

Provisions for existing pools

We recommend amending clause 7, new section 162C(2), and clause 13, new section 450B, to allow owners of existing pools to have the option of complying with the current requirements of the Building Code or the option of complying with the requirements of the Building Code that applied when their pool was installed.

Schedule amendments

We recommend several amendments to Part 2 of the Schedule to the bill, which would amend clause F9 of the Building Code. Our amendments would align the wording more closely with the proposed new wording contained in clauses 7 and 13 of the bill.

These amendments would clarify that owners have the option of placing barriers around the pool, or the immediate pool area, or the pool and part of the immediate pool area.

New Zealand Labour Party minority view

There have been considerable changes to the bill since its introduction into the House.

Inspections would be made compulsory on a 3-yearly cycle.

The purpose would be broadened beyond drowning to injury.

The acceptable solution under the Building Act would be the one specified in the Schedule to the Fencing of Swimming Pools Act.

The discretion to vary from that solution to another, or to exempt pools (for example supervised pools or rest home pools), is the same, i.e. no wider, in breadth or test for its application than the existing discretion under the Fencing of Swimming Pools Act.

The bill as amended now provides that information be provided to buyers regarding spa pools (and other small pools), and includes rules for distinguishing between those with 760 mm walls and locked lids, and others.

We are advised that with the changes made, the prescribed standard for pools is no different: spa rules for spas under 760 mm would include inspections, and the inspection regime is tougher than is the case currently.

While we are disappointed that the Government initially made proposals focused around cost savings rather than the prevention of harm and injury, we are pleased that the submission process has worked to remove many of the defects submitters were concerned about. While some submitters will be disappointed that other barriers (rather than fences) remain permitted, the system overall will be more effective rather than less.

Green Party of Aotearoa/New Zealand minority view

The Green Party opposes this bill as we believe it will lead to an increase in child death from drowning and an increase in child injury from near drownings. We will not support legislation that decreases children's safety. The primary reason for this bill has been given as "striking a balance between reduced compliance costs for residential pool owners and territorial local authorities (TLAs) and maintaining child safety". We reject the notion of reducing compliance for pool owners as a justification for increasing the risk of child death and injury.

We heard submissions from the parents of children who had drowned in domestic pools. We thank them for their compelling evidence.

We agree with the vast majority of submitters that this bill will increase drowning risk to children. The submission from the Auckland Regional Public Health Service suggests that the lives of over 200 children have been saved and several thousands of near drownings prevented by the original 1987 legislation. They also estimate that 2–5 child deaths will result from this bill over the next ten years because it makes reduced compliance a greater priority than children's lives.

We note that the Child and Youth Mortality Review committee, (Health Quality and Safety Commission) says that the bill places "emphasis on cost savings to pool owners and councils rather than child safety concerns". Water Safety New Zealand estimates that the cost of child drownings and hospitalisations from near drownings since 2005 is over \$110 million. They argue that the effect of the bill will be to "sig-

nificantly reduce child safety” and urge members to significantly revise the bill to strengthen child safety, not reduce it.

The New Zealand Society of Paediatric Surgeons, the Children’s Commissioner, and the Starship Child Health Auckland District Health Board all agree that the bill increases risk to children and the bill should not proceed as it is.

In the face of this overwhelming specialist evidence, we suggest that the bill does not proceed.

Appendix

Committee process

The Building (Pools) Amendment Bill was referred to the committee on 16 September 2015. The closing date for submissions was 5 November 2015.

We received and considered 183 submissions from interested groups and individuals. We heard from 31 submitters, which included holding hearings in Auckland.

We received advice from the Ministry of Business, Innovation and Employment and the Parliamentary Counsel Office.

Committee membership

Scott Simpson (Chairperson)

Matt Doocey

Sarah Dowie

Paul Foster-Bell

Joanne Hayes

Tutehounuku Korako

Ron Mark

Hon David Parker

Eugenie Sage

James Shaw

Meka Whaitiri

Todd Muller and Jacinda Ardern participated in the consideration of this item of business.

Metiria Turei replaced James Shaw for this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Dr Nick Smith

Building (Pools) Amendment Bill

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Schedule

Consequential amendments

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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**.

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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—

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(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;
- (iii) a rest home or retirement village;
- (iv) a camping ground;
- (v) any similar place

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~~hot tub means a heated pool that—~~

~~(a) is designed for therapeutic or recreational use; and~~

~~(b) has a water surface area of 5 m² or less; and~~

~~(c) has sidewalls—~~

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~~(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~~

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

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independently qualified pool inspector means a person—

(a) accepted by the chief executive as qualified to carry out inspections to determine whether a pool has barriers that comply with the requirements of **section 162C**; and

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(b) whose acceptance has not been withdrawn

pool means—

~~(a) any excavation or structure of a kind normally used for swimming, paddling, or bathing; or~~

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~~(b) any product (other than an ordinary home bath) that is designed or modified to be used for swimming, wading, paddling, or bathing~~

pool—

(a) means—

(i) any excavation or structure of a kind normally used for swimming, paddling, or bathing; or

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(ii) any product (other than an ordinary home bath) that is designed or modified to be used for swimming, wading, paddling, or bathing; but

(b) does not include an artificial lake

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pool operator means a person who operates and maintains a pool on a day-to-day basis

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

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

small heated pool means a heated pool (such as a spa pool or a hot tub) that—

- (a) has a water surface area of 5 m² or less; and
- (b) is designed for therapeutic or recreational use

~~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)

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

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

6A Section 11 amended (Role of chief executive)

(1) In section 11(m)(iii), replace “; and” with “; or”.

(2) After section 11(m)(iii), insert:

- (iv) to enforce duties or obligations under **section 162D** (manufacturers and retailers must supply notice); and

6B Section 12 amended (Role of building consent authority and territorial authority)

After section 12(2)(j), insert:

- (ja) enforces duties or obligations under **section 162C** (residential pools must have means of restricting access); and

6C New section 67A inserted (Territorial authority may grant waivers or modifications in relation to means of restricting access to residential pools)

After section 67, insert:

67A Territorial authority may grant waivers or modifications in relation to means of restricting access to residential pools

(1) A territorial authority may grant a waiver or modification of **section 162C(1) or (2)** (which requires residential pools to have means of restricting access by

unsupervised children) if the territorial authority is satisfied that the waiver or modification would not significantly increase danger to children under 5 years of age.

- (2) In deciding whether to grant a waiver or modification under **subsection (1)**, the territorial authority must have regard to all of the relevant circumstances (including the particular characteristics of the pool and the land on which it is situated).

Compare: 1987 No 178 s 6

7 New subpart 7A of Part 2 inserted

After section 162, insert:

Subpart 7A—Special provisions for residential pools

162A Purpose

The purpose of this subpart is to prevent drowning of, and injury to, young children by restricting unsupervised access to residential pools by ~~young~~ children under 5 years of age.

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.

- (2) ~~The means of restricting access referred to in **subsection (1)** must comply with—~~

~~(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.**~~

- (2) The means of restricting access referred to in **subsection (1)** must comply with the requirements of the building code—

(a) that are in force; or

(b) that were in force when the pool was constructed, erected, or installed (after 1 September 1987) and in respect of which a building consent, code compliance certificate, or certificate of acceptance was issued (in relation to the means of restricting access to the pool).

(2A) In the case of a small heated pool, the means of restricting access referred to in **subsection (1)** need only restrict access to the pool when the pool is not in use.

(3) The following persons must ensure compliance with this section:

(a) the owner of the pool:

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(ab) the pool operator:

(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:

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(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.

(4) ~~In this section, **applicable requirements** means the requirements that applied when the pool was constructed, erected, or installed.~~

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Compare: 1987 No 178 s 8

162CA Periodic inspections of residential pools

(1) Every territorial authority must ensure that the following residential pools within its jurisdiction are inspected at least once every 3 years, within 6 months before or after the pool's anniversary date, to determine whether the pool has barriers that comply with the requirements of **section 162C**:

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(a) residential pools other than small heated pools:

(b) small heated pools that have barriers that are not exempt, in terms of Schedule 1, from the requirement to have a building consent.

(2) A territorial authority may accept a certificate of periodic inspection from an independently qualified pool inspector for the purpose of **subsection (1)** in lieu of carrying out an inspection under section 222.

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(3) 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

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(b) in the case of a pool that did not require a building consent,—

(i) the date on which notice was given under section 7 of the Fencing of Swimming Pools Act 1987; or

(ii) if **subparagraph (i)** does not apply, the date on which the existence of the pool came to the knowledge of the territorial authority

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certificate of periodic inspection means a certificate that—

(a) is issued by an independently qualified pool inspector; and

- (b) is in the prescribed form (if any); and
- (c) certifies that a pool has barriers that comply with the requirements of **section 162C** (subject to any waiver or modification granted under **section 67A** or 188).

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~~ owners, pool operators, and occupiers under **section 162C(3)**.
- (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.

~~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~~

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)**.

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

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)

- (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.

(2) In section 168(1), replace “a notice to fix” with “any other notice to fix under this Act”. 5

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

10A Section 188 amended (Determination by chief executive)

(1) After section 188(3)(a), insert:

(aa) waivers or modifications of **section 162C(1) or (2)**; and

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(2) After section 188(3), insert:

(3A) The chief executive must only grant a waiver or modification of **section 162C(1) or (2)** if the chief executive is satisfied that the waiver or modification would not significantly increase danger to children under 5 years of age.

11 Section 222 amended (Inspections by territorial authority)

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

(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)**~~

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~~After section 222, insert:~~

~~**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.~~

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(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~~

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- ~~(b) in the case of an existing pool that did not require a building consent,—~~
- ~~(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**.~~

~~Compare: 1987 No 178 s 10~~

13 New sections 450A and 450B inserted

After section 450, insert:

450A Transitional and savings provision for residential pools

- (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.
- (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
- 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 existing residential pools

- (1) This section applies to a residential pool that was constructed, erected, or installed before **1 January 2017** (an **existing pool**).
- ~~(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~~
- ~~(ii) was subsisting immediately before **1 January 2017**; and~~
- ~~(b) the conditions of any such exemption.~~
- (2) An existing pool is deemed to have barriers that comply with **section 162C** if the barriers—

- (a) complied with the Schedule of the Fencing of Swimming Pools Act 1987 (as that schedule was in force) immediately before **1 January 2017**; and
- (b) continue to comply with those requirements subject to—
- (i) any exemption that was granted under section 6 or clause 11 of the Schedule of that Act and that was subsisting immediately before **1 January 2017**; and
- (ii) the conditions of any such exemption.
- (3) ~~An~~ Alternatively, an existing pool is deemed to comply with **section 162C(2)(a)** if all of the following apply:
- (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
- (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—
- (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

- (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:

21A Means of restricting access to ~~spa pools, hot tubs, and portable pools~~ small heated 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.~~

Installation of a safety cover as a means of restricting access to a small heated 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)”.

Part 2

Final and miscellaneous provisions

15 Repeal of Fencing of Swimming Pools Act 1987 5

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

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

	Provisions	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 <u>with a maximum depth of water of 400 mm or more that are filled or partly filled with water</u> must have means of restricting access that prevents	

Building Regulations 1992 (SR 1992/150)—continued

Provisions	Limits on application
unsupervised access by a child under 5 years of age. Performance F9.3.1 <i>Residential pools must be provided with a barrier or barriers able to restrict the entry of children into a <u>have or be provided with physical barriers that restrict access to the pool or the immediate pool area by unsupervised young children (ie, under 5 years of age).</u></i> F9.3.2 Barriers must either— (a) surround the immediate pool area <u>pool</u> (and may enclose the whole or part of the <u>immediate pool area</u>); or (b) in the case of a spa pool or hot tub <u>small heated pool</u>, cover the pool itself. F9.3.3 A barrier surrounding an immediate pool area <u>a pool</u> 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 pool; 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 building forms <u>all or</u> part of an immediate pool area barrier,— (a) doors between the building and the immediate pool area 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:	Performance F9.3.2(b) applies only to those spa pools or hot tubs <u>small heated pools</u> where— (a) the top surface of every wall of the pool is at all points not less than 760 mm above the adjacent floor or ground and the walls of the pool inhibit climbing; and (b) the area of the water surface is not greater than 5 m².

Building Regulations 1992 (SR 1992/150)—*continued*

Provisions	Limits on application
(b) windows opening from a building 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 spa pool or hot tub <u>small heated pool</u> , it must—	
(a) restrict the entry of children when closed; and	
(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.	

Legislative history

9 September 2015	Introduction (Bill 63–1)
16 September 2015	First reading and referral to Local Government and Environment Committee