

Building (Pools) Amendment Bill

Government Bill

As reported from the committee of the whole House

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Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Dr Nick Smith

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11

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

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 5

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 10
- (b) whose acceptance has not been withdrawn

pool—

- (a) means—
 - (i) any excavation or structure of a kind normally used for swimming, paddling, or bathing; or 15
 - (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 20

pool operator means a person who operates and maintains a pool on a day-to-day 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 25
- (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 30

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) 35

(1AA) After section 11(f), insert:

	(fa) <u>accepts (and withdraws acceptance of) independently qualified pool inspectors for the purpose of section 162CA; and</u>	
(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	5
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	10
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	15
(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.	20
(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).	25
	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	30
	The purpose of this subpart is to prevent drowning of, and injury to, young children by restricting unsupervised access to residential pools by 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.	35

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 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:
 - (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:
 - (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.
- 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**:
 - (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.
- (2A) If a territorial authority decides not to accept a certificate of periodic inspection from an independently qualified pool inspector under **subsection (2)**, the ter-

	<u>ritorial authority must, within 7 working days of making that decision, give notice to the chief executive of the decision and the reasons for the decision.</u>	
(2B)	<u>If an independently qualified pool inspector inspects a pool for the purpose of this section and decides that the pool does not have barriers that comply with the requirements of section 162C (subject to any waiver or modification granted under section 67A or 188), the inspector must, within 3 working days of the date of inspection, give written notice to the relevant territorial authority of the decision, attaching any information that the chief executive requires to accompany the notice.</u>	5
(3)	In this section,—	10
	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 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	15
	(ii) if subparagraph (i) does not apply, the date on which the existence of the pool came to the knowledge of the territorial authority	
	certificate of periodic inspection means a certificate that—	
	(a) is issued by an independently qualified pool inspector; and	20
	(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	25
(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, pool operators, and occupiers under section 162C(3) .	30
(2)	The chief executive may, by notice in the <i>Gazette</i> , 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
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)**. 5

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

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. 15

(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”.

(3) In section 168(2), replace “this section” with “**subsection (1)**”. 20

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

(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. 25

11 Section 222 amended (Inspections by territorial authority)

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

(iv) any residential pool (or the immediate pool area); and 30

(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.

(2) In section 222(1)(b), after “Part 2”, insert “; and”. 35

- (3) After section 222(1)(b), insert:
- (c) to enter premises for the purpose of determining whether **section 162C** is being complied with.
- (4) In section 222(4), replace “223” with “**222A**”.
- (5) In section 222(4), definition of **inspection**, after paragraph (a)(ii), insert: 5
- (ia) **section 162C** is being complied with; or

12A Section 402 amended (Regulations: general)

After section 402(1)(i), insert:

- Acceptance of independently qualified pool inspectors:*
- (ia) prescribing matters in respect of the acceptance and renewal of acceptance of independently qualified pool inspectors, including the fees or charges payable: 10

13 New sections 450A and 450B inserted

After section 450, insert:

450A Transitional and savings provision for residential pools 15

- (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. 20
- (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 25
- 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**). 30
- (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 35
- (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)	Alternatively, an existing pool is deemed to comply with section 162C if all of the following apply:	5
(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	10
(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—	15
(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)	20

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.	25
(3)	In Schedule 1, after clause 21, insert:	

21A Means of restricting access to small heated pools

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) ”.	30
(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

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

16 Consequential amendments to other enactments

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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> with a maximum depth of water of 400 mm or more that are filled or partly filled with water must have means of restricting access that prevents unsupervised access by a child under 5 years of age.	

Building Regulations 1992 (SR 1992/150)—continued

Provisions	Limits on application
Performance	
F9.3.1 <i>Residential pools</i> must have or be provided with physical barriers that restrict access to the <i>pool</i> or the <i>immediate pool area</i> by unsupervised young children (ie, under 5 years of age).	<u>In the case of a <i>small heated pool</i>, the means of restricting access referred to in Performance F9.3.1 need only restrict access to the <i>pool</i> when the <i>pool</i> is not in use.</u>
F9.3.2 Barriers must either— <ul style="list-style-type: none"> (a) surround the <i>pool</i> (and may enclose the whole or part of the <i>immediate pool area</i>); or (b) in the case of a <i>small heated pool</i>, cover the <i>pool</i> itself. 	Performance F9.3.2(b) applies only to those <i>small heated pools</i> where— <ul style="list-style-type: none"> (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) the area of the water surface is not greater than 5 m². <u>Performance F9.3.2(b) applies only to those <i>small heated pools</i> where 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.</u>
F9.3.3 A barrier surrounding a <i>pool</i> must have no permanent objects or projections on the outside that could assist children in negotiating the barrier. Any gates must— <ul style="list-style-type: none"> (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 all or part of an <i>immediate pool area</i> barrier,— <ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (i) emit an audible warning when the door is open; or (ii) close automatically after use: 	

Building Regulations 1992 (SR 1992/150)—continued

Provisions	Limits on application
<p>(b) windows opening from a building into the <i>immediate pool area</i> must be constructed or positioned to restrict the passage of children.</p> <p>F9.3.5 Where a cover is provided as a barrier to a <i>small heated pool</i>, it must—</p> <p>(a) restrict the entry of children when closed; and</p> <p>(b) be able to withstand a reasonably foreseeable load; and</p> <p>(c) be able to be readily returned to the closed position; and</p> <p>(d) have signage indicating its child safety features.</p>	

Legislative history

9 September 2015	Introduction (Bill 63–1)
16 September 2015	First reading and referral to Local Government and Environment Committee
14 April 2016	Reported from Local Government and Environment Committee (Bill 63–2)
13 September 2016	Second reading
11 October 2016	Committee of the whole House (Bill 63–3)