

Reprint
as at 1 April 2008

Fencing of Swimming Pools Act
1987

Public Act 1987 No 178
Date of assent 20 July 1987

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered by the Department of Building and Housing.

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An Act to promote the safety of young children by requiring the fencing of certain swimming pools

BE IT ENACTED by the Parliament of New Zealand as follows:

1 Short Title

This Act may be cited as the Fencing of Swimming Pools Act 1987.

2 Interpretation

In this Act, unless the context otherwise requires,—

fence—

- (a) means a fence that complies with the requirements of the building code in force under the Building Act 2004 in respect of swimming pools subject to this Act; and
- (b) includes any part of a building and any gates or doors that form part of the fence

Fence: this definition was amended, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150) by substituting the words “building code in force under the Building Act 1991 in respect of swimming pools subject to this Act;” for the words “Schedule to this Act”.

fence: this definition was substituted, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72). *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Gates or doors does not include any door to which clause 11 of the Schedule to this Act applies

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 or purposes carried on in conjunction with the use of the pool

Judicial officer means any District Court Judge, justice, Community Magistrate, or Registrar of a District Court (other than a constable); but does not include any person who is a member or employee of the territorial authority

Judicial Officer: this definition was amended, as from 30 June 1998, by section 7 District Courts Amendment Act 1998 (1998 No 76), by inserting the words “Community Magistrate.”

Owner means the owner of a pool; except—

- (a) Where the pool is subject to a hire purchase agreement within the meaning of the Income Tax Act 2007, in which case it means the purchaser of the pool:
- (b) Where the pool is on premises that are not subject to a tenancy under the Residential Tenancies Act 1986 and the pool is subject to a lease or is part of premises subject to a lease, in which case it means the lessee of the pool or the premises:

Swimming pool and **pool** mean an excavation, structure, or product that is used or is capable of being used for the purpose of swimming, wading, paddling, or bathing; and includes any such excavation, structure, or product, that is a spa pool

territorial authority has the same meaning as in the Local Government Act 2002

Section 2 **owner** paragraph (a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Owner: paragraph (a) of this definition was amended, as from 1 April 2005, by section 139 Credit Contracts and Consumer Finance Act 2003 (2003 No 52) by substituting the words “Income Tax Act 1994” for the words “Hire Purchase Act 1971”. See sections 141 to 143 of that Act as to the transitional provisions.

Owner: paragraph (a) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Territorial authority: this definition was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). See sections 273 to 314 of that Act as to the savings and transitional provisions.

3 Application to existing pools

This Act shall apply in respect of any swimming pool constructed, erected, or installed before the 1st day of September 1987 at any time on or after the 1st day of May 1988 when the pool is filled or partly filled with water.

4 Application to new pools

This Act shall apply in respect of any swimming pool constructed, erected, or installed on or after the 1st day of September 1987 at any time when the pool is filled or partly filled with water.

5 Exempted pools

Nothing in this Act shall apply in respect of—

- (a) Any pool that has no part of the top of its side walls less than 1.2 metres above the adjacent ground level or any permanent projection from or object standing on the ground outside and within 1.2 metres of the walls, where the outside surface of the side walls is constructed so as to inhibit climbing and any ladder or other means of access to the interior of the swimming pool can be readily removed or rendered inoperable and is removed or rendered inoperable whenever it is intended that the pool not be used:
- (b) Any excavation, structure, or product, in which the maximum depth of water does not exceed 400 mm:
- (c) Any excavation, structure, or product,—
 - (i) That is not used in association with any house, home unit, apartment building, school, hospital, hotel, motel, camping ground, or other similar premises; and
 - (ii) That is not modified for use, or intended to be used, for swimming, wading, paddling, or bathing:
- (d) Any pool intended to be used for wading or paddling in any place that is under the administration of a local authority:

- (e) Any pool that is wholly enclosed within a building that is used principally for a purpose or purposes not related to the use of the pool:
- (f) Any pool where—
 - (i) Persons are employed and present to provide supervision of the pool whenever the pool is available for use; and
 - (ii) Access to the pool is effectively prevented by a fence that complies with this Act or by locked gates or doors whenever the pool is not intended to be available for use.

6 Special exemptions

- (1) A territorial authority may, by resolution, grant an exemption from some or all of the requirements of this Act in the case of any particular pool where the territorial authority is satisfied, having regard to the particular characteristics of the property and the pool, any other relevant circumstances, and any conditions it imposes under subsection (2) of this section, that such an exemption would not significantly increase danger to young children.
- (2) In granting an exemption under subsection (1) of this section, the territorial authority may impose such other conditions relating to the property or the pool as are reasonable in the circumstances.
- (3) Any exemption granted or condition imposed under this section may be amended or revoked by a territorial authority, by resolution.

7 Notification of existence of pool to territorial authority

- (1) Every owner of a pool to which this Act applies when the pool is filled or partly filled with water or to which this Act will apply on or after the 1st day of May 1988 when the pool is filled or partly filled with water shall comply with any reasonable requirement of the territorial authority to advise the territorial authority of the existence of the pool.
- (2) Every person who proposes to construct or install a pool to which this Act will apply when the pool is filled or partly filled with water shall notify the territorial authority of the

intention to construct or install the pool before the construction or installation commences.

- (3) An application for a building consent under the Building Act 2004 in respect of the construction or installation of a pool shall be deemed to be notification under this section.

Subsection (3) was inserted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

Subsection (3) was amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words “Building Act 2004” for the words “Building Act 1991”. See subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

8 Obligations of owner and persons in control of pool

- (1) Every owner of a pool to which this Act applies shall ensure that, except as provided in any exemption granted under section 6 of this Act, the pool, or some or all of the immediate pool area including all of the pool, is fenced by a fence that complies with the requirements of the building code in force under the Building Act 2004 in respect of swimming pools subject to this Act at all times when this Act applies in respect of the pool.
- (2) Every owner of a pool to which this Act applies shall comply or ensure that there is compliance with every condition imposed under section 6(2) of this Act.
- (3) Every person who has possession of the property on which any pool to which this Act applies is situated shall ensure that the pool is not filled or partly filled with water at any time when the person knows or could reasonably be expected to know that any obligation imposed by this section on that or any other person is not being complied with.
- (4) The fact that a person complies with any obligation imposed by this section shall not excuse that person from any other duty imposed by law.

Subsection (1) was amended, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150) by substituting the words “building code in force under the Building Act 1991 in respect of swimming pools subject to this Act” for the words “Schedule to this Act”.

Subsection (1) was amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words “Building Act 2004” for the words “Building Act 1991”. See subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

9 Offence

- (1) Every person who, without reasonable cause, fails to comply with any obligation imposed by section 7 or section 8 of this Act commits an offence and is liable on summary conviction to a fine not exceeding \$500 and, where the failure is a continuing one, to a further fine not exceeding \$50 for every day on which the failure has continued.
- (2) Where the owner or person entitled to possession or control of a pool to which this Act applies is not entitled to possession of the property on which the pool is situated or the immediate pool area (whether because of any tenancy agreement, agreement to occupy a hotel room, motel, or camping ground, or otherwise) it shall be a defence to any proceedings for any offence described in subsection (1) of this section in relation to section 8 of this Act if the Court is satisfied that the owner took all reasonable steps—
 - (a) To ensure that the obligation was complied with; and
 - (b) To ensure that the persons in possession of the property or entitled or likely to be in the immediate pool area are made aware of the existence of the pool.
- (3) Where any person is convicted of the offence described in subsection (1) of this section in relation to section 8 of this Act the Court may order that the pool be drained of water and be kept empty until the pool is fenced in a manner that complies with this Act or any condition imposed under section 6(2) of this Act is met, as the case may require.

10 Obligation of territorial authorities

Every territorial authority shall take all reasonable steps to ensure that this Act is complied with within its district.

11 Power of entry for territorial authority officers

- (1) Without limiting any other powers of any territorial authority, any officer of a territorial authority who has reasonable grounds to believe—
 - (a) That there is on any land within the district of the territorial authority a swimming pool to which this Act applies; and

- (b) That the pool is not fenced as required by this Act, or any condition imposed under section 6(2) of this Act is not being complied with,—
may at any reasonable time enter on the land and carry out an inspection to determine whether or not there is on the land such a pool that is not fenced as required by this Act, or whether or not the condition is being complied with.
- (2) Nothing in subsection (1) of this section shall confer on any person the power to enter any house, home unit, or apartment building unless the entry is authorised by a warrant given by a judicial officer on written application on oath, which shall not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.
- (3) Every warrant issued under subsection (2) of this section shall be directed to a named officer of the territorial authority and shall be valid for a period of 1 month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity shall be shown in the warrant.
- (4) Every person exercising the power of entry conferred by subsection (1) of this section shall carry a warrant of authority issued by the territorial authority and specifying—
- (a) The name and the office or offices held by the person:
- (b) That the person is authorised by the territorial authority to exercise the power conferred by subsection (1) of this section to enter the land and carry out the inspection.
- (5) Every person exercising the power of entry conferred by subsection (1) of this section shall produce the warrant of authority and evidence of identity—
- (a) If practicable on first entering the land or premises; and
- (b) Whenever subsequently reasonably required to do so.

12 Delegation of powers to committees of councillors

The territorial authority may delegate its powers and functions under section 6 and clause 11 of the Schedule to any committee of the territorial authority appointed under clause 30 of Schedule 7 of the Local Government Act 2002 that comprises only members of the territorial authority; but may not delegate those powers and functions to any committee that has any

members who are not members of the territorial authority or to any officer of the authority.

Section 12 was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

13 Effect of Act on bylaws and other laws

(1)

(2)

(3) Nothing in this Act shall in any way restrict the power of any territorial authority to make and enforce bylaws relating to the fencing of pools to which this Act does not apply.

(4) Nothing in this Act shall in any way restrict the power of the Crown or any territorial authority or other person to enforce any other law relating to the fencing of pools to which this Act applies or any other pools.

Subsections (1) and (2) were repealed, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

13A Effect of Building Act 2004 on bylaws

(1) A territorial authority may not make any bylaw under this Act that purports to have the effect of requiring any pool subject to this Act to achieve performance criteria additional to or more restrictive than those specified in the Building Act 2004 or the building code in force under that Act.

(2) A territorial authority may not make any bylaw purporting to have the effect of allowing a pool subject to this Act to be fenced to a standard that would provide less protection against young children gaining access to the pool than the performance standard set by the said building code.

Sections 13A, 13B, and 13C were inserted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

The heading to section 13A was amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words “Building Act 2004” for the words “Building Act 1991”. *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Subsection (1) was amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words “Building Act 2004” for the words “Building Act 1991”. *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

13B Fencing in accordance with Schedule must be treated as means of compliance

Any provision that is made for the fencing of swimming pools that is in accordance with the Schedule must, in respect of—

- (a) matters subject to the Building Act 2004, be treated as a compliance document establishing compliance with the building code for the purposes of section 19 of that Act, and the requirements of this Act;
- (b) building and premises not subject to the Building Act 2004, be treated as a reasonable and adequate provision for the purposes of this Act.

Sections 13A, 13B, and 13C were inserted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

Section 13B was substituted, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72). *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

13C Amendment and replacement of Schedule

The Governor-General may, by Order in Council,—

- (a) amend the Schedule; or
- (b) repeal the Schedule and substitute a new schedule.

Section 13C: substituted, on 20 September 2007, by section 4 of the Fencing of Swimming Pools Amendment Act 2007 (2007 No 57).

Sections 13A, 13B, and 13C were inserted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

14 Amendment to Fencing Act 1978

The Fencing Act 1978 is hereby amended by inserting, after section 9, the following section:

“9A Contributions where fence required by Fencing of Swimming Pools Act 1987

Where any person is required to provide a fence in order to comply with the Fencing of Swimming Pools Act 1987—

- “(a) All work on that fence that is required because of the application of that Act and would not otherwise be required shall be the responsibility of the owner of the swimming pool; and
- “(b) No person, other than the owner of the swimming pool, shall be required to make any contribution under this Act to the work on a fence greater than the contribution

that the person would be required to make to the work on a fence (whether of the same type or not) if the swimming pool did not exist.”

Schedule Sections 13B, 13C
**Means of compliance for fences under
this Act**

The heading to the Schedule was amended, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150) by substituting the words “Means of Compliance” for the word “Requirement”.

Note: the amendment provision specifies to omit the word “Requirement”, apparently in error as the word in the heading is “requirements”.

Height

1

- (1) The fence shall extend—
 - (a) At least 1.2 metres above the ground on the outside of the fence; and
 - (b) At least 1.2 metres above any permanent projection from or object permanently placed on the ground outside and within 1.2 metres of the fence.
- (2) Notwithstanding subclause (1) of this clause, where the fence is constructed of perforated material, netting, or mesh and any opening in the material, netting, or mesh has a dimension (other than the circumference or perimeter) greater than 10 mm, the fence shall extend at least 1.8 metres above the ground or the projection or object.

Ground clearance

2

Any clearance between the bottom of the fence and ground level shall not exceed 100 mm.

Materials**3**

All materials and components shall be of a durable nature and shall be erected so as to inhibit any child under the age of 6 years from climbing over or crawling under the fence from the outside.

Clause 3 was amended, as from 20 November 1989, by section 2(1) Fencing of Swimming Pools Amendment Act 1989 (1989 No 117) by substituting the words “child under the age of 6 years” for the word “person”.

4

Except where the fence is horizontally close-boarded or is made of perforated material, netting, or mesh, the spacing between adjacent vertical pales, panels, or other posts shall not exceed 100 mm at any point.

Clause 4 was amended, as from 20 November 1989, by section 2(2) Fencing of Swimming Pools Amendment Act 1989 (1989 No 117) by inserting the words “or is made of perforated material, netting, or mesh”.

5

All fencing supports, rails, rods, and wires, that are not vertical, and all bracing that is not vertical, shall be inaccessible for use for climbing from the outside.

Clause 5 was substituted, as from 20 November 1989, by section 2(3) Fencing of Swimming Pools Amendment Act 1989 (1989 No 117).

5A

Notwithstanding clause 5 of this Schedule, a fence may have horizontal supports, rails, rods, or wires, that are accessible for use for climbing from the outside, and horizontal bracing that is accessible for such use, if—

- (a) The distance between any 2 of them at any point is at least 900 mm; and
- (b) There is no other support, rail, rod, wire, or bracing (other than a vertical rail) between the same 2 at any point.

Clause 5A was inserted, as from 20 November 1989, by section 2(3) Fencing of Swimming Pools Amendment Act 1989 (1989 No 117).

6

Where any perforated material, netting, or mesh is used, no opening in that material, netting, or mesh shall have any di-

mension (other than the circumference or perimeter) greater than 50 mm.

7

All perforated material, netting, or mesh material shall be firmly attached at both top and bottom to a rail, pipe, or similar firm structure, or otherwise be of such a nature that the fence cannot readily be crossed by children under the age of 6 years.

Gates and doors

8

Every gate or door shall be so constructed as to comply with the relevant requirements of clauses 1 to 7 of this Schedule, and shall be so mounted that—

- (a) It cannot open inwards towards the immediate pool area:
- (b) It is clear of any obstruction that could hold the gate or door open and no other means of holding the gate or door open is provided:
- (c) When lifted up or pulled down the gate or door does not release the latching device, come off its hinges, or provide a ground clearance greater than 100 mm.

Operation of gates and doors

9

- (1) Every gate or door shall be fitted with a latching device.
- (2) Where the latching device is accessible from the outside of the fence only by reaching over the fence, gate, or door or through a hole in the fence, gate, or door, the latching device and the lowest point of any hole giving access to it shall be at least 1.2 metres above the ground on the outside of the fence.
- (3) Where the latching device is otherwise accessible from the outside of the fence, gate, or door, the latching device shall be at least 1.5 metres above the ground on the outside of the fence.

10

Every gate or door shall be fitted with a device that will automatically return the gate or door to the closed position and

operate the latching device when the gate or door is stationary and 150 mm from the closed and secured position.

Doors in walls of buildings

11

Where any building forms part of a fence and the pool is not contained within the building, any door that gives access to the immediate pool area need not comply with the requirements for gates or doors set out in clauses 8 to 10 of this Schedule to the extent (if any) that the territorial authority is satisfied that such compliance is impossible, unreasonable, or in breach of any other Act, regulation, or bylaw, and the door is fitted with a locking device that, when properly operated, prevents the door from being readily opened by children under the age of 6 years.

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Notes

1 *General*

This is an eprint of the Fencing of Swimming Pools Act 1987. It incorporates all the amendments to the Fencing of Swimming Pools Act 1987 as at 1 April 2008. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 *About this eprint*

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

3 *List of amendments incorporated in this eprint (most recent first)*

Income Tax Act 2007 (2007 No 97): section ZA 2(1)
Fencing of Swimming Pools Amendment Act 2007 (2007 No 57)
