

**Subject: Pool barrier types - Child drownings**

**Date: 25-Apr-19**

**Attn: NZ Pool Industry Association**

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**Background:**

Following the introduction of the new pool regulations incorporated into the Building Act 2004 - Regulation NZBC F9 was issued. The intent of the regulation remained essentially as specified in the Fencing of Swimming Pools Act 1987 and its schedule.

**"Preventing unsupervised access to the home pool by children aged 5 years and under"**

And when the dwelling is used as part or all of the barrier:

- a. The door-set must be self-latching at 1500mm above the internal floor level and
- b. Must be self-closing or
- c. Must be alarmed to provide a warning the door-set had not been closed

From the first January 2017 until the 28 April 2017, the provisions of the FoSPA 1987 schedule were followed  
And the approved alternative solutions of NZS 8500-2006 were used to ensure compliance was achieved  
On the 28 April 2017 - MBIE published the non-mandatory AS1 schedule to achieve compliance under NZBC F9  
And this non-mandatory schedule restricted the size of all door-sets for pool access  
at a maximum size of one panel/leaf of 1000mm width which Auckland Council is enforcing

On the 31 January 2019 Determination 2019-001 was issued and while admonishing Auckland Council AS1 was non-mandatory MBIE still published a decision attempting to enforce the non-mandatory door restriction and in doing so Advised Swish systems could be made to fail (sabotaged) by AC inspectors who then reported the failure to MBIE... MBIE also allege, the system had been designed to be disconnected (but they were not at the design brief in 2004) which would allow an (irresponsible) adult to circumvent pool legislation and regulation...  
And therefore, Swish systems did not meet (as yet unspecified) performance standards of NZBC F9  
*despite Swish systems being less likely to be circumvented than isolation fencing (Refer table)*

**In support of our discussion and request for a review of Determination 2019-001, the following table has been prepared**

Period	Child drownings - Pool compliance method					Comments
	Isolation Fencing & gates	Doors bolted **	Doors Swish modify	Total child pool drowning	Average per year	
1980-1987	56	10	NA	66	7	Drowning Statistic from published records ex Drownbase NZ provided by WaterSafe NZ
1987-1997	41	6	NA	47	5	Ex Water Safety NZ publications
1997-2007	24	4	0	28	3	Note: Swish systems introduced April 2005
<b>Subtotal</b>	<b>121</b>	<b>20</b>	<b>0</b>	<b>141</b>	<b>5.5</b>	Statistic before Swish systems introduced 2005
						** Doors - bolted or unmodified:
2007 -2012	23	2	0	25	5	Ex Water Safety NZ statistics and confirmed by MBIE
2013	4	0	0	4	4	during the "make pool compliance easier" program 2016
2014	3	0	0	3	3	
2015	2	0	0	2	2	
2016	1	0	0	1	1	
2017	6	1	0	7	7	
2018	3	0	0	3	3	
<b>Subtotal</b>	<b>42</b>	<b>3</b>	<b>0</b>	<b>45</b>	<b>4</b>	Statistic after Swish systems introduced 2005
<b>Total</b>	<b>163</b>	<b>23</b>	<b>0</b>	<b>186</b>	<b>5</b>	Statistic over 38 years ex WSNZ Drownbase

Swish confirmed their Pool Access Safety Systems have modified door-sets for 14 years with all systems installed:

- 1. Being approved as pool compliant without question or operational sabotage being evidenced during this period
- 2. And that there had been no child drownings where Swish systems had modified door-sets for pool compliance...  
**Supported by Coronial records provided for the Determination application that resulted in 2019-001**
- 3. Which confirms Swish system acceptance and approval under the Building Act 2004 using NZS 8500-2006 and/or the Verification method of approval under this legislation



4. This Child Drowning table (updated) supports the Swish submission to the Parliamentary Select Committee Isolation fencing (fence between house and pool) can potentially increases child drownings  
Refer to Submission3: Finding sent to the Parliamentary Select Committee  
**"Australian Child home-pool drownings are 40% per capita higher than in NZ"**

**Question: Does NZ want to reverse the current improving child home-pool drowning trend?**

**This table does not support** any of the MBIE findings contained in Determination 2019-001 in regard to the apparently un-researched non-mandatory restriction of door-sets as advised in AS1: clause 4.2.1  
Swish believe the AS1 schedule should be replaced with NZS 8500-2006 advised as the cited document which was confirmed *as demanding respect (clause 3.7 "Child resistant door-sets")* in Determination 2017-045

**This table does not support** any of the alleged system misuse by home pool-owners provided by Auckland Council which was subsequently used by MBIE in their Determination 2019-001 to discredit Swish systems for use in pool compliance... *An unfounded accusation at best, a malicious intent to discredit Swish at worst!*

**Comment:**

Had Swish Pool Access Safety Systems been irresponsibly used by adults as alleged by both parties, the result of such activity should have been reflected in child drownings statistics since April 2005...

**Swish again pose the question:** *Why are MBIE and Auckland Council apparently encouraging the return to the failed pool compliance method for child pool safety, as evidenced both in NZ and Australia?*

**Conclusion:**

Swish will be continuing to seek clarification in regard to the Determination 2019-001 narrative as in our opinion the MBIE findings are not reflected in the published statistics... These MBIE findings alone, present the opportunity for a potential increase in child drownings in the home pool because the resulting recommendations can be considered to *"materially increase the danger to children aged 5 years and under,"* the very group the legislation was designed to protect **"by preventing unsupervised pool access by children aged 5 years and under..."**

In the interim, Swish seeks the support of all fellow members of NZPIA in challenging any BCA advice or recommendation to their pool-owner clients, seeking to enforce either, the non-mandatory AS1 schedule and/or, insisting on "isolation fencing" in preference to the clients desire to modify any door-sets with pool access...

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A handwritten signature in blue ink, appearing to read "Les J Hole", written over a light blue circular stamp.