

# Departmental Disclosure Statement

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Building (Pools) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Building, Resources and Markets Group of the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

8 September 2015

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## Part One: General Policy Statement

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

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

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

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

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

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p><i>Cabinet paper: Fencing of Swimming Pools Act 1987 – Policy proposals</i> <i>Regulatory Impact Statement: Fencing of Swimming Pools Act 1987</i> <i>Consultation document: Making pool safety easier – Proposed changes to the Fencing of Swimming Pools Act 1987</i> <i>Summary of the Submissions: Making pool safety easier – Proposed changes to the Fencing of Swimming Pools Act 1987</i> <i>Cabinet paper: Fencing of Swimming Pools Act 1987: Modifications to Cabinet decisions on amendments</i> <i>Regulatory Impact Statement: Fencing of Swimming Pools Act 1987: Modifications to Cabinet decisions</i></p> <p>These are available on <a href="http://www.building.govt.nz/fospa-index">http://www.building.govt.nz/fospa-index</a></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p><i>Regulatory Impact Statement: Fencing of Swimming Pools Act 1987. Ministry of Business, Innovation and Employment. 13 November 2013.</i> <i>Regulatory Impact Statement: Fencing of Swimming Pools Act 1987: Modifications to Cabinet decisions. 20 July 2015.</i></p> <p>These are available on <a href="http://www.building.govt.nz/fospa-index">http://www.building.govt.nz/fospa-index</a></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
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*Preliminary impact and risk assessments were undertaken for both the original policy proposals as well as subsequent amendments to these proposals (see 2.3 of this disclosure statement). It was concluded that RIA requirements apply to both sets of proposals because the proposals would change the obligations that are imposed on pool owners and councils. Regulatory Impact Statements (RIAs) were subsequently prepared.*

*As the regulatory proposals were unlikely to have a significant impact or risk, RIAT involvement was not required. It was estimated that the net economic benefit would be in the region of \$2m per year (which consists of the estimated reduction in administration and compliance costs).*

*Both RIAs were reviewed internally by the General Manager, Strategic Policy Branch and the MBIE Regulatory Impact Analysis Review Panel (the Panel) and the following commentary was provided:*

- Regulatory Impact Statement: Fencing of Swimming Pools Act 1987. The General Manager and the Panel considered that the information and analysis summarised in the RIS meets the criteria necessary for ministers to fairly compare the available policy options and taken informed decisions on the proposals in this paper.*
- Regulatory Impact Statement: Fencing of Swimming Pools Act 1987: Modifications to Cabinet decisions. The General Manager and the Panel considered that the information and analysis summarised in the RIS partially meets the criteria necessary for ministers to fairly compare the available policy options and take informed decisions on the proposals in the (Cabinet) paper. This is because there has been no supplementary consultation with pool owners. As a result, it is difficult to assess the scale of public concerns around the original Cabinet decisions and whether the recommended options would address these concerns.*

*In relation to the latter Regulatory Impact Statement, although there was no supplementary consultation with pool owners, MBIE officials did consult with Auckland Council, Water Safety New Zealand and Water Safe Auckland on the subsequent modifications to previous Cabinet decisions.*

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>

### **Extent of impact analysis available**

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<i>Information on potential costs and benefits are contained in the Regulatory Impact Statement: Fencing of Swimming Pools Act 1987. This is available on <a href="http://www.building.govt.nz/fospa-index">http://www.building.govt.nz/fospa-index</a></i>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<i>Information on cost and benefit impacts are discussed in the Regulatory Impact Statement: Fencing of Swimming Pools Act 1987. This is available on <a href="http://www.building.govt.nz/fospa-index">http://www.building.govt.nz/fospa-index</a></i>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

*Under the UN Convention on the Rights of the Child, states must act with the best interest of children as a primary consideration, and must take appropriate measures to diminish infant and child mortality. Any changes to the Fencing of Swimming Pools Act 1987, which aims to reduce child mortality, could thus have implications for New Zealand's compliance with the UN convention. The proposed changes to pool safety legislation are estimated to result in six fewer drownings of young children per decade and may thus be considered to be consistent with New Zealand's obligations under the Convention.*

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

*The consultation document was advertised using targeted emails, including through Māori networks. Subsequently, no comments were received to indicate that any of the proposed changes contravened the principles of the Treaty of Waitangi.*

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

**NO**

*The Bill is consistent with the New Zealand Bill of Rights Act 1990.*

## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
<p><i>Clause 7 (new section 162D(4)) creates an infringement offence for manufacturers and retailers who fail to supply a notice with any new product that is designed to be used for swimming, wading, paddling, or bathing other than an ordinary home bath.</i></p> <p><i>Clause 10 (new section 168 (1AB)) creates an offence for a person who fails to comply with a notice to fix a means of restricting access for a residential pool and, on conviction, is liable to a fine not exceeding \$5,000.</i></p> <p><i>The following consequential amendments will be made to the Building (Infringement Offences, Fees, and Forms) Regulations 2007:</i></p> <p><i>In Schedule 1, the item relating to section 168 of the Building Act 2004 will be replaced with:</i></p> <ul style="list-style-type: none"> <li><i>• A \$500 infringement fee for s 162D in relation to manufacturers supplying a pool product without an approved notice</i></li> <li><i>• A \$500 infringement fee for s 168(1AA) for a person who fails to comply with a notice to fix in relation to a means of restricting access to a residential pool</i></li> </ul>	
<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p><i>Consultation was undertaken with the Ministry of Justice on the offence provisions contained in the Bill. The Ministry of Justice considered the existing penalties (a fine not exceeding \$200,000) applied to 'notices to fix' under the Building Act 2004 too high for breaches of pool safety provisions. Consequently, failure to comply with the new 'residential pools' part of the Building Act 2004 (as proposed in the Bill) will be governed by separate 'notices to fix' and corresponding penalties which are more in line with the nature of the offence.</i></p>	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>



## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p><i>Wide ranging external consultation was undertaken on the policy to be given effect by this Bill through a public consultation process that was conducted in 2013 (submissions closed on 10 May 2013). In total 392 submissions were received and information thus gathered has been taken into account in policy decisions made by Government.</i></p> <p><i>As part of this consultation process, officials met with water safety groups convened by Water Safety New Zealand, and industry and water safety representatives convened by Auckland Council.</i></p> <p><i>MBIE officials also consulted with Auckland Council, Water Safety New Zealand and Water Safe Auckland on subsequent modifications to previous Cabinet decisions.</i></p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<i>Infringement offences will be created as described under 3.4 of this disclosure statement.</i>	

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

### Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

**Any other unusual provisions or features**

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>