

# **Making pool safety easier: Proposed changes to the Fencing of Swimming Pools Act 1987 Form containing the survey questions**

## **Introduction**

The Ministry of Business Innovation & Employment (MBIE) wants to hear the community's views on proposed changes to the Fencing of Swimming Pools Act 1987. These proposals are aimed at making the rules less costly for pool owners and councils while keeping young children safe around home pools.

There are 10 proposals they would like your feedback on. This form was written by MBIE to guide submitter responses.

The consultation document is available (link below) to read before you do the survey, it explains each proposal. MBIE ask that when doing the survey, take into account the costs for pool owners and councils, and the risk of young children drowning.

[Making pool safety easier: Proposed changes to the Fencing of Swimming Pools Act 1987](#) [PDF 606 KB, 34 pages]

Your response to this survey can be requested under the Official Information Act 1982. However, personal and commercially-sensitive information can be protected.

**Please complete the survey by Friday, 10 May 2013. Or reply to Julie Chambers before Monday 6 May.**

## **How to use this form**

Use this form if you want to prepare your comments, or if you need to get them checked by someone else, before doing the online survey. You can then either:

Paste your comments into the online survey:

[Consultation: Making pool safety easier](#)

**OR**

Post this completed form to us at:

Making pool safety easier  
Ministry of Business, Innovation and Employment  
PO Box 10729  
WELLINGTON 6143

If you have any questions, please email the MBIE consultation team at [pools@dbh.govt.nz](mailto:pools@dbh.govt.nz) or phone 0800 242 243 – To comment on the Paed Society response please contact Julie Chambers by reply email

**Proposal 1** - Define 'swimming pool' to mean an excavation or structure deeper than 400mm, and intended for swimming or other human aquatic activity.

1 **Do you agree with proposal 1?**

**NO**

*Note: This question does not relate to indoor pools. Indoor pools are addressed in the question below.*

2 **Do you agree with the additional option:** Include indoor pools in the definition of 'swimming pool'?  
(This excludes baths, used for personal hygiene and emptied after each use)

**YES**

3 Please give your reasons, or alternative suggestions, below.

The Children's Commissioner **do not agree** with the proposal for the threshold for pool depth to be 400mm. It is noted that the Australian definition is a pool depth of 300mm (Division of Local Government, Department of Premier and Cabinet. Swimming Pools Act 1992 Review-Discussion Paper 2012 (p 5)

<http://www.dlg.nsw.gov.au/dlg/dlghome/documents/information/Swimming%20Pools%20ACT%201992%20Review%20Discussion%20Paper.pdf>) The definition that is internationally recognised and reasonably expands the coverage of safety regulations which should be promoted from the perspective of promoting child well-being.

The Children's Commissioner **does not agree** with the proposal of including the words "or other aquatic activity". The term lacks clarity and could be interpreted beyond swimming, paddling and bathing.

The Children's Commissioner **agrees** indoor pools should be included in the definition. Indoor pools present an equivalent risk to young children as outdoor swimming pool if safeguards are not provided.

## Proposals for new pools

**Proposal 2** – Clarify the requirements for restricting access to the pool by:

- removing the following from the Act: the Schedule, exemptions, the requirement for a fence, and the obligation to comply with the Building Code at all times, and
- amending the Building Code so that the performance standard for home swimming pools is, ‘Pools shall have a means to restrict unsupervised access by young children,’ and
- developing acceptable solutions.

4 **Do you agree with proposal 2?**

NO

5 Please give your reasons, or alternative suggestions, below.

The Children’s Commissioner **does not agree** with Proposal 2.

The Children’s Commissioner considers that it is essential that the Schedule to the Act retain a requirement to fence and prescribe the particulars pertaining to this requirement.

The Children’s Commissioner considers that the Schedule of the Fencing of Swimming Pools Act 1987 should be amended so that it implements into legislation the NZ Standard - NZS 8500 Safety Barriers and Fences Around Swimming Pools, Spas & Hot Tubs. NZS 8500 was developed through robust discussion between experts and was released with the intention of replacing the current Schedule of the Act. It provides acceptable solutions and diversity for compliance, whilst maintaining effective safety levels.

The Children’s Commissioner considers that Building Code should accordingly be amended to require the consistent application of NZS 8500, without modification. This would provide a both a greater degree of clarity and a more robust safety standard than that proposed by Proposal 2.

**Proposal 3** – Remove the term ‘immediate pool area’ from the Act and the Building Code and include in the Building Code a requirement to restrict access to the pool from the house and other properties.

6 **Do you agree with proposal 3?**

NO

7 **Do you agree with the alternative option:** Restrict access to an area that people would normally only enter when using the pool?

NO

8 Please give your reasons, or alternative suggestions, below.

The Children’s Commissioner believes the phrase “requirement to restrict access to the pool from the house and from other properties” to be less clear than ‘immediate pool area’. The increased risk to child safety is acknowledged in the consultation document as there are possible times when young children will not be supervised but have access to the pool. This is an acknowledged factor in 30% of drownings. The proposal will put greater reliance on ‘childproof doors’ that have increased risk to failure than fences through human non-compliance.

Fencing which completely encloses a swimming pool and isolates it from the home has been shown to be effective in preventing young children drowning in home pools (Cochrane Collaboration Review, 2010 <http://summaries.cochrane.org/CD001047/fencing-which-completely-encloses-all-sides-of-a-swimming-pool-and-isolates-it-from-the-home-is-effective-in-preventing-drowning-of-young-children>).

The alternative term ‘restrict access to an areas that people would normally only enter when using the pool’ does not offer increased clarity than the current term ‘immediate pool area’. The alternative term introduces the component “would normally only enter” that in itself will require interpretation and so lack of clarity.

**Proposal 4** – Continue to allow childproof doors opening to the pool area.

9 **Do you agree with proposal 4?**

**NO**

10 **Do you agree with the alternative option:** Don't allow doors opening to the pool area?

**YES**

11 Please give your reasons, or alternative suggestions, below.

The Children's Commissioner notes that the discussion document acknowledges the increased risk to child safety when doors open from a house to the pool. 'Child-proof doors' that have a greater risk of failure than fences through human non-compliance.

Fencing which completely encloses a swimming pool and isolates it from the home has been shown to be effective in preventing young children drowning in home pools. (Cochrane Collaboration Review, (2010). *Fencing which completely encloses all sides of a swimming pool and isolates it from the home is effective in preventing drowning of young children.* <http://summaries.cochrane.org/CD001047/fencing-which-completely-encloses-all-sides-of-a-swimming-pool-and-isolates-it-from-the-home-is-effective-in-preventing-drowning-of-young-children>).

## Proposals for all pools

**Proposal 5** – Require owners to complete a simple maintenance check every 3 years, and require councils to randomly audit pools, especially high-risk pools.

12 **Do you agree with proposal 5?**

NO

13 **Do you agree with the alternative option:** No requirement for owners to do a check, but require councils to inspect all pools every 3 years?

YES

14 Please give your reasons, or alternative suggestions, below.

The Children's Commissioner believes the reliance on high-risk / low-risk property profile does not support an emphasis on child safety. The proposal allows for only a probability of inspection over a non-specified period. The method depends upon the assessment of risk that is prone to misclassification. Application of this method will lead to lower coverage of safety assessment. The discussion document acknowledges the lack of rigor of the approach by promoting the benefits of ad-hoc inspection when the property is visited for other purposes.

The discussion document acknowledges the success of Hastings District Council inspect of compliance with its strategy of regular checks, targeted awareness and pool identification at an annual cost of \$40 to each pool owner. The approach of this council still maintains the requirement of inspection on a three-year cycle (<http://www.hastingsdc.govt.nz/files/all/property/swimmingpools/strategy.pdf>). This cost to the homeowner of the inspection programme is not excessive in terms of overall pool running costs and the expected positive impact on child safety. Targeted awareness will also encourage on going personal responsibility on the part of pool owners.

**Proposal 6** – Replace court fines with the power to issue a notice (requiring an owner to remedy a maintenance issue), and infringement fees.

15 **Do you agree with proposal 6?**

YES

16 Please give your reasons, or alternative suggestions, below.

The Children’s Commissioner considers the alternative and potentially more effective provisions should provide a better deterrent and enforcement of safety requirements. However, a scaled approach should be maintained so that alternative options are available for those owners who continue to infringe.

## Proposals for spa pools and portable pools

**Proposal 7** – Exempt childproof spa pools from building consent and maintenance checks, and require spa pool retailers to give buyers a checklist setting out their obligations.

17 **Do you agree with proposal 7?**

NO

18 **Do you agree with the alternative option:** Same as proposal 7, except owners must notify the council when they acquire a spa pool, and would complete maintenance checks every three years?

NO

19 Please give your reasons, or alternative suggestions, below.

The Children's Commissioner notes that the discussion document acknowledges the significant contribution of 12%, to spa pool to child drowning. Also, acknowledged is that child-proofing technology is still dependent upon human behaviour and risk of non-compliance. The removal of obligation to use fencing of spa pools reduces the emphasis on child safety.

However, the Children's Commissioner agrees with retailers being required to provide information to buyers at the time of sale regarding fencing of pools and their responsibility.

**Proposal 8** – Require retailers of portable pools to give a checklist to buyers setting out their obligations under the Act. Also create powers for councils to issue an infringement notice if a portable pool is left filled with more than 400mm water without restricting the access of young children, and to remove the pool if there is subsequent offending.

20 **Do you agree with proposal 8?**

YES

21 Please give your reasons, or alternative suggestions, below.

The Children’s Commissioner agrees that retailers should be required to provide information to buyers regarding the fencing of pools and the responsibilities of pool owners to maintain the safety of the pool.

The Children’s Commissioner supports the use of infringement notices as an alternative and effective deterrent and enforcement of safety requirements.

## Other changes to the legislation

**Proposal 9** – Add a purpose statement to the legislation saying, ‘to prevent children aged under five years from drowning as a result of unrestricted access to a home swimming pool.’

22 **Do you agree with proposal 9?**

YES

23 Please give your reasons, or alternative suggestions, below.

**Proposal 10** – Repeal the current Act and create a stand-alone Act called the Home Pools Act.

24 **Do you agree with proposal 10?**

YES

25 **Do you agree with the alternative option:** Add new sections to the Building Act 2004 concerning child safety in home swimming pools?

NO

26 Please give your reasons, or alternative suggestions, below.

The Children’s Commissioner considers that given the importance of the issue of child safety, and with the need to make substantial rewriting of legislation, that is better for there to be a stand-alone act. There is a risk with the provisions being subsumed within other broad legislation that clarity of the legislation will be detrimentally affected.

## Other comments

27 Do you have any other comments about the proposals?

Thank you for the opportunity to participate in the consultation process for this important issue.

As the Children's Commissioner, I have the statutory responsibility to ensure that children's and young people's rights, interests and welfare are upheld. This includes advancing and monitoring the application of the UN Convention on the Rights of the Child (UNCROC) by departments of State and other Crown instruments. The Children's Commissioner's Act 2003 outlines the independence of my role and the functions and responsibilities of the Commissioner. I make this submission with those responsibilities in mind.

The Children's Commissioner considers the issue from the perspective of promoting child well-being and safety. Safety will be promoted by the consistent compliance with effective regulations.

The Office is willing to be involved in your further work on this issue.

Contact person: Terry Quirke, Principal Advisor, Health and Disability, [t.quirke@occ.org.nz](mailto:t.quirke@occ.org.nz)

# Information about you

28 Which best describes you?

Private individual who owns a pool

Private individual who doesn't own a pool

Home pool industry (e.g. retailer or supplier involved with pools or pool safety)

Non-commercial organisation with an interest in child safety

Territorial authority

Other (please explain below)

29 Please provide your contact details

Your name	
Organisation	
Postal address	
Email	

Thank you for your feedback. Your views will help the government to decide how to make it easier to keep swimming pools safe for young children.

Please either paste your comments into the online survey:

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