

# Building (Pools) Amendment Bill

Submission from the Office of the Children's Commissioner

5 November 2015

The Children's Commissioner is concerned that, if passed in its current form, the Building (Pools) Amendment Bill could increase the number of children dying or being seriously injured in drowning incidents.

**We recommend the bill is reconsidered with the safety and best interests of children as a primary consideration.**

**In addition, we recommend five specific amendments to the current bill:**

- Ensure minimum three-yearly inspections are mandatory;
- Remove or update the estimate of lives saved from the regulatory changes proposed as it is not accurate;
- Require four-sided isolation fencing for all private pools;
- Remove the proposal to allow other barriers, such as cliffs, instead of fencing;
- Remove the proposal to exempt spa pools and hot tubs with fitted covers from requiring fencing.

## CHILD SAFETY IS PARAMOUNT

Every child has the right to life. Countries – like New Zealand – that have signed up to the UN Convention of the Rights of the Child are required to ensure to the maximum extent possible the survival and development of every child.

Almost all child drowning deaths are preventable.<sup>1</sup> Children, especially very young children, are extremely vulnerable around water. They drown very quickly – often in less than one minute – and silently.

Preventing children from drowning requires active adult supervision at all times around water, but it also requires robust regulations to ensure that very young children do not access water unsupervised. Since the *Fencing of Swimming Pools Act 1987* was introduced,

New Zealand's child drowning toll has reduced dramatically from an average of 10 deaths per year to approximately two.

While we can see there is a case for streamlining current pool safety regulations into one consistently applied standard, we can see no justification for relaxing any of the current safety requirements in the process.

The explanatory material about the bill on the Ministry of Business, Innovation, and Employment website states that "the Government is changing the pool safety legislation to *strike a better balance* between protecting young children from drowning in home pools and making the legislation more workable for pool owners and local councils" (emphasis added).<sup>2</sup>

The objectives of saving children's lives and reducing the burden of compliance for councils and pool owners are not equivalent. Saving children's lives should always take precedence.

This is reinforced by the Convention on the Rights of the Child, which stipulates that in all actions concerning children, the best interests of the child must be a primary consideration. This does not appear to have been the case in the preparation of this legislation.

In its latest sector strategy, launched by the Minister of Sport and Recreation earlier this year, the New Zealand Water Safety Sector set the goal of reducing annual pre-school drownings from six to zero by 2020. The Office of the Children's Commissioner is

The OCC advocates for the best interests of all children and young people in New Zealand and looks to ensure all of their rights are respected.

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<sup>1</sup> Preventable drownings are defined as all drowning deaths other than those that result from suicides, homicides, and vehicle accidents.

<sup>2</sup> <http://www.mbie.govt.nz/info-services/building-construction/current-work/fencing-of-swimming-pools>

concerned that the passage of this bill will make that goal more difficult to achieve. To put it bluntly, we are worried that more children could die if this bill passes un-amended.

**We recommend that all the proposals in the bill are reconsidered with the safety and best interests of children as a primary consideration.**

### **PARTICULAR CONCERNS**

#### **Less frequent inspections and unsound estimates of lives saved**

The explanatory material accompanying the bill suggests that the changes in the bill could save an additional six lives per decade. This is based on an assumption that the monitoring and enforcement provisions in the bill will increase compliance for the estimated 20 percent of pools that are currently not inspected.

However, at the same time, the frequency of inspections for those pools that *are* currently inspected (around 60 percent of all private pools in New Zealand) will be reduced from three years to five.

Reducing the frequency of inspections relies on pool owners to be more vigilant about safety and compliance. Yet there is no evidence to suggest this will occur. Between 2002 and 2015, 29 pre-school age children drowned in private pools. 13 of these – 45 percent – were in pools with non-compliant barriers.<sup>3</sup> Moving to a regime in which the majority of pools are inspected less frequently could further increase the risk of children drowning in non-compliant pools.

The estimate that six additional lives will be saved per decade as a result of expanding the reach of the inspection regime does not take into account the reduction of frequency for most other pools, nor has an estimate of how many more drowning incidents might occur as a result of relaxing some of the current requirements been produced.

We are concerned that the bill is based on unsound assumptions about lives saved, and that the net effect of the changes is likely, in fact, to be an increase, not a decrease in the number of children drowning.

**We recommend the bill be amended to ensure minimum three-yearly inspections for all private pools (including spa pools and hot tubs).**

**We recommend that the estimate of the number of lives saved/lost as a result of the changes in the bill be updated to take into account the reduced frequency of inspections for the majority of pools and other changes in the bill, or removed from the explanatory material and the reasons for doing so communicated to MPs before the second reading.**

#### **Increased risk to children from relaxing barrier requirements**

The bill relaxes requirements to fence private pools in some concerning ways.

First, instead of requiring a pool to be fenced on all four sides to prevent young children from accessing it unsupervised, it will allow pool owners to use any physical barrier that restricts young children from accessing the pool, as long as it is compliant with the Building Code. Examples cited in the explanatory material produced alongside the pool include a cliff, a ditch, or a drop, such as for “infinity pools”.

From a water safety perspective, there are risks associated with this proposal (making it easier for children to climb into the pool area and gain unsupervised access, for example). New Zealand and international evidence suggests four-sided isolation fencing is best practice for child safety.

Furthermore, allowing other barriers such as cliffs and drops to prevent access to a pool will create new risks for young children. Once they have been permitted inside a pool area that uses a drop as a barrier, they could fall over the drop and be seriously injured, or disappear from the sight of their adult supervisor. A fence compliant with current regulations both keeps young children safe from unsupervised access *to* a pool, *and* from risks associated with falling or running *from* the pool out of sight of the supervising adult. The fact that this additional risk appears not to have been considered again suggests that the safety and best interests of children were not a primary consideration in the preparation of this legislation.

<sup>3</sup> Source: Water Safety New Zealand’s “DrownBase”: <http://www.drownbase.org.nz/>

Second, the bill removes the requirement to fence spa pools and hot tubs that have been fitted with a child-safe cover.

Child-proof covers for spas and hot tubs are effective at preventing children from gaining unsupervised access when fitted correctly. However, they provide no protection at times when the pool is being used. Requiring an additional form of restricted access to spa pools and hot tubs is an important second line of defense for times when the pool has been left unattended momentarily, for example if a user has gone inside to get a drink or use the toilet. While it might be best practice to replace that child-safe cover at such times, it is not realistic to expect users to do so. A second means of restricting access is vital.

**We recommend that the bill be amended to require four-sided isolation fencing of all private pools.**

**We recommend that the proposal to allow other barriers such as drops, cliffs, and ditches to be used to fence a pool be removed from the bill.**

**We recommend that the proposal to remove the requirement for spa pools and hot tubs have an additional means of restricting access if they have a child-safe cover be removed from the bill.**

### **PARTS OF THE BILL WE CAN SUPPORT**

We recognise the need for current pool safety regulations to be streamlined into one consistently applied standard. To that extent, the Office of the Children's Commissioner supports the introduction of legislation to modernise current arrangements.

Our preference is for a standalone drowning prevention Act to be retained, because we think this sends a clear message to the public that the Government values children's lives and water safety highly. With such an Act in place, clear national safety requirements could then be set out in an updated New Zealand Standard under the *Building Act 2004*. The existing Standard *8500:2006 Safety Barriers and Fences Around Swimming Pools, Spas and Hot Tubs* could be updated for this purpose.

Regardless of the mechanism chosen, however, the most important thing is that

changes to modernise current pool safety arrangements do not increase the risk of children drowning.

Aside from the provisions of concern we have highlighted above, there are a number of provisions in the bill that do improve current pool safety arrangements.

**We support streamlining current standards, requiring all territorial authorities to comply, requiring retailers to inform buyers of their obligations, and introduce a range of enforcement options, and recommend that these are retained in the final version of the bill.**

### **CONCLUSION**

The *Fencing of Swimming Pools Act 1987* raised the profile of drowning risks in private pools, and introduced robust safety regulations that have saved dozens of children's lives. Yet there is no room for complacency. New Zealand's drowning rate is lower *because* of these safety regulations, and they should not be relaxed.

There is a need to streamline current pool safety recommendations. However, whatever mechanism is chosen to do this, it is crucial that it does not place children at any additional risk of drowning or injury. Our concern with the bill as currently drafted is that because children's interests appear not to have been a primary consideration in its preparation, legislation is being considered that could lead to more children being harmed.

We urge the Select Committee to reconsider the entire bill with the best interests of children as a primary consideration, bearing in mind their right to life and survival, and the obligation this places on the Government to do everything possible to prevent children from drowning. In our view, the amendments we have recommended in this submission follow logically from such an exercise. The Committee may even wish to take the opportunity to recommend improvements to current pool safety standards where appropriate to help to reach the target of zero pre-school drowning deaths by 2020.