



# Cabinet Economic Growth and Infrastructure Committee

EGI Min (13) 28/9

Copy No: 44

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Fencing of Swimming Pools Act 1987: Policy Proposals

**Portfolio: Building and Construction**

On 20 November 2013, the Cabinet Economic Growth and Infrastructure Committee (EGI):

#### Background

1 **noted** that on 13 March 2013, EGI:

- 1.1 agreed to the release of a consultation document, *Making Pool Safety Easier*, which proposed amendments to the Fencing of Swimming Pools Act 1987 (the Act) to reduce compliance costs and maintain child safety;
- 1.2 invited the Minister for Building and Construction to report back on the outcome of the consultation;

[EGI Min (13) 4/4]

2 **noted** that 392 groups and individuals made submissions on the consultation document, and that submitters strongly supported most of the proposals, although for some proposals safety groups supported an alternative proposal;

#### Requirements for restricting access to pools

3 **agreed** to rely on the Building Code to set the requirements for restricting access to pools, and to repeal the duplicated requirements currently in the Act;

4 **agreed** to the following amendments to implement paragraph 3 above:

- 4.1 the Building Code will be amended, and acceptable solutions will be developed, to provide that:
  - 4.1.1 the existing provisions in the Building Code for swimming pool barriers will be removed;
  - 4.1.2 the performance standard for swimming pools is to the effect that pools shall have a means to restrict access by children aged 0-4 years;
  - 4.1.3 the Building Code will continue to require pools to be isolated while facilitating normal pool and poolside activities;

- 4.1.4 the specifications in the Schedule to the Act (without clause 11) will provide acceptable solutions for meeting the performance standard until replacement acceptable solutions are developed;
- 4.1.5 new acceptable solutions will be developed after the legislative amendments are made, and will involve public consultation;
- 4.2 the following will be removed from the Act:
  - 4.2.1 the requirement that pools must have a fence;
  - 4.2.2 the Schedule to the Act;
  - 4.2.3 the term 'immediate pool area';
  - 4.2.4 the power to grant exemptions under section 6 of the Act or clause 11 of the Schedule;
  - 4.2.5 the scope for councils to require owners to upgrade council-approved pools to comply with subsequent interpretations of the Act;
- 4.3 remove the obligations in the Act on the pool owner, and place those obligations on landowners and occupiers;
- 4.4 remove the requirement in section 7 of the Act for owners to notify councils of the existence of pools;
- 5 **noted** that, in relation to paragraph 4 above, the Building Code would continue to allow doors that restrict access to open directly to the pool area;

### **Better monitoring and enforcement**

- 6 **agreed** that the Act continue to require owners to maintain their means of restricting access to the pool;
- 7 **agreed** to amend the Act to:
  - 7.1 require councils to inspect, at least five-yearly, pools that the Act requires to have a means of restricting access, to verify that the means of restricting access has been maintained;
  - 7.2 continue to allow councils to inspect properties they have reasonable grounds to believe contain non-compliant pools;
  - 7.3 continue to enable councils to recover the cost of monitoring compliance from pool owners through targeted rates and/or inspection fees;
- 8 **agreed** to amend the Act to create an infringement regime, as follows:
  - 8.1 repeal the current enforcement provisions that provide for a court to impose fines and make orders to drain pools;
  - 8.2 create powers for councils to issue:
    - 8.2.1 notices requiring the owner or occupier to remedy a breach of the Act;

- 8.2.2 an infringement notice with an infringement fee of \$500 for a person not complying with a notice to remedy a breach of the Act;

### Spa pools

- 9 **agreed**, in addition to paragraph 4.1 above, to amend the Building Code to provide for child-resistant spa pools to be able to meet the standard in the Building Code for restricting access;
- 10 **agreed** to the following amendments to the Act and the Building Code relating to child-resistant spa pools and hot tubs:
- 10.1 not require councils to search for child-resistant spa pools or to undertake the periodic inspections referred to in paragraph 7 above;
- 10.2 continue to allow councils to inspect properties they have reasonable grounds to believe contain a spa pool or hot tub that is not child resistant;
- 10.3 remove the obligation that owners must seek building consents for spa pools and hot tubs simply for the reason that they fall within the definition of 'swimming pool' in the Act;
- 11 **agreed** that manufacturers and/or retailers of new spa pools must notify buyers of their obligations under the Act, and:
- 11.1 provide for the chief executive of the Ministry of Business, Innovation and Employment (MBIE) to set out the details of a disclosure notice to be provided to buyers;
- 11.2 give the chief executive of MBIE the power to require manufacturers and/or retailers to declare whether they are complying with their obligations under the Act;
- 11.3 create an infringement offence, with an infringement fee of \$500 for manufacturers and/or retailers that do not notify buyers and/or do not make a declaration required by the chief executive of MBIE;

### Portable pools

- 12 **agreed** to the following amendments relating to portable pools:
- 12.1 require manufacturers and/or retailers to notify buyers of their obligations under the Act in the same way as is proposed for spa pools (paragraph 11 above);
- 12.2 not require councils to search for portable pools or to undertake the periodic inspections referred to in paragraph 7 above;
- 12.3 continue to allow councils to inspect properties they have reasonable grounds to believe contain non-compliant portable pools;
- 12.4 exempt portable pools with less than 300mm water (rather than 400mm as currently) from the requirements of the Act;
- 12.5 remove the obligation that owners must seek building consents for portable pools simply for the reason that they fall within the definition of 'swimming pool' in the Act;



### Garden ponds and other water hazards

- 13 **agreed** that the Act exclude garden ponds and other water hazards not intended for swimming, wading, paddling, or bathing;

### Other types of pool

- 14 **agreed** that the Act exclude public pools, commercial pools, school pools, and hospital pools, but continue to include pools in homes, apartments, hotels, motels, and camping grounds;
- 15 **agreed** that indoor swimming pools in homes be subject to the Act (excluding baths used for personal hygiene and emptied after each use);

### Other amendments

- 16 **agreed** to amend the Act to:
- 16.1 include a purpose statement in the Act, that reflects the proposals in the paper under EGI (13) 256, of seeking to prevent drowning of children aged 0-4 years by restricting their access to home swimming pools;
- 16.2 align the inspection provisions of the Act with those in the Building Act 2004;
- 16.3 clarify that councils may not create bylaws that restrict access of young children to water hazards that are not covered by the Act;

### Legislative implications

- 17 **noted** that the Fencing of Swimming Pools Amendment Bill has a category 6 priority (drafting instructions to be issued to the Parliamentary Counsel Office in 2013) on the 2013 Legislation Programme;
- 18 **invited** the Minister for Building and Construction to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 19 **authorised** the Minister for Building and Construction to approve changes, consistent with the policy proposals in the paper under EGI (13) 256, on any issues that arise during the drafting process;

### Communications

- 20 **noted** that the Minister for Building and Construction intends to announce Cabinet's decisions and to release a copy of the paper under EGI (13) 256 and related decisions.

Reference: EGI (13) 256