

In Confidence

Office of the Minister of Building and Housing

Chair, Cabinet Economic Growth and Infrastructure Committee

## **Fee regulations for independently qualified pool inspectors**

### **Proposal**

- 1 This paper proposes acceptance and renewal fees to be charged by the Ministry of Business, Innovation and Employment (MBIE) to independently qualified pool inspectors (IQPIs) and a renewal period for IQPI acceptance.

### **Background**

- 2 The Building (Pools) Amendment Act 2016 (the Amendment Act) repeals the Fencing of Swimming Pools Act 1987 (FOSPA) and includes pool safety provisions in the Building Act 2004 (the Act). These provisions commence on 1 January 2017.
- 3 A key safety improvement made by the Amendment Act is a requirement for territorial authorities to ensure that certain residential pools<sup>1</sup> are inspected every three years. The introduction of mandatory inspections is estimated to avoid six drownings of young children per decade.
- 4 Under the Act, these inspections will be able to be carried out by territorial authorities (TAs) or IQPIs. Cabinet agreed to the IQPI regime on 7 March 2016, and noted that independent pool inspections are desirable as they promote consumer choice and convenience [CAB-16-MIN-0072.01].

### **Comment**

- 5 MBIE will administer a regime for accepting persons as qualified to be IQPIs. The Amendment Act creates a regulation-making power under the Act that authorises MBIE to charge fees for the acceptance and renewal of IQPIs, and to prescribe the renewal period for acceptance as an IQPI.

### *Proposed fees and renewal period*

- 6 I propose that:
  - 6.1 the application fee for acceptance as an IQPI be \$300 (excluding GST)
  - 6.2 the application fee for renewal of acceptance as an IQPI be \$300 (excluding GST)
  - 6.3 acceptance as an IQPI be required to be renewed annually.

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<sup>1</sup> This requirement will apply to residential pools other than small heated pools (spas and hot tubs), and any small heated pools with barriers that are not exempt from the requirement to have a building consent under Schedule 1 of the Act.

- 7 The level of the fees aims to ensure IQPIs contribute to the costs of administering the regime as far as possible, without qualified persons being deterred from joining (which would defeat the purpose of the regime).
- 8 MBIE's activities in administering the regime are estimated to cost \$100,000 per year. The proposed fees will only recover the costs of MBIE's activities that directly relate to the acceptance and renewal of an IQPI, including:
- assessing persons who apply to be accepted as an IQPI (e.g. assessing their knowledge of the Building Code in relation to pool barriers, their competence in carrying out inspections, and their competence in recordkeeping)
  - assessing persons who apply to have their acceptance as an IQPI renewed (e.g. assessing their performance and their compliance with conditions that MBIE imposes when accepting an IQPI).
- 9 The acceptance and renewal fees are proposed at the same level because the costs incurred by MBIE in undertaking these activities are estimated to be the same for both acceptance and renewal of an IQPI.
- 10 The proposed fees will not recover the cost of MBIE's other activities relating to the administration of the regime, including:
- considering complaints about an IQPI and, if necessary, deciding whether to withdraw acceptance of an IQPI
  - communicating about the regime, in particular with IQPIs
  - maintaining the assessment framework
  - monitoring the overall performance of the regime
  - maintaining MBIE's capability to administer the regime.
- 11 These other ongoing costs will be met by the building levy payable under section 53 of the Act (the levy), as the levy can be used for the performance of the Chief Executive of MBIE's functions under the Act (which will include the administration of the IQPI regime). Funding of the IQPI regime would have a negligible effect on payers<sup>2</sup> of the levy, and MBIE does not expect that the levy will need to be increased as a result of funding the IQPI regime.
- 12 These ongoing costs cannot be met from or spread over fees charged to IQPIs because the number of potential IQPIs is limited by the amount of swimming pool inspections, which is estimated to require 30 FTEs (full-time equivalents) annually. Some of these inspections are likely to continue to be carried out by TAs. Fees that charge full cost recovery would deter qualified persons from joining, which would defeat the purpose of the regime.
- 13 An annual renewal period will ensure that the currency and competency of IQPIs can be confirmed and that IQPIs regularly contribute to the cost of the regime.

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<sup>2</sup> The building levy is paid by applicants for building consents when a consent is granted and the estimated value of the building work is \$20,000 or more.

### *Proposed certificate of periodic inspection*

- 14 The regulation-making power also authorises the prescription of the form of the “certificate of periodic inspection” that will be issued by IQPIs to certify the compliance of pool barriers. I propose that regulations are also developed to prescribe the form of this certificate.
- 15 The certificate will prescribe information relating to the pool that has been inspected, the IQPI who has inspected it, the inspection that has taken place and the pool’s compliance with the requirements for pool barriers under the Act.

### **Consultation**

- 16 MBIE has conducted public consultation on the fees to be charged to IQPIs. MBIE received 28 submissions that covered the level of the fees. Most submissions supported \$300 fees as being reasonable (particularly for full-time IQPIs). One submitter was in favour of a higher fee level (\$500 per year) in the interest of limiting the regime to high calibre and committed IQPIs. Some submitters were in favour of lower fees, including because they thought this would incentivise IQPIs to join the regime and ensure the regime’s viability.
- 17 The Treasury has been consulted on this paper.

### **Financial Implications**

- 18 The proposals in this paper have no material financial implications. The IQPI regime fits within the purpose of the levy funding. The Building Regulation and Control appropriation has sufficient capacity to absorb the estimated \$100,000 per annum costs in 2016/17 and in the out years.

### **Human Rights**

- 19 There are no human rights implications arising from this proposal.

### **Legislative Implications**

- 20 Regulations under the Act are required to implement the proposal.

### **Regulatory Impact Analysis**

- 21 The regulatory impact analysis requirements do not apply as the proposal has only minor impacts on businesses, individuals and not-for-profit entities.

### **Gender Implications**

- 22 No gender implications have been identified in the preparation of this paper.

### **Disability Perspective**

- 23 No disability implications have been identified in the preparation of this paper.

### **Publicity**

- 24 I intend that a copy of this paper and the minute of the Cabinet decision are placed on MBIE's website.

## **Recommendations**

The Minister for Building and Housing recommends that the Committee:

- 1 note that the Building (Pools) Amendment Act 2016, which commences on 1 January 2017, mandates three-yearly pool inspections that will be able to be carried out by territorial authorities or by independently qualified pool inspectors (IQPIs)
- 2 note that the IQPI regime will be administered by the Ministry of Business, Innovation and Employment (MBIE), and that regulations are required under the Building Act 2004 to set the fees to be charged to IQPIs in respect of acceptance and renewal as an IQPI
- 3 agree that the fee prescribed in regulation to be charged to IQPIs in respect of:
  - 3.1 application for acceptance as an IQPI be set at \$300 (excluding GST)
  - 3.2 application for renewal as an IQPI be set at \$300 (excluding GST)
- 4 agree that the period prescribed in regulation for renewal of acceptance as an IQPI be an annual renewal period
- 5 invite the Minister for Building and Housing to issue drafting instructions to the Parliamentary Counsel Office for regulations prescribing the fees to be charged to IQPIs in respect of acceptance and renewal as an IQPI, and the form of the certificate of periodic inspection that will be issued by IQPIs
- 6 authorise MBIE to place a copy of this paper and the minute of the Cabinet decision on its website.

Authorised for lodgement

Hon Dr Nick Smith

Minister for Building and Housing