
Regulatory instruments under the Building (Pools) Amendment Bill

- **Manufacturer and retailer notices required to be supplied with pool products (spa pools, hot tubs and portable pools)**
- **Fees MBIE will charge independently qualified pool inspectors (IQPIs)**
- **Certificates of periodic inspection for IQPIs**



Published 7 October 2016 by
Ministry of Business, Innovation and Employment
PO Box 10-729 Wellington 6143
New Zealand
ISBN (online) 978-0-947524-52-4

How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm, 21 October 2016.

Your submission may respond to any or all of these issues.

Please include your name (and if your submission is on behalf of an organisation, the name of your organisation) in your submission. Please also include your contact details with your submission.

You can make your submission using the submission form provided, or in a letter or email.

Please return your submission by one of the following methods:

- email to pools@mbie.govt.nz, or
- post or courier to

Ministry of Business, Innovation and Employment
15 Stout Street
PO Box 1473
Wellington 6140
Attention: Pool consultation

Please send any questions relating to clarification of the consultation process to pools@mbie.govt.nz.

Publication of submissions

The information provided in submissions will be used to inform MBIE's development of regulatory instruments required to implement new pool safety provisions in the Building (Pools) Amendment Bill (the Bill). The Bill can be viewed on the [New Zealand Legislation website](#).

We may contact submitters directly if we require clarification of any matters in submissions.

Except for material that may be defamatory, MBIE may post written submissions on its website at www.mbie.govt.nz. MBIE will consider you to have consented to such posting by making a submission, unless you clearly specify otherwise in your submission.

If you have any objection to the publication of any information in the submission, please set out clearly which part(s) you consider should be withheld, together with the reason(s) for withholding the information. MBIE will consider these reasons when considering whether there are grounds for withholding the information under the Official Information Act 1982.

Any personal information you supply to MBIE in the course of making a submission will be used by MBIE only in conjunction with the matters covered by this document. Please clearly indicate in your submission if you do not want your name to be included in any summary of submissions that MBIE may publish.

Release of information

Submissions are also subject to the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such

objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

If your submission contains any confidential information, please indicate this on the front of the submission. Any confidential information should be clearly marked within the text. If you wish to provide a submission containing confidential information, please provide a separate version excluding the relevant information for publication on our website.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to the issues contained in the consultation document. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

Permission to reproduce

The copyright owner authorises reproduction of this work, in whole or in part, as long as no charge is being made for the supply of copies, and the integrity and attribution of the work as a publication of MBIE is not interfered with in any way.

Disclaimer

The opinions and proposals in this document are those of MBIE and do not necessarily reflect government policy.

MBIE does not accept any responsibility or liability whatsoever whether in contract, tort (including negligence), equity or otherwise for any action taken as a result of reading, or reliance on, any or all of the information contained in this consultation document, or for any error, inadequacy, flaw in, or omission from this consultation document.

Consultation on regulatory instruments under the Building (Pools) Amendment Bill

1. The Building (Pools) Amendment Bill (the Bill) proposes to repeal the Fencing of Swimming Pools Act 1987 (FOSPA) and include pool safety provisions in the Building Act 2004 (the Act). Some new provisions will require detail to be prescribed in regulations or approved by the chief executive of MBIE, including:
 - manufacturer and retailer notices required to be supplied with pool products (spa pools, hot tubs and portable pools)
 - fees MBIE will charge independently qualified pool inspectors (IQPIs)
 - certificates of periodic inspection for IQPIs.

Forms of manufacturer and retailer notices

- Proposed section 162D of the Bill will require manufacturers and retailers of pool products (spa pools, hot tubs and portable pools) to supply notices with these products summarising the responsibilities of owners, pool operators and occupiers to comply with pool barrier requirements. The aim of this requirement is to make sure people who buy ready-made or easily assembled pools are aware of the obligation to make sure these pools have barriers that restrict access by young children. It will be an offence not to supply the notices.
- The Bill provides that the chief executive of MBIE may approve the forms of the notices, by way of a notice in the New Zealand Gazette.

Portable pools

- The obligations under the Bill to restrict access by young children relate to pools with a maximum depth of at least 400 millimetres. The requirement to supply a notice would only apply to pools that are at least this deep.
- MBIE proposes that a prominent notice must be printed on the external packaging of portable pools. The proposed notice would say:

WARNING: By law this pool must have a barrier that complies with the Building Code and restricts unsupervised access by children under 5 years of age, such as a 1.2m high fence surrounding the pool. For more information visit www.building.govt.nz/poolsafety.

Small heated pools (spas or hot tubs)

- MBIE proposes that a written notice must be supplied with small heated pools. The proposed notice would say:

WARNING: This pool must have a barrier that complies with the Building Code and restricts unsupervised access by children under 5 years of age, such as a safety cover.

- MBIE proposes that, if a safety cover is supplied with a small heated pool, a notice must also be permanently fixed to the cover. The proposed notice would say:

WARNING: Cover must be fixed in place when pool not in use.

- This requirement will be consistent with the proposed Building Code clause F9.3.5, which will require a safety cover to have signage indicating its child safety features.

Implementation

9. MBIE understands manufacturers and retailers are likely to require time to print notices on packaging and on spa and hot tub covers. In order to provide sufficient time for the new requirements to be incorporated into manufacturing processes, MBIE proposes that these notices will be required from 1 September 2017.
10. The time at which the requirement comes into force will be approved by the chief executive of MBIE. The time will be approved alongside the approved forms of notices, by way of a notice in the New Zealand Gazette.

Question 1.1: Do you agree with the proposed forms of the notices? Why, or why not?

Question 1.2: Do you agree with these notices being required from 1 September 2017? Why, or why not?

Regulations for renewal period and acceptance and renewal fees for IQPIs

11. The Bill will create a regulation-making power that authorises the charging of fees for people who apply to be IQPIs (i.e. for registration and renewal of registration).

Background on IQPIs

12. The Bill creates a requirement for residential pools to be inspected at least every three years. Territorial authorities (TAs) currently inspect pools on a discretionary basis and are not required to periodically inspect pools, although an estimated 60 per cent of pools are currently inspected by a TA on a three-yearly basis.
13. The Bill provides that a TA may accept a certificate from an IQPI confirming that a pool complies with the relevant barrier requirements, in lieu of carrying out its own inspection. The aim of the IQPI regime is to give pool owners choice about who carries out their pool inspections. While TAs could potentially engage IQPIs to inspect pools (for example, if they do not want to maintain in-house capacity to carry out those inspections), they will still have the role of ensuring all pools are compliant with the Act, and will be required to inspect any pool that is not inspected by an IQPI. TAs already have the capability to carry out pool inspections because they currently carry out inspections (including inspections of pool barriers) as part of their building consent functions.
14. MBIE will have the role of administering the IQPI regime. This will include accepting people as IQPIs and, if necessary, withdrawing acceptance (i.e. cancelling their registration). MBIE's administration of the regime is intended to ensure IQPIs can be relied on to certify that pools comply with the pool barrier requirements.

Renewal period

15. MBIE proposes an annual renewal period for IQPI acceptance. Annual renewal would make sure IQPIs regularly contribute to the cost of the regime, and would confirm the currency and competency of IQPIs.

Question 2.1: Do you agree with an annual renewal period? Why, or why not?

Fees for IQPI acceptance and renewal

16. In setting the fees it will charge IQPIs, MBIE must balance recovering the costs of the regime with supporting the purpose of the enabling statute¹.
17. MBIE estimates the ongoing cost of administering the regime to be up to \$100,000 per year. MBIE's activities that will contribute to this cost include:

Cost directly related to acceptance and renewal

- assessing persons who apply to be accepted as an IQPI (for example, assessing their knowledge of the Building Code in relation to pool barriers, their competence in carrying out inspections, and their competence in record-keeping)

¹ Office of the Auditor General (2008) [Charging fees for public goods and services](#)

- assessing persons who apply to have their acceptance as an IQPI renewed (for example, assessing their performance, and their compliance with conditions that MBIE imposes when accepting an IQPI)

Ongoing costs of administering the wider regime

- 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 capability to administer the regime.
18. If a public entity provides a service where the benefits are largely enjoyed by private individuals, the public entity should first consider recovering the costs from those private individuals.² The key beneficiaries of MBIE's role in administering the IQPI regime will be IQPIs and their clients.
 19. MBIE is not consulting on a fee structure that aims to fully recover the costs of administering the regime from IQPIs. MBIE expects the number of IQPIs to be limited, which would require fees to be set at a level that might deter qualified persons from becoming IQPIs. MBIE estimates that 30 FTEs (full-time equivalents) will be required to inspect all residential pools in New Zealand, and some of this work is likely to continue to be carried out by TAs.
 20. MBIE proposes that the ongoing costs of the IQPI regime are instead funded by a combination of application and renewal fees, and the building levy. The building levy is likely to fund most of the costs. It is not anticipated that the building levy will need to be increased as a direct result of the IQPI regime.
 21. The building levy is paid by applicants for building consents. The levy is paid when building consents are granted and the estimated value of the building work is \$20,000 or more. It is used for, or in connection with, the performance of the chief executive's functions under the Act. Under the proposed provisions in the Bill, establishing and maintaining the IQPI regime will be a function of the chief executive of MBIE.

Proposal: annual fee of \$300

22. MBIE proposes to charge IQPIs a fee of \$300 per year, excluding GST. This fee would be payable in the first year for an IQPI's initial application, and annually thereafter for renewal of acceptance.
23. This fee is based on estimated costs incurred by MBIE in performing the necessary checks for accepting an application and reviewing ongoing acceptance of an IQPI.
24. Under this proposal, the building levy would fund most of the cost of the regime. While the costs directly related to acceptance and renewal would be recovered from IQPIs, other ongoing costs of the regime would be paid for by the building levy.
25. The fee would be the same for an initial application and renewal because both will require MBIE assessing applicants using a similar process and criteria.

² Office of the Auditor General (2008); Treasury (2002) Guidelines for [Setting charges in the public sector](#).

Alternative 1: Annual fee of \$100

26. MBIE has considered an alternative fee of \$100 per year, excluding goods and services tax (GST). This fee would be payable in the first year for an IQPI's initial application, and annually thereafter for renewal of acceptance.
27. This fee option is based on the national average of fees charged to Independently Qualified Persons (IQPs). IQPs are persons who are accepted by TAs as being qualified to inspect and maintain specified systems in buildings (for example, lifts and fire safety systems).
28. An annual \$100 fee would recover only a portion of the costs directly related to acceptance and renewal. The balance of those costs, and other ongoing costs of the regime would be met by the levy. The building levy would fund most of the cost of the regime.
29. The fee would be the same for an initial application and renewal because both will require MBIE assessing applicants using a similar process and criteria.

Alternative 2: Annual fee of \$500

30. MBIE has also considered an alternative fee of \$500 per year, excluding GST. This fee would be payable in the first year for an IQPI's initial application, and annually thereafter for renewal of acceptance.
31. This fee is based on MBIE recovering the costs directly related to acceptance and renewal, and a portion of the other ongoing costs of the regime. Most of the cost of the regime would still be met by the building levy. Consistent with guidance from the Treasury and the Auditor-General, the intention of this option would be to recover these costs from IQPIs as far as practicable without defeating the purpose of the IQPI regime.
32. However, setting the fee at \$500 per year could discourage some potential IQPIs from joining the regime. In particular, the fee may be too high to attract potential part-time IQPIs located in areas with fewer pools, or who already have a related business. Another factor to consider is that IQPIs will be providing a service that has been provided by some councils free of charge (for the initial inspection).
33. The fee would be the same for an initial application and renewal because both will require MBIE assessing applicants using a similar process and criteria. Other ongoing costs of administration will also be the same regardless of whether the fee is for initial application or renewal.

Question 2.2: Do you agree with the proposed annual fee of \$300? Why, or why not?

Regulations for the form of the certificate of periodic inspection

34. When an IQPI inspects a pool and the pool's barrier complies with the specified requirements, the IQPI will issue a certificate confirming that the inspection has taken place and that the pool barrier is compliant. TAs will be able to accept this certificate in lieu of conducting an inspection of the pool. If a pool barrier does not comply with the requirements, the IQPI must notify the relevant TA.
35. The Bill proposes a definition of "certificate of periodic inspection" as follows:
- is issued by an IQPI
 - is in the prescribed form (if any)
 - certifies that a pool has barriers that comply with the requirements of section 162C (subject to any waiver or modification granted under section 67A or 188 of the Act).
36. MBIE proposes that the form of the certificate be prescribed as follows:

A certificate of periodic inspection must include the following information:

- the address at which the residential pool is located; and
- the date of inspection; and
- the full name of the IQPI who is issuing the certificate, and their IQPI identification number.

The certificate must state that the IQPI:

- has inspected the pool onsite; and
- certifies that the pool has barriers that comply with the requirements of section 162C of the Building Act 2004 (subject to any waiver or modification granted under section 67A or 188 of the Building Act 2004); and
- has kept detailed records of the inspection and will make those records available without charge to the relevant TA on request.

The certificate must be signed and dated by the IQPI.

Question 3: Do you agree with the proposed form of the certificate? Why, or why not?