

TO: REGULATORY SERVICES COMMITTEE

FROM: THE DIRECTOR OF ENVIRONMENTAL AND  
PLANNING SERVICES

MEETING DATE: TUESDAY 25 NOVEMBER 2014

## SUPPLEMENTARY REPORT

### SPA POOL EXEMPTION REQUEST FOR 22B FILLEUL STREET, INVERCARGILL

Report Prepared by: S J Tonkin – Manager Building Regulation Services

#### SUMMARY

The owner of 22B Filleul Street, Invercargill has requested that the Council give consideration to granting an exemption under the Fencing of Swimming Pools Act 1987, Section 6.

#### RECOMMENDATIONS

**That the spa pool exemption request be declined.**

#### IMPLICATIONS

1.	<i>Has this been provided for in the Long Term Plan/Annual Plan?</i> N/A.
2.	<i>Is a budget amendment required?</i> N/A.
3.	<i>Is this matter significant in terms of Council's Policy on Significance?</i> N/A.
4.	<i>Implications in terms of other Council Strategic Documents or Council Policy?</i> N/A.
5.	<i>Have the views of affected or interested persons been obtained and is any further public consultation required?</i> N/A.

#### BACKGROUND

The owner of 22B Filleul Street, Invercargill has requested that the Council give consideration to granting an exemption under the Fencing of Swimming Pools Act 1987, Section 6.

6. *Special exemptions*

- (1) *A territorial authority may, by resolution, grant an exemption from some or all of the requirements of this Act in the case of any particular pool where the territorial authority is satisfied, having regard to the particular characteristics of the property and the pool, any other relevant circumstances, and any conditions it imposes under subsection (2), that such an exemption would not significantly increase danger to young children.*
- (2) *In granting an exemption under subsection (1), the territorial authority may impose such other conditions relating to the property or the pool as are reasonable in the circumstances.*
- (3) *Any exemption granted or condition imposed under this section may be amended or revoked by a territorial authority, by resolution.*

Attached as **Appendix 1** is the request from the owner for an exemption.

**Appendix 2** is a series of photographs of the area where the spa pool is proposed to be installed.

For Councillors' information and guidance, copies of the Fencing of Swimming Pools Act 1987, Guidelines for Territorial Authorities on The Fencing of Swimming Pools Act 1987, and New Zealand Standard 8500:2006 are attached as **Appendix 3**.

In particular, Section 6 Special exemption under the guidelines publication will provide meaningful useful guidance.

Also NZ Standard 8500:2006 has been introduced by Standards New Zealand but is not cited in the Building Act or Building Code as a means of compliance for any pools.

It can be used as an alternative solution, but Invercargill's building section has not accepted this standard in the past. The reason is the Ministry of Business Innovation and Employment was going to have this standard included in the Building Code last year, but as at November 2014 it is still not cited as any means of compliance but could be used as guidance by the Councillors.

The key consideration and test is whether the exemption will significantly increase danger to young children.

**CONCLUSION**

It is recommended that the spa pool exemption be declined.

The reasons for this recommendation are:

- 1. Children's safety relies on a person undertaking some act i.e. fitting a spa pool cover. The Fencing of Swimming Pools Act provisions that Council inspectors follow do not rely on any act as the rules are set very clearly – a fence has to be 1200mm high, gates or door self close and latch etc. In other words, an owner or person in charge of a pool does not have to think about doing anything.
- 2. The property is in a built up area where children reside in the neighbourhood.

**\*\*\*\*\***

# APPENDIX 1

**Simon Tonkin**

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**From:** Amy Swain [Amy.Swain@rothbury.co.nz]  
**Sent:** Tuesday, 18 November 2014 10:01 a.m.  
**To:** EP - Building  
**Cc:** Simon Tonkin; 'Todd Swain'  
**Subject:** FW: Application for Special Exemption under Section 6 of the Fencing of Swimming Pools Act 1987: Spa Pool with Lockable Lid

Good morning

We Todd and Amy Swain hereby apply for a special exemption under the provisions of section six of the Fencing of Swimming Pools Act 1987.

The property in respect of which this application is made is situated at 22b Filleul Street, Invercargill.

This exemption application relates to: Lockable lid for a Spa Pool fully complying with NZS8500:2006/3.10 but not with the Fencing of Swimming Pools Act 1987.

With regards to complying with NZS8500:2006/3.10

- A. The top of the spa is not less than 760 mm above ground level.
- B. The cover shall be lockable and shall be locked when the spa is un-occupied.
- C. The locking device shall contain a mechanical locking mechanism/self locking mechanism in addition to latching shut.
- D. The locks shall not be readily opened or released by a child.
- E. The cover shall have a weight bearing capacity of 20 kg.
- F. The cover shall comply with standard ASTM F134691 (check label).
- G. The cover shall taper from the centre hinge to the outside edge.
- H. When locked the cover shall not open greater than 100 mm.
- I. The cover and locks shall be in good working order.
- J. Warning stickers shall be placed on the cover to advise that it shall be locked in place when the spa pool is un-occupied.
- K. Removable steps, removable furniture or other objects that can assist young children to climb onto the cover shall be stowed 1200 mm away from the side of the spa pool.

We have one latch that needs replaced and we will need to have some stickers/signage made up.

Additional information:

- With the pending/proposed Law change to the Fencing Act this is the main reason for why we haven't fenced our spa pool, as advised by Hamish Handley 'We hope that it can go before the House early next year and then to Select Committee where there will be public input. One of the proposed changes is that spa pools that are at least 760 above a deck and have an approved child resistant cover will not be swimming pools under the Act. This provision is in the pool safety Standard NZS 8500: 2006 that originally we were hoping to reference under Clause F4.'
- We are a back section, our yard cannot be seen from the road, however we do back onto the riverbank which our yard is clearly visible however a small child should not be able to enter as our fencing & gate is high and the gate is always latched (we have 3 cats & a dog and do not want any dogs coming onto or jumping the fence into our section).
- We do not have any children and our friends & family are aware that we have our own rule that no-one under the age of 13 years old is allowed in our Spa regardless if there is a parent/adult in it.
- My parents in Albert Town who are also on a riverbank (Clutha) had this exemption and they had no gate or fence to stop anyone wandering in from both the riverbank side and the road onto their section, we feel our section is of a better set up.
- After watching 'The Block' (Television Show in Auckland) of the four properties, two of them had a spa pool & one had a hot tub all had exemptions, this has prompted us to apply also in the interim till the Act changes.

Please let us know if you require any further information, or we are happy to meet with you.

Kind regards

Amy & Todd Swain

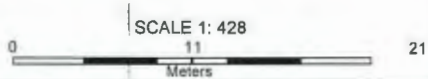
# APPENDIX 2



- Legend**
- - - District Boundary
  - - - Railway
  - ^ Transpower Structures
  - Transpower Overhead Line
  - - - Property Boundary
  - - - Proposed Subdivision
  - Legal Boundary
  - Parks and Reserves
  - Unformed Road
  - - - Formed Non-Legal Road
  - Unformed Legal Road



Date Printed: 20 November 2014



Information shown is the currently assumed knowledge as at date printed. If the information is vital, confirm with the Authoritative Owner. E & E.O.

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Cadastral information is derived from Land Information New Zealand.  
CROWN COPYRIGHT RESERVED.





Property  
01777368.doc

22 October 2014

Todd Bevan Swain and Amy Deneese Swain  
22B Filleul Street  
INVERCARGILL 9810

Dear Sir / Madam

**FENCING OF SWIMMING POOLS ACT 1987 - 22B FILLEUL STREET, INVERCARGILL**

Pursuant to the Fencing of Swimming Pools Act 1987, all owners of swimming pools must ensure that their pools are fenced in accordance with the Act.

Following a recent inspection of your property it was found there is a spa pool on site that does not have a building consent and is not fenced in accordance with the Fencing of Swimming Pools Act 1987.

Please have the spa pool drained within 10 working days. An Inspector will return in 10 days to ensure the pool has been drained.

You have two options: either remove the pool and contact Invercargill City Council for an inspection to confirm the pool has been removed; or apply for a building consent, with all the relevant documentation showing the fencing construction and backflow requirements in compliance with the Fencing of Swimming Pools Act 1987.

To book an inspection or for any queries, please contact the Building Services Team on 211 1777.

Yours faithfully

**S J TONKIN**  
**MANAGER – BUILDING REGULATION SERVICES**















**Inspection Sheet**  
**Reinspection**

Address: 228 FILLUEL ST

Building Consent No: \_\_\_\_\_ Date: 19-11-14 Time: 11-30

Inspector: I am competent to undertake this inspection  Yes OR I am inspecting under supervision / direction of: \_\_\_\_\_

Check Advisory Notes on BC \_\_\_\_\_ Advise Owner / Tradesman of Notes \_\_\_\_\_ Yes / No

Tradesperson: \_\_\_\_\_

This inspection sheet is to be used for all reinspections.

Inspectors to read notes/failed items on previous inspection sheet and write comments appropriate to the failed items, or add any new items.

**Comments**

ON SITE TO CHECK POOL AS REQUESTED BY S TONKIN.  
OWNER HAS APPLIED FOR EXEMPTION ON FENCING.

POOL IS LOCATED IN THE NTH EAST COR OF SECTION  
THERE IS AN OPEN SIDED FREE STANDING COVER BEEN CONSTRUCTED  
APPROX 3.8 X 3.0M OVER AREA OF POOL.  
R JOHNSON HAS INSPECTED PREVIOUSLY. THIS INSP IS FOR  
EXEMPTION TO FENCING.

POOL IS 830 H. 1400MM FROM BOUNDARY FENCE WHICH  
IS 1280 H.

POOL COVERS ARE HEAVY AND ARE FITTED WITH LOCKS  
(THE POOL IS EMPTY) THERE ARE FREE STANDING STEPS  
NEXT TO POOL

UNDER CURRENT LAW THE POOL DOES NOT COMPLY.

PHOTOS TAKEN - CARD LEFT IN DOOR TO RECORD VISIT.

Results Entered into Pathways  Yes  No

Applicant's Building Control Process Card Signed  Yes  No

Inspection Pass

Pass with Conditions

Fail

Site notice left onsite for pass with conditions or fail

Yes

N/A

Officer: ANDY JOHNSON

Signed: 

Date: 19-11-14

Note: Inspectors to note there may be some aspects of construction that are not covered by this checklist. Any additional items to be recorded under comments section.

Instructions: If outcome is no (i.e. not approved), identify reasons in comments section. All sections must be completed.

Key: Yes = approved: No = not approved: N/A = not applicable:



## Andy Johnson

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**From:** Simon Tonkin  
**Sent:** Wednesday, 19 November 2014 10:41 a.m.  
**To:** Andy Johnson  
**Subject:** FW: Application for Special Exemption under Section 6 of the Fencing of Swimming Pools Act 1987: Spa Pool with Lockable Lid

Andy can you do this check as well - Bex has the files I think and please read this email as this is what they are proposing -

I need to have a report done ny tomorrow night - s

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**From:** Amy Swain [mailto:Amy.Swain@rothbury.co.nz]  
**Sent:** Tuesday, 18 November 2014 10:01 a.m.  
**To:** EP - Building  
**Cc:** Simon Tonkin; 'Todd Swain'  
**Subject:** FW: Application for Special Exemption under Section 6 of the Fencing of Swimming Pools Act 1987: Spa Pool with Lockable Lid

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riverbank which our yard is clearly visible however a small child should not be able to enter as our fencing & gate is high and the gate is always latched (we have 3 cats & a dog and do not want any dogs coming onto or jumping the fence into our section).

- We do not have any children and our friends & family are aware that we have our own rule that no-one under the age of 13 years old is allowed in our Spa regardless if there is a parent/adult in it.
- My parents in Albert Town who are also on a riverbank (Clutha) had this exemption and they had no gate or fence to stop anyone wandering in from both the riverbank side and the road onto their section, we feel our section is of a better set up.
- After watching 'The Block' (Television Show in Auckland) of the four properties, two of them had a spa pool & one had a hot tub all had exemptions, this has prompted us to apply also in the interim till the Act changes.

Please let us know if you require any further information, or we are happy to meet with you.

Kind regards

Amy & Todd Swain





22B Flower St. ADG  
19-11-14









Reprint  
as at 28 November 2013



## Fencing of Swimming Pools Act 1987

Public Act 1987 No 178  
Date of assent 20 July 1987  
Commencement 20 July 1987

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**



13B	Fencing in accordance with Schedule must be treated as means of compliance	9
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**An Act to promote the safety of young children by requiring the fencing of certain swimming pools**

**1 Short Title**

This Act may be cited as the Fencing of Swimming Pools Act 1987.

**2 Interpretation**

In this Act, unless the context otherwise requires,—

**fence—**

- (a) means a fence that complies with the requirements of the building code in force under the Building Act 2004 in respect of swimming pools subject to this Act; and
- (b) includes any part of a building and any gates or doors that form part of the fence

**gates or doors** does not include any door to which clause 11 of the Schedule applies

**immediate pool area** means the land in or on which the pool is situated and so much of the surrounding area as is used for activities or purposes carried on in conjunction with the use of the pool

**judicial officer** means any District Court Judge, Justice, Community Magistrate, or Registrar of a District Court (other than a constable); but does not include any person who is a member or employee of the territorial authority

**owner** means the owner of a pool; except—

- (a) where the pool is subject to a hire purchase agreement within the meaning of the Income Tax Act 2007, in which case it means the purchaser of the pool:

- (b) where the pool is on premises that are not subject to a tenancy under the Residential Tenancies Act 1986 and the pool is subject to a lease or is part of premises subject to a lease, in which case it means the lessee of the pool or the premises

**swimming pool** and **pool** mean an excavation, structure, or product that is used or is capable of being used for the purpose of swimming, wading, paddling, or bathing; and includes any such excavation, structure, or product, that is a spa pool

**territorial authority** has the same meaning as in the Local Government Act 2002.

Section 2 **fence**: substituted, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 2 **judicial officer**: amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).

Section 2 **owner** paragraph (a): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2 **territorial authority**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

### **3 Application to existing pools**

This Act shall apply in respect of any swimming pool constructed, erected, or installed before 1 September 1987 at any time on or after 1 May 1988 when the pool is filled or partly filled with water.

### **4 Application to new pools**

This Act shall apply in respect of any swimming pool constructed, erected, or installed on or after 1 September 1987 at any time when the pool is filled or partly filled with water.

### **5 Exempted pools**

Nothing in this Act shall apply in respect of—

- (a) any pool that has no part of the top of its side walls less than 1.2 metres above the adjacent ground level or any permanent projection from or object standing on the ground outside and within 1.2 metres of the walls, where the outside surface of the side walls is constructed so as to inhibit climbing and any ladder or

other means of access to the interior of the swimming pool can be readily removed or rendered inoperable and is removed or rendered inoperable whenever it is intended that the pool not be used:

- (b) any excavation, structure, or product, in which the maximum depth of water does not exceed 400 mm:
- (c) any excavation, structure, or product,—
  - (i) that is not used in association with any house, home unit, apartment building, school, hospital, hotel, motel, camping ground, or other similar premises; and
  - (ii) that is not modified for use, or intended to be used, for swimming, wading, paddling, or bathing:
- (d) any pool intended to be used for wading or paddling in any place that is under the administration of a local authority:
- (e) any pool that is wholly enclosed within a building that is used principally for a purpose or purposes not related to the use of the pool:
- (f) any pool where—
  - (i) persons are employed and present to provide supervision of the pool whenever the pool is available for use; and
  - (ii) access to the pool is effectively prevented by a fence that complies with this Act or by locked gates or doors whenever the pool is not intended to be available for use.

## **6 Special exemptions**

- (1) A territorial authority may, by resolution, grant an exemption from some or all of the requirements of this Act in the case of any particular pool where the territorial authority is satisfied, having regard to the particular characteristics of the property and the pool, any other relevant circumstances, and any conditions it imposes under subsection (2), that such an exemption would not significantly increase danger to young children.



- (2) In granting an exemption under subsection (1), the territorial authority may impose such other conditions relating to the property or the pool as are reasonable in the circumstances.
- (3) Any exemption granted or condition imposed under this section may be amended or revoked by a territorial authority, by resolution.

**7 Notification of existence of pool to territorial authority**

- (1) Every owner of a pool to which this Act applies when the pool is filled or partly filled with water or to which this Act will apply on or after 1 May 1988 when the pool is filled or partly filled with water shall comply with any reasonable requirement of the territorial authority to advise the territorial authority of the existence of the pool.
- (2) Every person who proposes to construct or install a pool to which this Act will apply when the pool is filled or partly filled with water shall notify the territorial authority of the intention to construct or install the pool before the construction or installation commences.
- (3) An application for a building consent under the Building Act 2004 in respect of the construction or installation of a pool shall be deemed to be notification under this section.

Section 7(3): added, on 1 July 1992, by section 92(1) of the Building Act 1991 (1991 No 150).

Section 7(3): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

**8 Obligations of owner and persons in control of pool**

- (1) Every owner of a pool to which this Act applies shall ensure that, except as provided in any exemption granted under section 6, the pool, or some or all of the immediate pool area including all of the pool, is fenced by a fence that complies with the requirements of the building code in force under the Building Act 2004 in respect of swimming pools subject to this Act at all times when this Act applies in respect of the pool.
- (2) Every owner of a pool to which this Act applies shall comply or ensure that there is compliance with every condition imposed under section 6(2).

- (3) Every person who has possession of the property on which any pool to which this Act applies is situated shall ensure that the pool is not filled or partly filled with water at any time when the person knows or could reasonably be expected to know that any obligation imposed by this section on that or any other person is not being complied with.
- (4) The fact that a person complies with any obligation imposed by this section shall not excuse that person from any other duty imposed by law.

Section 8(1): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 8(1): amended, on 1 July 1992, by section 92(1) of the Building Act 1991 (1991 No 150).

## **9 Offence**

- (1) Every person who, without reasonable cause, fails to comply with any obligation imposed by section 7 or section 8 commits an offence and is liable on conviction to a fine not exceeding \$500 and, where the failure is a continuing one, to a further fine not exceeding \$50 for every day on which the failure has continued.
- (2) Where the owner or person entitled to possession or control of a pool to which this Act applies is not entitled to possession of the property on which the pool is situated or the immediate pool area (whether because of any tenancy agreement, agreement to occupy a hotel room, motel, or camping ground, or otherwise) it shall be a defence to any proceedings for any offence described in subsection (1) in relation to section 8 if the court is satisfied that the owner took all reasonable steps—
  - (a) to ensure that the obligation was complied with; and
  - (b) to ensure that the persons in possession of the property or entitled or likely to be in the immediate pool area are made aware of the existence of the pool.
- (3) Where any person is convicted of the offence described in subsection (1) in relation to section 8 the court may order that the pool be drained of water and be kept empty until the pool is fenced in a manner that complies with this Act or any condition imposed under section 6(2) is met, as the case may require.



Section 9(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**10      Obligation of territorial authorities**

Every territorial authority shall take all reasonable steps to ensure that this Act is complied with within its district.

**11      Power of entry for territorial authority officers**

(1) Without limiting any other powers of any territorial authority, any officer of a territorial authority who has reasonable grounds to believe—

- (a) that there is on any land within the district of the territorial authority a swimming pool to which this Act applies; and
- (b) that the pool is not fenced as required by this Act, or any condition imposed under section 6(2) is not being complied with,—

may at any reasonable time enter on the land and carry out an inspection to determine whether or not there is on the land such a pool that is not fenced as required by this Act, or whether or not the condition is being complied with.

(2) Nothing in subsection (1) shall confer on any person the power to enter any house, home unit, or apartment building unless the entry is authorised by a warrant given by a judicial officer on written application on oath, which shall not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.

(3) Every warrant issued under subsection (2) shall be directed to a named officer of the territorial authority and shall be valid for a period of 1 month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity shall be shown in the warrant.

(4) Every person exercising the power of entry conferred by subsection (1) shall carry a warrant of authority issued by the territorial authority and specifying—

- (a) the name and the office or offices held by the person;
- (b) that the person is authorised by the territorial authority to exercise the power conferred by subsection (1) to enter the land and carry out the inspection.

- (5) Every person exercising the power of entry conferred by subsection (1) shall produce the warrant of authority and evidence of identity—
- (a) if practicable on first entering the land or premises; and
  - (b) whenever subsequently reasonably required to do so.

**12 Delegation of powers to committees of councillors**

The territorial authority may delegate its powers and functions under section 6 and clause 11 of the Schedule to any committee of the territorial authority appointed under clause 30 of Schedule 7 of the Local Government Act 2002 that comprises only members of the territorial authority; but may not delegate those powers and functions to any committee that has any members who are not members of the territorial authority or to any officer of the authority.

Section 12: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

**13 Effect of Act on bylaws and other laws**

- (1) *[Repealed]*
- (2) *[Repealed]*
- (3) Nothing in this Act shall in any way restrict the power of any territorial authority to make and enforce bylaws relating to the fencing of pools to which this Act does not apply.
- (4) Nothing in this Act shall in any way restrict the power of the Crown or any territorial authority or other person to enforce any other law relating to the fencing of pools to which this Act applies or any other pools.

Section 13(1): repealed, on 1 July 1992, by section 92(1) of the Building Act 1991 (1991 No 150).

Section 13(2): repealed, on 1 July 1992, by section 92(1) of the Building Act 1991 (1991 No 150).

**13A Effect of Building Act 2004 on bylaws**

- (1) A territorial authority may not make any bylaw under this Act that purports to have the effect of requiring any pool subject to this Act to achieve performance criteria additional to or more restrictive than those specified in the Building Act 2004 or the building code in force under that Act.

- (2) A territorial authority may not make any bylaw purporting to have the effect of allowing a pool subject to this Act to be fenced to a standard that would provide less protection against young children gaining access to the pool than the performance standard set by the said building code.

Section 13A: inserted, on 1 July 1992, by section 92(1) of the Building Act 1991 (1991 No 150).

Section 13A heading: amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 13A(1): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

**13B Fencing in accordance with Schedule must be treated as means of compliance**

Any provision that is made for the fencing of swimming pools that is in accordance with the Schedule must, in respect of—

- (a) matters subject to the Building Act 2004, be treated as an acceptable solution or a verification method establishing compliance with the building code for the purposes of section 19 of that Act, and the requirements of this Act:
- (b) building and premises not subject to the Building Act 2004, be treated as a reasonable and adequate provision for the purposes of this Act.

Section 13B: substituted, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 13B(a): amended, on 28 November 2013, by section 76 of the Building Amendment Act 2013 (2013 No 100).

**13C Amendment and replacement of Schedule**

The Governor-General may, by Order in Council,—

- (a) amend the Schedule; or
- (b) repeal the Schedule and substitute a new schedule.

Section 13C: substituted, on 20 September 2007, by section 4 of the Fencing of Swimming Pools Amendment Act 2007 (2007 No 57).

**14 Amendment to Fencing Act 1978**

*Amendment(s) incorporated in the Act(s).*

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**Schedule**  
**Means of compliance for fences under**  
**this Act**

ss 13B, 13C

Schedule heading: amended, on 1 July 1992, by section 92(1) of the Building Act 1991 (1991 No 150).

**Height**

- 1(1) The fence shall extend—
- (a) at least 1.2 metres above the ground on the outside of the fence; and
  - (b) at least 1.2 metres above any permanent projection from or object permanently placed on the ground outside and within 1.2 metres of the fence.
- (2) Notwithstanding subclause (1), where the fence is constructed of perforated material, netting, or mesh and any opening in the material, netting, or mesh has a dimension (other than the circumference or perimeter) greater than 10 mm, the fence shall extend at least 1.8 metres above the ground or the projection or object.

**Ground clearance**

- 2 Any clearance between the bottom of the fence and ground level shall not exceed 100 mm.

**Materials**

- 3 All materials and components shall be of a durable nature and shall be erected so as to inhibit any child under the age of 6 years from climbing over or crawling under the fence from the outside.

Schedule clause 3: amended, on 20 November 1989, by section 2(1) of the Fencing of Swimming Pools Amendment Act 1989 (1989 No 117).

- 4 Except where the fence is horizontally close-boarded or is made of perforated material, netting, or mesh, the spacing between adjacent vertical pales, panels, or other posts shall not exceed 100 mm at any point.

Schedule clause 4: amended, on 20 November 1989, by section 2(2) of the Fencing of Swimming Pools Amendment Act 1989 (1989 No 117).

- 5 All fencing supports, rails, rods, and wires, that are not vertical, and all bracing that is not vertical, shall be inaccessible for use for climbing from the outside.

Schedule clause 5: substituted, on 20 November 1989, by section 2(3) of the Fencing of Swimming Pools Amendment Act 1989 (1989 No 117).

- 5A Notwithstanding clause 5, a fence may have horizontal supports, rails, rods, or wires, that are accessible for use for climbing from the outside, and horizontal bracing that is accessible for such use, if—

- (a) the distance between any 2 of them at any point is at least 900 mm; and
- (b) there is no other support, rail, rod, wire, or bracing (other than a vertical rail) between the same 2 at any point.

Schedule clause 5A: inserted, on 20 November 1989, by section 2(3) of the Fencing of Swimming Pools Amendment Act 1989 (1989 No 117).

- 6 Where any perforated material, netting, or mesh is used, no opening in that material, netting, or mesh shall have any dimension (other than the circumference or perimeter) greater than 50 mm.

- 7 All perforated material, netting, or mesh material shall be firmly attached at both top and bottom to a rail, pipe, or similar firm structure, or otherwise be of such a nature that the fence cannot readily be crossed by children under the age of 6 years.

#### Gates and doors

- 8 Every gate or door shall be so constructed as to comply with the relevant requirements of clauses 1 to 7, and shall be so mounted that—

- (a) it cannot open inwards towards the immediate pool area;
- (b) it is clear of any obstruction that could hold the gate or door open and no other means of holding the gate or door open is provided:

- (c) when lifted up or pulled down the gate or door does not release the latching device, come off its hinges, or provide a ground clearance greater than 100 mm.

#### Operation of gates and doors

- 9(1) Every gate or door shall be fitted with a latching device.
  - (2) Where the latching device is accessible from the outside of the fence only by reaching over the fence, gate, or door or through a hole in the fence, gate, or door, the latching device and the lowest point of any hole giving access to it shall be at least 1.2 metres above the ground on the outside of the fence.
  - (3) Where the latching device is otherwise accessible from the outside of the fence, gate, or door, the latching device shall be at least 1.5 metres above the ground on the outside of the fence.
- 10 Every gate or door shall be fitted with a device that will automatically return the gate or door to the closed position and operate the latching device when the gate or door is stationary and 150 mm from the closed and secured position.

#### Doors in walls of buildings

- 11 Where any building forms part of a fence and the pool is not contained within the building, any door that gives access to the immediate pool area need not comply with the requirements for gates or doors set out in clauses 8 to 10 to the extent (if any) that the territorial authority is satisfied that such compliance is impossible, unreasonable, or in breach of any other Act, regulation, or bylaw, and the door is fitted with a locking device that, when properly operated, prevents the door from being readily opened by children under the age of 6 years.
-



## Reprints notes

### 1      *General*

This is a reprint of the Fencing of Swimming Pools Act 1987 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2      *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, will have the status of an official version once issued by the Chief Parliamentary Counsel under section 17(1) of that Act.

### 3      *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4      *Amendments incorporated in this reprint*

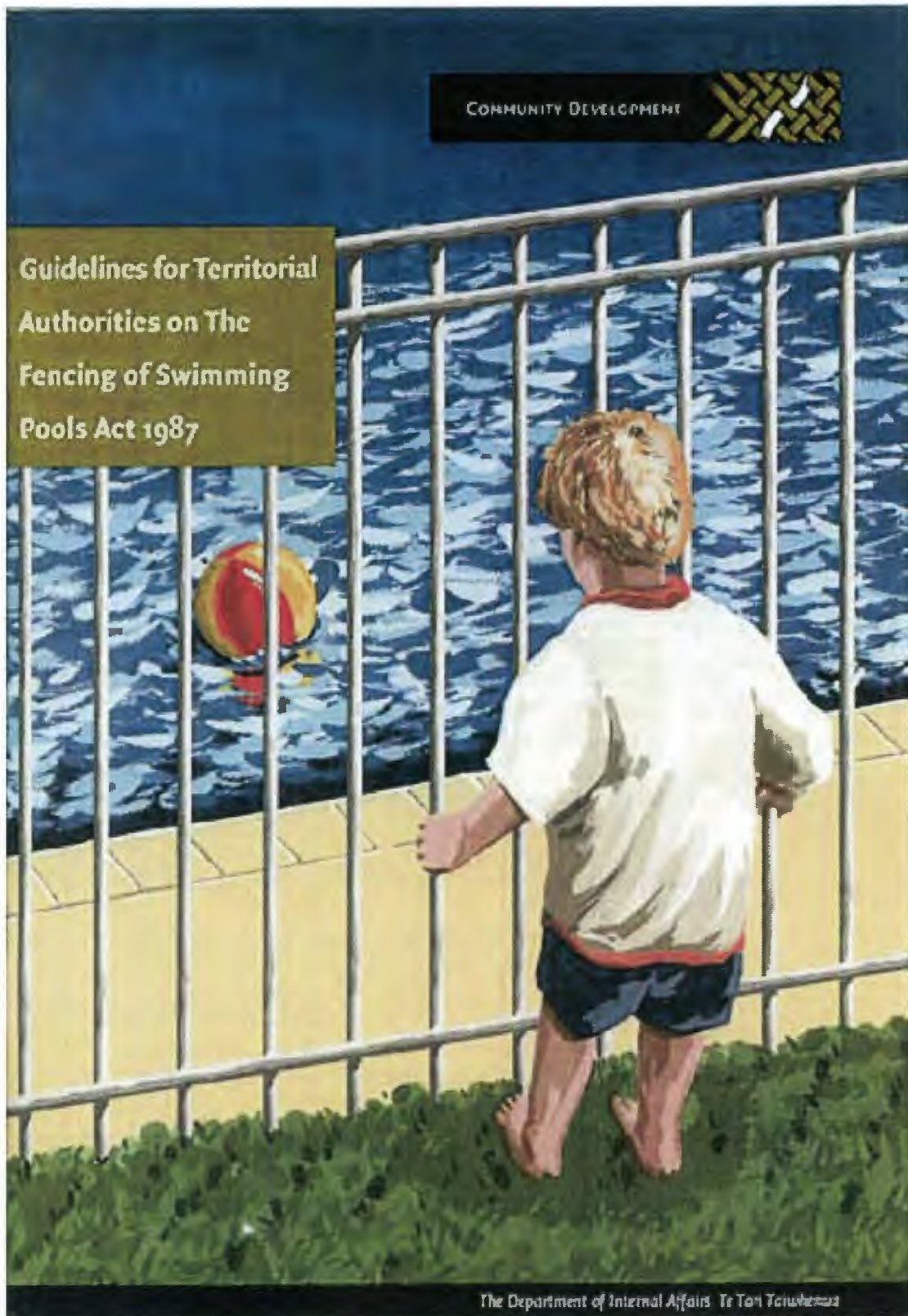
Building Amendment Act 2013 (2013 No 100): section 76  
Criminal Procedure Act 2011 (2011 No 81): section 413  
Income Tax Act 2007 (2007 No 97): section ZA 2(1)  
Fencing of Swimming Pools Amendment Act 2007 (2007 No 57)  
Building Act 2004 (2004 No 72): section 414  
Local Government Act 2002 (2002 No 84): section 262  
District Courts Amendment Act 1998 (1998 No 76): section 7  
Building Act 1991 (1991 No 150): section 92(1)  
Fencing of Swimming Pools Amendment Act 1989 (1989 No 117)

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COMMUNITY DEVELOPMENT



**Guidelines for Territorial  
Authorities on The  
Fencing of Swimming  
Pools Act 1987**



The Department of Internal Affairs Te Tari Taiwhiri

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## Foreword

Drowning is a major cause of the accidental death of young children in New Zealand. Many drownings happen in private homes, in unfenced, or inadequately fenced, swimming and spa pools. It has been estimated that, with the adequate fencing of pools, at least half these deaths (and other, non-fatal, accidents) would have been prevented.

General concern about these unnecessary deaths led Parliament to enact the Fencing of Swimming Pools Act 1987. This Act requires that, in the absence of a specific individual exemption, every private swimming and spa pool be properly fenced. Water Safety New Zealand has statistics showing that drownings of children under six years old have decreased since the introduction of the Act.

Each territorial authority is responsible for the enforcement of the Act. However, we have become aware of the development of some problems. Water Safety New Zealand recently had a survey conducted by the Injury Prevention Research Unit of the University of Otago. This survey highlighted difficulties some territorial authorities were having in trying to reconcile the prescriptive regime in the Schedule to the Act with the performance based criteria of the building code introduced under the Building Act 1991.

In an endeavour to deal with these issues, the Department consulted the following organisations:

- the Building Industry Authority;
- the Office of the Commissioner for Children;
- the Ministry of Health;
- Local Government New Zealand;
- Water Safety New Zealand;
- the Injury Prevention Research Unit of the University of Otago; and
- the Royal New Zealand Plunket Society.

The consultations led to the development of the new guidelines attached. These guidelines outline the requirements of both the Act and the Code, and explain how they interact. They are intended to assist territorial authorities to satisfy their responsibilities under both acts and, I hope, to assist them to explain, to individual pool and spa owners, what their duties are. Although there is an assumption that territorial authority officers are familiar with the Act, some departmental comment on its provisions has been included.

Also incorporated is a brief history of events leading up to the introduction of the Act, and a suggested pamphlet outlining the responsibilities of pool owners which territorial authorities are encouraged to distribute to every household.

It is important that territorial authorities fully enforce the fencing of residential swimming and spa pools. The major reason is, of course, to help guard young children from potential drowning or injury.

I commend these guidelines to all territorial authorities, and hope that they will be of assistance to regulatory staff and building inspectors when interpreting and enforcing the Act.

Staff in Local Government Services can further clarify any provisions in the Act (but cannot give opinions or rulings about particular cases). They can be contacted on telephone (04) 495-7200, fax (04) 495-7287, and e-mail

Roger Blakeley  
Secretary for Internal Affairs  
August 1999

## Background

There has been public debate about the desirability and method of fencing swimming pools for many years. In the early 1980's, Parliament's Local Bills Select Committee carried out the most comprehensive investigation of this issue. In its 1983 report, the Committee concluded that swimming pools should be fenced because:

- (a) They are a significant childhood water hazard;
- (b) Pool fencing is the most effective means of preventing drownings of pre-school children in private swimming pools;
- (c) It is totally impossible for parents or guardians to supervise the children in their care every minute of the day;
- (d) There are no equal or greater water hazards for pre-school children;
- (e) Where there is a reasonable and viable means of protecting young children from hazards such as private swimming pools, the children have a right to that protection; and
- (f) The value of aesthetically pleasing gardens cannot be placed above the value of human lives.

A summary of the report is included in this booklet as Appendix A.

The first Standard Model Bylaw (NZS 9201) relating to the fencing of swimming pools, was developed in 1979 by the then Standards Association. At the time, it was generally believed that pre-school drownings were caused by toddlers wandering from adjoining properties, or the road, onto properties which had a pool. The model bylaw, therefore, provided a pool owner with the options of either erecting a fence around the property, or around that part of the property which contained the pool.

The Local Bills Committee concluded that this view was mistaken. It found that about 80% of pre-school drownings in private pools occurred either in a child's home, or when it was visiting as an invited guest. In light of this new information, the Committee recommended that the model bylaw be amended to delete the option allowing the property only to be fenced. This recommendation was adopted in 1984 when a new model bylaw was issued by Standards New Zealand. The Committee also strongly recommended that all territorial authorities which had not adopted a bylaw requiring the fencing of private swimming pools, should do so as soon as possible. However, by 1987, only about one-third of all territorial authorities had made such a bylaw.

It was the desire to see provisions similar to the Standard Model Bylaw in legislation that led to a Private Member's Bill being introduced into Parliament in 1986. This triggered the enactment of the Fencing of Swimming Pools Act the following year.

The purpose of the Act is stated in the long title as, "*An Act to promote the safety of young children by requiring the fencing of certain swimming pools*". It does this by requiring that pool owners fence their swimming or spa pools and the immediately surrounding areas. In certain situations, exemptions from the provisions of the Act can be granted.



## Building Act 1991

The Act was subsequently amended by the Building Act 1991. The amendment requires that new pool fences, or alterations to existing fences comply with the performance standard of the Building Code in force under that Act. Previously, pools had to be fenced to the standard specified in the Schedule to the Fencing of Swimming Pools Act. Because the Building Act is not retrospective, existing pool fences are still required to meet the standard specified in the Schedule. However, that Schedule is deemed a compliance document in terms of the Building Act.

Performance standard F4.3.4 of the Building Code provides for alternative means of fencing a pool. It does this by requiring fences to be a continuous barrier of appropriate height, rigidity, and strength to restrict access to the pool or the immediate pool area by children under six years of age. This gives territorial authorities the flexibility to approve varying structures as long as they meet the performance standard, and thereby affords owners a choice in how they may fence their pools. However, the recognised acceptable rules for pool fences are in the Schedule to the Fencing of Swimming Pools Act. That is, the Schedule represents the “benchmark” which territorial authorities should judge fences against when deciding on the appropriateness of any alternative. Any alternative design must be at least as safe as if the fence were constructed to the specifications in the Schedule in order to comply with the performance standard of the Building Code.

It is assumed that a common sense approach will be taken when deciding on the appropriateness of an alternative design, keeping in mind the purpose of the Act and the standard specified in the Schedule. If there is a dispute with a pool owner or some uncertainty with regard to a particular pool fence, the Building Industry Authority can be approached to make a determination.

The survey undertaken for Water Safety New Zealand in 1997 found that some territorial authorities believe that an exemption is required from some, or all of the provisions of the Act before an alternative design may be approved. This is not the case. A territorial may grant an exemption from any or all of the requirements of the Act (see section 12) if it is satisfied that such an exemption, “...*would not significantly increase danger to young children*”.

## Necessity for the Fencing of Swimming Pools Act

Between 1980 and 1997, 129 children aged under six drowned in private swimming and spa pools in New Zealand.<sup>1</sup> This accounts for nearly 40% of all drownings involving pre-school children. Drowning is second only to road accidents as the major cause of accidental death for these children. An Australian study found that for every child who drowns, there are at least nine others involved in serious near drowning accidents<sup>2</sup>. Such accidents can leave children with permanent moderate to severe brain damage. Fencing is necessary, therefore, to prevent not only deaths, but also serious injury.

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<sup>1</sup> Source: Water Safety New Zealand

<sup>2</sup> Health Department of Western Australia

### Parental/Caregiver Responsibility

Parents/caregivers do have a responsibility to care for children. However, it is unrealistic to expect supervision alone to prevent pre-school children from gaining access to private swimming and spa pools. The Local Bills Committee found that in each case where a child drowned, in a private pool, an adult was present on the property.

Young children are inquisitive and tend to be attracted to water. This attraction is one reason why the existence of a pool is particularly dangerous to pre-school children. It is extremely difficult to constantly supervise a child every minute, especially where there is more than one child. Pre-school children and toddlers are mobile, and it can take only a few moments for them to get out of sight of parents/caregivers. A study of the circumstances in which pre-schoolers had drowned, reported that it was common for parents/caregivers to have taken their eyes off the child for only a few minutes.<sup>3</sup> Attention may temporarily lapse for a number of reasons. For example, one may assume that another person is supervising the child, or may leave the child unwatched to answer the telephone, or perhaps be distracted by a domestic emergency. Pool fences will safeguard a child even when a parent/caregiver is not in a position to supervise it.

### Water Safety Training

Children between the ages of one and three years are those most vulnerable to drowning in private swimming and spa pools. Statistics show that over 70% of pre-school fatalities in private swimming and spa pools occur to children in this age group. Research suggests that educating pre-schoolers is not a practical solution to the drowning problem.<sup>4</sup> The Local Bills Committee concluded that pre-school children can not be expected to learn the elements of water safety or be taught how to react appropriately in an emergency.

It is also unrealistic to expect pre-school children to keep away from an unfenced pool merely because they have been told to do so. While some five-year-olds may understand that pools can be dangerous, it would be unreasonable and unrealistic to expect every child to understand this, and to have the self-discipline never to go near a pool.

### Role of Pool Suppliers

It is recognised that pool suppliers are in the unique position of being able to provide information to pool owners on their obligations to fence their pool to the required standard. A leaflet outlining pool-owners' responsibilities has been distributed to pool suppliers nation-wide, and they have been encouraged to give a copy of this to all their customers.

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<sup>3</sup> Hassall, I B, Australian Pediatrics Journal, 1989; 25

<sup>4</sup> Geddis, D, New Zealand Medical Journal, 1984; 97

# FENCING OF SWIMMING POOLS ACT 1987

## SUMMARY AND COMMENT

### SECTION 1 – SHORT TITLE

- 1.1 This section names the Act the Fencing of Swimming Pools Act 1987.

### SECTION 2 – INTERPRETATION

- 2.1 This section defines certain terms used in the Act. These are discussed below:
- 2.2 “*Fence*” – The Act requires that new fences and alterations to existing fences be constructed to meet the performance standard of the Building Code. This Code requires fences to be a continuous barrier of an appropriate height, rigidity, and strength to restrict access to the pool or the immediate pool area. In order for a fence to meet the performance standard, it must be built to be at least as safe as if it were constructed to the specifications in the Schedule to the Fencing of Swimming Pools Act. A fence constructed to the Schedule’s specifications automatically meets the standard of the Building Code. Existing pool fences are still required to meet the specifications of the Schedule.
- 2.3 “*Gates or Doors*” – The term “gates or doors” refers to gates in pool fences and doors in any building which makes up part of a fence.

Gates must be constructed so that they open outwards and close and latch automatically. Latches must be at least 1.2 metres above the ground, if located on the inside of a fence, or 1.5 metres above the ground if located on its outside.

A door may be built in the wall of a building that forms part of a pool fence. If it does, it must be fitted with a lock which prevents it being readily opened by children under the age of six. As an extra safety precaution, it is preferable that the lock be at a height not easily reachable by toddlers.

- 2.4 “*Immediate Pool Area*” – This definition is of particular importance for the application of the Act. Section 8 requires pool owners to fence the pool, and some or all of the “*immediate pool area*”, that is the-

***“land in or on which the pool is situated and so much of the surrounding area as is used for activities or purposes carried on in conjunction with the use of the pool”.***

#### What can the “immediate pool area” include?

The definition of immediate pool area is important because it is only that area, along with the pool, which can be enclosed by the fence. The Department believes the examples given below adequately portray the common sense approach which territorial authorities should take in determining the appropriate area to be fenced.

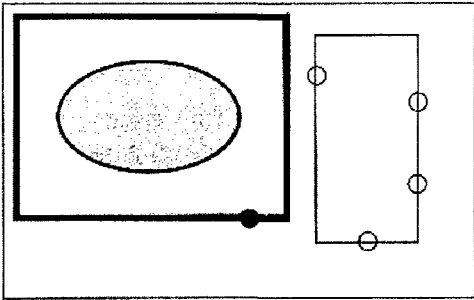


In the Department's view the "*immediate pool area*" could include the pool, its decking, and any changing sheds, but not a vegetable garden, a clothes-lines, a barbecue area, a children's sand-pit, or a slide or swing. The most important factor is the location of the fence in relation to the rest of the property. The fence should prevent young children moving directly to the pool from the house, other buildings, garden paths, or other areas of the property normally open to them.

The diagrams on the following pages illustrate various fences around pools, some of which meet the requirement to fence the pool, including some or all of the "*immediate pool area*", and some of which do not.

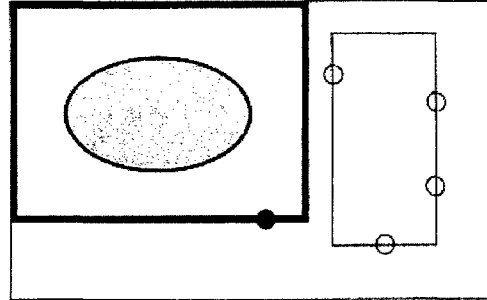


**Diagram 1**



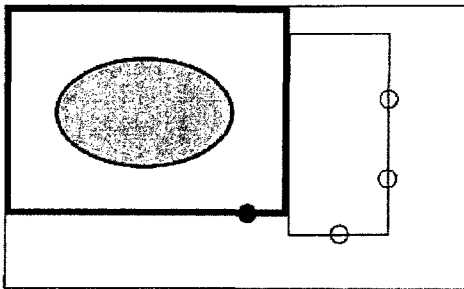
Pool fenced separately from both the house and the boundary fence.

**Diagram 2**



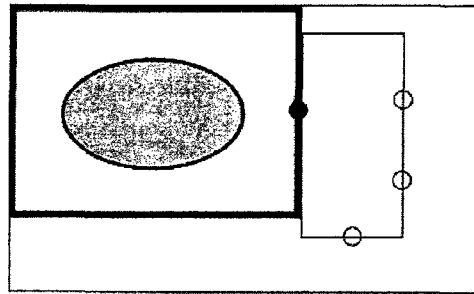
Pool fenced separately from the house but where part of the boundary fence is also part of the pool fence.

**Diagram 3**



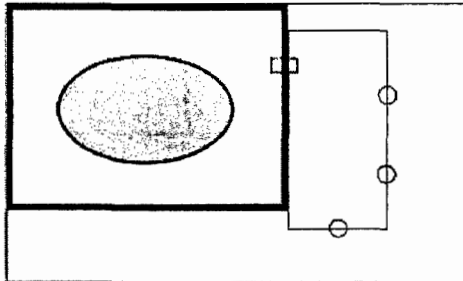
Pool where part of the house is part of the pool fence but there is no access to the pool from the house.

**Diagram 4**



Pool where part of the house is part of the pool fence, but the only access is by a door complying with the requirements of the Act.

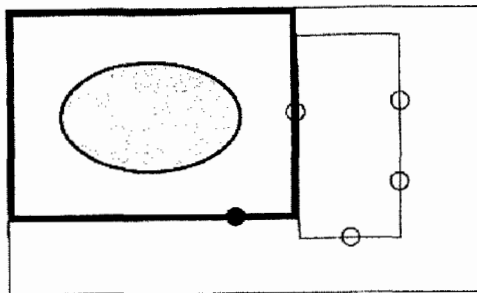
Diagram 5



Pool where part of the house is part of the pool fence. There is access to the pool directly from the house by a door which the council is satisfied cannot be made to meet the requirements of the Act. It is *instead* fitted with a lock that, when properly operated, prevents the door being readily opened by children under six.

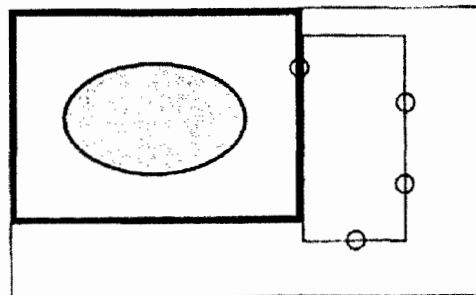
Diagrams 1-5 all depict situations, which would comply with the Act.

Diagram 6



Pool can be reached either through a gate complying with the Act or from the house through an ordinary door which does *not* have a lock that could prevent the door from being readily opened by children under six.

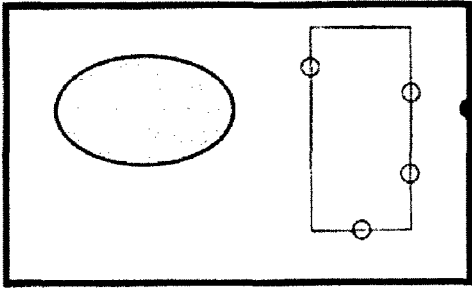
Diagram 7



Pool can be reached only from the house, but through an ordinary door that does *not* have a lock that could prevent the door from being readily opened by children under six.



**Diagram 8**



Pool which is fenced only by a boundary fence.

Diagrams 6-8 depict situations that would not comply with the Act.

*\* (Reproduced with amendments to suit New Zealand's situation from: Report, Cabinet and Legislative Division, Queensland Department of Housing and Local Government, 1990).*

*Is a boundary fence sufficient?*

A boundary fence can form part of a pool fence if it complies with the requirements of the Act (see diagrams 2 to 5). However, because the fence is permitted to enclose only the pool and some or all of the "*immediate pool area*", the whole of a boundary fence, by itself, would not comply (diagram 8). This is because there are areas on any property that cannot be part of "*the immediate pool area*".

The greatest need is to protect those children who are legitimately on the property. Over 85% of pre-school drownings occur when the child is resident on the property or is present as an invited guest (Water Safety New Zealand). The Local Bills Committee concluded that the-

"fencing of properties only, and not pools is not an effective means of preventing pre-school drownings".

2.5 "*Judicial Officer*" – The term "*judicial officer*" is used in section 11 of the Act, and means any District Court Judge, Justice, or Registrar of a District Court (other than a constable). It does not include a member or employee of a territorial authority.

2.6 "*Owner*" means any person who owns a pool, except—

- (a) where the pool is on hire purchase, when the owner is the purchaser of the pool or;
- (b) where the pool is on premises *not* subject to a tenancy under the Residential Tenancies Act 1986, and the pool is included in the lease, when the owner is the person who is leasing the pool or the premises.

Where the pool is on premises that *are* subject to a tenancy under the Residential Tenancies Act 1986, the owner is the owner of the premises.

- 2.7 “*Swimming Pool*” and “*Pool*” means any excavation, structure or product that is or can be used for swimming, wading, paddling, or bathing—including spa pools (section 5 sets out which pools are exempt from the Act).
- 2.8 “*Territorial Authority*” means any city or district council, and includes the Chatham Islands Council.

### **SECTIONS 3 AND 4—APPLICATION TO EXISTING AND NEW POOLS**

- 3.1 The Act applies to all pools when filled or partly filled with water (subject to any exemption granted under section 5 or section 6), regardless of when the pool was constructed.
  
- 3.2 Pools existing at the date of coming into force of the Building Act 1991 should have had fences which complied with the schedule to the Fencing of Swimming Pools Act. New pool fences or alterations to existing fences must be constructed in accordance with the performance standard of the building code under the Building Act. Section 13B of the Act provides that any pool constructed in accordance with the Schedule shall be deemed to comply with the building code under the Building Act.

## SECTION 5–EXEMPTED POOLS

5.1 Because the intention of the Act is to promote the safety of young children, the Act only applies to pools where young children, particularly pre-schoolers, are at risk. For this reason there are certain pools to which the Act does not apply. Exempt pools are listed in section 5 of the Act. They include-

- pools with sides higher than 1.2 metres with ladders etc., that can be removed or made inoperable;
- pools 400mm or less deep;
- pools not on a residential property and not used for swimming;
- paddling pools administered by a territorial authority;
- indoor residential pools; and
- pools which are supervised when in use and locked when not in use (i.e., public swimming pools)

5.2 The criteria for exempted pools under section 5 of the Act are as follows:

Section 5	Comment
<i>Nothing in this Act shall apply in respect of –</i>	
(a) <i>Any pool that has no part of the top of its side walls less than 1.2 metres above the adjacent ground level or any permanent projection from or object standing on the ground outside and within 1.2 metres of the walls, where the outside surface of the side walls is constructed so as to inhibit climbing and any ladder or other means of access to the interior of the swimming pool can be readily removed or rendered inoperable and is removed or rendered inoperable whenever it is intended that the pool not be used:</i>	If the outside walls of the pool are 1.2 metres or more above the ground, a fence is not required.  Permanent object includes decking or terracing.  Built in steps leading up to the pool would mean the pool would not be exempt.  It must be shown that the ladder is readily removable or can be rendered inoperable.
(b) <i>An excavation, structure, or product, in which the maximum depth of water does not exceed 400 mm:</i>	For example, portable paddling pools and splash pools used by toddlers are exempt if they are not more than 400mm deep.
(c) <i>Any excavation, structure, or product, –</i>	



- (i) *That is not used in association with any house, home unit, apartment building, school, hospital, hotel, motel, camping ground, or other similar premises; and*
  - For a pool to be exempt under subsection 5(c) it must not be on land on which there is any building listed in 5(c)(i).
- (ii) *That is not modified for use, or intended to be used, for swimming, wading, paddling, or bathing:*
  - Nor may it be intended for use for the purposes listed in 5(c)(ii). Both conditions must be met for such a pool to be exempt.
- (d) *Any pool intended to be used for wading or paddling in any place that is under the administration of a local authority:*
  - Paddling and wading pools administered by a local authority are exempt.
- (e) *Any pool that is wholly enclosed within a building that is used principally for a purpose or purposes not related to the use of the pool:*
  - This means that, for example, an indoor pool such as a spa pool within a house is exempt.
- (f) *Any pool where –*
  - (i) *Persons are employed and present to provide supervision of the pool whenever the pool is available for use; and*
    - For a pool to be exempt under subsection 5(f), a council has to be satisfied that-
      - (i) there would be persons employed specifically to provide supervision of the pool when it is in use, and
      - (ii) when the pool is not in use, access to it is prevented by a fence that complies with the Act or by locked doors or gates.
  - (ii) *Access to the pool is effectively prevented by a fence that complies with the Act or by locked gates or doors whenever the pool is not intended to be available for use.*
    - Both of the above conditions (i) and (ii), must be met for a pool to be exempt under this subsection. The view of the Department's is that there must always be at least two supervisors in attendance when a pool is open.

### School Pools

- 5.3 The Fencing of Swimming Pools Act does not expressly state that it is binding on the Crown. Therefore, any state school pools located on Crown land, and built prior to the coming into force of the Buildings Act, do not have to be fenced. However, because it is desirable that all school pools are fenced, the policy of the Ministry of Education is that all school swimming pools should comply with the spirit and intent of the Act.
- 5.4 The Building Act, however, is binding on the Crown. Therefore, new school pools must be fenced in accordance with the Building Code. An alteration to an existing pool fence must also comply with the Code. Private and integrated school pools must be fenced, because they are on private land.
- 5.5 It is pertinent to point out that between 1980 and 1997 only 3 pre-school children drowned in school pools while 129 drowned in private swimming and spa pools.

## SECTION 6–SPECIAL EXEMPTIONS

- 6.1 Under section 6 territorial authorities may grant exemptions from the requirements in the Act for particular pools. Territorial authorities can also impose special conditions on a property and a pool. A council can only grant an exemption, or impose a special condition, if, after having regard to the characteristics of the pool and the property, it is satisfied that it “*would not significantly increase danger to young children*”. No exemption is required for a new pool fence, or an alteration to an existing fence, if the new or altered fence is at least as safe as one built in accordance with the standard in the schedule of the Act.

### What criteria are appropriate for council consideration when deciding on exemptions?

#### Appropriate criteria

- 6.2 The criteria in section 6 are discussed below:

<i>Section 6</i>	<i>Comment</i>
<i>“A territorial authority may, by resolution, grant</i>	An exemption can only be granted by resolution of the council or of a council committee comprising only members, not a council officer.
<i>an exemption from some or all of the requirements of this Act</i>	An exemption must state specifically what requirements of the Act will not apply. It is possible for a pool to be exempt from all of the requirements of the Act i.e., to have no fence at all.
<i>in the case of any particular pool</i>	Pools must be considered separately, on a case by case basis.
<i>where the territorial authority is satisfied,</i>	A territorial authority must be satisfied that grounds for exemption exist for each particular case.
<i>having regard to the particular characteristics of the property</i>	A territorial authority must consider the particular characteristics of the property.
<i>and the pool,</i>	Similarly, the particular characteristics of the pool must be considered.
<i>any other relevant circumstances,</i>	A territorial authority must consider whether any other factors are relevant.
<i>and any conditions it imposes under subsection (2) of this section,</i>	Under subsection (2), a territorial authority may set other reasonable conditions relating to the property or the pool.
<i>that such an exemption would not</i>	This provides the test against which an

*significantly increase danger to young children”.*

application for exemption must be considered. Thus, while the council may give an exemption for a pool, which is not to the specified standard, it must be satisfied that the increased risk to small children is not.

- 6.3 As stated above, when granting an exemption, a territorial authority can impose conditions relating to the property or pool that are reasonable in the specific circumstances. For example, a requirement that the pool owner notify the territorial authority of any change in the particular circumstances that justified the exemption.
- 6.4 Any exemption or condition may be amended or revoked by council resolution.
- 6.5 The overarching criterion is whether the territorial authority is satisfied that an exemption would not significantly increase danger to young children. In coming to its decision in each case it is desirable that the authority bears in mind the long title of the Act—*“An Act to promote the safety of young children by requiring the fencing of certain swimming pools”.*
- 6.5 Territorial authorities should be aware of the *“danger to young children”* which a pool presents. Statistics and research information are widely available on drownings of young children in swimming pools; for example, the Local Bills Committee Report. Up-to-date statistics are available from,

Water Safety New Zealand  
P O Box 10-126  
Wellington.

- 6.6 It would be reasonable to expect a territorial authority to be aware of these statistics when considering whether an exemption would significantly increase the danger to young children. In this regard, Water Safety New Zealand advises that since the introduction of the Act the majority of drownings have occurred in pools that did not comply with the Act at the time of the incident.
- 6.7 An application for exemption solely for the reason that a pool is on an isolated property in a rural area with no children resident, would not, in the Department’s opinion, be acceptable because:
- there can be no guarantee that children will never visit the property (the Local Bills Committee found that one-third of drownings occurred when children were visiting as invited guests); and
  - children may well live on the property in the future.

*Other inappropriate criteria*

- 6.8 From time to time councils receive applications for exemptions on what, the Department considers, are inappropriate grounds. In addition to those cited in the preceding paragraph, some others are, the presence of other water hazards;
- other means of protection;
  - proximity of the pool to other residences; and



- effects on appearance of the property.

*The presence of other water hazards*

- 6.9 Statistics show that private swimming pools are the single most significant water hazard for small children. Between 1980 and 1997, nearly 40% of pre-school drownings occurred in private swimming and spa pools (Water Safety New Zealand statistics). Less than 1 in 4 pre-school drownings for this period occurred in rivers, streams, or other running water - the next most frequent sites of pre-school drownings. One reason for this is that most pre-school drownings occur in and around children's homes where there is not constant supervision. Often a child may gain access to the pool area in the course of normal play. The Injury Prevention Research Unit of the University of Otago reported studies, which showed that a large number of the toddlers drowned in private pools, were fully dressed at the time they entered or fell in a pool. A much higher standard of supervision is likely on outings to rivers or beaches, because there is an expectation that the child is likely to play in the water. It is probably this constant, short term, awareness that has meant that these other water hazards do not present the same danger to small children. The Local Bills Committee Report stated:

“... there is no inconsistency in fencing private swimming pools and not these other water hazards”.

- 6.10 The Department's view is that the presence of other water hazards is no reason to fail to fence private swimming and spa pools.

*Other means of protection*

- 6.11 The Local Bills Committee investigated alternative methods of protecting pre-schoolers, including the use of pool covers, electric alarm systems, buoys, poles, and ropes. The Committee found them “unlikely to prove greatly effective in preventing pre-school drownings.”

*Pool Covers*

- 6.12 The Injury Prevention Research Unit of the University of Otago is opposed to reliance on pool covers, including heavy wooden covers on spa pools, as a safety measure, because they must always be replaced after use. Unfortunately, because they can be heavy and difficult to manage, there is a constant danger they will not be replaced. There have been cases where

- children drowned after climbing under insecure pool covers; and
- small children drowned in water that had collected on top of a cover.

Since January 1980 at least 14 pre-school children have drowned in pools which had covers (Water Safety New Zealand statistics).

- 6.13 The major advantage of fencing a pool to the standard required by the Fencing of Swimming Pools Act and the Building Code is that there is constant protection. It does not require continual action or surveillance to prevent children gaining access.
- 6.14 Territorial authorities should note that they must grant a specific exemption, pursuant to section 6 of the Act, prior to permitting the use of only a pool cover. A general

policy cannot be adopted to allow the automatic acceptance of pool covers as an alternative to fencing.

#### *Pool Alarms*

- 6.15 An alarm will not keep a young child out of a pool. Its sole purpose is to sound an alert after an incident has taken place, in the hope that someone will hear and come to the victim's aid. It requires that someone will be continually available to monitor and respond to an alarm. This may not be the case.
- 6.16 The Local Bills Committee found the effectiveness of an alarm was often diminished because objects falling into a pool can set it off. With repeated false alarms, comes the danger that response time in a real emergency may be delayed.

#### *Buoys, Poles, and Ropes*

- 6.17 Buoys, poles, and ropes will not prevent pre-school children from gaining access to a pool.

#### *Whether children are resident on the property*

- 6.18 The absence of children as current residents of a property would not be an appropriate criterion for councils to use when considering an application for an exemption. There is no guarantee that children will not visit the property, or live there in the future.
- 6.19 The normal stages of family development mean it is likely that young children will, at some time, either live on a property or visit as grandchildren or in the company of other relatives. In any event, the property may be later sold to people who have young children or who will be visited by children accompanying friends or relatives.
- 6.20 It is important that the pool, and its fence, should be seen as a permanent feature of the property that will still be there after its present occupants have moved on.

#### *Distance of the pool from other residences*

- 6.21 As has already been shown, the greatest danger is not to children on adjoining properties, but those who live on the property or who are visiting. Therefore, distance from other residential properties should not be taken into consideration. It is noted that a number of rural pool owners use this reason when applying for an exemption.

#### *Effects on appearance of the property*

- 6.22 An exemption granted on the basis that a pool fence would diminish the appearance of a property would be contrary to the intention of the Act. Exemptions can only be granted where the danger to young children is not significantly increased. As the Local Bills Committee commented:
- "The value of aesthetically pleasing gardens cannot be placed above the value of human lives".*

## **SECTION 7 – NOTIFICATION OF EXISTENCE OF POOL TO TERRITORIAL AUTHORITY**

- 7.1 Pool owners must comply with any reasonable requirement of a territorial authority to advise it of the existence of a pool. If a person intends to build a pool, an application for a building consent under the Building Act 1991 to construct or install a pool must be obtained. Such applications are considered acceptable notification.
- 7.2 If a pool owner or prospective pool owner neglects this duty, it does not follow that a territorial authority can ignore its obligations. Section 10 requires that the authority take all reasonable steps to ensure compliance with the Act within its district.

## **SECTION 8 – OBLIGATIONS OF OWNER AND PERSONS IN CONTROL OF POOL**

- 8.1 Pool owners must ensure that, *“except as provided in any exemption granted under section 6, ... the pool, or some or all of the immediate pool area including the pool”* is fenced to the appropriate standard.
- 8.2 If a condition associated with an exemption under section 6 has been imposed, the owner must also comply with that.
- 8.3 Any person having possession of a property with a pool, whether or not that person is the *“owner”*, has a specific duty under the Act. This duty is to ensure that the pool is empty while the person knows or could reasonably be expected to know that the Act is not being complied with. This means, for example, that a tenant must ensure that any unfenced pool on the property is drained and kept empty. In an ordinary family home, where the owner of the property is absent, the question of whether a spouse or relative has *“possession of the property”* would have to be determined on a case by case basis.
- 8.4 The fact that a person has complied with the obligations under the Act does not excuse him or her from any other duty imposed by law.



## SECTION 9 – OFFENCES

- 9.1 Any person who fails to comply, without reasonable cause, with sections 7 or 8 of the Act, commits an offence. Conviction can attract a fine of up to \$500 and a further fine of up to \$50 per day if the failure to comply continues.
- 9.2 The offences under the Act are,
- (a) failure to comply with any reasonable requirement of a territorial authority to advise of the existence of a pool (s. 7(1));
  - (b) failure of a person proposing to build a pool to tell the territorial authority of that intention (s. 7(2));
  - (c) failure of an owner to fence a pool (s. 8(1));
  - (d) failure of an owner to comply with a condition imposed as part of an exemption (s.8(2)); and
  - (e) failure of a person in possession of a property to ensure that a pool is not filled or partly filled with water when the pool is not fenced or when a condition imposed as part of an exemption is not complied with (s. 8(3)).
- 9.3 Section 9(2) of the Act applies to the owner of property with a pool that may be let or leased. It would also apply to the owner of a hotel, or motel, or camping ground where a pool is for the exclusive use of a guest. This section provides that it can be a defence in relation to section 8 that the owner took all reasonable steps to ensure that:
- (a) the obligation in section 8 was complied with; and
  - (b) those in possession of the property or those likely to be in the immediate pool area were made aware of the pool.
- 9.4 If a person is convicted of an offence under section 8, the Court may order that the pool is drained and kept empty until an appropriate fence is erected or any condition imposed under section 6 is met.
- 9.5 A recent case in Auckland also shows that criminal charges may be brought against any person in control of a property where a child drowns in an inadequately fenced pool.

## SECTION 10 – OBLIGATIONS OF TERRITORIAL AUTHORITIES

- 10.1 Every territorial authority is required to take “*all reasonable steps*” to ensure that the Act is complied with. While the Act does not specify these “*reasonable steps*”, in the Department’s view, they should include:
- (a) Informing householders of the need to:
    - (i) fence pools;
    - (ii) tell the territorial authority of the existence of pools; and
    - (iii) tell the territorial authority of an intention to build a pool
  - (b) Locating existing pools in the area;
  - (c) Inspecting pools the territorial authority is aware of and:
    - (i) instructing pool owners of any changes required to upgrade fences to the appropriate standard;
    - (ii) carrying out periodic inspections to ensure that any instructions are complied with;
    - (iii) carrying out periodic inspections on all pools to ensure that fences are being maintained and that they still meet the standard required by the Act; and
  - (d) Taking court action against non-complying pool owners when all other means of obtaining compliance have failed.

These are all discussed in more detail below. Territorial authorities are strongly encouraged to implement these steps in order to aid in the prevention of drownings or accidents. They should include suitable pool safety objectives in their annual plans.

### Informing householders

- 10.2 It is important that pool owners and intending pool owners are informed of their legal responsibility to tell territorial authorities of the existence of a pool, or of an intention to build one. Section 7 provides that pool owners and prospective pool owners must comply with this responsibility. Informing *all* residents of this requirement will increase the chance that *all* pool owners and prospective pool owners know of it. Appendix B contains a suggested pamphlet that could be distributed.

- 10.3 Territorial authorities could also increase public awareness in a number of other ways, such as: newspaper advertisements or the inclusion of a message with rates assessments. It would also be beneficial to advise people applying for a Land Information Memorandum of the Act’s requirements.

### Locating existing pools

- 10.4 To be effective, a territorial authority needs to know the location of every pool in its district. If its information is considered inadequate, a first step could be to circulate a general request throughout the district seeking information about the existence of pools. The subsequent responses of pool owners would then be the start of a

database. However, further work is likely to be needed to discover all the pools in the district. This could involve, for example:

- house to house surveys;
- aerial surveys;
- identification of existing pools during a property inspection for some other purpose; or
- checking with Valuation New Zealand for details of properties.

- 10.5 The database could be progressively extended as applications for building consents for new pools and alterations to existing pools are received.

Pool inspections

- 10.6 Inspectors should inspect new pool fences to ensure that they comply with the Act. If the fence does not comply, owners should be informed, and told how to bring the fence up to an appropriate standard. A further inspection would be required, after a period specified by the inspector, to ensure that the owner has made the necessary changes. A code compliance certificate is to be issued to pool owners who complete work that was subject to a building consent.

- 10.6 Periodic inspections of pool fences should be made to in cases where the authority suspects that appropriate standards are not being maintained.

- 10.7 It is vital that pool owners know it is illegal to fill, or partly fill a pool while it is not fenced to the standard required.

Court action

- 10.8 Territorial authorities have an obligation to ensure that the Act is complied with, and section 9 provides a remedy for non-compliance. Territorial authorities should act through the Courts to seek sanctions against non-complying pool owners if all other steps to get compliance fail.

Costs of enforcing the act

- 10.9 Territorial authorities can recover the costs of enforcing the Act from the public at large through the general rate, or by charging pool owners inspection fees under section 690A of the Local Government Act.
- 10.10 That section provides that territorial authorities may prescribe fees for any certificate, approval, or inspection made under any Act. Such fees may recover the reasonable costs of the territorial authority for each inspection.

## **SECTION 11 – POWER OF ENTRY FOR TERRITORIAL AUTHORITY OFFICERS**

- 11.1 Section 11 of the Act provides that a territorial authority officer may, at any reasonable time, enter and inspect a property if there are reasonable grounds to believe that:
- there is an unfenced or inadequately fenced pool on the property, or
  - a condition imposed under section 6 is not being complied with.
- 11.2 Any officer entering a property must carry a warrant issued by the territorial authority which specifies the officer's name and position, and that the officer is authorised by the territorial authority to enter the land and carry out the inspection. The warrant, and evidence of identity, must be produced on first entering the property if it is practicable to do so, and whenever it may subsequently be required. The Department is of the view that the warrant can be generally worded to authorise the officer to enter any property in the area which he or she believes contains a pool not complying with the Act.
- 11.3 The Act does not authorise entry to a property on a regular basis, for example, to allow an annual check that a pool fence is being properly maintained. However, Otago University's Injury Prevention Unit reported that some territorial authorities are of the view that the passage of time in itself raises a question whether a pool fence would continue to be adequate. Those councils believe that this doubt is, of itself, a sufficient ground to authorise an inspection.
- 11.4 An officer can only gain entry to a dwelling with a warrant issued by a judicial officer (the definition of judicial officer is contained in section 2). Such a warrant can only be given to a specified officer and is valid for a maximum period of one month. A warrant may only be granted where entry is essential for an inspection to be carried out.

## **SECTION 12 – DELEGATION OF POWERS TO COMMITTEES OF COUNCILLORS**

- 12.1 A council may delegate its powers and functions, under section 6 of the Act or clause 11 of the Schedule, to grant exemptions or impose conditions on particular fences.
- 12.2 Such a delegation can only be to a committee consisting solely of elected council members. No delegation may be made to a committee with any non-elected members, or to any territorial authority officer (including any council inspector).



**SECTION 13-EFFECT OF ACT ON BYLAWS AND OTHER LAWS**  
**SECTION 13A-EFFECT OF BUILDING ACT 1991 ON BYLAWS**

- 13.1 Section 13 provides that a territorial authority may make other bylaws or enforce any other law relating to the fencing of pools to which this Act does not apply.
- 13.2 Section 13A states that a territorial authority cannot make a bylaw requiring any pool subject to the Act to achieve performance criteria greater or lesser than those specified in the Building Act or a building code.

**SECTION 13B-FENCING IN ACCORDANCE WITH SCHEDULE DEEMED A  
MEANS OF COMPLIANCE**  
**SECTION 13C-AMENDMENT AND REPLACEMENT OF SCHEDULE**

- 13.3 The Schedule to the Act is deemed to be a document establishing compliance with the Building Code. This means a fence constructed to the specifications contained in the Schedule automatically meets the requirements of the Building Code.
- 13.4 The Schedule may be amended or replaced by Order in Council.

## SECTION 14—AMENDMENT TO FENCING ACT 1978

14.1 Section 9A of the Fencing Act 1978 was inserted by the Act. It provides that:

- (a) where work on a fence is required solely because of the Fencing of Swimming Pools Act, it shall be the responsibility of the pool owner; and
- (b) no person, other than the pool owner, shall be required to make any contribution under the Fencing Act towards the fence which is greater than would have been necessary if the pool did not exist. This appears to envisage the situation where the pool fence is on part of the boundary line. In this case, the next-door neighbour only has to contribute to the cost of the fence as if it were an ordinary boundary fence.

14.2 In (a) above, the words “*work on a fence*” probably have the same meaning, as far as they are applicable, as the definition of the term in the Fencing Act. This includes “the erection, replacement, repair, and maintenance of a fence in whole or in part.”

## SCHEDULE TO THE ACT

The Schedule contains the technical requirements for existing fences, for the construction of new fences, and for alterations to existing fences. The following comments are the Department's interpretation of the Schedule's requirements.

### *Height of fence*

#### *Clause 1:*

The top of a fence must be at least 1.2 metres above the ground on its outside. It must also be at least 1.2 metres above any permanent object that is within 1.2 metres of the outside of the fence.

This means, for example, that the fence must be at least 1.2 metres above the level of any decking outside of it. It also means that there must be no trees, hedges, or stacks of wood, etc, which can be climbed, within 1.2 metres of the outside of the fence.

A problem may arise where a boundary fence forms part of a pool fence and the neighbour has trees, stacks of wood, etc within 1.2 metres of it. Under section 8 of the Act, it is the responsibility of the pool owner to ensure that the pool is fenced in compliance with the Act.

If the pool owner is unable to reach an agreement that the neighbour will keep his or her side of the fence clear, in the Department's view, the pool owner must make other arrangements that would comply with the Schedule. For example, build another fence inside the boundary fence, or ensure that the pool is not filled or partly filled with water.

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### *Ground clearance*

#### *Clause 2:*

The space between the bottom of the fence and the ground must not exceed 100 mm.

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### *Materials*

#### *Clause 3:*

The fence must be made of durable materials. The manner of construction should prevent children under the age of six from gaining access to the pool.

#### *Clause 4*

Except where the fence is horizontally close-boarded, or made of perforated material, netting, or mesh, the space between any *vertical* supporting posts, etc, may not exceed 100mm.

This clause was amended to allow the use of polypropylene netting, or mesh for fences. This material requires support only from corner posts.

### *Clauses 5 and 5A*

All fencing supports, rails, rods, wires, and bracing which are not vertical shall be inaccessible for climbing from the outside of the fence. This means that a fence can have vertical fencing supports, rails, rods, wires, or bracing on its outside. Any supports, etc, that are not vertical (for example, horizontal or near horizontal rails which could be used for climbing), must either be inaccessible from the outside, or be at least 900mm apart, with no other support (other than a vertical rail) between them.

Clauses 5 and 5A replaced the previous clause 5 to allow horizontal supports to run through the middle of a fence rather than requiring them to be entirely on the pool side of it. The requirement that there be a gap of at least 900mm between any two horizontal supports, is to ensure that small children cannot readily use them to climb over the fence.

### *Clause 6*

Where a fence is made of perforated material, netting, or mesh, no opening in that material, netting or mesh shall be greater than 50mm. When read together, clause 1(2) and clause 6 mean:

- if the openings in the perforated material, netting or mesh are 10mm or less, the fence must be at least 1.2 metres high;
- if the openings are more than 10mm, the fence must be at least 1.8 metres high; and
- an opening of more than 50mm is not permitted in any circumstances.

### *Clause 7*

Perforated material, netting, or mesh, shall be firmly attached to a rail or pipe at the top and bottom of the fence, or else be so arranged that the fence cannot be readily crossed by children under the age of six years.

This is to ensure that access to the pool cannot be gained by climbing or crawling through loose material at the top or bottom of the fence.

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## ***Gates and doors***

### *Clause 8*

Gates and doors must be constructed to comply with the relevant parts of clauses 1 to 7 of the Schedule. They must also be so mounted that:

- (a) they cannot open inwards;
- (b) they are clear of anything which could hold them open and no other means of holding them open is provided; and
- (c) when lifted up or pulled down they do not release from the latch, come off the hinges, or provide a ground clearance of greater than 100mm.

The reason for prohibiting gates and doors from opening towards the pool, is that any gate or door left unlatched cannot be opened by a young child who merely leans against it. It is more difficult for young children, especially those unsteady on their feet, to open a gate or door if they have to pull against the required self-closing device.

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### ***Operation of gates and doors***

#### *Clause 9*

Every gate or door must have a latch. Where the latch is inside the fence, and can only be reached over the top of, or through a hole in, the fence, gate, or door, the latch and the lowest point of the hole must be at least 1.2 metres above the ground on the outside of the fence.

Where the latch is on the outside of the fence, it must be at least 1.5 metres above the ground.

#### *Clause 10*

Every gate and door must have a device which will automatically close and latch it when it is stationary and 150mm from the closed position.

This is to ensure that the gate or door will not remain open when it is released. A self-closing and latching gate or door is critical to the safety of a pool. An Australian study of drownings and non-fatal accidents in pools states, “*no child scaled a fence and all children who gained access to a pool did so through an open or unlatched pool gate or house door.*”

### ***Doors in walls of buildings***

#### *Clause 11*

Where a building forms part of a fence, a door in the building wall does not have to comply with clauses 8 to 10 if a territorial authority is satisfied that:

- (a) compliance with these clauses is impossible, unreasonable, or in breach of another Act, regulation, or bylaw; and
- (b) the door is fitted with a lock that, when properly operated, prevents the door from being readily opened by children under the age of 6 years.

Diagrams 4 and 5 on page 10 **[check page number in final version]** illustrate examples of doors in buildings that form part of a fence.

Clause 11 allows territorial authorities to determine that it may be impossible to make doors in buildings conform to clauses 8 to 10 of the Schedule. In such cases, the door, including a sliding door, should have a lock, which is not easily operated by children. It would be preferable if this could also be located at a height not easily reached by children as an extra safety precaution.



It is important that councils consider carefully all applications for exemption and, if any are granted, ensure that appropriate locks are fitted to doors.

The council's powers under clause 11 can be delegated to a committee comprising only council members.

## APPENDIX A

### SUMMARY OF REPORT OF THE LOCAL BILLS COMMITTEE ON THE FENCING OF PRIVATE SWIMMING POOLS (1983)

- 1 A very large number of New Zealand children are exposed to the hazard of a private swimming pool in their immediate home environment.
- 1 Private swimming pools are a major cause of accidental death of pre-school children and are second only to motor vehicle crashes in this regard.
- 2 Reliance on education alone would achieve very little in reducing the number of pre-school drownings in private swimming pools.
- 3 Pre-school drownings in private swimming pools are preventable and pool fencing is the most effective means of achieving this.
- 4 Drownings of pre-school children in private swimming pools are both a rural and an urban problem.
- 5 The main reason given by councils for adopting a fencing provision was concern for the safety of young children.
- 6 The most frequently mentioned reasons given by councils for not adopting a fencing provision were that there were other equal or greater water hazards in the district, that such a provision would be too difficult to enforce, and that the matter was outside the council's responsibilities.
- 7 The most frequently mentioned circumstances in which those councils without fencing provisions would adopt such provisions would be a requirement by Central Government and public pressure on the council.
- 8 The Committee concluded that the overwhelming weight of evidence and argument required that private swimming pools should be fenced. In particular the Committee concluded that private swimming pools should be fenced because:
  - (a) They are a significant childhood water hazard;
  - (b) Pool fencing is the most effective means of preventing drownings of pre-school children in private swimming pools;
  - (c) It is totally impossible for parents to supervise their children every minute of the day;
  - (d) There are no equal or greater water hazards for pre-school children;
  - (e) Where there is a reasonable and viable means of protecting young children from hazards created in the environment such as private swimming pools, then those children have a right to that protection; and
  - (f) The value of aesthetically pleasing gardens cannot be placed above the value of human lives.

*Source: Appendices to the Journals of the House of Representatives, 1983, 1 10A*

## APPENDIX B

### SUGGESTED PAMPHLET FOR POOL OWNERS\*

#### FENCING OF SWIMMING POOLS ACT 1987

*\*Territorial authorities may, if they wish copy or amend this suggested pamphlet and distribute it to households.*

- **WHY DO I HAVE TO FENCE MY SWIMMING POOL?**

A private swimming pool is a significant asset for the home. It becomes the centre of activities in summer; the place for the family to sit around in the evenings or when friends come over for a barbie. A place to relax, or even to talk business in relaxed surroundings.

It can also be a deadly danger for small children. Sadly, a significant number of toddlers drown in private swimming and spa pools. The natural attraction water has for small children and the existence of private pools is a dangerous combination.

You may not have small children. You may have grandchildren, or perhaps the children of relatives or friends may come to visit you. Most often, the children who drown in private pools live on or are visitors to the property. So, it is not just to protect children who may stray onto your property, that private pools need to be fenced.

Ask anyone with practical experience of minding children. They will tell you that it is not possible to constantly supervise small children. Even the most careful parent may become distracted for two or three minutes. That is enough time for a small child to get to, and fall in an unfenced or unsecured pool. Even if a toddler is saved from drowning, the outcome is not always a happy one. If a child's brain is deprived of oxygen for only a few minutes, it can suffer moderate to severe damage. There are even suggestions that mild, otherwise undetectable damage may generate subtle changes in the later behaviour of children.

Some years ago Parliament decided that there was no reason for children to continue to fall into private pools and drown, or suffer brain damage, where this could be almost entirely avoided by adequate fencing. Parliament's answer was the Fencing of Swimming Pools Act 1987.

- **WHAT IS THE ACT ABOUT?**

The Fencing of Swimming Pools Act exists to protect young children from the dangers of unfenced swimming pools and spa pools. It does this by requiring owners to fence their pools.

- **WHOM DOES THE ACT APPLY TO?**

Pool owners, and people, including tenants, with pools on their property, all have duties under the Act.

Pool owners must tell the council if they have a pool or are intending to get or build a pool. A building consent is required before constructing any type of pool or altering a fence around a pool. All pools must be fenced to the standard set out in the Act. If a pool is not fenced to this standard, the owner must ensure that the pool is kept empty.

Everybody renting or leasing a house with a pool must ensure the pool is empty if it does not have a fence, which complies with the Act.

This council is required to take all reasonable steps to make sure that the Act is complied with.

- WHICH POOLS NEED TO BE FENCED?

All private pools and spa pools have to be fenced unless:

- the maximum depth is 400mm or less; or
- the walls of the pool are 1.2 metres or more above the ground (or the pool's surrounds). This means no permanent means of access such as steps are allowed and temporary steps must be removed after being used; or
- the pool is indoors

- WHERE MUST THE FENCE BE BUILT?

The fence may only surround the pool and the area immediately around the pool. This area can only include things used in association with the pool, for example, a sunbathing deck or a changing shed. **It may not include the clothesline, barbecue or a vegetable garden.** A secure boundary fence is not, on its own sufficient. It would not comply with the Act. However, subject to strict conditions, part of a boundary fence may be used as a part of a pool fence.

If a boundary fence is made use of, there is a danger that a neighbour may unwittingly make the fence unsafe. For example, the neighbour may stack timber against the fence so that it becomes easy for a child to climb over into the pool area.

- WHAT ABOUT AN EXISTING POOL?

There are still existing pools, which were built prior to the Act coming into force. These were often subject to a bylaw which only required that the property itself be adequately fenced. This reflected the view at that time, that the greatest danger arose through children straying onto a property. This does happen, but later research in New Zealand and overseas has shown that the majority of accidents happen to the children of pool owners or of their legitimate visitors.

Therefore, the Act requires that all pools must be fenced to the standard set by it.

- CAN A BUILDING FORM PART OF A FENCE?

Buildings can form part of a fence but have to meet certain requirements in the Act.

- CAN POOL OWNERS BE EXEMPTED FROM THE ACT?

Pool owners can apply to the council for an exemption from the Act. The council, in granting an exemption, could specify certain conditions that the pool or the property must meet. The council can only grant an exemption or a special condition if this would **not significantly increase danger to young children.**

- WHAT STANDARD OF FENCING IS REQUIRED?

Pool fences must meet the standard required by the Act. This requires existing pools to be fenced to the specifications of the schedule to the Act. A new fence or alterations to an existing fence must meet the performance standard of the Building Code. Ask the council for information about the criteria that your fence must conform to.

The Schedule of the Act set out specifications which, if followed, will automatically ensure that a swimming pool or spa pool fence meets the performance standard of the Building Code.

- WHAT HAPPENS IF I USE AN UNFENCED POOL?

Any person who uses an unfenced pool commits an offence under the Act, and is liable to a fine. Criminal proceedings were recently taken against the tenants of a property with an unfenced pool in which a small child drowned. Both tenants were convicted and required to pay substantial fines.

- NEED FURTHER INFORMATION?

Council officers can provide you with the information you need.

Our postal address is:

our telephone no. is:

email:

The person to ask for is:

# **The Fencing of Swimming Pools Act 1987 Guidelines for Territorial Authorities**

Local Government Services  
Department of Internal Affairs  
PO Box 805  
Wellington

August 1999

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NZS 8500:2006

New Zealand Standard

# **Safety Barriers and Fences Around Swimming Pools, Spas and Hot Tubs**

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## NZS 8500:2006

### COMMITTEE REPRESENTATION

This Standard was prepared under the supervision of the P 8500 Safety of Swimming Pools Committee for the Standards Council established under the Standards Act 1988.

The committee consisted of representatives of the following:

#### Nominating Organisation

BRANZ Ltd  
Department of Building and Housing  
Injury Prevention Network of Aotearoa New Zealand Inc.  
Institute of Public Policy  
Local Government New Zealand  
New Zealand Institute of Architects Inc.  
New Zealand Master Pool Builder's Guild  
Registered Master Builders Federation  
Royal New Zealand Plunket Society  
Safekids New Zealand  
Water Safety New Zealand  
WaterSafe Auckland Inc.

### ACKNOWLEDGEMENT

Standards New Zealand gratefully acknowledges the financial support provided by the Accident Compensation Corporation, Department of Building and Housing, and Water Safety New Zealand, and the contribution of time and expertise from all those involved in developing this Standard.

In particular, we wish to thank WaterSafe Auckland Inc., Water Safety New Zealand and Standards Australia for generously supplying material from their organisational resources for use in this Standard.

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### REVIEW OF STANDARDS

It is intended that the Standard for *Safety barriers and fences around swimming pools, spas and hot tubs* remains a dynamic and useful document. In order to achieve this, a regular review of the Standard is required to ensure it remains appropriate and applicable.

Suggestions for improvements of this Standard will be welcomed. They should be sent to the Chief Executive, Standards New Zealand, Private Bag 2439, Wellington 6140.

### AMENDMENTS

No.	Date of issue	Description	Entered by, and date

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**NZS 8500:2006**

New Zealand Standard

**SAFETY BARRIERS AND  
FENCES AROUND  
SWIMMING POOLS,  
SPAS AND HOT TUBS**

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## REFERENCED DOCUMENTS

Reference is made in the document to the following:

### NEW ZEALAND STANDARD

NZS 8690:2003 Water safety signage

### AMERICAN STANDARDS

ASTM F1346-91 (2003) Standard performance specification for safety covers and labeling requirements for all covers for swimming pools, spas and hot tubs

ASTM F2208-02 Standard specification for pool alarms

UL 2017-2002 UL Standard for safety general-purpose signaling devices and systems

### OTHER PUBLICATIONS

Chalmers, D., McNoe, B., Stephenson, S. and Langley, J. Drowning, near-drowning and other water-related injury: literature review and analysis of national injury data. Report to ACC. May 2004. Located at [www.acc.co.nz/wcm001/groups/external\\_ip/documents/internet/wcm2\\_020857.pdf](http://www.acc.co.nz/wcm001/groups/external_ip/documents/internet/wcm2_020857.pdf) (on 1 November 2006).

Child and Youth Mortality Review Committee. Circumstances surrounding drowning in those under 25 in New Zealand (1980 – 2002). 2005. Located at [www.newhealth.govt.nz/cymrc/publications/watersafetyreport.pdf](http://www.newhealth.govt.nz/cymrc/publications/watersafetyreport.pdf) (on 1 November 2006).

Drownbase™ Drowning statistics. Located at [www.watersafety.org.nz/drowning/index.asp](http://www.watersafety.org.nz/drowning/index.asp)

### NEW ZEALAND LEGISLATION

Building Act 2004 and the New Zealand Building Code

Fencing Act 1978

Fencing of Swimming Pools Act 1987

Local Government Act 2002

### LATEST REVISIONS

The users of this Standard should ensure that their copies of the above mentioned referenced Standards are the latest revisions or include the latest amendments. Amendments to referenced New Zealand and joint Australian/New Zealand Standards can be found on [www.standards.co.nz](http://www.standards.co.nz)

## USEFUL WEBSITES

ASTM (American Society for Testing and Materials)	<a href="http://www.astm.org">www.astm.org</a>
BRANZ Ltd.	<a href="http://www.branz.co.nz">www.branz.co.nz</a>
Department of Building and Housing	<a href="http://www.dbh.govt.nz">www.dbh.govt.nz</a>
Injury Prevention Network of Aotearoa New Zealand Inc.	<a href="http://www.ipn.org.nz">www.ipn.org.nz</a>
Institute of Public Policy	<a href="http://www.aut.ac.nz">www.aut.ac.nz</a>
Local Government New Zealand	<a href="http://www.lgnz.co.nz">www.lgnz.co.nz</a>
New Zealand Institute of Architects Inc.	<a href="http://www.nzia.co.nz">www.nzia.co.nz</a>
New Zealand Legislation	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>
New Zealand Master Pool Builders Guild	<a href="http://www.poolguild.org.nz">www.poolguild.org.nz</a>
Registered Master Builders Federation	<a href="http://www.masterbuilder.org.nz">www.masterbuilder.org.nz</a>
Royal New Zealand Plunket Society	<a href="http://www.plunket.org.nz">www.plunket.org.nz</a>
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WaterSafe Auckland	<a href="http://www.watersafe.org.nz">www.watersafe.org.nz</a>

## PREFACE

Drowning is a major cause of the accidental deaths of young children in New Zealand. Many drownings happen in private houses, in unfenced or inadequately fenced swimming pools, spa pools and hot tubs. (For the purposes of this Standard the terms 'spa pools' and 'spas' are interchangeable.)

Concern about these unnecessary deaths and other non-fatal accidents led Parliament to enact the Fencing of Swimming Pools (FOSP) Act in 1987. The Department of Building and Housing took over the administration of this legislation in October 2006. The FOSP Act requires that, in the absence of a specific individual exemption, every residential swimming pool, spa pool and hot tub is properly fenced in accordance with the specific requirements of the Act.

Water Safety New Zealand statistics show that drownings of children under the age of 6 years have steadily decreased since the introduction of the FOSP Act.

However, New Zealand still has the highest rate of youth drownings among OECD countries, at almost twice the rate of our nearest neighbour Australia.<sup>1</sup>

A 2005 report from the Child and Youth Mortality Review Committee reported 42 % of all drownings of 1 to 4 year olds were in home pools.<sup>2</sup> This has led the Accident Compensation Corporation, Department of Building and Housing and Water Safety New Zealand to sponsor the development of this Standard.

The aim of NZS 8500 is to assist New Zealanders to avoid pool-related drowning by providing various options which are designed to deny, delay or detect unsupervised entry to the swimming pool area by young children.

The committee has developed this Standard on the basis that the ultimate responsibility for avoiding fatal and near-fatal outcomes due to drowning as well as maintaining the integrity of all layers of protection lies with the property owner or person in possession of the property, adult supervisor or person in control of the pool.

All existing and future pool owners/users and members of the pool building industry are urged to make use of this Standard as soon as it is published in a bid to reduce drownings among the very youngest New Zealanders.

---

1 Chalmers, D., McNoe, B., Stephenson, S. and Langley, J. Drowning, near-drowning and other water-related injury: literature review and analysis of national injury data. Report to ACC. May 2004.

2 Child and Youth Mortality Review Committee. Circumstances surrounding drowning in those under 25 in New Zealand (1980 – 2002). 2005.

## FOREWORD

Protecting young children from accidental drowning and near-drowning in all water environments, whether natural or constructed, is a primary concern for parents, the aquatic industry, manufacturers of swimming pools, hot tubs and spas, health and water safety organisations, and regulators. Many fatalities and near-fatal drowning incidents involving young children happen in private houses, in unfenced or inadequately fenced swimming pools, spas and hot tubs.

To this end, organisations such as the Accident Compensation Corporation (ACC), Water Safety New Zealand, Royal New Zealand Plunket Society, BRANZ Ltd, territorial authorities, water and child safety organisations, the Department of Building and Housing (DBH) and spa and pool manufacturers, architects and designers, all recognise that restricting unsupervised access to pools coupled with constant adult supervision while in the pool enclosure are the primary elements in an integrated approach to drowning prevention for young children.

Water Safety New Zealand figures show that 34 % of total drownings of children under the age of 6 occurred in home pool/spa/hot tubs, between January 2001 and December 2005, compared to 44 % for the time period January 1980 to July 1987.

The following table compares home drowning with the total drownings of children in this age group after different time periods.

Time period	Home pool/Spa/Hot tub drownings of children under 6 years of age	Total drownings of children under 6 years of age
1 January 1980 to 31 July 1987 (seven years)	77 (Approx. 10 each year)	175 (Approx. 23 each year)
1 August 1987 to 31 December 1995 (nine years)	53 (Approx. 6 each year)	122 (Approx. 15 each year)
1 January 1996 to 31 December 2000 (four years)	26 (Approx. 5 each year)	67 (Approx. 13 each year)
January 2001 to 31 December 2005 (five years)	19 (Approx. 4 each year)	55 (Approx. 11 each year)

Source: Drownbase™

The aim of this Standard is to assist people to avoid a swimming pool-related drowning. The various options are specifically intended to deny, delay, and/or detect unsupervised entry to residential swimming pool areas including areas around spas and hot tubs. While supervision is important in preventing drowning, academic research has consistently and conclusively reported that isolation barriers are the most effective means to prevent young children from drowning in residential pools.

Unless adequate barriers are in place between the pool and areas ordinarily frequented by the child, it is unavoidable that small children will occasionally escape from supervision and be exposed to the risk of drowning. Being caught off guard does not have to mean being unprepared.

For those instances when there may be a lapse in supervision and the unexpected does occur, NZS 8500 *Safety barriers and fences around swimming pools, spas and hot tubs* has been developed to provide for layers of protection to supplement and complement the requirement of adult supervision of young children around residential swimming pools, spas and hot tubs.

The Standard provides options for the location of effective safety barriers to restrict the access of young children to swimming pools, as well as specifying requirements for the design, construction and performance of the fences, gates, retaining walls and doorsets and all structures that are intended to form a barrier to restrict the access of young children to swimming pools.

These requirements have been specified with the intention of providing a degree of flexibility to the pool owner in terms of the choice of fence and cost, while not compromising the safety of young children.

The committee has developed this Standard on the basis that territorial authorities will gradually seek an upgrade of existing pools over a transitional period. It is expected that this transitional phase would be completed within five years of the publication of this Standard.

The intention in developing NZS 8500 is that Government will be able to consider using it as a replacement for the Schedule in the Fencing of Swimming Pools (FOSP) Act. Until an amendment is made to the FOSP Act, the Standard will provide valuable guidance to territorial authorities in enforcing the FOSP Act for both new and existing pools. This Standard is a multi-purpose document. It is intended to become a compliance document under the New Zealand Building Code for new pools in addition to being used by territorial authorities in developing safe solutions for existing pools, once the Standard replaces the Schedule to the FOSP Act.

The ultimate responsibility for avoiding fatal or near fatal outcomes due to drownings and for maintaining the integrity of all layers of protection lies with the property owner or person in possession of the property.

Supervision of all young children in the vicinity of water is vital and this responsibility for avoiding fatal or near fatal outcomes lies with the adult supervisor or person in control of the pool.

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**NOTES**

New Zealand Standard

# Safety Barriers and Fences around Swimming Pools, Spas and Hot Tubs

## 1 General

### 1.1 Scope

This section specifies requirements for the location of effective safety barriers that will restrict the access of young children to new and existing swimming pools. These include residential and other pools where persons are not employed and present to provide supervision of the pool whenever the pool is available for use, as defined by the FOSP Act.

NOTE –

- (1) This Standard does not apply to baths, including spa baths within houses.
- (2) The location of the barriers should be related to the need for protection and should take into account all the circumstances of the particular site. Most drowning victims in private pools are under the age of six years and either live at the address or are invited visitors (refer to Drownbase™ 2005 Drowning Statistics).
- (3) Guidance on factors to be considered in selecting the location of barriers is given in section 2.
- (4) The type of barrier and the location of the pool within the property should ideally permit observation through or over the barrier so that the pool area may be directly viewed from commonly used areas of the house or yard.
- (5) Information and guidance for new and existing pools is given in 2.3.

### 1.2 Definitions

For the purpose of this Standard, the following definitions shall apply.

**ARC OF OPERATION.** The unaided movement of a gate, covering its operation area for access to or from the pool area.

**BARRIER (including SAFETY BARRIER).** The assembly of components intended to restrict the access of young children to the pool. The barrier can include items such as posts and panels, fencing, gates and doorsets, constructed or natural walls, sides of houses, child-resistant windows or balustrades on a balcony.

**CHILD-RESISTANT DOORSET.** Comprises a door, door frame, self-closing device and self-latching device, that are designed to provide an access way to the swimming pool from a house.

**CHILD-RESISTANT WINDOW.** Comprises a window, window frame and device that limits the window opening to less than 100 mm.

**FENCE/FENCING.** A barrier comprising a fence and associated gate or gates.



**FENCING HEIGHT.** The minimum height perpendicular to the finished floor level or ground level at any point along the length of the fencing, measured on the outside of the fencing (see figure 3.2).

**FINISHED FLOOR LEVEL (FFL).** A permanent stable surface, such as the top of tiles, timber or concrete, not including vinyl covering, carpet or similar.

**FINISHED GROUND LEVEL (FGL).** A permanent ground/landscaped level, such as lawns, gardens, soil or gravel.

**GATE.** Any portion of the barrier/fencing other than a child-resistant doorset that is designed to provide an access way through the barrier/fence. A gate is not designed to provide an access way to the swimming pool from a house. Double gates shall either independently self-close and self-latch or one leaf of the gate shall be permanently fixed in a closed position with the second leaf complying with 3.4.

**HOUSE.** A house or dwelling includes a home unit, apartment building, school, hospital, hotel, motel, and camping ground.

**IMMEDIATE POOL AREA.** The land in, or on which the pool is situated and so much of the surrounding area as is used for activities or purposes carried on in conjunction with the use of the pool. For further clarification, including examples, see 2.2.

**INSIDE OF THE FENCE/FENCING.** That side of a barrier/fence or gate which faces the pool area.

**ISOLATION BARRIER.** A continuous barrier/fence enclosing the immediate pool area.

**OUTSIDE OF THE FENCE/FENCING.** That side of a barrier/fence or gate which faces away from the pool area.

**SWIMMING POOL and POOL.** An excavation, structure or product that is used or is capable of being used for the purpose of swimming, wading, paddling or bathing; and includes any such excavation, structure or product that is a spa pool or hot tub. (For the purposes of this Standard the terms 'spa pools' and 'spas' are interchangeable.)

**NOTE –** For further clarification refer to the FOSP Act ([www.legislation.govt.nz](http://www.legislation.govt.nz)).

**TERRITORIAL AUTHORITY (TA).** Any city or district council.

**NOTE –** For further clarification refer to the Local Government Act ([www.legislation.govt.nz](http://www.legislation.govt.nz)).

**YOUNG CHILD.** A child under the age of six years.

### 1.3 Interpretation

For the purposes of this Standard the word 'shall' identifies a mandatory requirement for compliance with the Standard. The word 'should' refers to practices which are advised or recommended.

The term 'informative' has been used in this Standard to define the application of the appendix to which it applies. An 'informative' appendix is for information and guidance and does not form part of the mandatory requirements of the Standard. However, where an informative appendix specifies a prescribed test procedure, the word 'shall' used in it means that if users elect to conduct this test, it shall be undertaken exactly as set out in the appendix.

Clauses prefixed by 'C' and printed in italic type are intended as comments on the corresponding mandatory clauses. They are not to be taken as the only or complete interpretation of the corresponding clause, nor should they be used for determining in any way the mandatory requirements for compliance with a Standard.

The full titles of referenced documents cited in this Standard are given in the list of Referenced Documents immediately preceding the Foreword.

## 1.4 Legislation

It is intended that this Standard will be cited in the FOSP Act as replacing the Schedule.

## 1.5 Requirement for building consent applications

The Building Act requires that building consents be obtained for all new swimming pools, spa pools and hot tubs, and for any alterations to existing swimming pools, spa pools and hot tubs and their barriers/fences. It is the responsibility of the Territorial Authority (TA) or Building Consent Authority (BCA) to enforce this requirement.

NOTE – Under the Building Act spa pools and hot tubs are classified as buildings and require a building consent before installation.

### **C1.1.5**

*When applicants cannot agree with a TA or BCA about building work, a determination may resolve the matter. A determination is a legally binding decision made by the Department of Building and Housing (DBH) and provides a way of solving disputes or questions about the rules that apply to buildings, building accessibility, and health and safety.*

*As the Building Act is not retrospective, existing pool fences are required to meet the requirements specified in the FOSP Schedule.*

## 1.6 Inspections

Enforcement of the legislation and the Standard is an integral component of home pool compliance. See Appendix A for the inspection regime.

## 2 Options for the location of safety barriers and fences for swimming pools, spas and hot tubs

### 2.1 Introduction

The most effective way to prevent drowning is to isolate the pool from the house with an isolation barrier.

Young children are inquisitive and tend to be attracted to water. This attraction is one reason why the existence of a pool is particularly dangerous to young children. Pool barriers/fences safeguard a child even when a parent/caregiver is not able to constantly supervise them.

This Standard provides alternatives in the form of layers of protection in order to restrict the access of young children to swimming pools, spas and hot tubs.

### 2.2 General

The definition of 'immediate pool area' is important to understanding the responsibilities of a property owner(s) or person(s) in possession of the property, adult supervisor or person in control of the pool, as it defines the area, along with the pool, which shall be enclosed by the barrier/fence.

The immediate pool area could include the pool, its decking, changing sheds, an ornamental garden or landscaped area and a barbecue and outdoor furniture, but not a vegetable garden, clothes line, children's play areas or equipment, as these are not used in conjunction with the pool.

Tool sheds, garages, children's sand pits, vegetable gardens, clothes lines and other children's play equipment not associated with the use of the pool shall be located outside the pool area to reduce the likelihood of self-closing gates or doors being propped open in order to gain access.

Whenever a young child is inside a pool area, constant adult supervision is essential. Increasing the area and utilities inside the pool area may increase this responsibility. It is essential that a separate outdoor safe play area for children is available directly from the house.

The activities within the immediate pool area must be closely connected or associated with the use of the pool and may, but do not have to be carried out exclusively with use of the pool. It does not matter that the particular activity can be carried out independently of the use of the pool.

The distance of the barrier/fence from the pool should take into consideration a safety margin sufficient to discourage diving and jumping from the barrier/fence into the pool. The barrier/fence should be located within enough distance from the pool to allow visual supervision of the children.

## 2.3 Requirements for new and existing pools

### 2.3.1 General

NZS 8500 has been developed on the basis that TAs will gradually seek an upgrade to existing pools over a transitional period. It is expected that this transitional phase would be completed within 5 years of the publication of this Standard.

### 2.3.2 Specific requirements for pools

For new and existing pools at least one of the following requirements shall be met:

- (a) The pool shall be enclosed by an isolation barrier (see figure 2.1(a));
- (b) The pool shall be enclosed by an isolation barrier which includes boundary fences (see figure 2.1(b));
- (c) The pool shall be enclosed by an isolation barrier, where a wall of a house forms part of the barrier (see figure 2.1(c));
- (d) The pool shall be enclosed by an isolation barrier where a wall of a house contains a child-resistant window (see figure 2.1(d));
- (e) The pool shall be enclosed by an isolation barrier where a wall of a house contains a child-resistant window and/or a child-resistant doorset or doorsets, regardless of the direction of door swing (see figure 2.1(e)); or
- (f) The pool shall be enclosed by an isolation barrier where a wall of a house contains doors opening from the house to the immediate pool area (regardless of direction of door swing). Should the doors not be self-closing and self-latching, then a lockable door latch 1500 mm above finished floor level shall be provided on every opening door-set. In addition there shall also be:
  - (i) An automatic pool cover that complies with ASTM F1346-91, and
  - (ii) An alarm complying with UL 2017 capable of detecting unauthorised access from the house into the immediate pool area, and that when activated emits a sound of 85 decibels or more to be heard from the house.

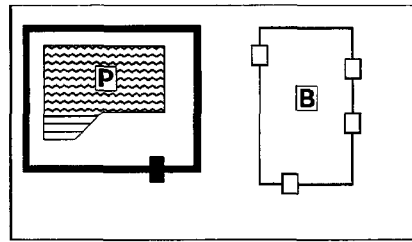
Where an automatic pool cover is not installed in an existing pool, an alarm that complies with UL 2017 and a pool alarm that complies with ASTM F2208 shall be fitted in addition to lockable door latches at 1500 mm from the finished floor level including safety signage on every doorset.

#### NOTE –

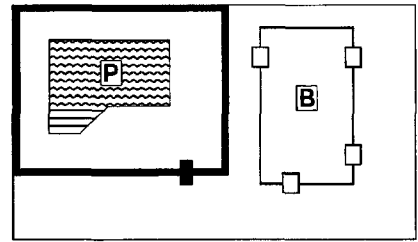
- (1) A pool alarm that complies with ASTM F2208 provides additional protection and may also be used in conjunction with any of the above methods.
- (2) The TA has the authority under the FOSP Act to provide an exemption for a specific pool and the Department of Building and Housing can make determinations on specific pools.

It is the responsibility of the property owner(s) or person(s) in possession of the property on which any pool is situated to ensure that the pool is not filled or partly filled with water at any time when the person(s) knows or could reasonably be expected to know that the pool/fence/barrier does not comply with this Standard. This means that the property owner(s) or person(s) in possession of the property must check that any layers of protection are functioning at all times.

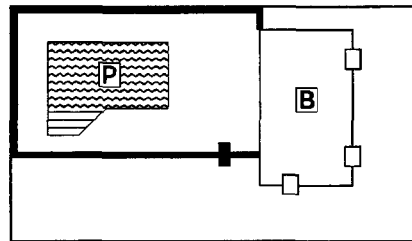
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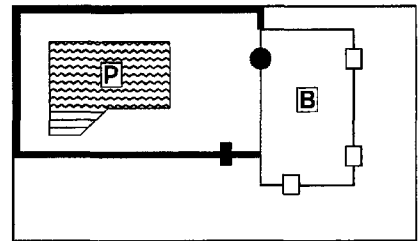
(a) Isolation barrier



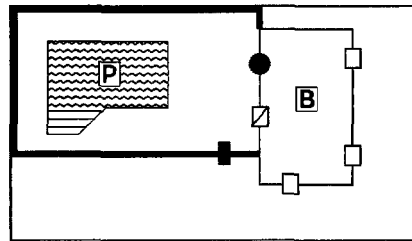
(b) Isolation/boundary



(c) Isolation/boundary/building



(d) Isolation/boundary/building/window



(e) Isolation/boundary/building/window/door

LEGEND

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>Ⓟ Pool</li> <li>Ⓛ Building</li> <li>□ Window or door</li> <li>■ Gate complying with 3.4</li> <li>⊠ Child-resistant doorset (self-closing and latching) complying with 3.7.1</li> </ul> | <ul style="list-style-type: none"> <li>● Child-resistant operable portion of window complying with 3.6</li> <li>— Property boundary</li> <li>— Fence, retaining wall or other such barrier complying with 3.3</li> </ul> |
|---|--|

Figure 2.1 – Typical examples of outdoor pool barriers (not to scale)

## **2.4 Requirements of barriers/fences**

Fences, gates, retaining walls and other such barriers in figure 2.1 shall comply with 3.2.

## **2.5 Boundary fences**

It is the obligation of the property owner(s), or person(s) in possession of the property to ensure that where the boundary fence forms part of the pool fencing it continues to provide a complying barrier.

The property owner(s), or person(s) in possession of the property shall ensure that neighbours do not permanently place climbable objects adjacent to the fence compromising the barrier/fence. See figure 3.2.

NOTE – The Fencing Act provides recourse for an owner to negotiate fence construction with their neighbour.

## **2.6 Balcony**

A balcony projecting into a pool area shall comply with 3.8.

## **2.7 Indoor pools**

### **2.7.1 Fully indoor pool**

Access to a fully indoor pool shall be via a child-resistant doorset or doorsets that is compliant with this Standard (see 3.7.1). Where windows are present in the pool barrier they shall be made to be child-resistant.

### **2.7.2 Partly indoor pool**

Where the pool is partly in an indoor area that extends directly into an outdoor area, each area shall be treated in the same way as a pool in that exclusive area.

The indoor section of the pool barrier shall only be accessible via a pool gate or child-resistant doorset that complies with 3.4 or 3.7.1.

The outdoor section of the pool barrier shall only be accessible via a pool gate, child-resistant doorset or appropriate pool barrier that complies with 3.4, 3.5 or 3.7.1.

## **2.8 Ornamental ponds**

This Standard does not apply to any excavation, structure or product in which the maximum depth of water does not exceed 400 mm. Refer to [www.legislation.govt.nz](http://www.legislation.govt.nz) for the Fencing of Swimming Pools Act definition of swimming pool, including section 5 exemptions for swimming pools.

## **2.9 Access to the house through the pool area**

Access to the house from outside the property shall not be through the pool area.

Where compliance is impossible, unreasonable or in breach of any other Act, regulation or bylaw, then a special exemption or determination may be sought from the TA or the DBH. Considerations may include additional layers of protection incorporating at least one of the following:

- (a) Automatic pool covers that comply with ASTM F1346-91;
- (b) Alarms complying with ASTM F2208, with warning signage required in accordance with section 5; or
- (c) Any barrier/fence approved by the TA or DBH through the special exemption/determination process.

## **2.10 Pools under construction**

Once a pool contains more than 400 mm of water it shall be isolated by a construction fence that complies with this Standard.

### **3 Design of safety barriers and fences for swimming pools, spas and hot tubs**

#### **3.1 General**

##### **3.1.1 Scope**

This section of the Standard specifies requirements for the design, construction and performance of barriers/fences, gates, retaining walls, windows, doorsets and balconies intended to restrict the access of young children to swimming pools, including residential pools and other pools where persons are not employed and present to provide supervision of the pool whenever the pool is available for use.

NOTE – Appendix B gives a broad guide to some of the key construction criteria which need to be met by some of the more common types of barriers/fences, in order to comply with the requirements of this Standard.

#### **3.2 Design and construction of elements of a barrier/fence**

##### **3.2.1 General**

A barrier/fence shall be designed and constructed so that at any point the outside of the barrier will restrict access to young children. The barrier/fence shall be a permanent structure.

##### **3.2.2 Materials and finish**

Barriers/fences may be constructed from any type of material, provided that the finished barrier/fence complies with the requirements of this Standard. New barriers/fences shall also comply with the New Zealand Building Code, in particular Clause B2 'Durability'.

#### **3.3 Barriers/fencing**

##### **3.3.1 Barrier and fence dimensions and proximity requirements**

The effective barrier/fencing height shall be not less than 1200 mm (see figure 3.1 and figure 3.2).

There shall be no climbable objects on the outside within 1200 mm of the top of the barrier/fence (see figure 3.2).

The height shall be considered to be effective if a quadrant of radius 1200 mm, located as shown in figure 3.2, provides a clear span of 1200 mm to finished ground or floor level, or to any projections from, or weight bearing objects on, the ground, except for objects non-climbable by a young child which are able to be positioned within the 1200 mm radius.



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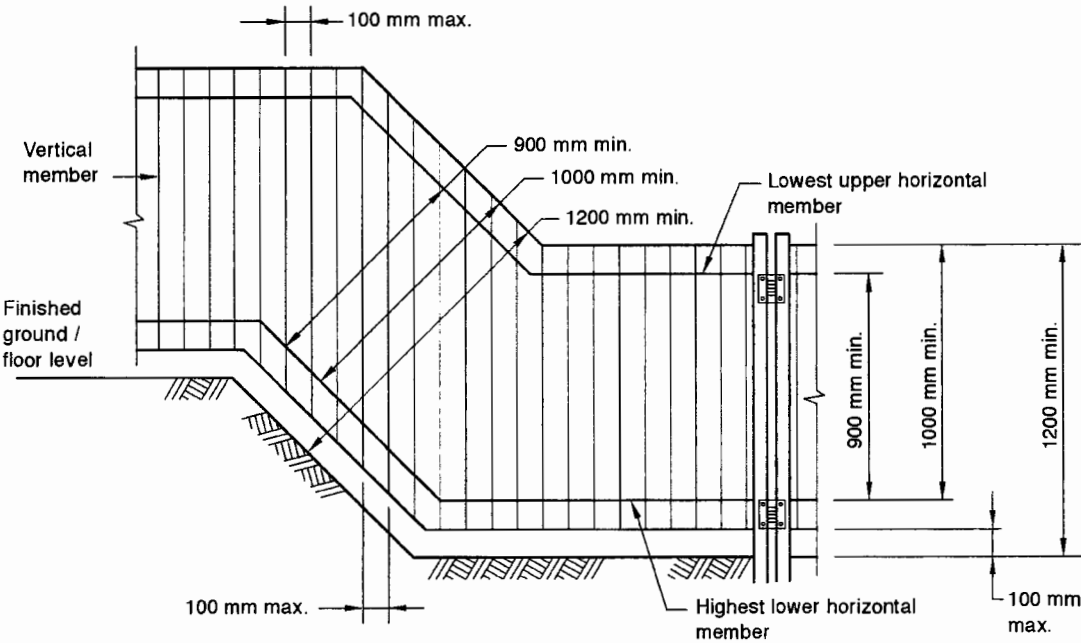


Figure 3.1 – Perpendicular fencing dimensions on sloping ground

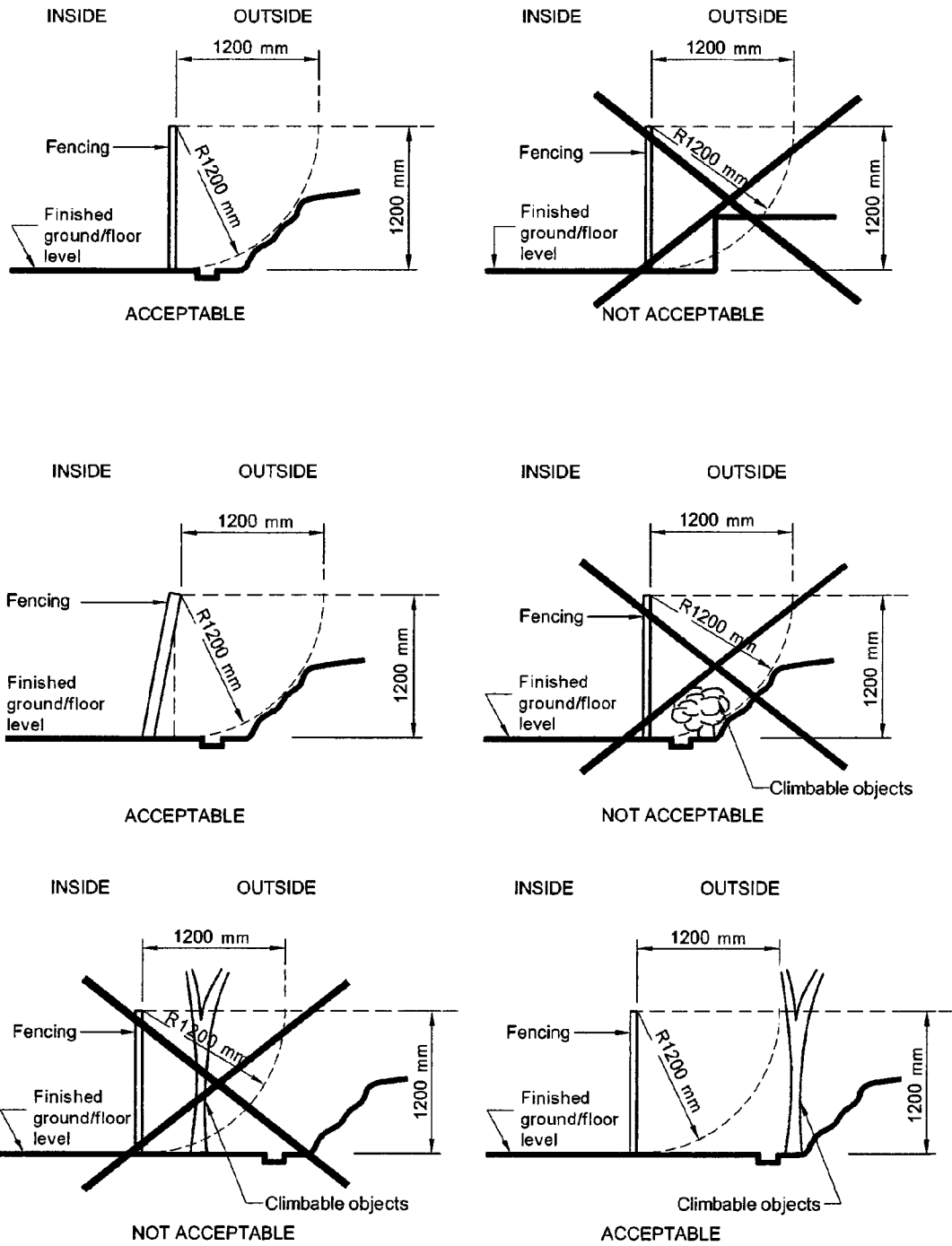


Figure 3.2 – Effective fencing height

**3.3.2 Perforated material, mesh or trellis**

For barriers/fences 1200 mm and above in total height, the aperture size of the fencing materials shall be no greater than 10 mm diameter (see table 3.1 and figure 3.3).

For barriers/fences 1800 mm and above in total height, the aperture size of the fencing materials shall be no greater than 35 mm diameter.

For barriers/fences 3000 mm and above in total height, the aperture size of the fencing materials shall be no greater than 53 mm diameter.

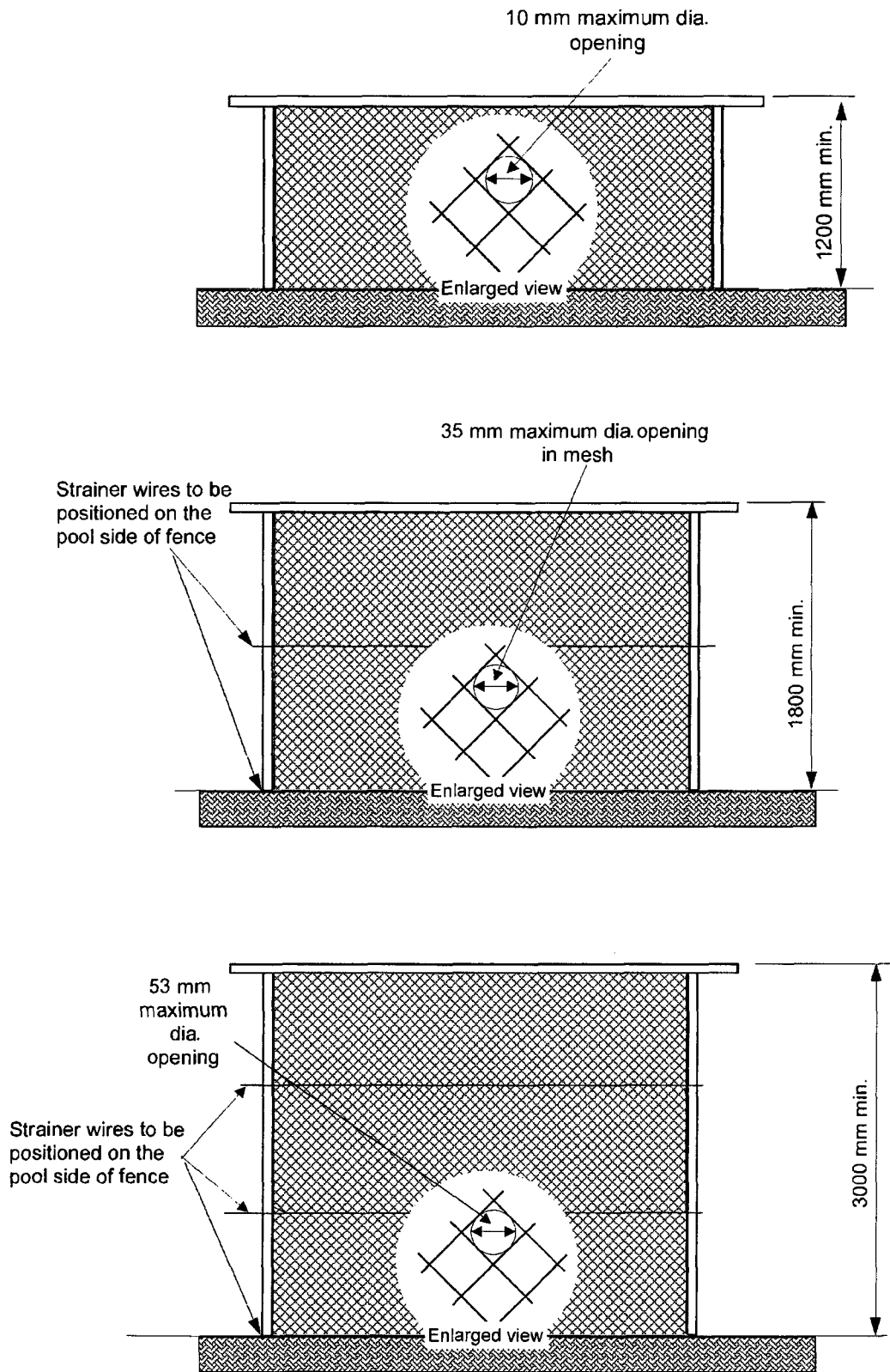
Barriers/fences using link mesh or fabric shall include a strainer wire or rail at the top and the bottom of the barrier.

Barriers/fences that require a strainer wire to be used to maintain their rigidity at finished floor or ground level shall be located at or below finished floor/ground level.

**Table 3.1 – Maximum apertures for size of barriers/fencing**

<b>Fence height (mm)</b>	<b>Apertures max. diameter (mm)</b>
1200 and above	10
1800 and above	35
3000 and above	53

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NOTE – Consideration is to be given to the climbability of adjoining fences, barriers and other objects.

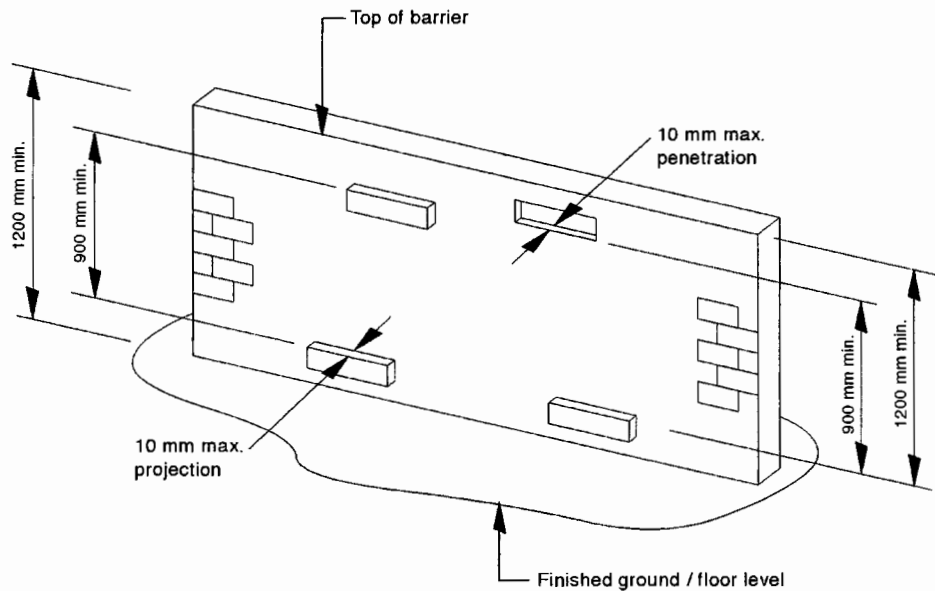
**Figure 3.3 – Maximum aperture size on fencing**

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### 3.3.3 Outside surface

Projections from or indentations into the outside surface of the barrier/fencing, or any combination of projections and indentations, shall not form a substantially horizontal surface with a depth greater than 10 mm, unless they are spaced not less than 900 mm vertically apart and provided that the lower projections or indentations are at least 1000 mm below the top of the barrier/fencing (see figure 3.4 and figure 3.5).

The barrier/fence shall be designed to be vertical, or where specifically designed to lean towards the pool, it shall not do so by more than 15° to the vertical (see figure 3.7).



**Figure 3.4 – Barriers/fencing with projections such as ornamental brick or stonework**

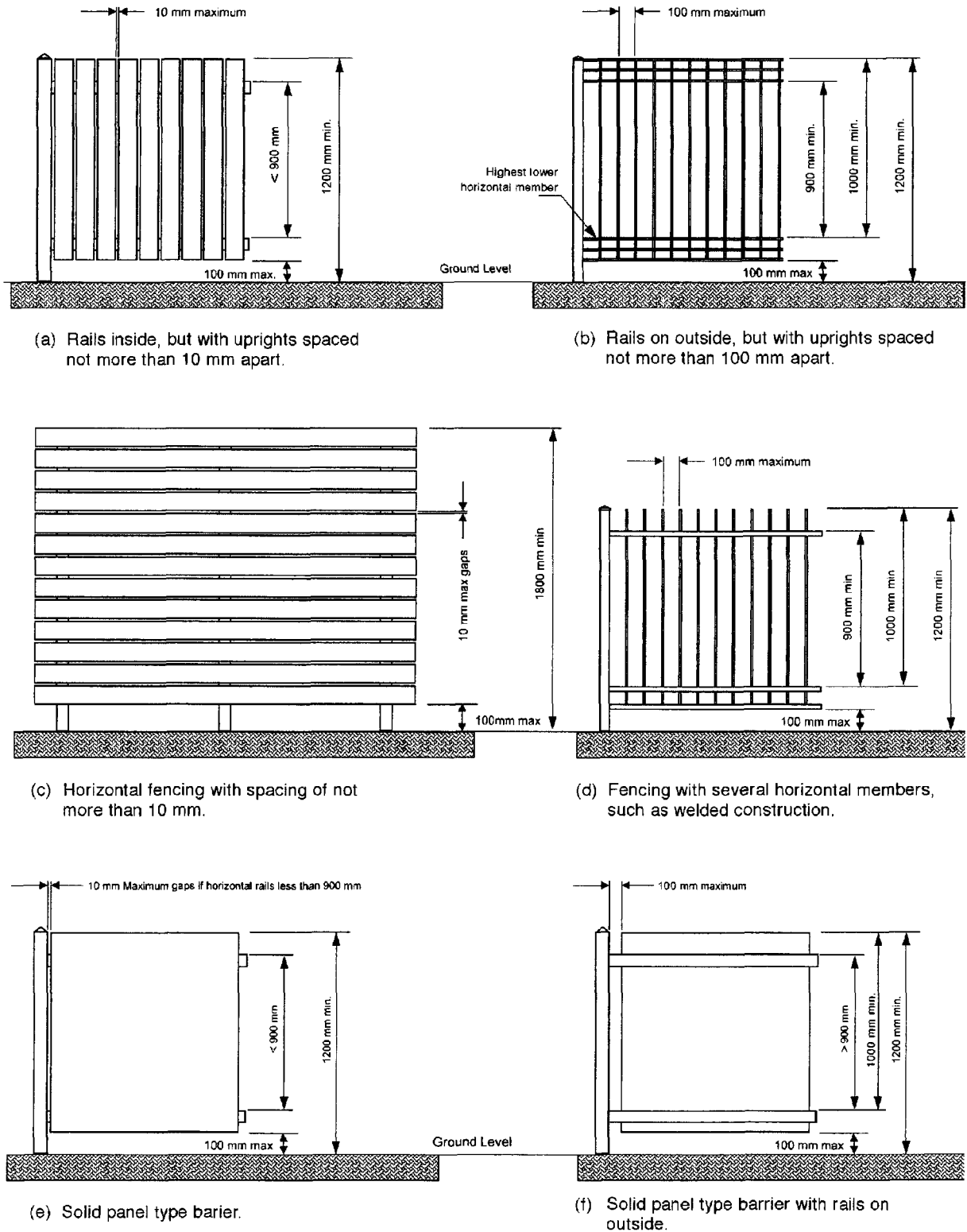
### 3.3.4 Horizontal climbable members

Where barrier/fencing components provide a substantially horizontal surface, such as rails, rods, wires or bracings, that could be used as holds for climbing and are located on the outside of the barrier/fencing, or where vertical members are spaced such that they provide clear openings of more than 10 mm width, the following requirements shall apply except for gate hinges:

- (a) Horizontal members shall be not less than 900 mm apart and where there are more than two horizontal members, there must be at least one 900 mm unclimbable portion between any two top surfaces of members (see figure 3.1 and figure 3.5);
- (b) The top surface of the highest lower horizontal member shall be at least 1000 mm below the top of the fence (see figure 3.1 and figure 3.5).

Gate hinges with a horizontal dimension greater than 10 mm shall be not less than 900 mm apart. Hinges may be spaced less than 900 mm apart if the total projection of the hinge is less than 10 mm.

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NOTE – These drawings are of an outside pool barrier view.

Figure 3.5 – Spacing of accessible horizontal members, or projections or indentations

**3.3.5 Horizontal non-climbable members**

Horizontal members shall be categorised as non-climbable if they comply with figure 3.4 and figure 3.5.

**3.3.6 Horizontal surfaces inside the barrier/fencing**

Where any nearby horizontal surfaces that could be used as holds for climbing are permanently located near the inside of the fencing and where the spacing between vertical members is greater than 10 mm, such surfaces shall be separated from the fencing by a distance of not less than 300 mm.

**3.3.7 Vertical members**

The clear space between any adjacent vertical members (figure 3.1), such as palings, rods or wires, shall not exceed 100 mm at any point.

**3.3.8 Ground clearance**

The height of any opening between the bottom of the barrier/fence and the finished floor/ground level shall not exceed 100 mm, except for the minimum requirements for perforated materials (see 3.3.2).

**3.4 Gates and fittings**

**3.4.1 Direction of opening**

Gates shall be hung so that they only swing outwards away from the pool area.

**3.4.2 Operation of gate**

The gate shall have sufficient clearance to enable it to swing freely and be unobstructed through its arc of operation.

When lifted up or pulled down the gate shall not release the latching device, come off its hinges or provide a ground clearance greater than 100 mm.

**3.4.3 Self-closing device**

All gates shall be fitted with a device that will return the gate to the closed position and operate the latching device from any position with a stationary start and without the application of a manual force.

The self-closing device shall be capable of complying with these requirements with the gate at any position from resting on the latching mechanism to fully open.

NOTE –

- (1) The self-closing device may require a cushioned back-checking operation to prevent shock when the gate is closing.
- (2) Self-closing devices subject to wind loading (which may prevent their closing) may require special consideration.

**3.4.4 Latching device**

Gates shall be fitted with a latching device that will automatically operate on the closing of the gate to prevent the gate from being re-opened without being manually released.

Any latching device shall be designed to prevent being inadvertently adjusted during operation (e.g. locked in the open position), and any necessary adjustment shall only be possible with the use of correct tools.

When in the closed position, the latching mechanism shall not be able to be released by the insertion of any implement between the 10 mm gap shown in figure 3.6(a) particularly from below the mechanism.

**3.4.4.1 Location of the latching device**

Where the release to the latching device or the latch is located at a height less than 1500 mm above the finished floor/ground level or 1400 mm above the top of the highest lower horizontal member and is capable of being released at the latching mechanism, the location of the release of the latching device (see figure 3.6) shall:

- (a) Not be on the outside of the barrier/fencing;
- (b) Not be in such a position that to release the latching device from the outside it will be necessary to reach over or through the barrier/fencing at a height of less than 1200 mm above the finished floor level or less than 1000 mm above the top of the highest lower horizontal member; and
- (c) Be at least 150 mm below the top of the gate if a hand hole is not provided, or at least 150 mm below the edge of any hand hole opening if a hand hole is provided.

**3.4.4.2 Shielding of latching device**

Where the release to either the latching device or the latch is located at a height less than 1500 mm above the finished floor/ground level or 1400 mm above the top of the highest lower horizontal member and is capable of being released at the mechanism, the latch and its release shall be so shielded (see figure 3.6(a) – (c) and (e)) that no opening greater than 10 mm occurs within an area bounded by:

- (a) An effective radius of 450 mm from the operating parts of the latch; and
- (b) The top of the fence, if this intersects the area described in (a).

Where it is necessary to have a hand hole in a gate, the bottom of the opening shall be not less than 1200 mm above the finished floor level or 1000 mm above the top of the highest lower horizontal member, and the shielding shall be extended up to a horizontal line through the top of the hand hole, or 150 mm above the top of the latch, whichever is the higher.

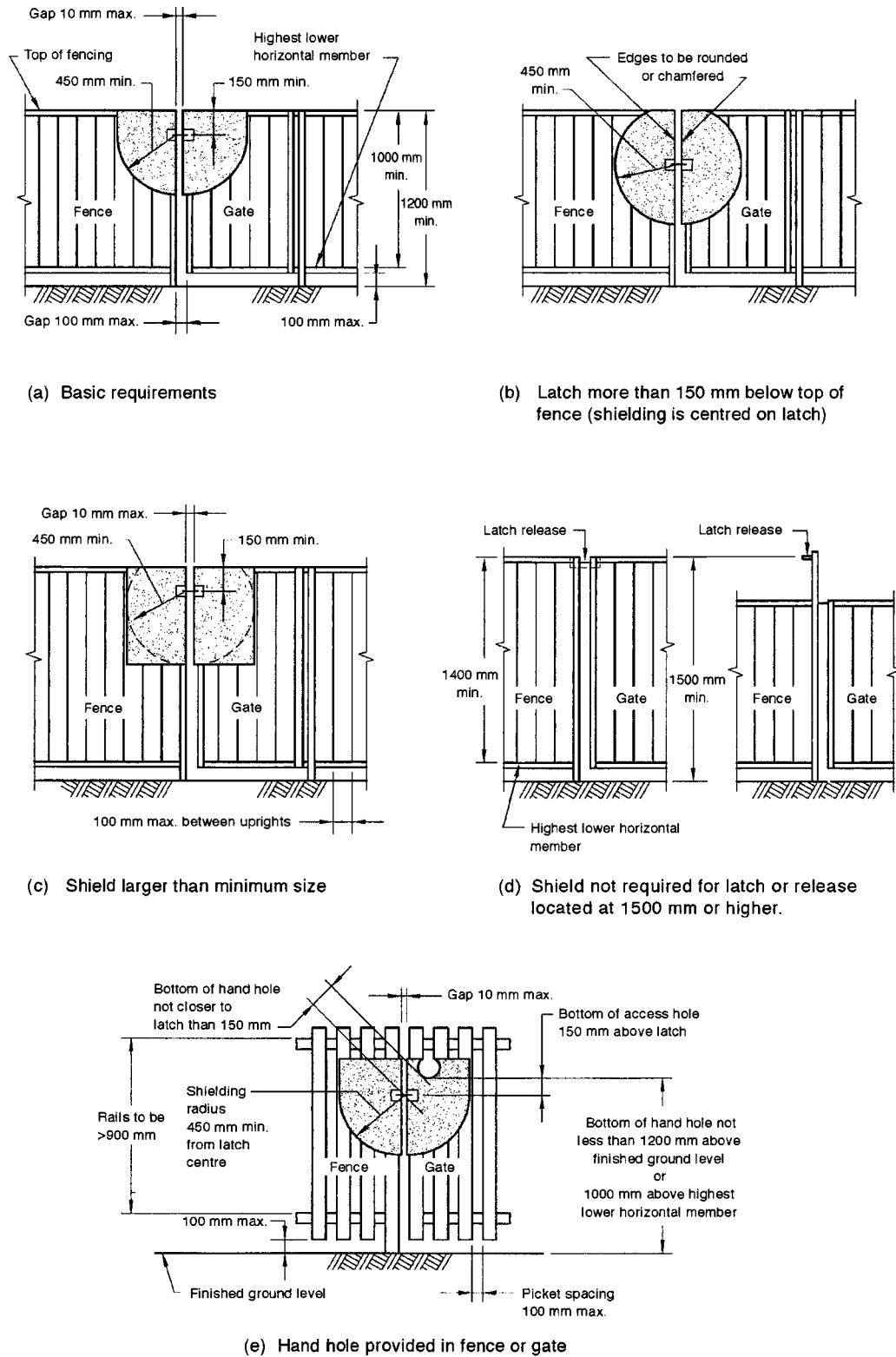
The shield shall be free of sharp edges and the edges of the adjacent parts of the shield on the gate and the fence shall be rounded or chamfered to prevent a hazard when the gate closes.

**3.4.4.3 Double gates**

Double gates shall either independently self-close and self-latch or one leaf of the gate shall be permanently fixed in a closed position with the second leaf complying with 3.4.



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NOTE – Main dimensional requirements are also shown. The shields are shaded.

Figure 3.6 – Latch shielding for gates of open construction

**3.4.4.4 Maintenance of gates and doors**

Any gate or door that is deliberately propped open or faulty, does not comply with this Standard.

A barrier/fence, gate or doorset that is not properly maintained as an effective barrier compromises the safety of young children and is not permitted under this Standard.

**3.5 Retaining wall or other such barrier****3.5.1 Retaining wall on the high side of a pool**

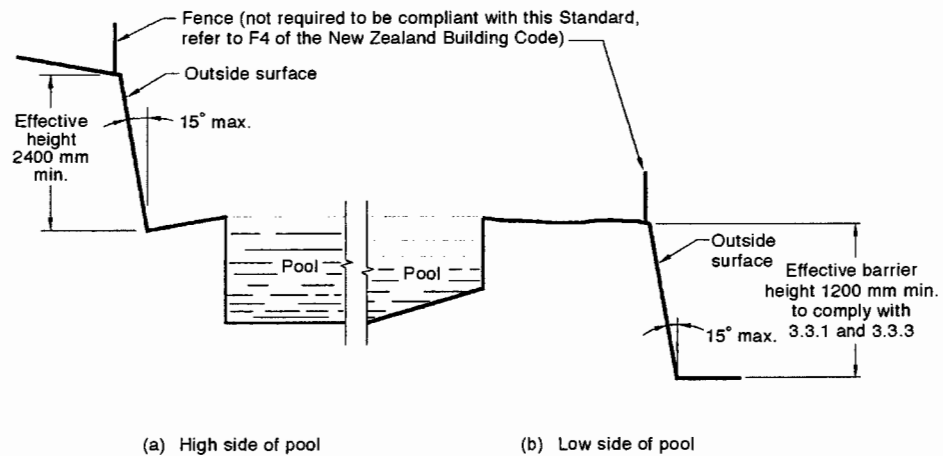
A retaining wall or other such barrier on the high side of the pool (see figure 3.7(a)) shall be an effective barrier if it has an effective height of not less than 2400 mm and does not slope away from the pool by more than 15° to the vertical.

NOTE – Refer to F4 of the New Zealand Building Code for appropriate barrier height.

**3.5.2 Retaining wall on the low side of a pool**

A retaining wall or other such barrier on the low side of the pool (see figure 3.7(b)) shall be an effective barrier if it does not slope towards the pool by more than 15° from the vertical, is non-climbable and complies with 3.3.1 and 3.3.3.

Where a barrier/fence intersects a retaining wall, a barrier/fence shall extend to the outer edge of the retaining wall and return 1200 mm along the retaining wall in either direction.



**Figure 3.7 – Retaining wall or other such barrier**

### 3.6 Child-resistant openable portion of window

Where the height ( $h_1$ ) from the sill of the lowest opening portion of the window in the pool barrier is less than 2400 mm (see figure 3.8), the openable portion of the window shall comply with the following requirement:

Where the height ( $h_2$ ) from the internal sill of the lowest opening panel of a compliant window to the floor inside the house is less than 1200 mm, then:

- (a) The openable portion of the window shall be covered by a safety barrier to a minimum height of 1200 mm (complying with 3.2); or
- (b) Windows shall be fixed in such a way that they will only open to a maximum of 100 mm and comply with the test for strength and rigidity of fencing openings in 4.2.

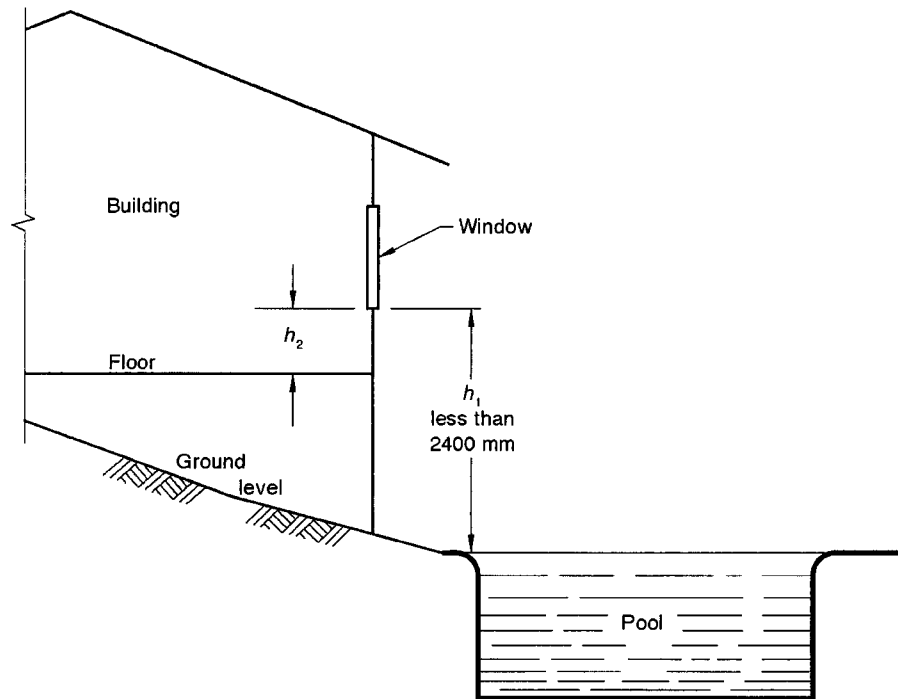


Figure 3.8 – Height limitations on child-resistant windows

## 3.7 Doors

### 3.7.1 Child-resistant doorset

Child-resistant doorsets shall comply with all of the following requirements:

- (a) Doors shall be fitted with a self-latching device that will automatically operate on the closing of the door and will prevent the door from being re-opened without manually releasing the device;
- (b) Every door shall be fitted with a device that will automatically return the door to the closed and latched position when the door is stationary and 150 mm from the closed and secured position;
- (c) The release for the latching device on the internal (house) side of the door shall be located not less than 1500 mm above the floor;
- (d) There shall be no footholds wider than 10 mm on the door or its frame between the floor and 1000 mm above the floor;
- (e) The closing and latching of the door shall comply with 4.6;
- (f) Horizontal members, vertical members, perforated materials or mesh, and finish shall comply with this Standard;
- (g) The doorset shall comply with the performance requirements for a gate for strength and rigidity of openings and strength of gate (see 4.2 to 4.4);
- (h) Doors from the house may swing in either direction; and
- (i) Pet doors to the immediate pool area are prohibited.

## 3.8 Balcony

Where a balcony projects into the immediate pool area (see figure 3.9) the following shall apply:

- (a) Where the distance from the floor of the balcony to the pool finished floor level is less than 2400 mm, and where windows and doors to the balcony do not comply with 3.6 and 3.7, the balcony shall include a pool safety barrier which complies with the requirements for a barrier in this Standard;
- (b) Where the distance from the floor of the balcony to the pool surround is less than 2400 mm, and where windows and doors to the balcony comply with 3.6 and 3.7, the balcony shall include a balustrade which complies with the requirements of the New Zealand Building Code; and
- (c) Where there is a climbable object below and the distance from the floor of the balcony to the pool surround is greater than 2400 mm, and where windows and doors to the balcony do not comply with 3.6 and 3.7, and there is a clear arc of 1200 mm from the floor of the balcony, the balcony shall include a balustrade which complies with the New Zealand Building Code.

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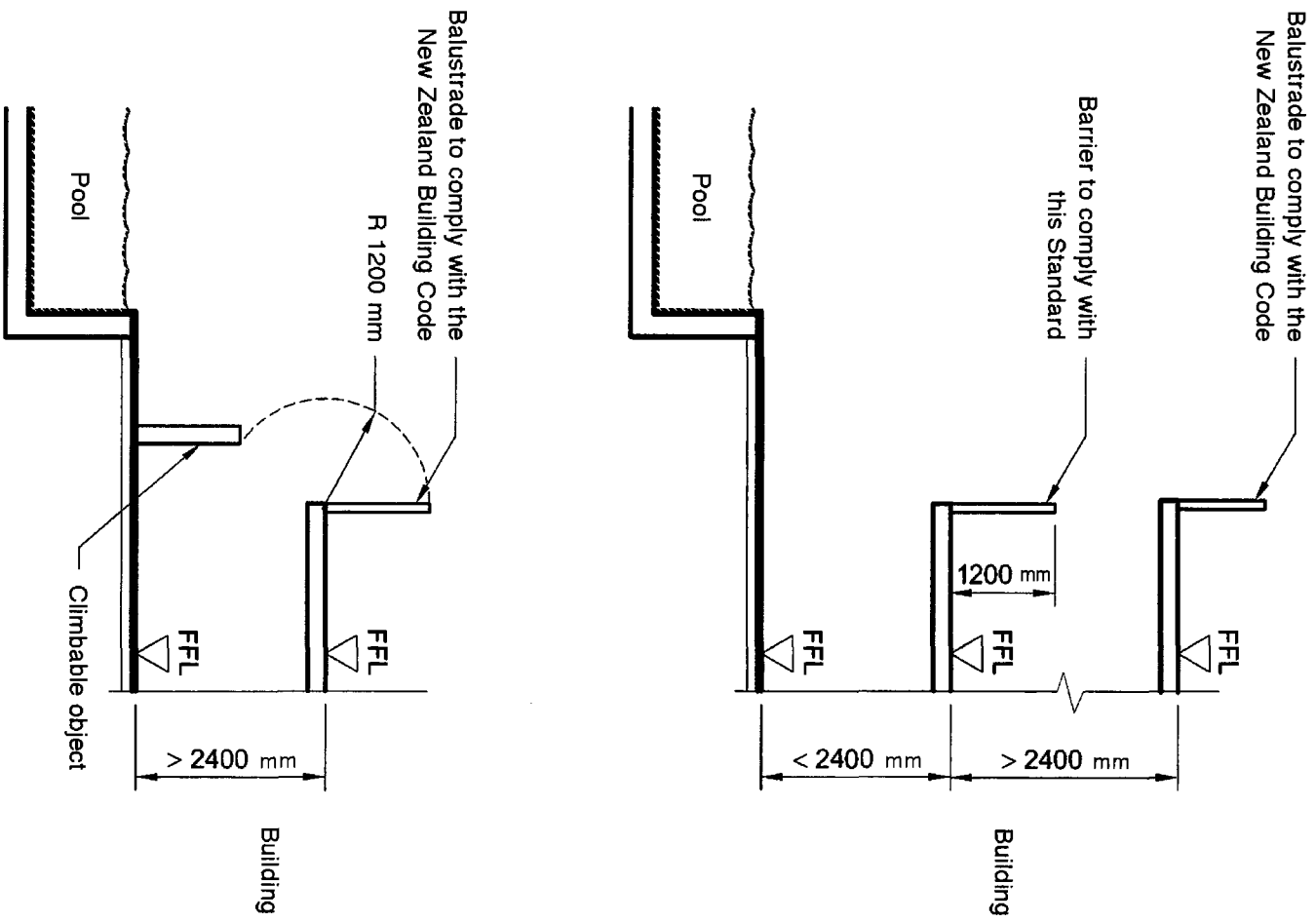


Figure 3.9 – Balcony projecting into immediate pool area

### 3.9 Above-ground swimming pools

For above-ground pools, as illustrated in figure 3.10, including inflatable pools, (whether temporary, permanent, moveable or removable) the walls of the pool can be an effective barrier if no part of the top of its sidewalls is less than 1200 mm above the adjacent ground level or near any permanent projection from, or objects standing on the ground outside and within 1200 mm of the walls. The outside surface of the side walls shall be constructed so as to inhibit climbing and any ladder or other means of access to the interior of the swimming pool shall be via a safety barrier/fence complying with this Standard and in particular complying with 3.3.

NOTE – Above-ground pools pose a particular hazard because of the tendency to leave climbable objects against the pool that can be used for access into the pool.

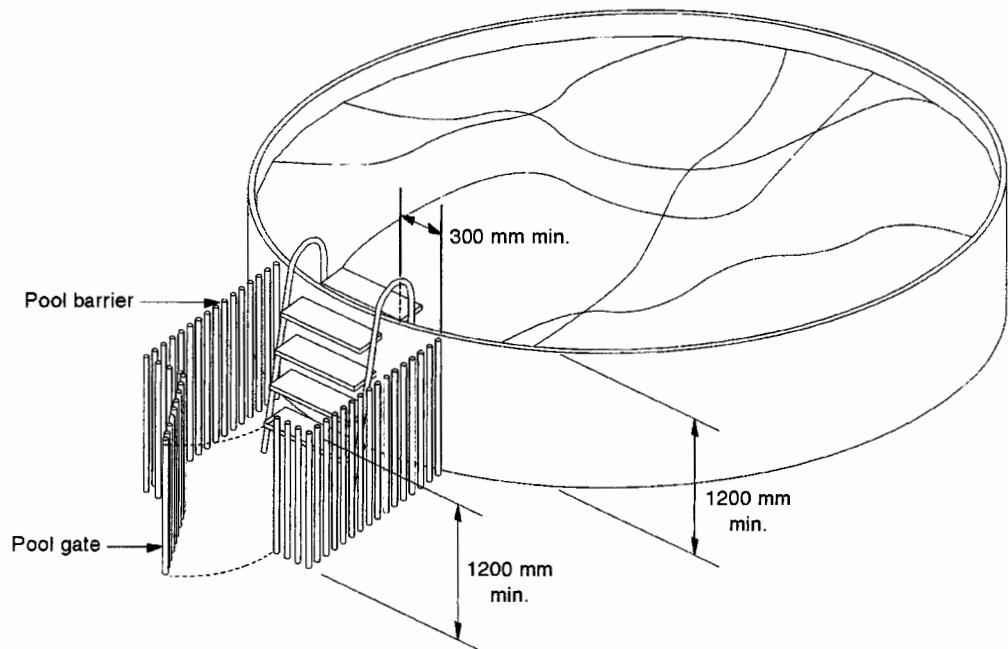


Figure 3.10 – Above-ground pool with barrier

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### 3.10 Above-ground spas and hot tubs

Above-ground spas and hot tubs shall meet all of the following (see figure 3.11):

- (a) The top of the spa pool or hot tub shall be positioned with the entire top surface not less than 760 mm above the surrounding ground or deck;
- (b) The cover shall be lockable and shall be kept locked when the spa pool or hot tub is not being used or supervised. A locking device shall contain a mechanical locking mechanism or a self-locking mechanism in addition to latching shut;
- (c) The locks shall not be able to be readily opened or released by a child of up to the age of six years;
- (d) When locked the cover shall be fitted so that if lifted it does not release the locking device or provide a clearance greater than 100 mm;
- (e) The cover shall be made of a material that if walked on cannot collapse and can withstand the weight of at least 20 kg to ensure that it will more than take the weight of a child up to six years of age;
- (f) The cover shall be constructed of material that meets ASTM F1346-91 to allow easy movement on and off the spa pool or hot tub;
- (g) The cover shall be constructed with a taper from the centre hinge to the outside edge of the cover so that water will not pond on top of it;
- (h) The cover shall have an evenly spaced mechanical locking device as required in (b) which shall be positioned to ensure the cover cannot be lifted more than 100 mm by a child up to six years of age, and ensures that the cover is fixed securely to the spa pool or hot tub;
- (i) The cover and locks shall be maintained at all times in a good state of repair;
- (j) Warning stickers/signs shall be placed on the cover to advise that it shall be locked in place when the spa pool or hot tub is not being used or supervised;
- (k) Removable steps, movable furniture, or other objects that can assist a young child to climb onto the cover, shall be stowed/stored away at least 1200 mm from the side of the spa pool or hot tub.

#### 3.10.1 Non compliant above-ground spa pools and hot tubs

Failure to comply with 3.10 will require a barrier/fence complying with this Standard.

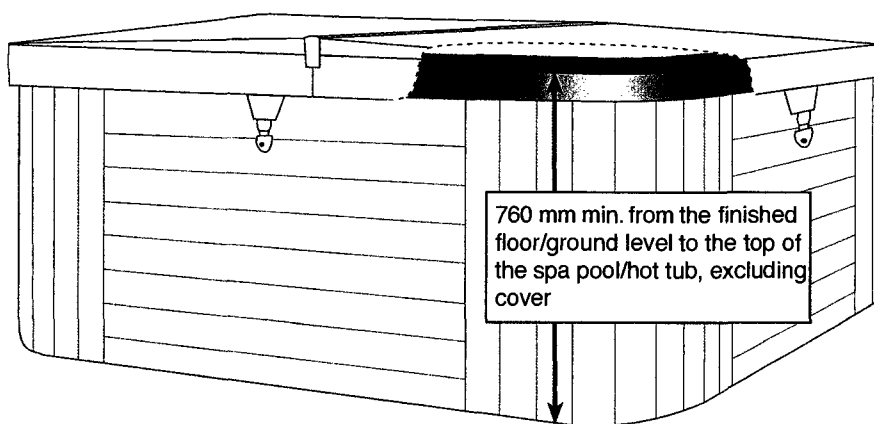


Figure 3.11 – Example of typical spa pool

## **4 Performance tests for safety barriers/fences and closing latching devices**

### **4.1 General**

This section provides practical means for measuring the performance of the safety barriers/fences/gates/doors and latching devices used by pool owner(s) or person(s) in possession of the property.

### **4.2 Strength and rigidity of openings**

When any opening in the barrier/fence is tested in accordance with Appendix C, the test object shall not pass through.

### **4.3 Strength of posts and footings**

When tested in accordance with Appendix D, there shall be no permanent damage to any post. The footings shall not loosen to impair the effectiveness of the barrier and any gate shall meet the requirements of 3.4.

### **4.4 Strength of barrier/fencing components**

#### **4.4.1 Rigid components**

When tested in accordance with Appendix E, structural components, such as panel infills, top and bottom rails, rods, palings, pickets and the like, shall be capable of:

- (a) Sustaining a force of 250 N (25 kg) without any component becoming permanently deformed; and
- (b) Sustaining a force of 330 N (33 kg):
  - (i) Without breaking
  - (ii) Without showing signs of fracture, or
  - (iii) Without becoming permanently deformed by more than 10 mm over their length.

#### **4.4.2 Flexible material and components**

When tested in accordance with Appendix F, flexible barrier/fencing material and components shall not break or tear or the fixings loosen.



#### 4.5 Closing and latching of gates

Every gate shall be fitted with a device that will automatically return the gate to the closed position and operate the latching device.

In addition to 3.4 each gate shall:

- (a) Close and latch from a stationary point at any position, including resting on the latch, in both of the following conditions:
  - (i) Under the natural weight of the gate
  - (ii) After a mass of 25 kg supported by the top rail is placed at a point 100 mm from the outer edge of the locking stile of a gate.

NOTE – This requirement is intended to show whether the automatic closing and latching mechanism is likely to remain effective after the gate has been subject to deflection, either under its own weight or as a result of children swinging on it.

- (b) Have the latching device and posts of the barrier/fencing to which the gate is attached capable of retaining the gate in the closed position when tested in accordance with (a).

#### 4.6 Closing and latching of doors

Every door shall be fitted with a device that will automatically return the door to the closed position and operate the latching device.

In addition to 3.7 each door shall:

- (a) Close and latch from a stationary point 150 mm from the closed and secured position under the natural weight of the door; and
- (b) Have the latching device, door jamb and striker plate to which the door is attached capable of retaining a door in the closed position.

## 5 Water safety warning signage

### 5.1 General

Water safety signage has an important role to play in the implementation of preventive safety measures by informing owners, visitors and temporary users of the house of their obligations that exist under this Standard.

Warning signage shall be required when doorsets open to the immediate pool area and where pool/spa/hot tub covers are used as a barrier (see 2.3.2(e) and (f) and 3.10).

Appendix G provides examples (drawn to scale) of warning signage that is currently available.

### 5.2 Wording

A warning sign shall consist of:

- (a) Black lettering on white background, white lettering on black background, or black lettering on yellow background;
- (b) Lettering shall be of a size that enables a person with normal vision, including corrected vision, to read the safety sign or label at a normal viewing distance;
- (c) 'Warning' letter size height shall be at least 50 % greater than the selected height of the message panel;
- (d) Signal words shall be in upper case in a bold sans serif font (e.g. Helvetica or Universe);
- (e) Letter size for 'Warning Signage' shall be in accordance with 5.7; and
- (f) Any branding shall not detract from the message contained on the sign and shall not encroach on the target area.

NOTE – It is recommended that where possible the colours of the surface should conform to Pantone® 123 (yellow) and Pantone® Black, as detailed in NZS 8690 *Water safety signage*.

### 5.3 Placement

A warning sign shall be:

- (a) Readily visible to the intended viewer;
- (b) Able to alert the viewer to potential hazard/danger;
- (c) Located 1000 to 1500 mm above the inside floor/ground level and within 300 mm of any latching mechanism; and
- (d) Placed on one doorset.

#### 5.4 Life expectancy/materials

A label sign shall:

- (a) Have a reasonable expected life of no less than 5 years with good colour stability and word message legibility when viewed as stated; and
- (b) Be resistant to foreseeable damage, corrosive elements, fading or visual obstruction caused by abrasion, rain or ultraviolet light.

#### 5.5 Attachment

A label sign shall be attached permanently so that it cannot be readily removed.

#### 5.6 Replacement

A label sign shall be replaced when it no longer meets legibility requirements for safe viewing as prescribed in 5.7.

#### 5.7 Weight and sizes of signage

Word message letters' height and size shall be as indicated in table 5.1, or refer to NZS 8690.

**Table 5.1 – Weight and sizes of signage**

Safe viewing distances (mm)	Minimum letter height for favourable reading conditions	Minimum letter height for unfavourable reading conditions
Less than 600	Height (mm) – $\frac{\text{view distance}}{150}$	Height (mm) – $\frac{\text{view distance}}{75}$
600 – 2500	Height (mm) – $\frac{\text{view distance}}{300}$	Height (mm) – $\frac{\text{view distance}}{150}$
Greater than 2500	Height (mm) – $\frac{\text{view distance}}{400}$	Height (mm) – $\frac{\text{view distance}}{300}$

## Appendix A – Inspection regime

(Informative)

### A1 General

Inspection and maintenance is an integral component of home pool compliance. While the Fencing of Swimming Pools (FOSP) Act (section 10) requires each Territorial Authority (TA) to take 'all reasonable steps' to ensure that the Act is complied with, the Act is silent on specifying in detail what these reasonable steps are.

The aim of this Appendix is to provide all TAs with guidance in performing their responsibilities in enforcing the safety barriers of some commercial and residential swimming pools, spa pools and hot tubs. Hereafter 'pools' includes spa pools and hot tubs.

It is vital that owner(s) or person(s) in possession of the property, adult supervisor or person in control of the pool know it is illegal to fill, or partly fill the pool deeper than 400 mm, while it does not have safety barriers compliant with this Standard.

Reasonable steps should include:

- (a) Informing property owner(s) or person(s) in possession of the property, adult supervisor or person in control of the pool of the need to:
  - (i) Establish layers of protection to supplement and complement the requirements of adult supervision around water amenities
  - (ii) Advise the TA of the existence of pools
  - (iii) Advise the TA of an intention to build a pool, and
  - (iv) Comply with the FOSP Act.
- (b) Locating all existing pools, within the TA's area;
- (c) Establishing a regular inspection and education regime for existing pools, and:
  - (i) Instructing and educating property owner(s) or person(s) in possession of the property, adult supervisor or person in control of the pool of any changes required to upgrade safety barriers/fencing to meet this Standard
  - (ii) Carrying out periodic inspections to ensure that any instructions are complied with
  - (iii) Carrying out periodic inspections of all pools, to ensure that safety barriers/fences are being maintained and that they continue to meet this Standard
  - (iv) Taking court action against non-complying property owner(s) or person(s) in possession of the property, adult supervisor or person in control of the pool when all other means of obtaining compliance have failed.

## A2 Location of existing pools

To be effective, a TA needs to know the location of every pool in its district. If its information is considered inadequate, a first step could be to circulate a general request throughout the district seeking information about the existence of pools, drawing attention to the requirements of the FOSP Act. The subsequent responses of property owners or persons in possession of the property would then be the start of a database. However, further work is likely to be needed to discover all the pools in the district. This should involve, for example:

- (a) Notices in rates newsletters;
- (b) An advertising campaign in local newspapers;
- (c) Aerial surveys;
- (d) Identification of existing pools during a property inspection for some other purpose;
- (e) Amending a Land Information New Zealand request form to include a description of any pool on the property; or
- (f) Checking with Valuation New Zealand for details of properties.

The database could be progressively extended as applications for building consents for new pools and alterations to existing pools are received.

The core set of minimum data to be collected should include:

- (g) The exact number of pools in the district;
- (h) The year of pool construction;
- (i) Whether the pool is exempt under the Act;
- (j) Whether a building permit/building consent has been issued for the construction of the pool AND safety barrier/fence;
- (k) The date and result of Code Compliance inspection. This is then to be transferred to the Pool Safety Database for ongoing inspections;
- (l) Whether an order to comply or notice of intended prosecution has been issued;
- (m) Court action, if any.

## A3 Pool inspection

TA inspectors should inspect new safety barriers/fences to ensure that they comply with the FOSP Act and this Standard. If the safety barrier(s)/fence(s) do/does not comply, property owner(s) or person(s) in possession of the property, adult supervisor or person in control of the pool should be informed, and if necessary told how to bring the safety barrier(s)/fence(s) up to this Standard. It is vital that the owner(s) or person(s) in possession of the property, adult supervisor or person in control of the pool know it is illegal to fill, or partly fill a pool while it is not isolated to this Standard.

A further inspection would be required, after a period specified by the inspector, to ensure that the owner(s) or person(s) in possession of the property, adult supervisor or person in control of the pool has made the necessary changes.

A pool compliance certificate under the FOSP Act is to be issued to owner(s) or person(s) in possession of the property, adult supervisor or person in control of the pool who complete work that was subject to a building consent.

#### **A4 Cyclic inspection regime**

Three-yearly inspections of barrier(s)/fence(s) should be made, in addition to periodic inspections where the TA suspects that this Standard is not being met.

## Appendix B – Examples of pool barriers/fences

(Informative)

### B1 General

The information given in this Appendix is intended to serve as a broad guide to some of the main construction criteria that some of the more common types of barriers/fences will have to meet in order to satisfy this Standard.

The examples are given as a simplified guide to commonly available fencing; they are not a recommendation for any style of barrier/fencing and do not preclude the necessity for the fencing to meet the requirements of this Standard.

### B2 Typical barriers/fences

The following examples serve to identify the significant dimensional requirements that need to be met to enable a barrier/fence to comply with this Standard:

- (a) *Post-and-rail construction.* For fences constructed of palings, galvanised steel, fibre cement (fibro), aluminium or similar profiled or flat wall material, the significant dimensions are as follows:
- (i) The rails, if located on the outside of the fencing, are to be not less than 900 mm apart when measured between the top surfaces of the rails
  - (ii) The top surface of the lower rail is to be at least 1000 mm from the top of the barrier/fence.

The effect of these similar requirements in (c), (d) and (e) is that there should be a height of at least 900 mm clear of any potential handholds or footholds, and that any foothold at the bottom of this clear distance should be at least 1000 mm from the top of the barrier/fence.

- (b) *Perforated materials, wire mesh or fabric fences.* For fences of this type, the significant dimensions are as follows:
- (i) Where the material has openings greater than 10 mm, the fence height is to be increased in accordance with 3.3.2
  - (ii) Materials with openings greater than 53 mm are not to be used.

To meet the requirements of this Standard it will generally be necessary for the material to be firmly fastened and tightly strung and meet 3.3.2.

- (c) *Fabricated metal barriers.* For fences fabricated from small section steel, aluminium or other suitable metals, the significant dimensions are as follows:
- (i) Vertical members are to be spaced not more than 100 mm apart
  - (ii) Horizontal members are to be placed a minimum of 900 mm apart vertically.

Horizontal members shall be not less than 900 mm apart and where there are more than two horizontal members, there must be at least one 900 mm unclimbable portion between any two top surfaces of members (see figure 3.1 and figure 3.5).

The top surface of the highest of the lower group of horizontal members is to be at least 1000 mm below the top of the fencing.

(d) *Infill panel barriers.* For fences constructed of glass-fibre reinforced plastics, reinforced glass, safety glass, timber, plywood, exterior grades of hardboard or other sheet products in framed ledge or panel construction, the significant dimensions are as follows:

- (i) Any potential climbing holds are to be at least 900 mm apart vertically
- (ii) The lower of any climbing holds between which the vertical distance of 900 mm is measured is to be at least 1000 mm below the top of the fencing
- (iii) The width of any openings below a height of 1200 mm is not to exceed 100 mm.

In addition, it will be necessary to ensure that the sheet material is sufficiently rigid and adequately fixed to its frame.

(e) *Brickwork or masonry barriers.* For fences constructed of bricks, blocks or masonry, the significant dimensions are as follows:

- (i) Any projections, indentations or combination of these having a depth greater than 10 mm are to be spaced at least 900 mm apart vertically
- (ii) The lower of any such projections or indentations is to be at least 1000 mm below the top of the fencing.

Natural features such as rock faces that form part of the fence would be acceptable provided that they meet the requirements of the Standard.

(f) *Brushwood fences.* For fences constructed of woven brushwood, the significant requirements are:

- (i) Brushwood should be tightly packed so that it will meet the performance requirements in 4.2
- (ii) Wires on the outside of the fence are to be interwoven with the brushwood in order not to provide a foothold for young children.

It may also be necessary to provide some sort of capping on the top of the fence to prevent birds from picking at the brushwood twigs.

NOTE – Brushwood fences are known to deteriorate quickly in comparison to other types of fencing and therefore should be regularly maintained.

(g) *Retaining walls.* Where a vertical or near-vertical retaining wall not less than 1200 mm high supports the pool and the surface of the wall complies with 3.3.4, a fence complying with this Standard is not required on top of the wall. A barrier/fence to provide safety from falling may be required to comply with the requirements of the New Zealand Building Code.



## Appendix C – Test for strength and rigidity of barrier/fencing openings

(Informative)

### C1 Scope

This Appendix sets out a method for determining that the barrier/fencing is sufficiently strong and rigid to prevent an opening from being forced to a size that would allow a young child to gain entry.

There are simple tests already covered earlier in this Standard for strength and rigidity of barrier/fencing.

The following tests are available if there is doubt, in the case of a failure, whether this barrier/fencing complies with this Standard.

### C2 Principle

A force is applied to the test object in an attempt to force it through an opening in the barrier/fencing. This will result in a failed test.

### C3 Apparatus

The following apparatus is required:

- (b) A cylindrical solid-faced test object  $105 \pm 1$  mm in diameter with a body length of  $300 \pm 2$  mm, as shown in figure C1. One end shall be conical and may be truncated to a diameter of 20 mm to provide a flat base for the attachment of fittings. The test object shall be made from a rigid material having a smooth surface;
- (c) A means of measuring the force applied, such as a spring balance;
- (d) A means of attaching the force measuring device to the test object.

### C4 Procedure

Place the conical end of the test object into the opening under test and steadily apply a force of 150 N (15 kg) in an attempt to force the body of the object through the opening.

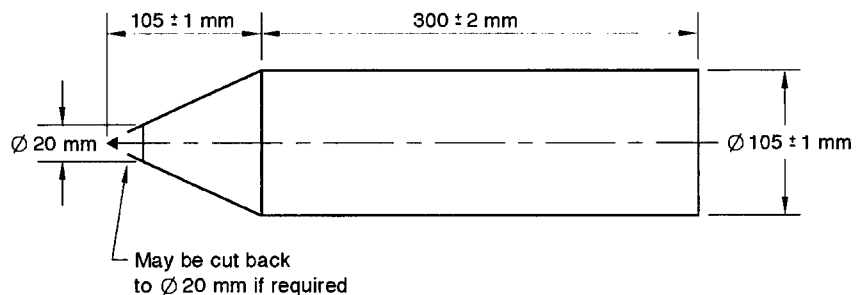


Figure C1 – Test object for testing openings and other components

## C5 Report

The report shall include the following information:

- (a) Whether the test object passed through any opening in the fencing.
- (b) Reference to this test method, i.e. NZS 8500, Appendix C.

## Appendix D – Strength test for posts and footings

(Informative)

### D1 Scope

This Appendix sets out a method for testing whether barrier/fencing posts have adequate strength and have been correctly installed.

There are simple tests already covered earlier in this Standard for strength and rigidity of barrier/fencing.

The following tests are available if there is doubt, in the case of a failure, whether this barrier/fencing complies with this Standard.

### D2 Principle

A force is applied to the fencing post and it is then inspected for signs of fracture, loosening of footings or any damage to the gate that would prevent it from closing and latching from any position. This would result in a failed test.

### D3 Apparatus

The following apparatus is required:

- (a) A cylindrical test object of diameter  $105 \pm 1$  mm (as shown in figure D1), having at least one solid flat-faced end; and
- (b) A means of measuring the force being applied.

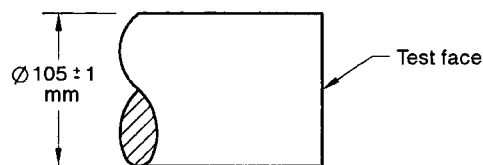


Figure D1 – Test object for barrier/fencing posts

#### **D4 Procedure**

The procedure shall be as follows:

- (a) Place the flat end of the test object against the post under test at a height of 1200 mm above finished floor level;
- (b) Apply a horizontal force of 330 N (33 kg), without shock, to the test object so as to load the post in the desired direction;
- (c) Inspect the post for damage or loosening of the footings;
- (d) For gate posts, check that the gate will close and latch when released from various positions including fully open and with the gate resting on the latching mechanism.

#### **D5 Report**

The report shall include the following information:

- (a) Breakage or sign of fracture of any post;
- (b) Loosening of any component;
- (c) Any damage to the gate that would prevent it from closing and latching from any position;
- (d) Whether the post or gate passed or failed the test;
- (e) Reference to this test method, i.e. NZS 8500, Appendix D.

## Appendix E – Strength test for rigid barrier/fencing components

(Informative)

### E1 Scope

This Appendix sets out a method for testing whether barrier/fencing components have adequate strength.

There are simple tests already covered earlier in this Standard for strength and rigidity of barrier/fencing.

The following tests are available if there is doubt, in the case of a failure, whether this barrier/fencing complies with this Standard.

### E2 Principle

A force is applied to the component or components of the fencing and it is then inspected for signs of fracture, permanent deformation or loosening of components which would result in a failed test.

### E3 Apparatus

The following apparatus is required:

- (a) A cylindrical test object of diameter  $105 \pm 1$  mm, having at least one solid flat-faced end (see figure D1).
- (b) A means of measuring the force being applied.

### E4 Procedure

The procedure shall be as follows:

- (a) Place the flat end of the test object against the component (or several components of such size or spacing (or both) that they will be covered by the 105 mm diameter) under test. The test shall be carried out from either side of the fencing component and at the component's weakest points;
- (b) Apply a force of 250 N (25 kg), without shock, to the test object to load the component in the desired direction;
- (c) Remove the test force and inspect the component for permanent deformation;
- (d) Apply a force of 330 N (33 kg), without shock, to the test object in order to load the component in the desired direction;
- (e) Remove the test force and inspect the component for the following:
  - (i) Breakage or sign of fracture of any component
  - (ii) Loosening of any component;
- (f) Measure and record the amount of deformation of the component, in millimetres.

## E5 Report

The report shall include the following information:

- (a) Whether the component permanently deformed under a load of 250 N (25 kg);
- (b) For a load of 330 N (33 kg) whether there was:
  - (i) Breakage or sign of fracture of any component, and
  - (ii) Loosening of any component;
- (c) For a load of 330 N (33 kg) the amount of deformation of any component, in millimetres;
- (d) Whether the component passed or failed the test;
- (e) Reference to this test method, i.e. NZS 8500, Appendix E.

## Appendix F – Strength test for flexible materials and components

(Informative)

### F1 Scope

This Appendix sets out a method for testing whether flexible materials and components have adequate strength and whether such materials are adequately fixed to prevent them being penetrated or deformed under dynamic loading.

The following tests are available if there is doubt, in the case of a failure, whether this barrier/fencing complies with this Standard.

### F2 Principle

A dynamic force is applied to the component or components of the barrier/fencing and it is then inspected for signs of penetration, breakage, tearing or signs of fracture, or loosening of components. This would result in a failed test.

### F3 Apparatus

The following apparatus is required:

- (a) Test object A – a 8.1 kg half spherical solid-faced test object  $150 \pm 1$  mm diameter;
- (b) Test object B – a 9.1 kg half spherical solid-faced test object  $50 \pm 1$  mm diameter;
- (c) A means of swinging the test object through an arc of radii 1400 mm and 1800 mm.

### F4 Procedure

The procedure shall be as follows:

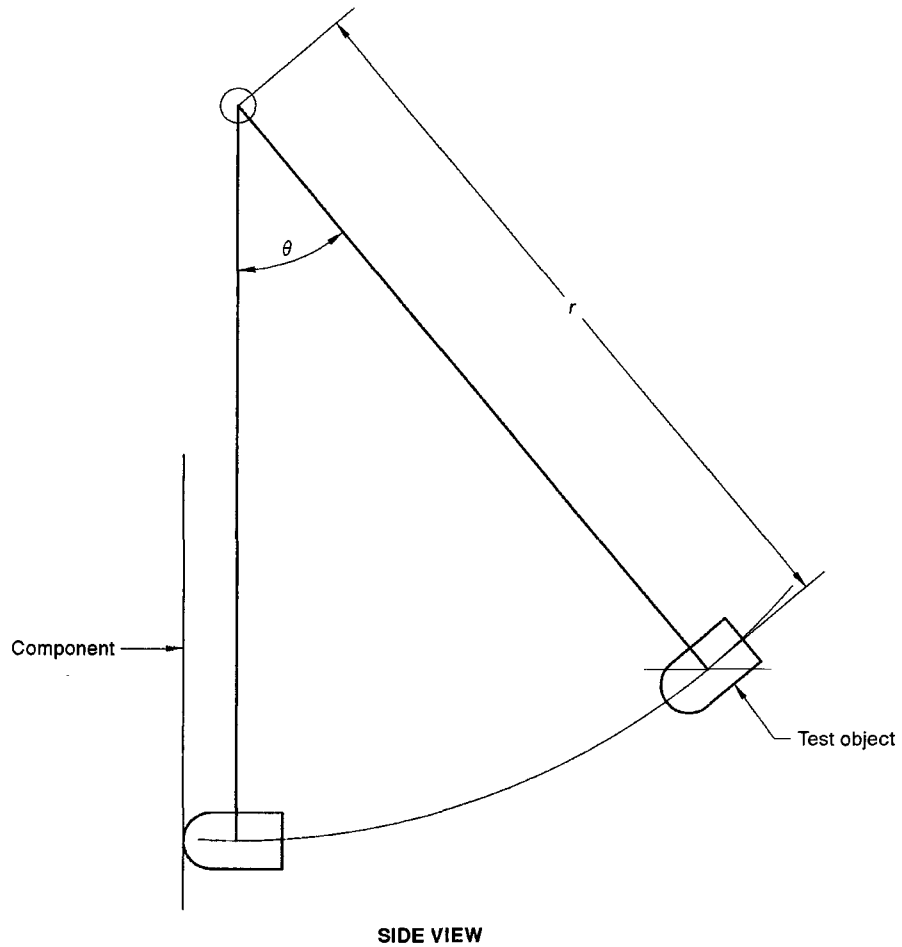
- (a) Suspend test object A the distance of the selected radius below a pivot point to allow pendulum action and place the test object against the component. The test shall be carried out from either side of the fencing component and at the component's weakest points.
- (b) Raise the test object A through the selected angle to the vertical (see figure F1) and release.
- (c) Inspect the component for the following:
  - (i) Breakage, tearing or signs of fracture
  - (ii) Loosening of any component or fixings;
- (d) Repeat step (a) using test object B (see figure F1);
- (e) Raise test object B through the selected angle to the vertical (see figure F1) and release;
- (f) Repeat step (c).

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### F5 Report

The report shall include the following:

- (a) For test object A and B separately, whether there was:
  - (i) Breakage, tearing or signs of fracture of any component
  - (ii) Loosening of any components or fixings;
- (b) Whether the component passed or failed the test;
- (c) Reference to this test method i.e. NZS 8500 Appendix F.



Test object	Pendulum length ( <i>r</i> ) (mm)	Angle to the vertical ( $\theta$ ), (degrees)
A	1400	40
B	1400	37
A	1800	35
B	1800	33

Figure F1 – Test object for testing flexible materials and components



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## Appendix G – Water safety warning signage

(Informative)

### G1 General

The information given in this Appendix is intended to serve as a broad guide for swimming pool, spa and hot tub property owner(s) or person(s) in possession of the property, adult supervisor or person in control of the pool to ensure that there is adequate warning signage displayed informing visitors, subsequent owners, and temporary users of the house of the dangers that exist on the property around the immediate pool area.

Warning signage shall be required when doorsets open out to the immediate pool area and where pool/spa/ hot tub covers are used as a barrier (see 2.3.2(e) and (f) and 3.10).

### G2 Samples

Figures G1 to G5 (drawn to scale) provide indicative samples of warning signage and are not limited in application.

NOTE – Consult current PANTONE Publications for accurate colour. Pantone® is the property of Pantone, Inc.

#### G2.1 Pool signage

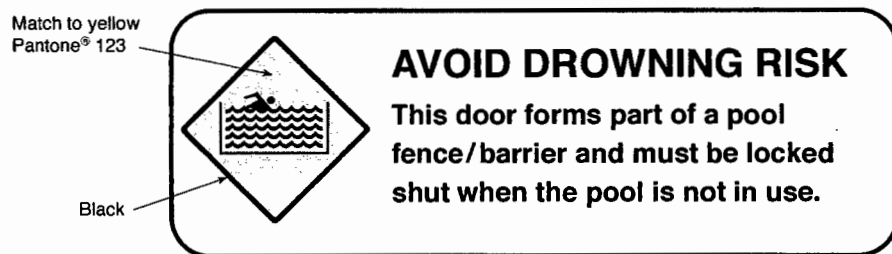


Figure G1 – Swimming pool warning signage

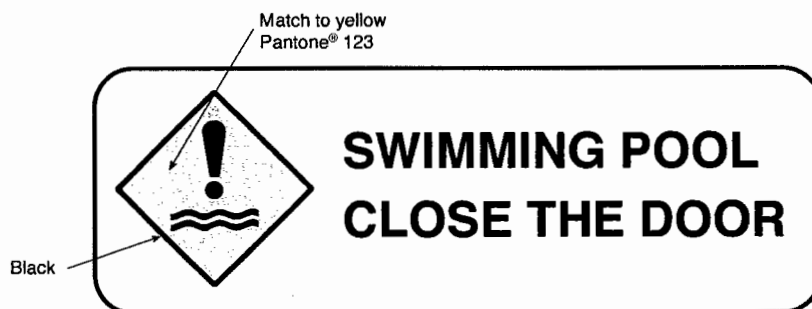


Figure G2 – Water warning signage

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### G2.2 Spa signage

Match to yellow  
Pantone® 123

Black

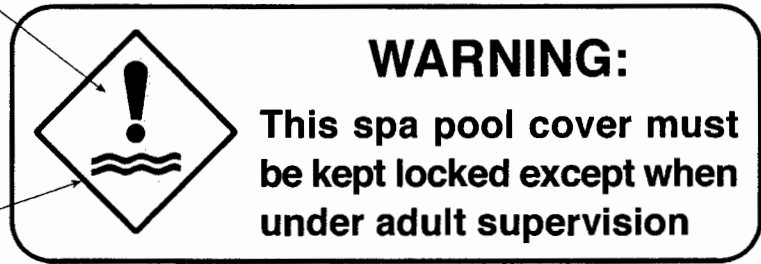


Figure G3 – Spa cover warning signage

### G2.3 Hot tub cover signage

Match to yellow  
Pantone® 123

Black

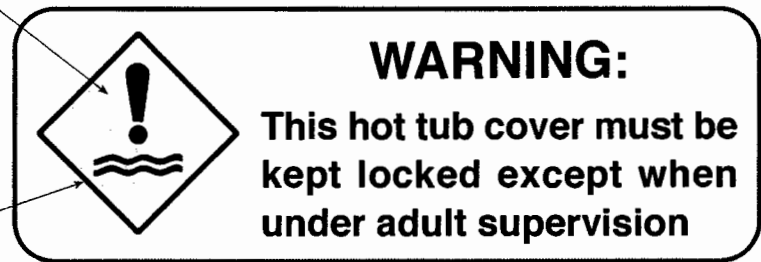


Figure G4 – Hot tub cover warning signage

### G2.4 General

Match to yellow  
Pantone® 123

Black



Match to yellow  
Pantone® 123

Black

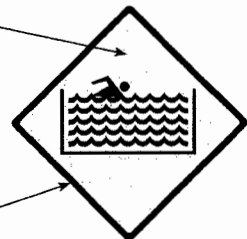


Figure G5 – General signs

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**NOTES**

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