

Reprint
as at 1 July 2013



**Fencing of Swimming Pools Act
1987**

Public Act 1987 No 178
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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

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

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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 a compliance document 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).

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).

ss 13B, 13C

Schedule
Means of compliance for fences under
this Act

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.
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Notes

1 *General*

This is a reprint of the Fencing of Swimming Pools Act 1987. The reprint incorporates all the amendments to the Act as at 1 July 2013, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint
(most recent first)***

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)

