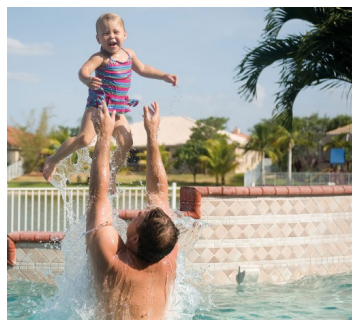


Residential pool provisions of the Building Act 2004: Guidance for territorial authorities



The Building Act 2004 (the Act) requires residential pools to have barriers that restrict access by unsupervised children under five years of age. This guidance describes residential pool provisions of the Act that took effect on 1 January 2017, and aims to help territorial authorities to enforce the barrier requirement for residential pools.

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Of interest to Territorial Authority

Why residential pools need barriers

Research shows that fencing residential swimming pools reduces accidental drowning of young children.

Drownings of young children in residential swimming pools in New Zealand decreased dramatically after the Fencing of Swimming Pools Act 1987 (FOSPA) was enacted. Prior to 1987, an average of 10 young children drowned every year in residential swimming pools. By 2014, this average had reduced to two young children every year. Most of the children who drowned were under three years of age.

Cochrane Collaboration (<http://dx.doi.org/10.1002/14651858.CD001047>) online library has a review of international research on pool fencing.

The [Water Safety New Zealand](http://www.watersafety.org.nz) (<http://www.watersafety.org.nz>) website has data on drowning.

Law changes from 1 January 2017

The Building (Pools) Amendment Act 2016 repealed FOSPA and inserted provisions in the Act relating to residential pools. The changes came into effect on 1 January 2017. The changes aim to better protect children from drowning in residential pools while also making the requirements more practical and enforceable.

The main changes are:

- a new requirement that residential pools must be inspected every three years
- in certain circumstances, covers can be used as barriers for small heated pools such as spa pools and hot tubs
- territorial authorities can use a “notice to fix” to enforce the requirement to restrict access to residential pools. The only enforcement tool under FOSPA was prosecution.

[Building \(Pools\) Amendment Act 2016](http://www.legislation.govt.nz/act/public/2016/0071/latest/whole.html) (<http://www.legislation.govt.nz/act/public/2016/0071/latest/whole.html>) on the Legislation website has further information.

Further information

[Restricting access to residential pools \(https://www.building.govt.nz/building-code-compliance/f-safety-of-users/pool-safety/\)](https://www.building.govt.nz/building-code-compliance/f-safety-of-users/pool-safety/) has more information.

[Contact us \(https://www.building.govt.nz/about-building-performance/contact-us/\)](https://www.building.govt.nz/about-building-performance/contact-us/) if you have questions relating to residential pools.

Residential pools that require a barrier

Barriers are required for 'residential pools' that:

- can be filled with water to a depth of 400mm or more and
- contain water (regardless of the amount of water).

'Residential pool' relates to 'pools' associated with an 'abode'.

'Pool' relates to the type of excavation or structure that is used for swimming, paddling or bathing.

'Abode' relates to a place of residence, including hotels, motels and similar accommodation. Such accommodation can provide an environment similar to the home environment, in that caregivers cannot be expected to closely supervise young children at all times.

[Section 7 of the Act \(http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306054.html\)](http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306054.html) on the Legislation website includes the full definitions of 'abode', 'pool' and 'residential pool'.

Example where a residential pool barrier is not required

A residential pool barrier is not required for garden ponds and similar water hazards, which are not intended to fall within the definition of 'pool'.

School pools

Usually, school pools are not residential pools and the barrier requirements for residential pools do not apply. However, a school pool may fall within the definition of residential pool if there is an abode, such as a hostel or caretaker residence, at the school.

Requirements for residential pool barriers

Barriers for residential pools must restrict access by unsupervised children under the age of five years. This requirement applies throughout the life of the pool (except when the pool is empty).

Residential pool barriers must comply with either:

- the current Building Code; or
- the Building Code that applied when the pool was installed (if a building consent, code compliance certificate or certificate of acceptance was issued).

This requires owners to maintain their residential pool barriers to at least the standard that applied when those barriers were originally approved.

The following are available on the Legislation website:

[Section 162C of the Act \(http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM7084102.html\)](http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM7084102.html) requires residential pools to have barriers.

[Building Code Clause F9 \(http://www.legislation.govt.nz/regulation/public/1992/0150/latest/DLM162576.html#DLM7084015\)](http://www.legislation.govt.nz/regulation/public/1992/0150/latest/DLM162576.html#DLM7084015) contains performance

requirements for residential pool barriers.

Existing pools deemed to comply with the barrier requirements for residential pools

Existing pools installed before 1 January 2017 are deemed to comply with the residential pool barrier requirements if they complied with the Schedule to Fencing of Swimming Pools Act 1987 (FOSPA). Valid exemptions granted under the FOSPA continue to apply, including the conditions of those exemptions.

Existing pools installed before 1 January 2017 are deemed to comply with the residential pool barrier requirements if they meet the criteria described in section 450B(3) of the Act relating to the side walls of the pool and the means of access into the pool.

The following are available on the Legislation website:

[Section 450B of the Act \(http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM7084183.html\)](http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM7084183.html) has provisions for existing pools.

[Schedule to the FOSPA \(http://www.legislation.govt.nz/act/public/1987/0178/latest/DLM124497.html\)](http://www.legislation.govt.nz/act/public/1987/0178/latest/DLM124497.html)

Covers can be used as barriers for small heated pools

Under the Act, barriers for residential pools that are 'small heated pools', such as spa pools and hot tubs, need to restrict access only when the pool is not in use. This enables covers to be used as barriers for certain small heated pools. Drownings of young children in small heated pools with safety covers are very rare.

The following are available on the Legislation website:

[Section 7 of the Act \(http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306054.html\)](http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306054.html) includes a definition of 'small heated pool'.

[Section 162C\(3\) of the Act \(http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM7084102.html\)](http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM7084102.html) contains barrier requirements for small heated pools.

[Building Code Clause F9 \(http://www.legislation.govt.nz/regulation/public/1992/0150/latest/DLM162576.html#DLM7084015\)](http://www.legislation.govt.nz/regulation/public/1992/0150/latest/DLM162576.html#DLM7084015) sets out requirements for small heated pools with a cover as the barrier.

Indoor residential pools require a barrier

FOSPA did not apply to pools wholly enclosed inside a house. However, young children are at risk if they have unrestricted access to pools in the home environment. Existing and new indoor pools are now subject to the same barrier requirements as other residential pools. For example, doors to the pool room must not be able to be readily opened by children and would need to be self-closing or have an alarm.

Waivers and modifications of the requirements for residential pools

The Act provides territorial authorities the power to grant waivers or modifications of the requirements in section 162C of the Act for certain residential pools to have barriers. These powers allow for the exercise of judgement when dealing with unusual building compliance situations.

The requirement in the Act that certain residential pools must have barriers is mirrored in the Building Code. If it is appropriate to grant a waiver or modification of the requirements of the Building Code relating to residential pools, it is also necessary to also grant a waiver or modification of section 162C of the Act.

The following are available on the Legislation website:

[Building Code Clause F9.3.1 \(http://www.legislation.govt.nz/regulation/public/1992/0150/latest/DLM162576.html#DLM7084015\)](http://www.legislation.govt.nz/regulation/public/1992/0150/latest/DLM162576.html#DLM7084015) mirrors requirements in section 162C of the Act.

[Section 67A of the Act \(http://www.legislation.govt.nz/act/public/2004/0072/latest/whole.html#DLM7083794\)](http://www.legislation.govt.nz/act/public/2004/0072/latest/whole.html#DLM7083794) gives territorial authorities powers to

waive or modify the barrier requirements in section 162C of the Act.

Building work involving residential pools

Building work for residential pools requires a building consent unless it is exempt under Schedule 1 of the Act. Pools below certain thresholds are exempt under clause 23 of Schedule 1.

Even if the building work for a residential pool is exempt, the owner must still obtain a building consent for the barrier. This confirms from the outset that the pool has barriers that restrict the access of young children, and informs the territorial authority of the location of the pool. The subsequent issue of a code compliance certificate sets the anniversary date for periodic inspections to occur.

The installation of a cover for a small heated pool is exempt from requiring a building consent.

The following are available on the Legislation website:

[Clause 21A of Schedule 1 of the Act \(http://www.legislation.govt.nz/act/public/2004/0072/latest/whole.html#DLM5770963\)](http://www.legislation.govt.nz/act/public/2004/0072/latest/whole.html#DLM5770963) sets out an exemption for covers for small heated pools.

[Clause 23 of Schedule 1 of the Act \(http://www.legislation.govt.nz/act/public/2004/0072/latest/whole.html#DLM5770963\)](http://www.legislation.govt.nz/act/public/2004/0072/latest/whole.html#DLM5770963) sets out the thresholds for pools to be exempt from requiring a building consent.

Acceptable Solutions for restricting access to residential pools

MBIE has issued two [Acceptable Solutions for restricting access to residential pools \(https://www.building.govt.nz/building-code-compliance/f-safety-of-users/pool-safety/acceptable-solutions-and-verification-methods/\)](https://www.building.govt.nz/building-code-compliance/f-safety-of-users/pool-safety/acceptable-solutions-and-verification-methods/)

- F9/AS1 Residential pool barriers
- F9/AS2 Covers for small heated pools

These Acceptable Solutions replace the Acceptable Solution in Section 450A of the Act, which has been revoked.

Example of a temporary above-ground pool that must comply with the Building Code

Temporary residential pools, such as inflatable pools, are subject to the same Building Code requirements as other residential pools.

The pool's barrier must comply with all the relevant requirements of the Building Code. For example, any gates in the pool's barrier must be self-closing, and the barrier must meet the requirements in the Building Code for structure and durability.

Any pool that cannot be filled to a depth of 400mm does not require a barrier.

Inspecting residential pools

Residential pools must be inspected every three years

Territorial authorities are responsible for ensuring residential pools are inspected in a three-year cycle to check whether they continue to comply with the Act. Periodic inspections do not apply to small heated pools if a compliant cover is used as the residential pool barrier.

An inspection is required every third anniversary of when the pool received its code compliance certificate. The inspection must occur, at the latest, six months after that anniversary.

An inspection may occur any time before the anniversary, for example in order to manage the overall inspection workload, or in response to a complaint about a pool. For any existing pool, installed before 1 January 2017, this inspection falls due in 2019.

The following are available on the Legislation website:

[Section 162D \(http://www.legislation.govt.nz/act/public/2004/0072/latest/whole.html#DLM7084103\)](http://www.legislation.govt.nz/act/public/2004/0072/latest/whole.html#DLM7084103) of the Act requires pools to be periodically inspected.

[Section 219 of the Act \(http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM307862.html\)](http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM307862.html) enables territorial authorities to charge owners for inspections.

[Building Code Clause F9 \(http://www.legislation.govt.nz/regulation/public/1992/0150/latest/DLM162576.html#DLM7084015\)](http://www.legislation.govt.nz/regulation/public/1992/0150/latest/DLM162576.html#DLM7084015) sets out requirements for small heated pools with a cover as the barrier.

Examples of when inspections are due

For pools that received their code compliance certificate on 1 March 2017, the third anniversary is on 1 March 2020. An inspection must occur by 1 September 2020.

For pools that received their code compliance certificate on 1 March in any year before 2017, the third anniversary after 1 January 2017 is on 1 March 2019. An inspection must occur by 1 September 2019.

Independently qualified pool inspectors may carry out periodic inspections

Owners will be able to choose who carries out the periodic inspections of their pool: either an independently qualified pool inspector (IQPI) or their territorial authority.

MBIE is responsible for ensuring that IQPIs are competent so that territorial authorities can rely on inspections carried out by IQPIs. MBIE will assess persons who apply to be IQPIs, and regularly review their performance.

IQPIs will issue a 'certificate of periodic inspection' if a pool is compliant. If a territorial authority decides not to accept the certificate of periodic inspection, they must notify MBIE within seven days of that decision.

[Building \(Pools\) Regulations 2016 \(http://legislation.govt.nz/regulation/public/2016/0304/6.0/DLM7046150.html\)](http://legislation.govt.nz/regulation/public/2016/0304/6.0/DLM7046150.html) on the Legislation website sets out the 'certificate of periodic inspection'.

[Independently qualified pool inspectors \(https://poolinspectors.tradingstandards.govt.nz/\)](https://poolinspectors.tradingstandards.govt.nz/) on Trading Standards' pool inspector website has more information.

Territorial authorities may inspect pools whenever necessary

Territorial authorities may inspect any residential pool, including a small heated pool, whenever necessary, for example after receiving a complaint about a pool.

These inspections can occur regardless of whether a periodic inspection is due for that pool.

[Section 222 \(http://www.legislation.govt.nz/act/public/2004/0072/latest/whole.html#DLM307867\)](http://www.legislation.govt.nz/act/public/2004/0072/latest/whole.html#DLM307867) of the Act on the Legislation website includes powers to inspect residential pools.

Enforcing the residential pool barrier requirement

The Act provides enforcement tools to help achieve compliance with the requirements of the Act relating to residential pools.

If a residential pool is non-compliant with the barrier requirements, territorial authorities can issue a notice to fix, to any person responsible for

ensuring the pool is compliant.

Persons failing to comply with this notice to fix could receive an infringement fee of \$500, or a fine of up to \$5000.

[Building infringement scheme guidelines \(https://www.building.govt.nz/building-officials/guides-for-building-officials/building-infringement-scheme-guidelines/\)](https://www.building.govt.nz/building-officials/guides-for-building-officials/building-infringement-scheme-guidelines/) has guidance for using the enforcement powers in the Act.

The following are available on the Legislation website:

[Subpart 8 of the Act \(http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM307348.html\)](http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM307348.html) includes provisions for notices to fix relating to residential pools.

[Building \(Infringement Offences, Fees, and Forms\) Regulations 2007 \(http://www.legislation.govt.nz/regulation/public/2007/0403/latest/whole.html\)](http://www.legislation.govt.nz/regulation/public/2007/0403/latest/whole.html) includes offences relating to residential pools.

Resolving disputes relating to residential pools and barriers

A party who cannot agree with a territorial authority about a residential pool and/or barrier may be able to seek a determination from MBIE if the matter relates to whether the pool and/or barrier complies with the Building Code, or about a building consent, code compliance certificate or a notice to fix relating to the pool/barrier.

[Determinations \(https://www.building.govt.nz/resolving-problems/resolution-options/determinations/\)](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/) has more information.

Examples of non-compliant residential pool barriers

Barriers for residential pools must restrict access by unsupervised children under the age of five years.

Examples of barriers that are unlikely to comply with this requirement include:

- a swimming pool cover
- a door that can be unlocked and left open.

Previous determinations provide some useful guidance about these types of barriers. These determinations were issued in relation to specific pools, and in relation to previous requirements of the Building Code.

[Determination 2010/119 \(https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/2010119-use-of-a-cover-as-a-barrier-to-a-swimming-pool/\)](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/2010119-use-of-a-cover-as-a-barrier-to-a-swimming-pool/) (<https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/2010119-use-of-a-cover-as-a-barrier-to-a-swimming-pool/>) relates to a swimming pool cover.

[Determination 2015/037 \(https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/determination-2015-037/\)](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/determination-2015-037/) relates to doors that could be left open.

[Restricting access to residential pools \(https://www.building.govt.nz/building-code-compliance/f-safety-of-users/pool-safety/\)](https://www.building.govt.nz/building-code-compliance/f-safety-of-users/pool-safety/) has more information, including relevant determinations.

Manufacturer and retailers must supply a notice with pools

From 1 September 2017, manufacturers and retailers must supply notices with pools informing consumers about the barrier requirement for residential pools.

MBIE is responsible for ensuring that manufacturers and retailers comply with this requirement.

[Building \(Pool Manufacturers and Retailers\) Notice 2017 \(https://www.gazette.govt.nz/notice/id/2017-go984\)](https://www.gazette.govt.nz/notice/id/2017-go984) on the New Zealand Gazette website sets out the requirements for the notices that manufacturers and retailers must supply.



New Zealand Government

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