



ANALYSIS

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1987, No. 178

An Act to promote the safety of young children by requiring the fencing of certain swimming pools

[20 July 1987

BE IT ENACTED by the Parliament of New Zealand as follows:

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” means a fence that complies with the requirements of the Schedule to this Act and includes any part of a building and any gates or doors forming part of the fence; and “fenced” has a corresponding meaning;

“Gates or doors” does not include any door to which clause 11 of the Schedule to this Act 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, 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 Hire Purchase Act 1971, 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 1974.

3. Application to existing pools—This Act shall apply in respect of any swimming pool constructed, erected, or installed before the 1st day of September 1987 at any time on or after the 1st day of 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 the 1st day of 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) of this section, that such an exemption would not significantly increase danger to young children.

(2) In granting an exemption under subsection (1) of this section, 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 the 1st day of 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.

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 of this Act, 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 Schedule 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) of this Act.

(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.

9. Offence—(1) Every person who, without reasonable cause, fails to comply with any obligation imposed by section 7 or section 8 of this Act commits an offence and is liable on summary 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) of this section in relation to section 8 of this Act 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) of this section in relation to section 8 of this Act 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) of this Act is met, as the case may require.

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) of this Act 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) of this section 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) of this section 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) of this section 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) of this section to enter the land and carry out the inspection.

(5) Every person exercising the power of entry conferred by subsection (1) of this section 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 of this Act and clause 11 of the Schedule to this Act to any committee of the territorial authority appointed under section 104 of the Local Government Act 1974 that comprises only members of the territorial authority; but may not delegate those powers to any committee that has any members who are not members of the territorial authority or to any officer of the territorial authority under section 715 of the Local Government Act 1974 or otherwise.

13. Effect of Act on bylaws and other laws—(1) No territorial authority may make any bylaw that purports to allow the fencing of pools at a standard lower than that required by this Act.

(2) Nothing in this Act shall prevent the making and enforcing of bylaws by a territorial authority that impose fencing requirements for pools at least as stringent or more stringent than the requirements of this Act, and no bylaw shall be held to be repugnant to the laws of New Zealand or unreasonable solely because it imposes such requirements.

(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.

14. Amendment to Fencing Act 1978—The Fencing Act 1978 is hereby amended by inserting, after section 9, the following section:

“9A. Contributions where fence required by Fencing of Swimming Pools Act 1987—Where any person is required to provide a fence in order to comply with the Fencing of Swimming Pools Act 1987—

- “(a) All work on that fence that is required because of the application of that Act and would not otherwise be required shall be the responsibility of the owner of the swimming pool; and

“(b) No person, other than the owner of the swimming pool, shall be required to make any contribution under this Act to the work on a fence greater than the contribution that the person would be required to make to the work on a fence (whether of the same type or not) if the swimming pool did not exist.”

Section 8

SCHEDULE

REQUIREMENTS FOR FENCES UNDER THIS ACT

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) of this clause, 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 person from climbing over or crawling under the fence from the outside.

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

5. All fencing supports, rails, rods, wires, bracing, or other similar posts shall be on the inside of the fencing and shall be inaccessible for use for climbing from the outside.

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 of this Schedule, and shall be so mounted that—

- (a) It cannot open inwards towards the immediate pool area:

SCHEDULE—*continued*

- (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 of this Schedule 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.

This Act is administered in the Department of Internal Affairs.
