

4. DISCUSSION DOCUMENT ON THE EVALUATION OF THE FENCING OF SWIMMING POOLS ACT 1987

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officers responsible:	Legal Services Manager & Inspections and Enforcement Manager
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PURPOSE OF REPORT

1. The purpose of this report is to report to the Committee on the Discussion Document on the Evaluation of the Fencing of Swimming Pools Act 1987 and the proposed submission for the Council to make on that discussion document.

EXECUTIVE SUMMARY

2. This discussion document has been published by the Department of Building and Housing (DBH) with the aim of gaining feedback to assist the DBH with its evaluation of the Act. Submissions are due by 30 June 2008. A second paper is planned in early 2009 to seek views on the proposals developed from the consultation
3. The purpose of the document is to:

“...further reduce drownings by improving compliance and enforcement of the Act and also to:

 - assess the current risks posed to young children under the existing provisions of the Act.
 - improve uniformity in the interpretation and application of the Act by territorial authorities across New Zealand.
 - provide more certainty to pool owners and territorial authorities on their responsibilities and obligations under the Act.
 - increase public awareness of pool owners’ responsibilities under the Act.”
4. There have been considerable difficulties for territorial authorities in interpreting and enforcing the Act. The lack of clarity in the Act, and its relationship with the Building Act, has been the subject of judicial comment on the need for amendment some time ago. This review is long overdue. The DBH knows there are a number of issues with the Act, but before they make proposals addressing the issues, they want to be sure they have understood them fully and identified the different options for resolving them. The discussion document “describes and seeks ...feedback on:
 - the issues and whether they have been accurately defined.
 - options to resolve the issues.
 - the impact of the options on pool owners, territorial authorities and the public as a whole.
 - any other issues affecting compliance with, or enforcement of, the Act.”
5. The discussion document outlines the DBH’s proposals and can be viewed at <http://www.dbh.govt.nz/fospa-consultation>. The draft submission attached is being made on the form provided by the DBH.

FINANCIAL IMPLICATIONS

6. No financial implications in making this submission, but some of the options identified in the discussion document or proposed by the Council, if proceeded with by way of an amendment to the legislation, could have financial implications for the Council

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

7. Not applicable.

LEGAL CONSIDERATIONS

Have you considered the legal implications of the issue under consideration?

8. Legal considerations have been taken into account in drafting this submission, but at this stage there is no detail as to the extent and content of possible future amendments to the Act.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

9. Not applicable.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

10. No.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

11. The current Council policy aims for the Council to inspect all known pools biannually. Inspection requirements at this level have not been achieved due to the high levels of non-compliance found upon re-inspections (50%) and the current in-effective and time consuming enforcement tool available, namely prosecution with a maximum penalty of \$500. The Christchurch City Council is currently considering amending its policy and related KPI to one that requires the inspection of 15% of all known pools annually. This level of inspections allows for a annual inspection of a good percentage of known pools, provides for a education focussed approach whilst ensuring targeted prosecutions are pursued for those who ignore Council warnings/corrective action advice.

The submission (in relation to the inspections section of the discussion document), supports legislative change to require territorial authorities to undertake re-inspections and that a re-inspection regime of once every five years would be appropriate and achievable provided this requirement was implemented with other initiatives that would increase compliance and assist the inspection and enforcement process. The initiatives recommended include:

- Nationally funded education campaign;
- Mandatory supplier/installer pool notification to council;
- Supplier/installer offences for failing to notify or failing to advise purchasers of fencing requirements;
- Stand alone legislation and simplified definitions;
- Increased fines and an infringement notice regime.

CONSULTATION FULFILMENT

12. Internal consultation has been carried out between the Inspections and Enforcement Unit, Environmental Policy and Approvals (Building Act), and the Legal Services Unit.

STAFF RECOMMENDATION

It is recommended that the Committee recommend to the Council that it approve the draft submission.

BACKGROUND

13. DBH discussion document can be found at:

<http://www.dbh.govt.nz/fospa-consultation>

The draft submission is attached.

THE OBJECTIVES

14. To make a submission on this discussion document that will put forward the Council's current issues with the Fencing of Swimming Pools Act 1987, and provide feedback on the options suggested by the DBH.

THE OPTIONS

15. The Council can make a submission or not, or could make a submission in respect of only some of the matters raised in the discussion document.

THE PREFERRED OPTION

16. The preferred option is for the Council to make a submission, as the enforcement of this Act is an important function for the Council, and the ability to have some input on how the Act should be improved is reasonably significant for the Council.