

# Building (Pools) Amendment Bill

18 August 2015

Hon Christopher Finlayson QC, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Building (Pools) Amendment Bill

## *Purpose*

1. We have considered whether the Building (Pools) Amendment Bill ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').

2. In preparing this advice we have not seen a copy of the final Bill and have prepared this advice on the basis of a draft Bill. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 21 – the right to be secure from unreasonable search and seizure. Our analysis is set out below.

## *The Bill*

3. The purpose of the Bill is to:

- Repeal the Fencing of Swimming Pools Act 1987, and amend the Building Act 2004 ("the principal Act") to provide for the regulation of the construction and fencing of residential swimming pools to ensure that:
  - a. a) all residential pools with a maximum depth of 400 millimetres or more that are filled or partly filled with water have physical barriers that prevent unsupervised access to the pool (including climbing) by young children under the age of 5 years
  - b. b) the owner of the pool, owner, occupier, purchaser or lessee of the land on which the pool is situated, is responsible for compliance with the provisions of the Bill
  - c. c) manufacturers and retailers of any swimming, wading, or paddling product, other than a residential bath, when supplying a pool, include a notice approved by the Chief Executive summarising the responsibilities of owners and occupiers
  - d. d) when served with a notice to fix, owners etc of the pool/land are obliged to drain the relevant pool until the terms of such notice are complied with, and
  - e. e) every territorial authority ensures all residential pools comply with the requirements of this Bill by carrying out compulsory inspections every 5 years.
- Provide a penalty for any person who fails to comply with a notice to fix a means of restricting access to a residential pool punishable by fine up to a maximum of \$5,000.

## *Consistency of the Bill with the Bill of Rights Act*

### *Section 21 – Right to be secure from unreasonable search and seizure*

4. Section 21 of the Bill of Rights Act provides the right to be secure against unreasonable search and seizure. Section 21 has two limbs. First, it only applies to activities that constitute a "search or seizure". Where actions do constitute a search or seizure, section 21 only protects against such searches and seizures which are "unreasonable" in the circumstances.

5. Clause 12 of the Bill inserts section 222A into the principal Act which requires all territorial authorities to carry out 5 yearly inspections on all residential pools within each jurisdiction.

6. In determining whether the search and seizure powers are consistent with section 21, we noted and considered the following factors:

- a. The purpose of the inspection powers are clearly established (a territorial authority is required to inspect all residential pools every five years to ensure they comply with statutory requirements).
- b. The aim of the Bill is to provide for the health and safety of young children in respect of residential swimming pools. In considering whether the search and seizure powers were justifiable we have taken into account the Ministry of Business, Innovation and Employment have advised that the powers are necessary because:

*“The means of restricting access to swimming pools deteriorate over time (i.e. fencing), therefore a periodic inspection of all pools is required to ensure continual compliance with the requirements of the Bill.*

*A high degree of public welfare protection is also required. The consequences of failing to comply with the relevant statutory requirement could have potentially serious or even tragic results.”*

7. Overall, we have formed the view that the inspection and monitoring powers, in light of the justifications outlined above, do not appear to be inconsistent with section 21 of the Bill of Rights Act.

#### *Conclusion*

8. We have concluded the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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