

1 February 2005

SC40-04  
EN15-05

Drowning Prevention Strategy Submission  
Injury Prevention Division  
Accident Compensation Corporation  
PO Box 242  
WELLINGTON

Dear Sir/Madam

**Submission on the Drowning Prevention Strategy: Towards a Water Safe New Zealand 2005 - 2015 Draft Consultation Document**

*Local Government New Zealand* thanks the Accident Compensation Corporation (ACC) for the opportunity to comment on the Drowning Prevention Strategy: Towards a Water Safe New Zealand 2005 - 2015 Draft Consultation Document (consultation document).

*Local Government New Zealand* makes this submission on behalf of the National Council representing the 74 territorial authorities and 12 regional councils of New Zealand. You may also receive submissions from individual councils.

We support the preparation of a drowning prevention strategy and consider it is timely. We agree with the overall content and direction of the consultation document. In particular, we support the need for co-ordinated action by all parties involved in water safety and drowning prevention work (Objective 1), and in the area of water safety education and awareness (Objective 6).

A key gap we have identified in the consultation document relates to Objective 4 and the potential actions under that Objective. The case study under Objective 4 discusses the Fencing of Swimming Pools Act 1987. The local government sector would like to see the Act reviewed to address a number of problems being experienced with it. We request that a review of the Act is incorporated into the actions under Objective 4.

We provide the following background information in support of our request.

At the *Local Government New Zealand* Annual General Meeting in July 2004, the members passed a remit seeking legislative change to improve clarity and reduce conflicts between the Fencing of Swimming Pools Act 1987 and the Building Code under the Building Act 2004.

The problems being experienced included:

- The absence of a clear definition of “immediate pool area”.
- The lack of clarification about what the requirements are where doors from the house lead directly to the pool area.
- The absence of clarity about the liability faced by property owners/occupiers, council/council officers, architects, builders, and pool retailer and installers, if a drowning or serious injury occurs.
- New issues that were not foreseen when the Fencing of Swimming Pools Act was passed in 1987. For example: whether portable spa pool covers are an acceptable alternative to fencing; how to address safety issues relating to inflatable and portable pools (around 80,000 of these are being sold each year and they can be as big as permanent in-ground pools); and safety issues for ornamental ponds in gardens.

Local government is not alone in seeing the need for legislative change. The following comment was made in the High Court decision by Randerson J<sup>1</sup> on the issue of defining the “immediate pool area”.

“The size of the immediate pool area cannot be defined with precision and will depend on the circumstances of each case. That leaves both territorial authorities and pool owners in a situation of most undesirable uncertainty which is the inevitable consequence of well intentioned but vaguely worded legislation.

It is not within the power of this Court to interpret the [Fencing of Swimming Pools] Act with any greater precision. This is the proper function of Parliament. Early attention should be given to this as well as clarifying the unsatisfactory inconsistencies between the requirements of the Schedule of the Act and the building code in relation to fences, gates and doors.” (paragraphs 55 and 56)

The problems were also raised at a forum on water safety organised by Water Safety New Zealand (WSNZ) in December 2004. The forum resolved that a task force should be convened to work towards legislative change.

The issues had previously been raised at a Watersafe Auckland Pool Fencing Forum held in 2001, which led to the seven Auckland territorial authorities forming a group to get consistency of interpretation and application of the Act across the region.

The primary reason local authorities are so concerned about the issue is to ensure the safety of pre-school children by reducing domestic pool drownings and pool related injuries. Pre-school drownings have significantly reduced since the Act was introduced in 1987. However, there were still 40 drownings of pre-school children in pools in the ten years from 1994 to 2003. For every one drowning there are approximately five overnight hospitalisations, of which it is estimated that 20% will incur ongoing medical problems from their submersions. The Act is not working as effectively as it could to reduce drownings and serious injury from submersions, due to the issues outlined above. These problems are making it very difficult, if not impossible, for local authorities to require compliance, particularly for existing pools.

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<sup>1</sup> Waitakere City Council V John Michael Hickman and Stephanie Hickman and Anor HC AK CIV2003-404-7266[1 October 2004].

In summary, *Local Government New Zealand* supports the preparation of a drowning prevention strategy and agrees with the overall content and direction of the consultation document. In particular, *Local Government New Zealand* supports the need for co-ordinated action by all parties involved in water safety and drowning prevention work, and in the area of water safety education and awareness. Our key request is that a review of the Fencing of Swimming Pools Act is incorporated into the actions under Objective 4.

Yours sincerely

Eugene Bowen  
Chief Executive  
*Local Government New Zealand*