

## FENCING OF SWIMMING POOLS ACT 1987 (the Act)

### Section 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.

## SCHEDULE

[Sections 13B, 13C]

## [MEANS OF COMPLIANCE] 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 child under the age of 6 years] from climbing over or crawling under the fence from the outside.
4. Except where the fence is horizontally close-boarded [or is made of perforated material, netting, or mesh], the spacing between adjacent vertical pales, panels, or other posts shall not exceed 100 mm at any point.
- [5. All fencing supports, rails, rods, and wires, that are not vertical, and all bracing that is not vertical, shall be inaccessible for use for climbing from the outside.]  
[5A. Notwithstanding clause 5 of this Schedule, a fence may have horizontal supports, rails, rods, or wires, that are accessible for use for climbing from the outside, and horizontal bracing that is accessible for such use, if—
  - (a) The distance between any 2 of them at any point is at least 900 mm; and
  - (b) There is no other support, rail, rod, wire, or bracing (other than a vertical rail) between the same 2 at any point.]
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—
- It cannot open inwards towards the immediate pool area;
  - 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;
  - 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.

Hist. Schedule, omitted expression "Section 8" and substituted expression "Sections 13B, 13C", on 1 July 1992 by 1991 No 150, s92(1).

Hist. Heading; omitted word "REQUIREMENTS" and substituted words "MEANS OF COMPLIANCE" on 1 July 1992 by 1991 No 150, s92(1).

{ Editorial Note: 1991 No 150 substitutes for the word "REQUIREMENT" whereas the original schedule heading actually contained the word "REQUIREMENTS". }

Hist. Cl.3 omitted words "any person" and substituted words "any child under the age of 6 years" on 20 November 1989 by 1989 No 117, s2(1).

Hist. Cl.4 inserted words "or is made of perforated material, netting, or mesh" on 20 November 1989 by 1989 No 117, s2(2).

Hist. Cl.5 repealed and cl.5 & cl.5A substituted on 20 November 1989 by 1989 No 117, s2(3). The repealed cl.5 is listed below for reference.

"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."

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**FENCING OF SWIMMING POOLS AMENDMENT ACT 1989**

Public Act 1989 No 117

Date of assent 20 November 1989

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**CONTENTS**

- |   | Title            |
|---|------------------|
| 1 | Short Title      |
| 2 | Schedule amended |
- 

**FENCING OF SWIMMING POOLS AMENDMENT ACT 1989**

Public Act 1989 No 117

An Act to amend the Fencing of Swimming Pools Act 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 Amendment Act 1989, and shall be read together with and deemed part of the Fencing of Swimming Pools Act 1987 (hereinafter referred to as the principal Act).
- 2 **SCHEDULE AMENDED**
  - (1) Substituted words in cl.3 of the Schedule to principal Act.
  - (2) Inserted words in cl.4 of the Schedule to principal Act.
  - (3) Substituted cl.5 & cl.5A for repealed cl.5 of the Schedule to principal Act.

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The Fencing of Swimming Pools Act 1987 is administered in the Department of Internal Affairs.



Waitakere City Council  
Te Takahi o Waitakere

11 MAR 2005

CHEQUE FOR  
\$ 250.00

EXEMPTION APPLICATION FORM FOR SPA & SWIMMING POOLS

632823

The Operational Compliance Manager  
Waitakere City Council  
Private Bag 93109  
Henderson

WAITAKERE CITY

OFFICE USE ONLY

SITE ADDRESS:

17 Puketitiro St

Green Road

SWP NO. 99.000.385

ABA NO. (IF APPLICABLE)

OWNERS NAME:

Mr/Mrs/Ms/Ms/Ms... PT. RAKICH

Hereby make application for an exemption from the standard fencing controls relating to pools.

I propose to make or have already made the following arrangements for the security of my pool:

My Pool is TOTALLY FENCED OFF now (We spent approx \$2000 on a new fence to isolate pool from Street, which MR KSCWYER told me to do & not to put the fence to isolate the Dwelling doors

Reasons why proposal should be granted: (See reverse): The Bifold doors can't SELF LOCK & THEY HAVE THE PROPER SAFETY LATCHES TOP & Bottom & centre.

ADDRESS FOR  
CORRESPONDENCE:

APPLICATION FEE: \$250.00 (one off) (We don't think it is fair for us to pay this amount)

Signature: [Signature]

Telephone No: 8397897

Date: 2/5/05

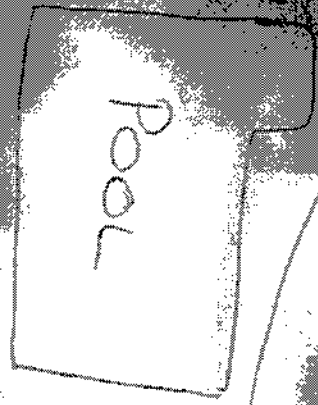
Note the explanation and requirements on the reverse of this form.

Pa P 99000 200  
17 Pac 613776

Unexcused

LAWN

REQUIRED



17 FEB 1957  
Graham

By telling her  
with correct safety

**DWELLING.**

M.R. Keating told me this was  
not required a then when  
M.R. Keating unexcused pool I thought  
something was OK except small  
cap but then she'd adwelling  
The other I was sked to, even  
letter that the dear have to be  
self talking.



**Sliding Bifold Door with outward swinging section**

**17 Puketitiro Street**

635074

WAITAKERE CITY COUNCIL

- 3 JUN 2005

3rd June 2005

286 Titirangi Rd,  
Titirangi,  
Waitakere City

CHEQUE FOR  
\$ 250.00  
TO CASHIERS

The Chairman,  
Waitakere City Council,  
Swimming Pool Fencing Exemptions Committee  
Private Bag 93109  
Henderson,  
Waitakere City 1231

Dear Sir,

Attached please find our application for exemption for the landscaped area of our swimming pool. This is now the only issue outstanding for compliance as we have replaced our French doors with compliant bi-folds.

As we consider that this landscaped area does not in any way endanger the safety of children, we ask that any exemption (if granted) should run with the property and show on Lim reports as such.

We also request that our Application Fee of \$250 for this exemption be refunded as we strongly believe that this area has never constituted a danger to children.

Because of our strong concern for the safety of our own children (and those of our neighbours) we took the initiative to fence our pool area more than 22 years ago.

Since that time we have never allowed children to be within our pool area unsupervised

If you require any further information do not hesitate to contact me at 820 1022 (business) or 817 7990 (residence).

Please note that we will be unavailable from 3/06/05 to 7/06/05 inclusive as we would definitely like to be present when the Exemption Committee visits our property to assist with their deliberations.

Yours faithfully,



Bob & Carole Spargo

+64 9 8368064

# Exemption Application Form for Spa & Swimming Pools



Send to: Chief Executive  
Waitakere City Council  
Private Bag 93109  
Henderson  
WAITAKERE CITY 1231

For more information:  
Civic Centre, Waipareira Avenue,  
Henderson  
Telephone (09) 839 0400  
Facsimile (09) 836 8001

Owners Name: Robert and Carole Ann Spargo

Address of pool: 286 TITIRANGI ROAD, TITIRANGI, WAITAKERE CITY

Hereby make application for an exemption from the standard fencing controls relating to pools. I propose to make or have already made the following arrangements for the security of my pool:

Pool is fully fenced and inaccessible to children.

Reasons why proposal should be granted: (See reverse)

See attached

- 1, Reasons why we feel Exemption should be granted
- 2, Plans for property (Appendix F)
- 3, Plans of Pool Area (Appendix E)
- 3, General Information including height of fence and Materials

Address for Correspondence: 286 Titirangi Road, Titirangi, Waitakere City

Application fee: \$250 (one off)

Signature: [Signature]

Telephone Number: (Res) 817-7990, (Bus) 820-1028

Date: 3/6/05

Note the explanation and requirements on the reverse of this form

Office Use Only

Site Address: \_\_\_\_\_

SWP No: \_\_\_\_\_

ABA No: \_\_\_\_\_  
(If applicable)

Chief Executive	
Corporate Services	
City Services Moselle	
Consultancy Services	
ECO - WATER	
Strategic Group	
Consent Services	
Field Services	
Jenny Koochin	

## **Reasons Why We feel Exemption Should be Granted**

1/ Swimming Pool Fencing is all of vertical timber construction and gates open outwards and are self closing. The fence meets all requirements of the act thus excluding children from the pool area.

2/ The area in question is used to store the following equipment used for maintenance of the pool;

- (a) Leaf scoop and long handled cleaning brush (Hung on fence).
- (b) Pool chemicals etc. (See photos – appendix B).

3/ The low retaining wall is necessary because the slope of the land required the creation of a platform for the pool.

3/ Line of sight to the pool is not restricted from this area as can be seen in the photos. (appendix C)

4/ We do not believe the inclusion of this area within the pool fencing increases danger to children in any way.

5/ This fenced pool area has been in use since 1983, (See Spargo Pool History – appendix D). During this time we have raised 4 children (at that date their ages ranged from 4 to 12 years old). All were taught to swim professionally and well supervised whenever they were in the pool area. In our opinion, even when pool fencing is compliant, supervision of children at all times is of paramount importance.

6/ This landscaped area only became an issue after the Randerson judgement. Before this the pool inspectors were not concerned with it.