



## Building (Pools) Amendment Bill Local Government and Environment Committee

### The Salvation Army New Zealand Fiji and Tonga Territory Submission

#### BACKGROUND

1. The Salvation Army is an international Christian and social services organisation that has worked in New Zealand for over one hundred and thirty years. The Army provides a wide-range of practical social, community and faith-based services, particularly for those who are suffering, facing injustice or those who have been forgotten and are marginalised by mainstream society.
2. We have over 90 Community Ministry centres and Churches (Corps) across the nation, serving local families and communities. We are passionately committed to our communities as we aim to fulfil our mission of caring for people, transforming lives and reforming society through God in Christ by the Holy Spirit's power<sup>1</sup>.
3. This submission has been prepared by the Social Policy and Parliamentary Unit of The Salvation Army. This Unit works towards the eradication of poverty by encouraging policies and practices that strengthen the social framework of New Zealand.
4. The Social Policy and Parliamentary Unit have prepared this submission with the assistance and expertise of Water Safety New Zealand. Water Safety New Zealand (WSNZ) was formed in 1949, and is the umbrella organisation for the water safety sector. WSNZ works to reduce the high number of New Zealanders who lose their lives in the water each year. The Unit acknowledges the significant work that WSNZ and their colleagues in the water safety sector have done in relation to reviewing this proposed legislation and outlining their key areas of concern and recommendations.
5. This submission has been approved by Commissioner Robert Donaldson of The Salvation Army's New Zealand, Fiji and Tonga Territory.

#### THE SALVATION ARMY PERSPECTIVE

6. The Salvation Army believes that our children are our *taonga* – precious treasures and in need of our nurture and protection. A preschool child can drown in less than one minute.

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<sup>1</sup> <http://www.salvationarmy.org.nz/our-community/mission/>

Every child drowning is considered preventable and we should be doing all we can to prevent those deaths.

7. The Salvation Army acknowledges that this Bill aims to “*maintain child safety*” whilst “reducing the compliance burden currently imposed on pool owners and territorial authorities in relation to residential pools.”
8. However, the Salvation Army is concerned that the Bill as it stands does not adequately ensure the safety and welfare of our children. Whilst The Salvation Army does not have specific expertise in water safety, we are choosing to submit on this Bill and highlight the concerns and recommendations of the water safety sector as we believe that the potential implications of this Bill are a social justice issue.
9. It is for this reason that The Salvation Army **opposes** the Building (Pools) Amendment Bill in its current form.
10. This Bill has attracted the significant concern of former Children’s Commissioner Dr Ian Hassall and the wider water safety sector, including WSNZ. The Salvation Army adds our voice to these concerns and urges the Select Committee to carefully listen to and consider the expertise of water safety experts on the implications of these changes.
11. We, and our colleagues at WSNZ, believe that the Bill as proposed has the potential to increase the number of drowning deaths and injuries of under five-year-old children in New Zealand home swimming pools and spas. Reductions in compliance and inspection costs, or the right of homeowners with swimming pools to enjoy a more aesthetically pleasing garden or pool area should not be placed above the value of children’s lives.

## **GENERAL COMMENTS AND SUMMARY OF RECOMMENDATIONS**

12. We believe repealing a dedicated drowning prevention Act such as the Fencing of Swimming Pools Act 1987 (FOSP Act) removes a clear public statement that the Government values child safety in the home environment. The Salvation Army submits that the reliance on “voluntary compliance” by pool owners under this Bill indicates that there is a flawed emphasis on individual pool-owner freedom and reducing costs, rather than prioritising child safety.
13. The experience of the water safety sector is that the public *do not* self-regulate their safety around water because they underestimate the risks and overestimate their abilities. New Zealand and international experience shows that most under-fives have drowned as a result of not being actively supervised around water. Pools remain the most common location for under-fives drowning. A robust regulatory framework is therefore essential.
14. Parliament has highlighted the success of the Fencing of Swimming Pools Act 1987 (FOSP Act) in reducing the number of fatalities of children under 5 years old in residential swimming pools, from about 10 per year to three per year.

15. However, despite the success of the FOSP Act, from 2005 to 2014, 75 under-five year olds drowned. Of these deaths 41 (55%) occurred around the home, and 21 were in pools or spas. In addition to these tragic and preventable deaths, 71 under-five year olds were hospitalised from non-fatal drownings in a home pool, spa or public pool. The majority of them drowned because gates, fences or doors were non-compliant, or they had direct access from the home.
16. This suggests to The Salvation Army that there is still work to be done in improving child safety around water. All of these deaths and injuries were preventable and we believe that this process should be used as an opportunity to *increase* protection for children around water, not *reduce* the protections that have been in place so successfully for almost 30 years.
17. The Salvation Army therefore adopts and affirms the recommendations of WSNZ:

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| Recommendation 1: | Retaining the FOSP Act and making complementary improvements to both the FOSP Act and the Building Act that will strengthen drowning prevention measures so that we can further reduce the social and economic costs associated with children drowning. |
| Recommendation 2: | The Building Act is amended to incorporate an updated New Zealand Standard 8500: 2006 <i>Safety Barriers and Fences Around Swimming Pools, Spas and Hot Tubs</i> as a single, industry mandated, acceptable solutions compliance document.              |
| Recommendation 3: | That mandatory 3-year inspections for all residential pools and spas, and periodic inspections where the Territorial Authority suspects that standards are not being met, be added to the current FOSP Act Schedule of compliance.                      |
| Recommendation 4: | The requirement for four-sided isolation fencing with self-latching gates for any new home and pool builds where doors can open directly on to a pool area to be added to the current FOSP Act Schedule of compliance.                                  |
| Recommendation 5: | That current provisions for spa pools and hot tubs remain in the FOSP Act schedule of acceptable solutions and be considered as part of the recommended update of NZS 8500: 2006.   |
| Recommendation 6: | Spa pools and hot tubs be included in pool fencing council inspections every three years.   |
| Recommendation 7: | Continue to include the requirement to fence garden ponds and water hazards in the FOSP Act.  |
| Recommendation 8: | The depth of water for portable pools be set at a maximum of 300mm before fencing is required if they are to be left up and full of water.  |
| Recommendation 9: | Retain the mandatory requirement to fence home swimming pools as opposed to introducing the less specified idea of a “ <i>means of restricting access</i> ”.  |

Recommendation 10: That there is a provision of a clear definition, statement of purpose and interpretation of the term “Immediate Pool Area”.

## **SPECIFIC RESPONSES TO AMENDMENT**

### **Voluntary Compliance and Five Yearly inspections (Recommendation 3)**

18. Under clause 12, the Bill proposes these inspections be changed to every five years, citing the fact that 20% of pools are currently not inspected.
19. The Salvation Army submits that five yearly inspections are too infrequent to ensure pool fences are properly maintained, or to remind people of their obligations.
20. We believe this increase in time between inspections will increase the risk of unsafe pool fencing. The majority of drownings by children occur because of non-compliant or faulty fences and gates. The Bill proposes that frequent inspections be replaced with a reliance on personal responsibility by pool and spa owners - this is effectively voluntary compliance.
21. 60% of pools are currently inspected every three years. WSNZ notes that the public do not self-regulate their safety around water because they underestimate the risks and overestimate their abilities. As a result we have one of the highest drowning rates of the OECD.
22. ***The Salvation Army recommends mandatory 3-year inspections for all residential pools and spas under the current Fencing of Pools Act, and periodic inspections where the Territorial Authority suspects that standards are not being met.***

### **Doors opening onto pool areas (Recommendation 4)**

23. Clause F9 proposes the means of restricting access to residential pools: “Where a building forms part of an immediate pool area barrier, doors between the building and the immediate pool area must not be able to be readily opened by children, and must either emit an audible warning when the door is open, or close automatically after use.”
24. Dr Ian Hassall, former Children’s Commissioner notes that some of the children who have drowned in the past have made a *determined* effort to enter the pool. Making the standard one in which a child cannot “readily” open the doors is not a sufficiently high threshold. The Salvation Army submits that continuing to allow doors to open directly onto a pool area, albeit with self-closing mechanisms or alarms, continues the possibility of mechanical or human error.
25. Reference is also made to the need for a gate to be *self-closing* but not *self-latching*, and it is not specified that the opening mechanism should be inaccessible to a child of under-five.

26. The 2014 World Health Organisation *Global Report on Drowning* recommends that home swimming pools should have four-sided child resistant fences in addition to self-closing gates with safety latches.

**27. The Salvation Army recommends that:**

*a. Four-sided isolation fencing for any new home and pool builds where doors can open directly on to a pool area be added to the current FOSP Act Schedule of compliance and,*

*b. Self-closing gates are required to have safety latches.*

#### **Removing restrictions on spas and hot tubs (Recommendations 5 & 6)**

28. The Salvation Army is concerned at the removal of the requirements for a building consent for spas and hot tubs, for their fencing, and for any inspections. This effectively means that they will become a largely unregulated water hazard.

29. The low level of child drownings in spa pools currently can be attributed to the safety measures present in the FOSP Act, not to any intrinsic safety features of the spas themselves.

30. Given their growing popularity, and prominence on home decks and in gardens, the safety of spas and hot tubs will rely on the weak notion of 'owner vigilance'. The safety threshold would be lowered to an unacceptable level. These measures introduce an avoidable drowning risk for children.

31. The presence of a lockable spa cover does not guarantee the cover will be put in place and locked. We believe failure to have some inspection compliance around spa pools negates the value of the requirement for a lockable cover.

**32. The Salvation Army recommends that:**

*c. current provisions for spa pools and hot tubs remain in the FOSP Act schedule of acceptable solutions and be considered as part of the recommended update of NZS 8500: 2006 and,*

*d. Spa pools and hot tubs are included in pool fencing council inspections every three years.*

#### **Clarity around the definition of "pool" (Recommendation 7)**

33. Currently the FOSP Act defines pool as something that "is used or *capable of being* used for the purpose of swimming, etc...."

34. Clause five amends the definition for pool as “any excavation or structure of a kind *normally* used for swimming, paddling, or bathing; or any product (other than an ordinary home bath) that is designed or modified to be used for swimming, wading, paddling, or bathing.”
35. What it is “normally” used for is irrelevant to the young child who falls into it. Drowning occurs in any type of water. Garden ponds and water features are designed to be attractive to people and they constitute a significant danger to unsupervised children. Removing the requirements to fence them will inevitably result in children drowning.
36. ***The Salvation Army recommends that the current requirement for garden ponds and water hazards to be fenced is retained.***

#### **Depth of water for portable pools (Recommendation 8)**

37. Portable pools are increasingly a home pool of choice for many New Zealand families.
38. The new Subpart 7A (Special provisions for residential pools) under the Bill only applies to pools with a maximum depth of water of 400 mm or more.
39. The water safety sector recommends that the depth of water for portable pools be set at a maximum of 300mm before fencing is required if they are to be left up and full of water. This is not an attempt to impose unreasonable requirements on owners but to act as a reminder to empty the portable pools. All Australian States have the depth of water for portable pools set at a maximum of 300mm before fencing is required – we should bring New Zealand into alignment with Australian national standards.
40. ***The Salvation Army recommends that the depth of water for portable pools be set at 300mm before fencing is required, to align us with Australian regulations.***

#### **Retain the Requirement for a ‘Fence’ (Recommendation 9)**

41. Under clause F9, the Bill repeals the FOSP Act and instead inserts new provisions into the Building Regulations 1992.
42. The Salvation Army and the water safety sector wish to retain the mandatory requirement to *fence* home swimming pools as opposed to introducing the less specified idea of a “*means of restricting access*” and relying on a performance-based standard in the Building Code.
43. We note that performance based standards have been responsible for persistent problems with leaky buildings.
44. This change to “*means of restricting access*” reduces the certainty provided by the requirement to ‘fence’ a pool and replaces it with a process that introduces an ability to interpret a pool safety requirement broadly and liberally. It introduces the possibility of barriers being constructed whose primary purpose is not safety but aesthetics.

45. Retaining the clearly understood and proven notion of a 'fence' will avoid uncertainty for the public, councils and the pool industry, and ensure that current pool access restrictions are not compromised.

46. The inevitable cost of any failure of a safety regime reliant on a performance based standard will be the death by drowning of children.

**47. *The Salvation Army recommends that the mandatory requirement to fence home swimming pools under the FOSP Act is retained.***

#### **"Immediate Pool Area" (Recommendation 10)**

48. The Salvation Army submits that there should be a clear definition, interpretation of and statements of purpose about the term "Immediate Pool Area".

49. **Definition:** A clear definition of the term Immediate Pool Area will give Councils and pool owner's clear guidelines of what the pool area is. The fence should then be placed either within or on the outer edge of the immediate pool area. This will allow home owners to decide on the placement of their fences (as long as the whole pool is fenced).

50. The term can then be better understood for educational purposes around supervision.

51. **Interpretation:** Currently Clause 5 states that the meaning of "Immediate Pool Area" is the land in or on which the pool is situated and so much of the surrounding area as is used for activities carried out in relation to or involving the pool"

52. We support the term "Immediate Pool Area" being retained.

53. **Purpose:** The new 162A Purpose under the Bill states that "The purpose of this subpart is to prevent unsupervised access to residential pools by young children."

54. The Salvation Army submits that the wording of this purpose is too restrictive and narrow.

55. Inclusion of "or the immediate pool area" is important where a building is part of the immediate pool area and is part of the physical barrier (fence).

**56. The Salvation Army adopts the recommendation of the water safety sector and recommends instead including "or the immediate pool area" as follows:**

- a. ***"The purpose of this subpart is to prevent unsupervised access to residential pools or the immediate pool area by young children."***

57. Clause 162C(1) then goes on to state “Every residential pool that is filled or partly filled with water must have physical barriers that restrict access to the pool by unsupervised children under 5 years of age.”
58. We further submit that the wording of 162 C(1) is too restrictive.
59. The Salvation Army repeats the sector’s recommendation at [40-46] above to retain the mandatory requirement to *fence* swimming pools as opposed to introducing the less specified idea of a “means of restricting access”.
60. We therefore recommend including “fence” and “or the immediate pool area” as follows:
- a. **“Every residential pool that is filled or partly filled with water must have a *fence* that restricts access to the pool *or the immediate pool area* by unsupervised children under 5 years of age.”**

## CONCLUSION

61. The Salvation Army is concerned that the Bill as proposed erodes the existing protections for children in the name of removing cost and compliance burdens on pool owners. Despite the consultation process that took place in the lead up to the drafting of this Bill, The Salvation Army believes that it is significant that the water safety sector still has significant concerns that this Bill does not create a more consistent and practical approach to protecting young children from drowning in residential swimming pools.
62. The Salvation Army commends the work of our colleagues at WSNZ, and urges the Select Committee to use this opportunity to take full account of the concerns and recommendations of the experts in order to further improve the safety of our children.



## References

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