

19 June 2006

Release of Draft Standard for Public Comment: DZ 8500 to be NZS 8500:2007 Safety Barriers for Young Children around Swimming Pools, Spas and Hot Tubs

Standards New Zealand (SNZ) has released for public comment a draft of DZ 8500 to be NZS 8500:2007 *Safety Barriers for Young Children around Swimming Pools, Spas and Hot Tubs*.

The submission period runs from **19 June 2006 to 11 August 2006**.

Water Safety New Zealand advised that between 1 January 1980 to 31 December 2005 3,993 (1,368 under 24 years) people drowned in New Zealand. Of those 3,993 people, 386 were in the age group of 1-4 years old with the most common site the domestic swimming pool 136 (35 %), with a further 17 (4 %) being spa pool deaths.

The key aim of this Standard is to assist people to avoid a swimming pool related drowning. It sets out the options for the location of effective safety barriers that will restrict the access of young children to swimming pools, as well as specifying requirements for the design, construction and performance of fences, gates, retaining walls and door sets intended to form a barrier that will restrict access of young children to swimming pools.

If you or anyone in your organisation would like to review the draft and provide comments, you can obtain a copy by downloading it free from the Standards New Zealand website.

<http://www.standards.co.nz/draft-standards>

You can either comment online by clicking on 'Enter Comments Online' or by downloading and completing a comment form and sending it to Vicki Allison – email: Vicki.Allison@standards.co.nz.

I would be grateful if you could circulate this notice to those in your organisation who may be interested in commenting on the draft.

Comments are due to Standards New Zealand before **Friday 11th August**. Comments **must** be provided in electronic form using the template supplied on the SNZ website or entering your comments online.

Yours sincerely



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RECOMMENDED CHANGES TO DRAFT STANDARD

To: Vicki Allison Standards New Zealand Private Bag 2439 WELLINGTON Fax: +64 4 498 5994 Email: vicki.allison@standards.co.nz	From: (Your Name and Address) Willis Heney Christchurch City Council P O Box 237 Christchurch	
	Closing date for comment 11 August 2006	Date of your comments
DZ 8500 Committee: P8500 Title: Safety Barriers for Young Children around Swimming Pools, Spas and Hot Tubs		

Comment is preferred in electronic format using Microsoft Word 97 or above, following the layout below. Electronic drafts are available from Standards New Zealand web site at <http://www.standards.co.nz>.

The following form is for comments to be submitted electronically. Please email your comments to vicki.allison@standards.co.nz

GENERAL COMMENT

These comments on the Draft Standard have been prepared by the Team Leader Environmental Monitoring, Christchurch City Council, in conjunction with the Council's Fencing of Swimming Pools Inspectors.

The Committee is to be congratulated on the thoroughness and detail of the document that they have produced. It is noted however in the foreword that *the intention in developing the standard is that Parliament will be able to consider using it as a replacement for the Schedule in the FOSP Act by way of an amendment to the Act. Further, that the Standard is a multipurpose document. It is intended to become a compliance document under the Building Code for new pools and also to be used by territorial authorities in developing safe solutions for existing pools.* These are highly commendable intentions but there is a concern that the draft is trying to do too much in that rather than being restricted to (in the words of the Schedule to the Act) Means Of Compliance For Fences Under This Act, it in fact is a Model Bylaw for the Fencing of Swimming Pools or a discussion document for a new Fencing of Swimming Pools Act.

This is not intended as a criticism of the work that has been done or of the document that has emerged. On the contrary, it is strongly recommended that the Department of Building and Housing should build on the good work that has been done and use this document as the basis of a new Act.

As a replacement to the Schedule to the Act and/or as a means of compliance with the Building Code, much of the document as it is currently worded would be considered *ultra vires*. For example, Immediate Pool Area is defined in the Act and this definition cannot be extended in the Standard. A pool wholly enclosed within a building that is used principally for a purpose or purposes not related to the use of the pool is exempt from all of the requirements of the Act and therefore cannot be required to have access only through a child-resistant doorset as suggested by 1.2.4.1. (Highly commendable as this may be).

SPECIFIC COMMENT

Insert the number of the clause, paragraph or figure. Do not preface the number with words (i.e. 1 not clause 1). If there is no clause number, use the section heading (e.g. Preface). Insert the page, paragraph and line number as appropriate. Use a new row for each comment.

The rows will automatically expand to accommodate comments of any length. Remove unused rows, or insert additional rows as required. To insert extra rows at the end of the table, go to the last cell and press the TAB key.

Clause/ Para/ Figure/ Table No	Page No	Recommended Changes and Reason Exact wording of recommended changes should be given
Foreword 5 8	9	<p>We agree with the concept of establishing ‘layers of protection to supplement and complement the requirement of adult supervision of young children around residential water amenities’. This is the approach promoted by the USA Consumer Product Safety Commission and removes the current reliance on a barrier as the only level of protection.</p> <p>The final sentence in this paragraph is debatable. There is no question that the responsibility for “maintaining the integrity of all layers of protection lies with the property owner(s) etc.” but we would believe that some, at least, of “the ultimate responsibility for avoiding drownings” (of young children) must rest with the parent or person in charge of the young child.</p>
1.1.1	10	Note 4 would prohibit the use of a solid barrier in many cases. Is this what is intended?
1.1.2 8	10	<p>IMMEDIATE POOL AREA</p> <p>The final part of the definition needs clarifying. If it is intended that the IPA can only include that land from which the entry of a child into the pool can be immediately detected then this needs to be spelt out a little clearer.</p> <p>As noted in the General Comments however it is believed that this would be ultra vires the Act. There may well be a place for definitions in the Standard but these must be limited to only to words or terms that appear in the Standard but not in the Act, Building Act or Building Code. To have differing definitions or interpretations simply provides the potential to introduce more confusion rather than providing clarity.</p> <p>We do wonder however why, if the proposed Standard is intended as a replacement to the Schedule to the FOSP Act, there should be any definitions in the Standard? The Schedule does not have any definitions, these are in the Act itself. In the event of differences between a definition in the Standard and the Act then that in the Act would take precedence. There appears to be great potential to introduce more confusion rather than providing clarity. (As a supporting argument, it is noted that there is no intent to duplicate or expand the definition of Swimming Pool)</p> <p>It may be helpful in conjunction with the removal of such definitions (e.g. would also need to remove “Fence/Fencing”) to add a note to 1.1.3 that definitions from the Act apply to terms in the Standard unless clearly inconsistent with that meaning.</p> <p>We would strongly support the need to more clearly define what is meant by Immediate Pool Area but suggest that this must be done by way of amendment to the Act.</p>
1.1.2 17	11	<p>Definition of Young Child as a child under the age of 5 years differs from that in the Schedule to the Act of “under the age of 6 years”</p> <p>F3.4.3 of the Building code also refers to “children under 6 years of age.</p> <p>In order to maintain consistency this should be changed to - YOUNG CHILD. A child under the age of 6 years.</p>
1.1.5	11	<p>Is it necessary to say this/have this section at all? It is also the TAs responsibility to inspect pools, new and old, and require that they be fenced if they don't comply with the Act, so if this section is to remain perhaps that responsibility/retrospective effect of the legislation should also be mentioned.</p>

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1.2.1	12	<p>Agree with no direct access permitted to the pool area from a dwelling or areas of property normally open to the dwelling. Also agree that any window forming part of the barrier must comply with 2.2.7.</p> <p>We do not believe that it should be acceptable to have a door or doors forming part of this barrier. For a new pool it should be quite feasible to provide for a fully complying barrier at the design stage with no need to include a door or doors. The provision of a door from the dwelling to the pool area could encourage the use of the pool area as a thoroughfare or other unacceptable purposes.</p> <p>If it is absolutely impossible to provide a barrier without including a door or doors then this must be only by way of exemption in accordance with section 6 of the Act. If an exemption was to be considered then this would offer the opportunity to require additional layers of protection as suggested in the foreword. This could mean that in addition to a child-resistant doorset there is also a requirement for an alarm capable of detecting unauthorised access from the dwelling into the pool area. There also needs to be some guidance as to the number of doors that are permitted as part of the barrier.</p>
1.2.4.1	14	<p>Agree with this requirement, but see the general comment on 1.1.2. above. "Fully indoor" pool should be better aligned with section 5(e) of the Act, perhaps by adding: "...fully indoor pool, not being a pool to which section 5(e) of the Act applies..."</p>
1.2.5	14	<p>In view of the findings of the Invercargill Coroner in the inquest into the drowning of a child in an ornamental pond and the subsequent amendments by the Department of Internal Affairs to the guidelines for Territorial Authorities on The Fencing of Swimming Pools Act 1987, it is considered unfortunate that there has been no effort made to discuss this subject.</p> <p>There needs to be a clear and positive statement such as ponds are not "swimming pools" for the purpose of the Act. The 1983 Report of the Local Bills Committee concluded <i>that there was no equal or greater water hazards for pre-schoolers (than swimming pools)</i>. The report stated <i>"Young children do not drown in large numbers in the sea, open drains, stock dips, troughs, ponds, lakes or excavation sites. The Committee, therefore concludes that there is no inconsistency in fencing private swimming pools and not these other hazards."</i></p> <p>There are many hazards to young children that are not the subject of regulation (such as the dangers of vehicles reversing in driveways) and the exemption provided if the pond is less than 400 mm deep is an academic measure as a pond of 390 mm depth still presents a danger.</p> <p>In terms of risk-management, it is suggested that the risk to young children from a pond "used in association with any house ..etc." is not greater than that from any pond that is not used in association with a house. Territorial Authorities and their residents should not have to contend with the huge costs associated with making ornamental ponds comply with the Act.</p>
2.2	16	<p>In Figure 2.2 drawings 4 and 5 appear to be mislabelled as drawing 4 has the fork in the tree below 1200 and therefore would be climbable whereas drawing 5 has the fork above 1200 and would be non-climbable.</p>
2.2.3.2	17	<p>For clarity, it is suggested that the word "trellis" be included in the heading.</p> <p>As an alternative to the different mesh aperture sizes for different fence heights, it is suggested the following could be used instead of sentences 2 and 3 <i>For fences/barriers above 1.2 m in height the aperture size shall be no greater than 10 mm for the first 1200 mm of height.</i></p>
2.2.5.1	20	<p>Direction of opening of gates. There should be acknowledgement that there will be some occasions where it is not possible to have gates opening outwards (e.g. sloping land). In such a case it would be acceptable to have a sliding gate, self-closing and self-latching, approved by the exemption process.</p>

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2.2.5.3	20	We consider the requirement that the gate should be self-closing from any position including <i>resting on the latching mechanism</i> to be unduly onerous and prefer the current requirement of the Schedule of 150 mm. as the gate must open away from the pool a gate resting on the latching mechanism would be pushed closed by a toddler's instinctive push on the gate. If this requirement is retained then it should only apply to new installations.
2.2.5.4.1 and 2.2.5.4.2	20 21	We agree with and support these clauses.
2.2.6	23	Figure 2.7 <i>Statement Fence (not required to be compliant with this Standard)</i> should read Fence (to comply with the New Zealand Building Code) We believe that effective height of the drop in 2.2.6.1 only needs to be in excess of 1 metre. This, plus the 1 metre height of the barrier gives an effective falling height of 2 metres
2.2.7	24	As it would be most unusual for a room inside a building to have no furniture or climbing aids within the room, it is considered that ALL openings (regardless of height above floor level) should have screens or restrictors fitted where they are less than 2400 mm above ground level.
2.2.8.1 (a) (b) (h)	25	<p>Agree with this requirement. There does not appear to be any requirement in relation to the direction that the door opens. Is this intentional or an oversight?</p> <p>Same comment as for clause 2.2.5.3 Clause F4.3.5 of the Building Code also needs be amended to remove the exclusion for sliding and sliding-folding doors to be self-closing and self-latching or this clause should be amended to allow for them. This inconsistency between the Act and the Building Code was commented on by Justice Randerson in his decision dated 1 October 2004 along with his comment that early attention by the legislature to the difficulties (caused by the inconsistency) was highly desirable.</p> <p>Agree with this requirement, however we again have problems with definitions. This refers to "a child" but in the Definitions there is only a definition for "YOUNG CHILD".</p>
2.2.11	27	<p>Do not agree with allowing lockable cover instead of a complying fence. What is the difference between a spa with a cover and a swimming pool with an automated safety cover? Or is it intended that these should also be accepted at some future time?</p> <p>The Injury Prevention Research Unit of the University of Otago has previously expressed it's opposition to them and the DIA Guidelines of 1999 noted that Water Safety NZ Statistics showed that "since January 1980 at least 14 pre-school children have drowned in pools which had covers".</p> <p>It appears that this relaxation of the requirements is a response to the vocal lobby from spa pool manufacturers rather than a serious effort to safeguard pre-schoolers and should not be accepted. As noted in the 1999 Guidelines "The major advantage of fencing a pool to the standard required by the Fencing of Swimming Pools Act and the Building Code is that there is constant protection. It does not require continual action or surveillance to prevent children gaining access."</p> <p>It is our opinion that a lockable cover on a pool should only be considered as an additional layer of protection and not a substitute for a complying pool fence.</p> <p>However, if this clause is agreed to we would ask that the following matters be clarified</p> <ul style="list-style-type: none"> • What is defined as "portable", and why are these different to "fixed or permanent"? • What is the reason for specifying a minimum height?

Clause/ Para/ Figure/ Table No	Page No	<p>Recommended Changes and Reason</p> <p>Exact wording of recommended changes should be given</p>
2.3	28	<p>Do not agree with Performance Standards being included in this document. Section 2 provides details relating to the design and construction of the barrier, including the requirement that it “<i>shall be a permanent structure.</i>”</p> <p>Delete this section and appendices E to H.</p>
2.4	29	<p>We are in agreement with the concept of warning signage and have supplied signs similar to the examples shown in appendix J for some years.</p> <p>We do wonder however at the need for 2.4.1. to 2.4.6 and Table 2.2. Councils should have the freedom to design and/or approve signs to their own criteria.</p>
Appendix A	30	<p>It is noted that this Appendix is “<i>Informative</i>” rather than “<i>Normative</i>” but still consider that paragraph 3 should read “<i>Tool sheds, garages,the pool shall be located outside the pool area</i>” This requirement must be mandatory in accordance with the DIA Guidelines 1999 and the judgement by Justice Randerson dated 1 October 2004.</p>
Appendix B	31	<p>Agree with B2 (a) to (e) being “<i>Normative</i>” (mandatory) but not sub-clause (f). There is a large number of pools that would fall within this category that have been through the Special exemption procedures of section 6 of the Act that would face further, additional expense in order to comply with this if it was made mandatory.</p> <p>Suggest inserting after “should be provided and” in the first sentence “Unless the pool has previously been granted an exemption under section 6 of the Fencing of Swimming Pools act 1986,”</p>
Appendix C	32	<p>Suggest that some mention be made that in some cases vegetation of a suitable nature, such as cacti, roses or other prickly plants, may be acceptable as part of the barrier.</p>
Appendix D	34	<p>D1 Third paragraph change “<i>fill, or fill a pool deeper than 400 mm</i>” to “<i>fill or partly fill any pool</i>” (This is in accordance with the wording of section 8 of the Act and D3 of this section)</p>