

# Memo:

**To:** NZ Pool Industry Association

**Attn:** For circulation to all members

**Date:** 6 March 2019

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**Subject: Compliance update for members** who may not be on the Swish web-site mail list...  
– For circulation to specifiers preventing rumours about current pool compliance

Following is our eNews dated 3 March 2019 which advises that one of our clients applications for a Determination has been rejected by MBIE... The reason has been explained in eNews however, MBIE have also highlighted other concerns in the Determination:

**MBIE believes Swish systems can be disconnected by an (irresponsible) adult:**

- Advising the systems have been designed to be disconnected
  - Swish do not remember any MBIE or council employee at our design meetings in 2004/5 which no doubt accounts for their lack of understanding
  - Which has been proven by this inane comment in the Determination
- A sequentially opening slide door-sets can be used as a restrictor by a (irresponsible) adult – This is an opinion at best, not proven by facts or drowning statistics
  - And has only been attempted to our knowledge four times
  - by council or MBIE employees on two site visits where we were in attendance

**We are seeking Clarification on the above:**

- On the basis the legislation and/or regulation, does not require any method or product designed for pool compliance
- to prevent or restrict the actions of Irresponsible adults

**We have also advised MBIE, Swish personnel have observed many times during our 14 years in business:**

- 5 and 6 year old children who have climbed the pool fence
- And released the fence self-latch set at 1500mm above the floor
- Then propped open the gate with an object, like a brick or stone
- Obviously, they have breached the barrier without the assistance of an irresponsible adult although, in my youth, a short, sharp shock would have been the response from my parents or any observing adults

**But MBIE agree, the Swish SelfLatch, requiring a two handed operation to open the door-set**

- prevents a 5 or 6 year old child releasing the latch and opening the door
- Which reflects the proven safety record of Swish modified doors with pool access

More later as we work through the process but enjoy the read...

Regards

Les J Hole  
Director

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----- Original message -----

From: Swishautomation <[admin@swishautomation.com](mailto:admin@swishautomation.com)>

Date: 3/03/19 10:24 AM (GMT+12:00)

To: [leshole@swishautomation.com](mailto:leshole@swishautomation.com)

Subject: A great although confusing start to 2019

## Innovative Solutions for Home-Pool Safety

Our usual intent is to get an eNews market update to you early in the new-year... However, demand was such that we ran out of time, so here is our belated *"best wishes for a successful 2019"* and our first eNews for the year.....

On the 19 February 2019 Swish were advised one of the three determinations we have had in progress with MBIE had finally produced a conclusion after almost 14 months of review and re-draft... The "Determination 2019/001" had been issued on the 31 January 2019 and while a lot of time and energy had been put into it by the clients, the architect and ourselves, the MBIE decision is confusing to say the least...

Our letter requesting a Clarification of Determination is too long to cover here but should you wish to obtain a copy of the determination and our request for clarification, please contact us by email and will supply them for your review...

Suffice to say at this stage, MBIE has upheld the Auckland councils demand for our client to meet the AS1 schedule door-size restriction under clause 4.2.1 - This is despite advising council earlier in the document "the non-mandatory schedule cannot be enforced"... ***And if you can understand that bureaucratic thinking, give me a call!***

It would appear that MBIE and the council want to 'encourage' isolation fencing despite the research supplied by Swish to and accepted by, the Select Committee confirming, Australian child drowning statistics show isolation fencing of home pools is not working... Fake news advising *"NZ has the worst child home pool drowning statistics in the world"* cannot be substantiated as, *Australia has 40% more child deaths by drowning in home pools per head of population than New Zealand* - **The following questions are therefore relevant:**

**1. Why would MBIE (and Auckland council) want to encourage the discredited Australian pool isolation fencing as NZ's preferred compliance method to prevent child drownings?**

**2. Why would MBIE (and Auckland council) choose to ignore the Swish 14 year pool safety compliance record that confirms "there have been no child deaths in the home pool where door-sets have been modified for compliance with Swish systems?"**

**Comment:**

Swish will continue issuing Product Technical Statements: Design packages that confirm door-sets at a specified property can be modified to meet pool compliance under NZBC F9 using NZS 8500-2006 - This standard is the cited document to NZBC F9 and has been endorsed in Determination 2017/045 with the following comment - *"it was approved by the Standards Council and must command respect as representing the consensus of major national bodies arrived at after a process of public consultation - Referring to clause 3.7.1 child resistant door-sets..."*

However, in our PTS: Design addendum2, we will continue to advise clients and specifiers the following under the heading:

**Conclusion:**

- The Swish slide door system by default, restricts the first slide panel to a maximum opening of 950mm when the closer is installed
- As slide door-set panels open sequentially, any second or third panel in the door-set will not be moved by opening the first panel to the closer mechanism's maximum width - Refer the Swish Design Technical Review included in the PTS: Design package
- **Note:**
- Orders for door-set modification to include multiple panel restriction to meet AS1 clause 4.2.1 will be accepted by Swish providing the client confirms in writing of their acceptance as follows:
- *"BCA demands for pool compliance under NZBC F9 and the non-mandatory AS1 clause 4.2.1 have been accepted... Any additional work required to achieve such door-set restriction is authorised by the client..."*

**Legislation (summary):**

The legislation requires all home swimming pools to have a barrier that "***prevents unsupervised access by children aged five (5) years and under..."***"

**Regulation (summary):**

Requires a barrier for the home pool that "***prevents unsupervised access by children aged five (5) years and under..."***"

The pool barrier can be the wall or all walls of a dwelling providing all door-sets have a self-latch at 1500mm above the internal floor and either:

- Self-Closing device to return the door to a closed position or
- An alarm to warn when the door has been left open
- And all windows in the pool area are restricted to a maximum of 100mm
- Thereby "***preventing unsupervised pool access by children aged five (5) years and under..."***"

**Meanwhile,**

Swish will continue working with clients to get AS1 modified or replaced by NZS 8500-2006 to prevent opinions and interpretations being used as law and regulation... Such action effectively usurps the intent of Parliament as stated for NZBC F9:

1. The new legislation is designed to make pool safety compliance easier
2. The intent of the legislation is to reduce cost to all parties involved
3. And to further reduce child deaths by drowning in the home pool by at least 6 children in the first 10 years of this legislation

**Note:** Regrettably, based on the research supplied to and accepted by the Select Committee, the current bureaucratic focus encouraging home-pool owners to adopt failing Australian "isolation fencing" could well result in a 40% increase in NZ child deaths by drowning in the home-pool... That is; *unless some action is taken to reverse the current compliance trend based on "opinion and interpretation" from BCA's and MBIE.*

**Refer:** Swish web page "Guide to Poolside Supervision" - Child drowning submission

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