

**SWIMMING POOLS AMENDMENT BILL 2012**  
**PROOF 17 OCTOBER 2012**

**Bill introduced on motion by Mr Donald Page, read a first time and printed.**  
**Second Reading**

**Mr DONALD PAGE** (Ballina—Minister for Local Government, and Minister for the North Coast) [10.08 a.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Swimming Pools Amendment Bill 2012. As we head into the warmer months, families will use their backyard swimming pools increasingly. Swimming pools are an important part of family life as they bring families together and provide everyone with endless hours of healthy fun.

<2>

But it is a sad fact that each year a number of children continue to drown in backyard swimming pools. Each year, approximately 60 young children are admitted to hospital following a near drowning. Each drowning or injury in a backyard pool is a tragedy for the families and for the local communities. The greater tragedy is that effective and well-maintained swimming pool fences, combined with vigilant adult supervision, could have prevented most, if not all, of these drownings.

This has led to increasing calls by pool safety advocates for a further strengthening of the Swimming Pools Act 1992. The case put forward is that too many pools that are inspected have deficient barriers and that each deficiency in a pool barrier that is identified and rectified potentially saves the life of a child. The New South Wales Deputy State Coroner has conducted a series of inquests into swimming pool deaths and has made recommendations to strengthen the Swimming Pools Act.

It is clear that more needs to be done to ensure the safety of children in relation to private swimming pools. This Government has undertaken a two-year comprehensive review of swimming pools legislation. After a review of the evidence, proposals have been developed through a cross-agency working group. Consultations have been held with those who have an interest in pool safety in New South Wales. I thank all the stakeholders who have provided their expertise in the development of the pool safety laws, such as Hannah's Foundation, the Royal Lifesaving Society of New South Wales, the Samuel Morris Foundation, the Commission for Children and Young People, local councils and numerous organisations from pool, building and health sectors, as well as all the members of the community who provided their input.

I wish to acknowledge the efforts of Kelly Taylor in this regard. Kelly lost her two-year-old son Jaise in a swimming pool tragedy two years ago. I met with Kelly and the member for Mulgoa recently in Kingswood on National Drowning Prevention and Awareness Day. In my discussions with Kelly it was clear that she had been advocating strongly for the strengthening of swimming pool laws in New South Wales. This proposed legislation could be known as Jaise's law.

The evidence supporting change is overwhelming. Now is the time to act to protect the lives of children in New South Wales. The State President of the Australian Medical Association, Associate Professor Brian Oowler, in welcoming these changes, said:

Ensuring that pool fences are compliant with the safety standards is the key to minimising the risk to children safety.

The bill proposes amendments to the Swimming Pool Act to achieve this. The amendments are designed to address the concerns about the high rate of non-compliance with swimming pool barriers with the Act's requirements. The amendments will identify where swimming pools are, educate pool owners about pool safety, and enable inspections to be carried out to ensure that pools, particularly those that pose the highest risk to children, are made safe.

To achieve this objective the bill includes amendments to establish a statewide online register of all private swimming pools in New South Wales to require that pool owners self-register free of charge and certify, to the best of their knowledge, that their pool complies with the relevant requirements; to require that councils develop and adopt a locally appropriate and affordable inspection program in consultation with their communities; to require that councils conduct mandatory periodic inspections of pools associated with tourist and visitor accommodation; to amend the Building Professionals Act 2005 to allow accredited certifiers to conduct inspections and issue certificates of compliance for swimming pools when requested by pool owners; and to amend the conveyancing and residential leases legislation to require that vendors and landlords have a valid swimming pool compliance certificate before offering a property for sale or lease.

Targeting pool safety messages and inspection requires councils to know where pools are located in the community. Although a number of councils already hold this information, many do not. The proposed amendments in the bill will require pool owners to self-register their pool, free of charge, on a statewide online register. The register will become operational after six months of the commencement of the Act, which will allow development and testing of the technology required to operate the swimming pool register before it goes live.

The registration process will require pool owners to self-assess to the best of their knowledge that their pool barrier complies with the legislation. Pool owners will be provided with a simple checklist to help them identify defects in swimming pool barriers. Sometimes these are relatively easily remedied. These defects include gates that do not self-close or gaps under fences that allow young children to access a pool when a responsible adult is not present. These defects are common and present as much risk as other defects that may need much more expert attention.

The registration and self-assessment checklist is designed to raise awareness of pool safety and to ensure that pool owners take responsibility to make their pool barriers compliant. There may be a small number of pool owners who are unable to use the online register. In order to ensure that all pools are registered, pool owners will be able to have their pools registered on their behalf by their local council for a token registration fee of no more than \$10. To ensure pool owners have sufficient time to register their pools, the bill will allow a six-month phase-in period from when the register goes live. During this time all private pools in New South Wales must be registered. This Government believes the way to ensure the

safety of children around swimming pools is to ensure that pool owners take responsibility for their pool and for providing information on what makes a safe pool.

The stakes of pool safety are high and the consequences of getting it wrong can be tragic. That is why the proposed amendments also include a new offence for failing to register a swimming pool, attracting a penalty notice of \$220 with a maximum court imposed penalty of \$2,200. The requirement to have pool owners register and self-assess their pool will help raise awareness of pool safety. In addition, the statewide register will provide for the first time an overall picture of pool ownership in New South Wales. Councils will also be provided with access to a consistent database to update information, plan local community education programs and manage an inspection program.

To reinforce the registration and self-assessment process, councils will be required to develop locally tailored risk-based inspection programs in consultation with its communities. With an estimated 340,000 pools in New South Wales, it is not practical to inspect all pool barriers in a reasonable time frame. Councils are best placed to decide which pools should be inspected and how often. Guidance on how to do this will be provided to the councils. Such inspections will come at a cost to councils and ratepayers so the councils will be provided with the option of recovering the cost of these inspections from pool owners with a capped maximum fee.

The bill requires councils to act to ensure child safety around pools that pose a higher risk to children. The bill requires councils to conduct inspections every three years of swimming pools associated with tourist and visitor accommodation, as well as other multi-occupancy developments. This is necessary to address the higher risks associated with pools used more frequently and by a wider range of people. This includes pools in hotels, motels, serviced apartments, backpacker accommodation and unit complexes. If a swimming pool is inspected and found to be compliant, the council will issue a compliance certificate that will be valid for three years, subject to certain conditions.

Importantly, swimming pools in rental properties pose the greatest danger to children in New South Wales. Coronial findings have demonstrated an increased risk in relation to pools at these types of properties because landlords may be unaware of any deficiencies in the integrity of the pool barrier and may be reluctant to make repairs due to the cost involved. Alarming evidence provided to a coroner's inquest by the Hannah's Foundation suggest that in the area in relation to which the foundation was collecting statistics more than 50 per cent of child deaths in home swimming pools occurred in rental properties.

The Government will not accept these tragedies as inevitable. For that reason the bill requires pool owners who want to lease a property with a swimming pool to first obtain a swimming pool compliance certificate. At the same time the bill contains amendments to require that property owners must obtain a compliance certificate for their pool before it is sold. To achieve this, the bill makes a number of amendments to the Conveyancing (Sale of Land) Regulation 2010 and the Residential Tenancies Regulation 2010 that will prevent the sale or lease of properties with swimming pools unless the pool is registered and there is a valid

certificate of compliance for the pool.

<3>

Recognising the challenge that the implementation of this proposal may place on local councils and pool owners, the bill introduces a number of measures designed to reduce any potential delays in the process of sale or lease of properties with swimming pools. First, the bill allows accredited certifiers licensed under the Building Professionals Act 2005 to carry out inspections and issue compliance certificates if they are requested by pool owners to do so. The bill also makes consequential amendments to the Building Professionals Act 2005 to ensure that all provisions of that Act, including disciplinary proceedings such as suspension or revocation of an accredited certifier's licence, apply to the accredited certifiers. Allowing the private sector to step in to an area previously regulated only by local councils will ensure there is sufficient supply of qualified inspectors on the market and the process of selling and leasing of properties is not delayed.

Second, the bill expressly provides that a council must inspect a property with a swimming pool where it is necessary to enable the sale or lease of that property. If, following an inspection, a council or an accredited certifier is satisfied that the pool is compliant, they must issue a compliance certificate. This will enable the sale and lease of properties to proceed smoothly and without delay. As a result of extensive consultation with pool safety advocates, industry and councils, the provisions in the bill that introduce council inspection programs and mandatory certification of properties with swimming pools offered for sale or lease by accredited certifiers will commence 18 months after assent to this bill. This will allow sufficient time for councils to build capacity by employing and training increased numbers of staff and to introduce an inspection program. The private sector will also be in a position to develop a sufficient supply of qualified inspectors to meet pool owners' demands. Also, the 18-month phase-in period will allow sufficient time for landlords and property owners to understand and comply with new provisions, including taking any remedial action to ensure that pool fences comply.

The bill provides that a council or an accredited certifier must issue a certificate of compliance at the conclusion of an inspection if the pool is registered and its barrier is compliant. As I mentioned earlier, the certificate will remain valid for three years unless a council has issued a direction under the Swimming Pools Act requiring a pool owner to bring the pool barrier to the required standard. Importantly, where a complaint has been made or it is suspected a pool does not meet the required standards an authorised council officer will be able to enter premises that contain a swimming pool to investigate.

The bill exempts owners of new swimming pools from the need to obtain a certificate of compliance for a period of three years where an occupation certificate has been issued. The proposed exemption will avoid duplication with the requirements of planning legislation and prevent undue costs on pool owners. The proposal is supported by the Department of Planning and Infrastructure. This bill seeks to amend the Swimming Pools Act to remove the automatic exemption for pools that are fenced voluntarily. The proposal addresses the issue

of currently exempt pools that are voluntarily fenced but to an unsatisfactory standard.

Anecdotal evidence suggests that a number of children may have drowned in voluntarily fenced pools with deficient barriers: They create the illusion of a safe barrier but present a safety hazard for young children. The intent of this amendment is to remove ambiguity about exempt pools that have been voluntarily fenced by removing that exemption. The bill provides other minor amendments to clarify the intent of the Act and the role of local councils and to make the Act more consistent with other legislation. The amendments include a minor change to the prescribed minimum depth of a swimming pool by replacing the words "300 millimetres or more" with the words "greater than 300 millimetres". This will make the Act consistent with the Building Code of Australia, which is referenced in the Swimming Pools Regulation 2008. It will also make the Act consistent with the minimum depth of a swimming pool prescribed in other jurisdictions.

An amendment replaces the words "hotel or a motel" with the words "tourist and visitor accommodation". This means that the Act's requirements for swimming pools will apply to a wider range of commercial and shared residential accommodation such as backpacker, bed and breakfast and farm stay accommodation and serviced apartments. It will also ensure consistency with the standard local environmental plan under planning legislation that provides for a definition of "tourist and visitor accommodation". The bill also ensures that the powers of entry under the Swimming Pools Act are consistent with those in the Local Government Act.

In summary, the bill has been designed to strike the right balance between pool owner responsibility and government regulation. The proposals aim to ensure that pool owners take responsibility for pool safety, that councils have the right tools to make sure pool barriers are compliant and that the Government provides the best possible legislative and policy framework to reduce drowning in swimming pools. To make sure pool owners and the various affected sectors, such as the real estate and legal sectors, know of the new obligations for pool safety the Division of Local Government is developing a targeted education and awareness campaign.

I will request that all councils include with the next rates notice a notice detailing the changes to ratepayers' obligations under the Swimming Pool Act. In tandem with continued pool safety education the bill will provide a balanced and sensible approach to swimming pool safety that will protect the lives of young children in New South Wales.

I wish to acknowledge the presence in the public gallery today of Kelly Taylor, whose son Jaise tragically drowned in a swimming pool. Her commitment will ensure that some good arises from the tragic death of her son Jaise through the introduction of legislation that will improve swimming pool barrier safety. I commend the bill to the House.

**Mrs BARBARA PERRY** (Auburn) [10.25 a.m.]: The Opposition supports the Swimming Pools Amendment Bill 2012, a significant and important bill that builds upon the work done

by the previous Government with regard to swimming pool safety and minimising the risk of children drowning in backyard pools. I would like to thank Kelly Taylor for being present in the gallery today. Kelly, I know this is a difficult time for you. The proposed legislation is testament to your strength. Too many families have tragically lost children to drowning. You are courageous, and your memories of Jaise are reflected in this legislation today. I express my sympathy to you and all parents who have lost a child in this way. I acknowledge also the Samuel Morris Foundation and its work relating to drowning prevention and awareness.

**Debate adjourned on motion by Mrs Barbara Perry and set down as an order of the day for a later hour.**

<4>