



New South Wales

Swimming Pools Amendment Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Swimming Pools Act 1992* (the *Principal Act*):

- (a) to require swimming pools to be registered, and
- (b) to provide for the inspection of swimming pools and the issue of certificates of compliance by local authorities and accredited certifiers, and
- (c) to extend provisions of the Principal Act that applied to hotels and motels to all forms of tourist and visitor accommodation, and
- (d) to remove certain exemptions under the Principal Act, and
- (e) to make powers of entry under the Principal Act by council officers consistent with those under the *Local Government Act 1993*.

This Bill also amends the *Conveyancing (Sale of Land) Regulation 2010* and the *Residential Tenancies Regulation 2010* to prevent the sale or lease of residential premises with a swimming pool unless the pool is registered and there is a valid certificate of compliance or a relevant occupation certificate for the pool.

This Bill also makes a consequential amendment to the *Building Professionals Act 2005*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act with the exception of Schedule 1 [16] and [26] to the proposed Act (which provide for the inspection and registration of swimming pools) which commence 6 months after the date of assent and Schedule 2.2 and 2.3 (which prevent the sale and lease of premises on which swimming pools are situated unless the pool is registered and certified) which commence 18 months after the date of assent.

Schedule 1 Amendment of Swimming Pools Act 1992 No 49

Schedule 1 [26] inserts proposed Part 3A into the Principal Act. That Part establishes the Register of Swimming Pools and makes the Chief Executive of the Division of Local Government in the Department of Premier and Cabinet (the *Director-General*) responsible for the keeping and administration of the Register. The owner of premises on which a swimming pool is situated must ensure that certain information about the swimming pool (the *registration information*) is entered on the Register by providing the information to the Director-General (this is expected to be done on-line). Alternatively the owner may give the registration information to the relevant local authority (in most cases the relevant local council) and the local authority is required to enter the information on the Register. A swimming pool is registered when the registration information about the swimming pool is entered on the Register. Proposed Part 3A permits the Director-General to issue a document certifying certain information on the Register for evidentiary purposes. The Director-General may also enter into agreements under which another person or body can exercise the functions of the Director-General under the proposed Part. Authorised persons (being authorised officers and other persons prescribed by the regulations) and the Minister for Local Government are entitled to access information on the Register and that access is to be free of charge. **Schedule 1 [27]** permits regulations to be made for or with respect to the Register.

Schedule 1 [16] inserts proposed Division 5 into Part 2 of the Principal Act. That Division requires each local authority to develop and adopt a program for the inspection of swimming pools in its area to ensure compliance with Part 2 of the Principal Act. A local authority is then required to inspect swimming pools in accordance with this program. Aside from this mandatory program of inspection, an owner of property on which a swimming pool is situated may request the local authority or an accredited certifier (being a person with a category A1, A2 or A3 accreditation under the *Building Professionals Act 2005*) to carry out an inspection. A local authority must carry out such an inspection within a reasonable time if the request from the owner is in writing and states that the inspection is necessary to enable the sale or lease of the premises. If, following an inspection, the local authority, or in the case of a voluntary inspection, the local authority or the accredited certifier is satisfied that the requirements for the issue of a certificate of compliance

have been met, the local authority or accredited certifier must issue a certificate of compliance. The requirements for the issue of a certificate of compliance are that the swimming pool is registered and that the pool complies with the requirements of Part 2 of the Principal Act. A certificate of compliance remains valid for 3 years from the date of its issue but ceases to be valid if a direction is issued under section 23 of the Principal Act with respect to the swimming pool to which the certificate relates. A local authority or accredited certifier that issues a certificate of compliance must ensure that the details of the certificate are entered on the Register of Swimming Pools.

If an accredited certifier carries out an inspection of a swimming pool at the request of the owner of premises and finds that the requirements for the issue of a certificate of compliance have not been met, the certifier must give a written notice to the owner setting out (amongst other things) the reasons why the requirements have not been met and whether the accredited certifier is of the opinion that the swimming pool poses a significant risk to public safety. If the accredited certifier is of the opinion that the pool is a significant risk to public safety, the accredited certifier must immediately forward a copy of the notice to the relevant local authority. If the accredited certifier is not of the opinion that the pool is a significant risk to public safety, the notice is to be forwarded to the relevant local authority only if a certificate of compliance is not issued in respect of the swimming pool within 6 weeks after the inspection. The local authority is then able to use its existing powers under the Principal Act to ensure that the swimming pool is brought into compliance.

A local authority may charge a fee for an inspection under the proposed Division and any such inspection is to be conducted by an authorised officer. If the local authority is a council it must include information about inspections in its annual report.

Regulations made under the proposed Division are able to modify the provisions of the Division in relation to local authorities that are not councils (being the Western Lands Commissioner and the Lord Howe Island Board). **Schedule 1 [27]** permits regulations to be made for or with respect to inspections. **Schedule 1 [13] and [17]–[20]** make consequential amendments.

Schedule 1 [5], [10] and [11] extend the application of the Principal Act (and in particular the application of Division 2 of Part 2 of the Principal Act) to swimming pools situated on premises on which there is tourist and visitor accommodation rather than just hotels and motels as is currently the case. *Tourist and visitor accommodation* means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes backpackers' accommodation, bed and breakfast accommodation, farm stay accommodation and serviced apartments. **Schedule 1 [12]** provides an exemption from these requirements for existing pools and for any pools constructed or installed before 1 May 2013. **Schedule 1 [2], [9], [14] and [15]** make consequential amendments.

Schedule 1 [6]–[8] remove exemptions found in sections 8, 9 and 10 of the Principal Act which provide that a child-resistant barrier is not required to surround a swimming pool constructed before 1 August 1990 or situated on a small, large or

waterfront property. The exemptions now cease to apply in respect of a swimming pool if a barrier is erected on the premises (between the swimming pool and a residential building) as a barrier to direct access to the swimming pool from any residential building situated on the premises.

Schedule 1 [22]–[24] make the powers of entry for purposes under the Principal Act the same as those under the *Local Government Act 1993* when the person making the entry is an officer appointed by a council. The powers of entry are unchanged for authorised officers who are appointed by a local authority other than a council. **Schedule 1 [25]** makes a consequential amendment.

Schedule 1 [3] makes a minor amendment to bring the definition of *swimming pool* in the Principal Act into line with the definition used in the relevant Australian Standard.

Schedule 1 [4] makes it clear that a swimming pool is situated on premises on which another building is located if the swimming pool is ancillary to that other building, regardless of whether the swimming pool is on a separate lot.

Schedule 1 [21] sets out the circumstances in which a local authority is deemed to have refused to issue a certificate of compliance for the purposes of making an appeal to the Land and Environment Court.

Schedule 1 [1] sets out a number of definitions to be used for the purposes of the Principal Act including *relevant occupation certificate* in respect of a swimming pool which means an occupation certificate issued under the *Environmental Planning and Assessment Act 1979* that is less than 3 years old and that authorises the use of the swimming pool.

Schedule 1 [28] permits the regulations to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [29] contains a number of savings and transitional provisions.

Schedule 2 Amendment of other legislation

Schedule 2.1 makes a consequential amendment to the *Building Professionals Act 2005* to provide that the carrying out of inspections for the purposes of the Principal Act and the issuing of certificates of compliance under that Act is certification work.

Schedule 2.2 amends the *Conveyancing (Sale of Land) Regulation 2010* so that the vendor under a sale of residential premises on which there is a swimming pool must attach to the contract of sale either a valid certificate of compliance for the pool or a relevant occupation certificate together with evidence that the swimming pool is registered under proposed Part 3A of the Principal Act.

Schedule 2.3 amends the *Residential Tenancies Regulation 2010* to make it a term of all residential tenancy agreements that if a pool is situated on the residential premises, the landlord agrees to ensure that the pool is registered and that there is a valid certificate of compliance or relevant occupation certificate for the pool and that

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a copy of the certificate will be provided to the tenant at the time that the agreement is entered into.