

Passed by both Houses



New South Wales

# Swimming Pools Amendment Bill 2012

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2012*



New South Wales

## **Swimming Pools Amendment Bill 2012**

Act No , 2012

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An Act to amend the *Swimming Pools Act 1992* and other legislation with respect to the registration, inspection and certification of swimming pools; and for other purposes.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Swimming Pools Amendment Act 2012*.

**2 Commencement**

- (1) Except as provided in subsections (2) and (3), this Act commences on the date of assent to this Act.
- (2) Schedule 1 [16] and [26] commences 6 months after the date of assent to this Act.
- (3) Subschedules 2.2 and 2.3 commence 18 months after the date of assent to this Act.

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## Schedule 1      Amendment of Swimming Pools Act 1992 No 49

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*certificate of compliance* means a certificate issued under section 22D.

*council* means the council of an area within the meaning of the *Local Government Act 1993*.

*Director-General* means:

- (a) the Chief Executive of the Division of Local Government within the Department of Premier and Cabinet, or
- (b) if there is no such position within that Department, the Director-General of that Department.

*Register* means the Register of Swimming Pools under section 30A.

*relevant occupation certificate* in respect of a swimming pool 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.

*Standard Instrument* means the standard local environmental planning instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

*tourist and visitor accommodation* has the same meaning as in the Standard Instrument.

### [2] Section 3 (1), definition of “residential building”

Omit paragraph (b) of the definition. Insert instead:

- (b) a moveable dwelling, or
- (b1) tourist and visitor accommodation, or

### [3] Section 3 (1), definition of “swimming pool”

Omit “of 300 millimetres or more” from paragraph (a) of the definition.

Insert instead “greater than 300 millimetres”.

### [4] Section 3 (1A)

Insert after section 3 (1):

- (1A) For the avoidance of doubt, 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, such as on common property under a strata scheme.

**[5] Section 4 Swimming pools to which Act applies**

Omit “dwelling, a hotel or a motel”.

Insert instead “dwelling or tourist and visitor accommodation”.

**[6] Section 8 Exemption for swimming pools constructed before August 1990 and existing swimming pools on small properties**

Insert after section 8 (3):

- (4) This section ceases 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.

**[7] Section 9 Exemption for swimming pools on large properties**

Insert after section 9 (4):

- (5) This section ceases 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.

**[8] Section 10 Exemption for swimming pools on waterfront properties**

Insert after section 10 (4):

- (5) This section ceases 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.

**[9] Part 2, Division 2, heading**

Omit “dwellings, hotels and motels”.

Insert instead “dwellings and tourist and visitor accommodation”.

**[10] Section 11 Swimming pools to which Division applies**

Omit “dwelling, a hotel or a motel”.

Insert instead “dwelling or tourist and visitor accommodation”.

**[11] Section 12 General requirements for outdoor swimming pools**

Omit “dwelling, hotel or motel” from section 12 (a).

Insert instead “dwelling or tourist and visitor accommodation”.

**[12] Section 13 Exemptions for existing swimming pools**

Insert after section 13 (1):

(1A) This section also applies to swimming pools:

- (a) that are situated on premises on which there is tourist and visitor accommodation (but not if there is a moveable dwelling, hotel or motel on the premises), and
- (b) the construction or installation of which commenced before 1 May 2013.

**[13] Part 2, Division 4, heading**

Omit “General”.

Insert instead “Additional requirements for swimming pools”.

**[14] Section 19 House wall may be used as part of required child-resistant barrier**

Omit “of a residential building, hotel or motel” from section 19 (1).

Insert instead “of a residential building or a building used for the purposes of tourist and visitor accommodation”.

**[15] Section 19 (1)**

Omit “the residential building, hotel or motel”. Insert instead “the building”.

**[16] Part 2, Division 5**

Insert after section 22:

**Division 5 Inspections and compliance with Part**

**22A Definition**

In this Division:

**accredited certifier** means an accredited certifier within the meaning of the *Building Professionals Act 2005* holding:

- (a) category A1, category A2 or category A3 accreditation under that Act, or
- (b) if the regulations prescribe alternative qualifications, those alternative qualifications.

**22B Mandatory pool inspection program by local authority**

- (1) A local authority must, within 6 months after the commencement of this section, develop and adopt a program for the inspection of swimming pools in its area to ensure compliance with the requirements of this Part.
- (2) Within 12 months after the commencement of this section, the program must make provision for the inspection, at least once every 3 years, of any swimming pool situated on premises on which there is tourist and visitor accommodation or more than 2 dwellings.
- (3) The program is not to require the inspection of a swimming pool in respect of which there is a valid certificate of compliance or a relevant occupation certificate.
- (4) A local authority must inspect swimming pools in its area in accordance with its program.
- (5) The regulations may make provision for or with respect to the development and adoption of programs for the inspection of swimming pools including:
  - (a) the form and content of programs, and
  - (b) the manner in which the public is to be consulted during the development of any such program, and
  - (c) the carrying out of inspections under the program.
- (6) In this section:  
*dwelling* has the same meaning as in the Standard Instrument.

**22C Other inspections at request of owner**

- (1) The owner of any premises on which a swimming pool is situated may, at any time, request the local authority or an accredited certifier to inspect the swimming pool.
- (2) A local authority or an accredited certifier may carry out any such inspection if requested to do so.
- (3) A local authority must carry out an inspection under this section, and must carry out that inspection within a reasonable time, if the request to the local authority is in writing and states that the inspection is required to enable the sale or lease of the premises or part of the premises on which the swimming pool is situated.
- (4) The regulations may make provision for what is a reasonable time for the purposes of subsection (3).



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**22D Certificates of compliance**

- (1) The requirements for the issue of a certificate of compliance in respect of a swimming pool are that:
  - (a) the swimming pool is registered under Part 3A, and
  - (b) the swimming pool complies with the requirements of this Part.
- (2) A local authority or an accredited certifier must issue a certificate of compliance in respect of a swimming pool if the local authority or accredited certifier:
  - (a) has inspected the swimming pool under this Division, and
  - (b) is satisfied that the requirements for the issue of a certificate of compliance have been met.
- (3) A local authority or an accredited certifier must not issue a certificate of compliance except as provided by subsection (2).
- (4) A local authority or an accredited certifier may refuse to issue a certificate of compliance until any fee payable for the inspection has been paid.
- (5) A certificate of compliance in respect of a swimming pool is to be issued to the owner of the premises on which the pool is situated in a form approved by the Director-General.
- (6) A certificate of compliance remains valid for a period of 3 years from the date on which it is issued but ceases to be valid if a direction is issued under section 23 in respect of the swimming pool to which the certificate relates.
- (7) A local authority or accredited certifier that issues a certificate of compliance in respect of a swimming pool must ensure that details of the certificate are entered on the Register, by providing the details to the Director-General in a form approved by the Director-General.
- (8) The regulations may make provision for or with respect to the time and manner in which any such information is to be entered on the Register.

**22E Notices by accredited certifier if pool does not comply**

- (1) This section applies to an inspection carried out by an accredited certifier under section 22C.
- (2) An accredited certifier must provide a written notice to the owner of a swimming pool if the accredited certifier has inspected the

swimming pool and is not satisfied that the requirements for the issue of a certificate of compliance have been met.

- (3) A notice under this section is to set out the following:
- (a) the date of the notice,
  - (b) the address of the swimming pool to which the notice relates,
  - (c) the date on which the inspection took place,
  - (d) the reasons why the accredited certifier is not satisfied that the requirements for the issue of a certificate of compliance have been met and the steps that need to be taken in order to meet those requirements,
  - (e) whether the accredited certifier is of the opinion that the swimming pool poses a significant risk to public safety,
  - (f) a warning that a copy of the notice will be forwarded to the local authority for the area in which the swimming pool is situated:
    - (i) immediately, if the accredited certifier is of the opinion that the swimming pool poses a significant risk to public safety, or
    - (ii) 6 weeks after the date of inspection (or such other time as may be prescribed by the regulations) if a certificate of compliance is not issued for the swimming pool before that time,
  - (g) such other matters as may be prescribed by the regulations.
- (4) An accredited certifier who issues a notice under this section in respect of a swimming pool must forward a copy of the notice to the local authority for the area in which the swimming pool is situated:
- (a) immediately, if the accredited certifier is of the opinion that the swimming pool poses a significant risk to public safety, or
  - (b) within 5 days after the end of the period specified in subsection (3) (f) (ii) in any other case.
- (5) An accredited certifier is not required to forward a copy of any notice to a local authority in respect of a swimming pool if, at the time at which the notice is due to be sent, the swimming pool has a valid certificate of compliance.

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**22F Inspections carried out by local authority**

- (1) A local authority may charge the owner of premises a fee for carrying out an inspection under this Division being a fee that is no greater than the maximum fee (if any) prescribed by the regulations, but it may not charge a separate fee for issuing a certificate of compliance.
- (2) A local authority that is a council must include in its annual report under section 428 of the *Local Government Act 1993* such information (if any) in relation to inspections under this Division as is prescribed by the regulations.
- (3) An inspection by a local authority is to be conducted by an authorised officer and entry on to premises to carry out such an inspection is to be in accordance with Part 3.

**22G Local authorities that are not councils**

The regulations may:

- (a) modify the application of the provisions of this Division with respect to a local authority that is not a council, and
- (b) provide for any functions of such a local authority under this Division to be exercised by another person or body.

**[17] Section 24 Local authority must grant certificate of compliance if swimming pool complies with this Part**

Omit the section.

**[18] Part 2, Division 6, heading**

Insert before section 25:

**Division 6 Defences and appeals**

**[19] Section 25 Defences to offences under Part**

Omit section 25 (2) (a) and (b). Insert instead:

- (a) that there is a valid certificate of compliance or relevant occupation certificate in respect of the swimming pool that is the subject of the alleged offence, and

**[20] Section 26 Appeals against decisions of local authority**

Omit section 26 (1) (c) and (d). Insert instead:

- (c) a decision to refuse to grant a certificate of compliance under section 22D,
- (d) a decision to give a direction under section 23.

**[21] Section 26 (3)**

Insert after section 26 (2):

- (3) A local authority is taken to have refused to issue a certificate of compliance in relation to a swimming pool if the local authority has failed to issue either a certificate of compliance or a direction under section 23 in respect of the swimming pool, within 6 weeks (or such other period as may be prescribed by the regulations) after:
  - (a) an inspection of the swimming pool is carried out under section 22B, or
  - (b) a written request is made under section 22C to the local authority that stated that the inspection was required to enable the sale or lease of the premises or part of the premises on which the swimming pool is situated.

**[22] Sections 27A and 27B**

Insert after section 27:

**27A Grounds for entering premises**

- (1) An authorised officer may enter premises for any one or more of the following purposes:
  - (a) to carry out an inspection of a swimming pool under Division 5 of Part 2,
  - (b) to investigate a complaint under section 29A,
  - (c) to investigate any contravention of this Act or the regulations that the authorised officer reasonably suspects to have occurred.
- (2) Nothing in this section prevents an authorised officer from entering premises with the consent of the owner or occupier of those premises.

**27B Powers of entry and search warrants—local council**

- (1) This section applies to an authorised officer who has been appointed by a local authority that is a council.
- (2) Part 2 of Chapter 8 of the *Local Government Act 1993* applies to the entry of premises by an authorised officer for any purpose specified in section 27A and an authorised officer is taken to be an authorised person for the purposes of section 201 of that Act.
- (3) For the avoidance of doubt, the investigation of any contravention of this Act or the regulations that an authorised

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officer reasonably suspects to have occurred is a function of the council that appointed the authorised officer.

**[23] Section 28 Power of entry—local authority other than local council**

Omit section 28 (1). Insert instead:

- (1) This section applies to an authorised officer who has been appointed by a local authority other than a council.
- (1A) An authorised officer who enters premises for any purpose specified in section 27A may examine the premises and, in particular, any swimming pool, and any barrier or other means of restricting access to any swimming pool, situated in or on the premises.

**[24] Section 29 Search warrants—local authority other than local council**

Insert before section 29 (1):

- (1A) This section applies to an authorised officer who has been appointed by a local authority other than a council.

**[25] Section 29A Investigation of complaint**

Omit “in accordance with section 28” from section 29A (4).

Insert instead “in accordance with this Part”.

**[26] Part 3A**

Insert after Part 3:

## **Part 3A Registration of swimming pools**

### **30A The Register of Swimming Pools**

- (1) There is to be a Register of Swimming Pools.
- (2) The Director-General is responsible for the keeping and administration of the Register.
- (3) The regulations may make provision for the manner and form in which the Register is to be kept, the information that is to be entered on the Register, the fees (if any) payable for entering information on the Register and any other matter concerning the keeping and administration of the Register.

### **30B Registration of swimming pools**

- (1) The owner of the premises on which a swimming pool is situated must ensure that any information prescribed by the regulations in

relation to the swimming pool (the *registration information*) is entered on the Register.

Maximum penalty: 20 penalty units.

- (2) A person complies with subsection (1) in respect of a swimming pool, if the person:
  - (a) provides to the Director-General, in a form approved by the Director-General, the registration information in relation to the swimming pool, or
  - (b) provides to a local authority, in a form approved by the local authority, the registration information in relation to the swimming pool and pays to the local authority any fee required by the local authority (being no more than the maximum fee (if any) prescribed by the regulations).
- (3) A local authority is required to enter on the Register, in a form approved by the Director-General, any information provided to it under subsection (2) (b).
- (4) A swimming pool is registered when the registration information about the swimming pool is entered on the Register.

**30C Evidence of registration**

- (1) The Director-General may issue a document certifying as to whether or not a particular swimming pool is or was registered at a particular time and certifying as to any registration information for the swimming pool entered on the Register at a particular time (including whether a certificate of compliance was valid with respect to a swimming pool at a particular time).
- (2) A document issued under this section is evidence of the matters certified.

**30D Director-General may enter into agreements for purposes of Part**

- (1) The Director-General may enter into agreements and other arrangements with a person or body in respect of the exercise of functions of the Director-General under this Part by the person or body on behalf of the Director-General.
- (2) An agreement or other arrangement may make provision for the ownership of information entered on the Register to be vested in the Director-General.

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**30E Access to Register**

- (1) An authorised person is entitled to access information contained in the Register. The Director-General is required to provide that access free of charge.
- (2) The regulations may provide for the ways in which access can or must be given to authorised persons.
- (3) The regulations may require the Director-General to keep specified records with respect to the access given to the Register under this section and may provide for the persons who are entitled to have access to those records.
- (4) The Director-General may give different degrees of access to the Register to different classes of authorised persons, having regard to the different functions that they perform.
- (5) The Minister and any person acting with the Minister's authority is entitled to full and free access to information contained in the Register at all times.
- (6) The following persons are authorised persons for the purposes of this section:
  - (a) authorised officers,
  - (b) a person who is a member of a class of persons prescribed by the regulations as authorised persons for the purposes of this section.
- (7) The regulations may prescribe the circumstances in which other persons may access information contained in the Register.

**[27] Section 38 Regulations**

Insert after section 38 (1) (b):

- (b1) inspections of swimming pools, and
- (b2) the Register of Swimming Pools, and

**[28] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

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**[29] Schedule 3, Part 4**

Insert after Part 3:

**Part 4 Provisions consequent on the enactment of the Swimming Pools Amendment Act 2012**

**17 Definition**

In this Part:

*amending Act* means the *Swimming Pools Amendment Act 2012*.

**18 Existing certificates of compliance**

- (1) A certificate of compliance issued under section 24 before the repeal of that section by the amending Act is taken to be a certificate of compliance issued under section 22D and remains valid for a period of 3 years from the date on which it was issued or until 6 months after the date of assent to the amending Act (whichever is the later).
- (2) A certificate of compliance ceases to be valid if a direction is issued under section 23 in respect of the swimming pool to which the certificate relates.

**19 Registration of swimming pools**

The owner of premises on which a swimming pool is situated is not required to comply with section 30B until 12 months after the date of assent to the amending Act.

**20 Local authority not required to inspect pools**

A local authority is not required to carry out an inspection under section 22C (3) until 18 months after the date of assent to the amending Act.



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## Schedule 2 Amendment of other legislation

### 2.1 Building Professionals Act 2005 No 115

#### Section 3 Definitions

Insert at the end of paragraph (c) of the definition of *certification work* in section 3 (1):

, or

- (d) the carrying out of inspections for the purposes of section 22C of the *Swimming Pools Act 1992* and the issuing of certificates of compliance under that Act.

### 2.2 Conveyancing (Sale of Land) Regulation 2010

#### Schedule 1 Prescribed documents

Insert after clause 15:

- 16** If the contract relates to land on which there is a swimming pool within the meaning of the *Swimming Pools Act 1992* to which that Act applies, a copy of either of the following in respect of the swimming pool:

- (a) a valid certificate of compliance issued under that Act,
- (b) a relevant occupation certificate within the meaning of that Act and evidence that the swimming pool is registered under Part 3A of that Act.

**Note.** A relevant occupation certificate is 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.

### 2.3 Residential Tenancies Regulation 2010

#### Schedule 1 Standard Form Agreement

Insert after clause 40:

[Cross out this clause if there is no swimming pool]

- 40A. The landlord agrees** to ensure that at the time that this residential tenancy agreement is entered into:

- 40A.1 the swimming pool on the residential premises is registered under the *Swimming Pools Act 1992* and has a valid certificate of compliance under that Act or a relevant occupation certificate within the meaning of that Act, and

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40A.2      a copy of that valid certificate of compliance or relevant occupation certificate is provided to the tenant.