

## SWIMMING POOLS AMENDMENT BILL 2012

### Second Reading

**The Hon. GREG PEARCE** (Minister for Finance and Services, and Minister for the Illawarra) [9.44 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have my second reading speech incorporated in *Hansard*.

#### **Leave granted.**

The Government is pleased to introduce the Swimming Pools Amendment Bill 2012.

As we head into the warmer months, families are increasingly going to be using their backyard swimming pools. Backyard swimming pools are an important part of family life. They bring families together and provide everyone with endless hours of healthy fun.

But it is a sad fact that each year a number of children continue to drown in backyard swimming pools. And each year about 60 young children are admitted to hospital following a near drowning.

Each drowning or injury in a backyard pool is a tragedy for families and for local communities. And 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. They put the case 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 NSW Deputy State Coroner has also conducted a series of inquests into swimming pool deaths and has made a number of recommendations about how the Swimming Pools Act should be strengthened.

It is clear that we need to do more to ensure the safety of children around private swimming pools.

This Government has undertaken a two-year comprehensive review of the swimming pool legislation. We have looked at the evidence and developed proposals through a cross-agency working group. We have consulted with those who have an interest in pool safety in NSW.

I thank all stakeholders who have provided their expertise in the development of the pool safety laws, such as Hannah's Foundation, The Royal Life Saving Society NSW, the Samuel Morris Foundation, the Commission for Children and Young People, local councils and numerous organisations from the pool, building and health sector, as well as all the members of the community who provided their input.

Just the other week, the Minister for Local Government met with Kelly Taylor who lost her two-year-old son, Jaise, in a swimming pool tragedy two years ago. The Minister met with the Member for Mulgoa on National Day of Drowning Prevention, Awareness and Support in

Kingswood.

The evidence supporting change is overwhelming. Now is the time to act to protect the lives of NSW children.

The Australian Medical Association, State President Associate Professor Brian Owler, has welcomed these changes. He said  
Ensuring that pool fences are compliant with the safety standards is the key to minimising the risk to children's safety,

This Bill proposes amendments to the Swimming Pools Act to achieve this. The amendments are designed to address widespread concern about the high rate of non-compliance of swimming pool barriers with the Act's requirements.

The amendments will help us know where pools are, educate pool owners about pool safety and carry out inspections to ensure pools, particularly those that pose the highest risk to children, are made safe.

To achieve this, the Bill includes amendments:

- to establish a State-wide on line register of all private swimming pools in NSW;
- to require that pool owners self-register, free of charge, and certify to the best of their knowledge 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 they may offer the 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 State-wide, on-line register. The register is to become operational after 6 months of the commencement of the Act. This will allow development and testing of the technology required to operate the swimming pool register before it goes live.

As part of the registration process, pool owners will be required to self-assess to the best of their knowledge that their pool barrier complies with the legislation. Pool owners will be provided with simple checklists to help them do this.

The checklists will help pool owners identify defects in swimming pool barriers. Sometimes these are easily remedied. These defects include gates that do not self close, or gaps under fences which allow young children to access a pool when a responsible adult is not present.

These minor defects are common and present as much risk as other defects that may need more expert attention.

The registration and self-assessment checklist is designed to raise awareness of pool safety and ensure pool owners take responsibility for ensuring pool barriers are compliant.

Of course, there may be a small number of pool owners who are unable to use the on-line register. To ensure 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 allows a 6 months phase-in period from when the register goes live, within which all private pools in NSW must be registered.

This Government believes that the way to ensure the safety of children around swimming pools is to ensure that pool owners take responsibility for their pool. We want to support them to do this by providing information on what makes for 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.

Requiring pool owners to register and self assess their pool will help raise awareness of pool safety. In addition to this important benefit, the State-wide register will provide an overall picture of pool ownership in NSW for the first time. It will also provide councils 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 communities.

With an estimated 340,000 pools in NSW it is not possible to inspect all pool barriers. Councils are best placed to decide which pools should be inspected and how often. Councils will be provided with guidance on how to do this.

Such inspections will come at a cost to councils and ratepayers. Councils will be provided with the option of recovering the cost of these inspections from pool owners, with a capped maximum fee.

There are some pools, however, that pose a higher risk to children, so the Bill requires councils to act to ensure child safety around these pools.

The Bill requires councils to conduct inspections of swimming pools associated with tourist and visitor accommodation, as well as other multi-occupancy developments, every three years. 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, backpackers' accommodation and unit complexes. If a swimming pool is inspected and found to be compliant, the council will issue a compliance certificate that,

subject to certain conditions, will be valid for 3 years.

Importantly, it is swimming pools in rental properties that pose the greatest danger to children in NSW.

Coronial findings have demonstrated increased risk in relation to pools on these types of properties, as landlords may be unaware of any deficiencies in the integrity of the pool barrier and may be reluctant to make repairs due to the costs involved.

Alarming evidence provided by Hannah's Foundation to the coroner's inquiry suggests that, in the area in which the Foundation was collecting statistics, more than fifty percent of child deaths in home swimming pools occur in rental properties.

The Government will not accept these tragedies as inevitable. This is why the Bill requires pool owners who want to lease a property to first obtain a swimming pool compliance certificate.

At the same time, to ensure that all pools are made safe, the Bill also contains amendments to require that a property owner 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.

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.

Firstly, 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 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 the 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.

Secondly, 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 councillor and accredited certifier are 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 delays.

Following extensive consultation with pool safety advocates, industry and councils, the provisions in the Bill that introduce council inspection programs, mandatory certification of properties with swimming pools offered for sale or lease and the provisions allowing

accredited certifiers to commence inspections, will commence 18 months after the assent to this Bill.

This will allow sufficient time for councils to prepare and build capacity to introduce an inspection program, by employing and training increased numbers of staff to conduct inspections. 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 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, an authorised council officer will be able to enter the premises with a swimming pool to investigate where a complaint has been made or they suspect the pool does not meet the required standards.

Also, 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 the 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 exemptions for those pools that are fenced voluntarily.

The proposal addresses the issue of currently exempt pools being voluntarily fenced but to an unsatisfactory standard. Anecdotal evidence suggests that a number of children may have drowned in voluntarily fenced pools that have deficient barriers which, while they may create the illusion of a safe barrier, present a safety hazard for young children. The intent of this amendment is to remove ambiguity about exempt pools that have been voluntarily fenced and to 'disapply' or remove the exemption.

Finally the Bill provides other minor amendments to clarify the intent of the Act, the role of local councils and to make it more consistent with other legislation. These include:

- A minor change to the prescribed minimum depth of a swimming pool that replaces the words '300 mm or more' with 'greater than 300 mm'. This will make it consistent with the depth in the Building Code of Australia, which is referenced in the Swimming Pool Regulation 2008. This will also make it consistent with the minimum depth of a swimming pool prescribed in other jurisdictions.
- A change that replaces the term 'hotel or a motel' with '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 backpackers' accommodation, bed and breakfast accommodation, farm stay and serviced apartments. It will also ensure

consistency with the standard local environmental plan under the 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.

The proposals in the Bill have 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,
- councils have the right tools to make sure pool barriers are compliant, and
- the Government provides the best possible legislative and policy framework to reduce drowning in backyard swimming pools.

To make sure pool owners and the various affected sectors of new pool safety obligations, such as 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 all councils include a notice with the next rates notices with details of these changes and their obligations under the Swimming Pool Act.

In tandem with continued pool safety education, the proposals in the Bill provide a balanced and sensible approach to backyard swimming pools safety to protect the lives of young children in NSW.

I commend the Bill to the House.