

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [4.53 p.m.]: I move:

That this bill be now read a second time.

It is both satisfying and timely to be introducing the Swimming Pools Amendment Bill 2009. With the summer season almost upon us, it is important to reflect that drowning is a leading cause of accidental death in very young children and that drowning deaths occur quickly and silently. While backyard swimming pools are places for fun with family and friends, they are also potentially lethal to the very young who lack the ability to deal with the dangers swimming pools can present. Although the average number of toddlers drowning per year in New South Wales has reduced since pool fencing laws were introduced in the early 1990s, recently we have seen a spike in drowning figures. Reports indicate that eight children under five years drowned in private swimming pools in New South Wales in 2007-08.

Notwithstanding the figures, even one child drowning is one too many. Every death and serious injury resulting from a backyard pool drowning is a tragedy for parents, family, friends and the broader community. Our role as legislators is to protect young children—among the most vulnerable members of our community—and to give them the best chance of growing up safely to lead full and active lives. While no laws can replace vigilant adult supervision at all times, this bill provides a key element to help minimise the risks to toddlers posed by backyard pools. The object of the bill is to provide the legislative framework to bring about a consistent and high standard of four-sided pool barrier fencing to surround all newly constructed backyard pools in New South Wales. The bill also aims to ensure that local councils regulate and promote awareness of the requirements in the most appropriate way, including through the use of appropriate compliance mechanisms.

I will now move on to the detail of the bill to strengthen swimming pool barrier requirements and to increase compliance. It is a sad fact that many backyard toddler drownings occur in pools that have some form of barrier in place. Behavioural factors such as a momentary lapse in supervision or propping open a pool gate can often lead to the ultimate tragedy: the death or severe brain injury of a young child. While the recent spike in toddler drownings is of concern, it is important to note that statistics cannot show the number of young lives that have been saved since the general requirement for four-sided barriers to surround pools was introduced in the early 1990s. Recent research into the type of barrier around private pools and its condition—or absence—has found that the risk of toddler drownings is significantly less in pools with stronger barrier requirements.

This bill seeks to amend the Swimming Pools Act to remove automatic exemptions that currently allow some pools to be directly accessed from the house through so-called "child-resistant" doors. All pools regardless of their location or the size of the property on which they are situated should be isolated from the house on the property, as well as from adjoining properties and public spaces. The bill proposes that the automatic exemptions in the Act for new pools to be built on very small properties, which are less than 230 square metres; large properties, which are two hectares and over; and waterfront properties be removed. This will ensure that all newly constructed pools are surrounded by a four-sided barrier, that a self-closing, self-latching gate is installed and maintained to the Australian standard, and that the pool is separated from the house and adjoining properties and public spaces at all times. Sensibly, especially for pools on small properties, owners will still be able to use boundary fences and house walls as part of the swimming pool barrier, as long as they meet the legislative requirements and the Australian standard.

Of course, there are also specific circumstances, such as the need for disability access, that justify a special exemption being granted by the local council under section 22 of the existing Act. In such cases pool owners will still have the option of applying to their local council for a special exemption if they believe the barrier requirements are impracticable or unreasonable. These provisions will not change. The bill also allows for a delayed commencement period for these provisions of 1 July 2010—or six months after commencement of the legislation—to allow for automatic exemptions to still apply to pools on these properties where a development application has been submitted or construction has commenced.

This bill also proposes amendments that will strengthen compliance with barrier and other requirements under the Swimming Pools Act. One way to manage non-compliance is an increase to the maximum court-imposed penalty amounts for most offences under the Act from \$1,100 to \$5,500, as well as a consequent increase to penalty notice amounts prescribed by regulation from \$220 to \$550. Current penalty amounts have been in place for over 19 years and are lower than many offences under other New South Wales legislation of a similar nature. Penalties under the Act include failure to provide and maintain a swimming pool barrier to standard and failure to keep gates securely closed when not in use. These have been increased to bring them into line with the magnitude of the offences and the significant risks they pose to young children.

While breaches of the Act are serious, we also recognise that many pool owners and occupiers may be

genuinely unaware that their pool may not comply. The bill has therefore introduced a warning system so that pool owners are usually issued with at least 14 days notice prior to being formally ordered to fix a deficient barrier. This approach puts the focus firmly on compliance rather than punishment and will serve the bill's ultimate aim of keeping swimming pools safe. To further strengthen compliance, the bill also proposes that councils be required to investigate complaints that they receive about possible non-compliance with barrier and other requirements under the Act. While most councils already investigate and resolve such complaints promptly, the bill mandates that all councils must do so within a reasonable time frame.

The bill proposes that councils must commence investigation of a complaint received in writing within 72 hours, where practicable. This time frame balances the need for councils to investigate complaints as quickly as possible while allowing for weekend interruptions and urgent priorities that may compete for attention. It should be noted, however, that where councils assess a complaint to be frivolous, vexatious or lacking in substance, the bill gives the council the ability to decline its investigation. Another proposal to increase compliance is to give councils optional powers to enter property and undertake remedial work to rectify deficient pool barriers in situations where non-action poses a significant risk to public safety, and where the owner refuses, or is unable, to do the work.

I expect this power to be used infrequently and to be limited strictly to situations where non-action poses a significant risk to public safety. Further, before any work is done, the council must provide notice of intention to do the work. The costs may be recovered through court from the owner or occupier. The bill provides other minor amendments to clarify the intent of the Act, the role of local authorities, and to make it more consistent with other legislation. It abolishes the Pool Fencing Advisory Committee, the functions of which are now undertaken by the New South Wales Water Safety Advisory Council. The bill provides for the delegation of functions under the Act and makes a number of minor and statute law revision amendments.

It is important to note that the amendments in the bill to strengthen pool barrier requirements deal with pools to be built in the future, not with pools that are now in existence. These include pools built prior to 1 August 1990, as well as pools built after this date on small, large and waterfront properties, including right up until 1 July 2010. The risk to young people posed by these pools will only increase over time and we need to address this risk sooner rather than later. To this end, consultation with a view to making further amendments to the Swimming Pools Act to deal with exemptions for existing pools is currently underway. While regulation is important we need to strike the right balance between the responsibilities of State local councils and individuals.

Ultimately, responsibility for child safety around backyard swimming pools lies with pool owners and occupiers. The Government recognises that education is fundamental to promoting awareness of the barrier standard, as well as backyard pool safety. Accordingly, in tandem with these legislative amendments, additional initiatives to get key pool safety messages across to pool owners and parents are under active consideration. In summary, this bill will enhance the safety of children aged zero to four years old around backyard swimming pools in New South Wales by strengthening swimming pool barrier requirements and encouraging compliance.

Importantly, these reforms have been developed in close consultation with water safety advocate groups, such as the Royal Life Saving Society of New South Wales, the local government sector, State government agencies and other interested industry organisations and individuals, including pool owners. The Swimming Pools Amendment Regulation, together with other information as required, will support the bill. This may include guidelines to assist councils with the implementation of the proposed amendments. The bill represents the most significant reforms to swimming pool legislation in New South Wales in 17 years. In tandem with backyard pool safety education, these reforms provide a balanced and sensible approach to backyard swimming pool safety in New South Wales. I commend the bill to the House.