



THE LAW SOCIETY
OF NEW SOUTH WALES

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22 February 2012

Swimming Pools Act Review
Division of Local Government,
Department of Premier and Cabinet
Locked Bag 3015
NOWRA NSW 2541

Email: swimmingpools@dlg.nsw.gov.au

Dear Sir / Madam,

Re: Swimming Pools Act 1992 Review

Thank you for the invitation to consider and comment upon the proposals to review the provisions of the *Swimming Pools Act 1992* ("Act"), as set out in the *Swimming Pools Act 1992 Review Discussion Paper* ("Discussion Paper") released by the Division of Local Government, Department of Premier and Cabinet Panel in January 2012.

The Discussion Paper has been considered by the Law Society's Property Law Committee ("Committee").

The Committee supports Government strategies to introduce measures to improve swimming pool safety and measures that may reduce drownings in private pools. However, it is for the Government to ensure that the proposals achieve the desired outcome of reducing drownings.

The proposals include provisions which are intended to improve the safety for very young children around backyard swimming pools. The proposals envisage attendant changes to the practice and procedures relating to land ownership and dealings with land.

Specifically of interest to the Committee are the requirements relating to the sale and leasing of land on which a swimming pool is located.

The Committee has considered the Discussion Paper and has provided the following comments together with the completed Feedback Form.

The current position – sales and purchases

Since the commencement of the Act, it has been open to the owner of premises on which a swimming pool is situated to apply under section 24 of the Act for a compliance certificate

from the relevant local authority (usually the Local Council). The section has some practical difficulties - for example, the section does not, on its face, allow a non-owner (for example, a purchaser or tenant) to apply for a certificate. It is the Committee's experience that it is extremely rare for a vendor to apply for a section 24 certificate to attach to a contract for sale, and it is relatively uncommon for a purchaser to apply for the certificate.

With effect from 1 September 2010, pursuant to the *Conveyancing (Sale of Land) Regulation 2010*, a vendor must attach to the contract for sale a Warning in these terms:

An owner of a property on which a swimming pool is situated must ensure that the pool complies with the requirements of the *Swimming Pools Act 1992*. Penalties apply. Before purchasing a property on which a swimming pool is situated, a purchaser is strongly advised to ensure that the swimming pool complies with the requirements of that Act.

The Warning is a requirement not only for sales of properties containing swimming pools, but to all property sales. The Committee believes this Warning serves an important educative function, and should be retained.

The current position – leases

Section 52(3) of the *Residential Tenancies Act 2010* provides:

- (3) A landlord must comply with the landlord's statutory obligations relating to the health or safety of the residential premises.

Note. Such obligations include obligations relating to swimming pools under the *Swimming Pools Act 1992*.

This obligation is reiterated in clause 40 in the prescribed form of residential tenancy agreement. It appears to the Committee that a tenant is less likely to be alerted to the importance of pool fencing and pool safety than a purchaser viewing a draft contract for sale containing the prescribed warning.

Strengthening the Swimming Pools Act

Provisions to require registration of sites of pools, inspection regimes for certification and two yearly inspections are supported.

Enhanced vendor disclosure

If the above provisions are adopted the Committee recommends that a compliance certificate be added as a prescribed vendor disclosure document under Schedule 1 of the *Conveyancing (Sale of Land) Regulation 2010*. This would avoid a vendor opting out of the requirement.

Enhanced landlord disclosure

The Committee supports a proposal to amend the *Residential Tenancies Act 2010* to require a landlord to provide a compliance certificate prior to leasing property on which a swimming pool is located.

The Committee also believes that the New Tenant Checklist published by NSW Fair Trading should specifically alert tenants to the requirements of the Act.

Other Matters

The Committee also suggests that some consideration be given to the issue of changes that might be made by a pool owner after a certificate of compliance issued, so that if the certificate may no longer be accurate at the time of sale, an updated certificate is required.

All fees must be reasonable as indicated in the Discussion Paper. Should the requirements proceed then a facility to apply for and obtain a Compliance / Currency Certificate must be available on-line. This will enable the purchaser or tenant (or another interested party such as a mortgagee) to assist in the 'policing' of the proposed requirements. The Committee agrees with the suggestion that access to the on-line register be at no cost.

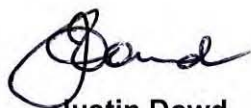
Provisions to reduce the numbers of pools currently exempted from the requirements of the Act are supported. However, any narrowing of the exemption must not have the result that some properties cannot be leased or sold because of the inability to obtain a compliance certificate under an enhanced disclosure regime.

One topic which will need careful consideration is the obligations accruing where a swimming pool is located within a strata or community scheme. Typically the swimming pool will be located on common property, and the obligation to obtain inspections and compliance certificates should primarily lie with the owners corporation (or relevant association in the community scheme). It would be unfortunate if each time a lot were sold or leased within the scheme the owner had to obtain a compliance certificate independently of any certificate held by the owners corporation. It may be that there would need to be consequential amendments to strata and community legislation to require the owners corporation to make a copy of any compliance certificate held available to a lot owner without charge.

Conclusion

The Committee appreciates the opportunity to participate in the *Swimming Pools Act 1992 Review*. If you have any questions arising from the Committee's comments above, please contact Gabrielle Lea on (02) 9926 0375 or email: gabrielle.lea@lawsociety.com.au.

Yours faithfully



Justin Dowd
President