



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our Ref: JD:GL: 656996  
Direct Line: 9926 0375

18 October 2012

The Hon. Donald Page  
Minister for Local Government  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

[Don.Page@parliament.nsw.gov.au](mailto:Don.Page@parliament.nsw.gov.au)

Dear Minister,

**Swimming Pools Amendment Bill 2012 ("Bill")**

I am writing to you at the request of the Law Society's Property Law Committee ("Committee"), which is comprised of experienced and specialist property law practitioners, drawn from the ranks of the Law Society's members, who act for various stakeholders in the conveyancing process.

The Committee supports in principle the measures designed to minimise death and injury arising from pools covered by the *Swimming Pools Act 1992* ("Act"). However the Committee is concerned that the Bill has been introduced into the New South Wales Parliament without sufficient consultation and discussion, given the wide ranging nature of the proposed changes.

Due to time constraints the Committee is unable to extensively review the Bill but it wishes to raise several matters as indicative of the further consideration the Bill requires.

The Bill specifically mentions strata schemes (proposed section 3(1A)) to avoid doubt that the Act applies to pools located on common property. In the Committee's view, it is unclear how the Bill's provisions will operate where a vendor or landlord is a lot owner in a strata scheme (or a community scheme). To take two examples:

1. The proposed amendment to the prescribed form of residential tenancy agreement contemplates that the landlord will "ensure" registration of the pool and the existence of a valid certificate of compliance or a relevant occupation certificate. In the Committee's view it is unclear as to how a lot owner will do this. Is there power to compel the owners corporation to register the pool?
2. For sales and leases, must an owners corporation provide a copy of the relevant certificate to a lot owner, and if so on what terms? For example, can a fee be charged? When must a copy be supplied?

The Committee is also concerned that a prescribed vendor disclosure document under Schedule 2.2 (and a requirement built into the prescribed form of residential tenancy agreement) can "cease to be valid" if a section 23 direction issues, as referred to in Explanatory Note on page 3 at line 5. This is clearly problematic.

The Committee also suggests that given the proposed requirement on sale for a prescribed document, arguably the Swimming Pools Warning, which is currently prescribed under Item 15 of the *Conveyancing (Sale of Land) Regulation 2010*, is otiose and should be deleted. This consequential amendment is absent from Schedule 2 of the Bill.

The Committee considers that the administrative structure allocating roles to local councils, accredited certifiers, the Register of Swimming Pools and owners, seems unduly complex. If a Register is to be established and vendor or landlord disclosure is required, it would be efficient if the certificate issued by the Registry (say under proposed section 30C) was the only document required.

The Committee is also concerned that by virtue of amendments to the Act (for example the modifications to the exemptions in sections 8, 9 and 10) those who purchased in good faith premises which are capable of being sold or leased prior to the commencement of the amending Act may find it impossible or impracticable to comply with the Act's requirements.

The Committee has also noted what appears to be an unintended consequence of the staggered commencement dates for different items in the Bill. The commencement date for Schedule 1 Item 16, which effectively brings in the new certification regime, is 6 months after the date of assent. Schedule 1 Item 17 which repeals section 24 of the Act, the provision relating to the issue of a certificate of compliance, commences on assent. Consequently for the 6 month period beginning from the date of assent there appears to be no certification regime in place.

These issues have significant consequences for all swimming pool owners in New South Wales, particularly those proposing to either lease or sell their property in the near future. While the issue of children's safety is paramount, in the Committee's view, some of these matters are sufficiently important to warrant meaningful consultation with stakeholders (including the Law Society) before the Bill is passed.

Your officials may find it convenient to direct any queries about this letter to Gabrielle Lea, Policy Lawyer for the Property Law Committee on (02) 9926 0375 or by email to [gabrielle.lea@lawsociety.com.au](mailto:gabrielle.lea@lawsociety.com.au).

Yours sincerely,

  
Justin Dowd  
**President**