



REINSW

REAL ESTATE INSTITUTE
OF NEW SOUTH WALES

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

By email: Don.Page@parliament.nsw.gov.au

22 October 2012

Dear Minister,

Swimming Pools Amendment Bill 2012 ("Bill")

The Real Estate Institute of NSW ("REINSW" or "the Institute") is the largest professional association of real estate agents and other property professionals in New South Wales. The REINSW seeks to promote the interest of members and the property sector on property related issues, and in doing so the REINSW has a substantial role in the formation of regulatory policy in New South Wales.

The Institute is aware that the Bill to amend the *Swimming Pools Act 1992* ("Act") is currently before the New South Wales Parliament. The REINSW is in principle supportive of initiatives to minimise the risk of death or injuries occurring in swimming pools. However the Institute is concerned that industry stakeholders have not been sufficiently consulted in formulating the proposed changes.

Due to time constraints the Institute is unable to carry out a comprehensive review of the Bill, however wishes to bring to your attention several (non-exhaustive) matters which suggest that further consultation and discussion is needed before the Bill progresses.

1. Where a pool is located on common property the Bill is unclear as to who is responsible to ensure that the swimming pool is registered and that a valid compliance certificate issues – presumably this would be the owners corporation, however the Bill does not appear to make provision requiring owners corporations to do so. How can a lot owner ensure that compliance occurs?

It is also unclear as to how an owners corporation can be compelled to provide a copy of the certificate of compliance or occupation certificate to a lot owner, at what cost and within what time period.

These matters can adversely affect the lot owners' ability to lease or sell the lot, given that it is proposed to prescribe obligations on owners within the residential tenancies and conveyancing legislation to provide the certificate at the time of selling or leasing.

2. There is a proposed inclusion of relevant certificates as prescribed documents to be attached to contracts for sale of land, however there is no provision for the removal of the Swimming Pools Warning Notice, which is currently prescribed – presumably the requirement to attach certificates will replace the Notice. The legislation should be amended accordingly.
3. The Institute is concerned that a certificate of compliance, which is proposed to be a prescribed vendor disclosure document and a document required to be provided to a tenant at the time of entering into a residential tenancy lease, can “cease to be valid” if a direction is issued under section 23. This can result in a myriad of problems for property owners in the process of selling or who are leasing a property.

Also, the modifications of the exemptions in sections 8, 9 and 10 will have the consequence of owners, whose properties previously fell within the exemptions, finding it impossible or impracticable to comply with the new requirements, thereby affecting their ability to sell the property and adversely affecting the value of the property.

4. The Bill requires a local authority to develop and implement a plan for the inspection of swimming pools and each swimming pool within its area within 12 months of the commencement of the amendments and then at least once every 3 years. It is not clear how it is envisaged the cost of such a compliance program will be covered.
5. It is noted that some provisions of the Bill are intended to commence immediately on assent and others which 6 and 18 months after assent. This will result in section 24 being repealed on assent and the new certification provisions commencing 6 months later and therefore in an anomalous situation where there is no certification process in place for a period of 6 months. This appears to be an unintended consequence and should be addressed.

The above matters will have significant implications for swimming pool owners and the property market in NSW. The Institute is of the view that further consultation with industry stakeholders is required before progressing the draft legislation so as to ensure the primary concern of ensuring children’s safety is addressed whilst at the same time a practical scheme for certification and vendor/landlord compliance and disclosure is developed.

Yours faithfully,



Eva Sklavos
Legal and Policy Manager