



# The Property Owners' Association of NSW

Quarterly Journal | March 2014

- poa-nsw -

# THE PROPERTY OWNERS' ASSOCIATION OF NSW



02 9363 3949



[www.poansw.com.au](http://www.poansw.com.au)



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of NSW Inc"*

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Gabriel Keleny

John O'Connor JNR

Simon Ruben

## PRESIDENT'S REPORT

### JANUARY - MARCH 2014

Welcome all to the first quarter edition of our 2014 publications. Can I still say a happy new year to all? Yes I will anyway though we know it's March already! It looks like another buoyant year in the NSW property market with traditional summer property selling frenzy in most "hot spots" clearing out at 85% under the hammer and rental vacancy rates remaining tight. Sydney property within a 20km of CBD once again leading the field.

On the political front it was sad to hear late last year the resignation of former NSW Fair Trading Minister now Resource Minister Anthony Roberts. So much work and lobbying done by POANSW committee members on all fronts, we were making some ground. New minister appointed, will he listen to NSW property owner's needs? A meeting has been called.

The NSW Civil and Administrative Tribunal (N.C.A.T) launched 1/1/14. Replaces the C.T.T.T. "The super tribunal" as its being called. Will landlords /boarding house operators receive super fair results or will it be same old same old? Time will tell. A new pre-hearing voluntary mediation process is now available, but is this a complete waste of time and resources when an agreement reached is not officially binding? Our AGM guest speaker will provide details of the inner workings and provide information to members about this process and how judgements are made.

As promised last year, new POANSW member services are now available at discounted rates. Property reports, tenant database checks, web advertising to name a few. Information on these in the journal. As always, we welcome your feedback on these and any other services which may be of interest to you.

New swimming pool and spa laws compliance commences next month. Please read the 2 x articles inside this journal carefully about how this affects you renting and selling your property.

It's great to report our membership numbers have hit a record high. On the back of new boarding house legislation, complexities from the 2010 Residential Tenancy Act and upcoming strata reform, it's great to see the public seeking quality information, knowledge and guidance via our association committee. I welcome all our new members and hope you gain from your membership.

Our A.G.M is being held on 7/5/14 in what will be a newly refurbished Hughenden Hotel. All members are invited and the nominations are now open to elect the 2014 executive committee.

I look forward to seeing you on the night.

Best Wishes,

*J. Gil'movich*

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### WELCOME TO OUR NEW MEMBERS:

C. Tseris	H. Alfassi
G. Cox	W. Kelman
K. Ward	D. Powell
G. Hunt	C. Stapleton
L. Martin	J. Peppas
D. Muirhead	G. Wade-Ferrell
P. Kozlina	I. Nymous
D. Crowley	M. Moutzouris
P. Mahalingam	S. Petrohilos
M. Dodgson	

*Cover photo by Andrea Schaffer  
<http://www.flickr.com/photos/aschaf/>*



# **PROPERTY OWNER'S ASSOCIATION OF NSW INC.**

# ***invites you to...***

## **NOTICE OF ANNUAL GENERAL MEETING 2014**

(MEMBERS ONLY)

**With Special Guest Speaker Mr Nick Vrabac**

Former deputy chair for determinations of C.T.T.T.

Currently senior member of N.C.A.T

**When:** 7 May 2014

**Where:** The Hughenden Hotel,  
14 Queen Street WOOLLAHRA

**Time:** A.G.M. 5:30pm – 6:15pm

**Guest Speaker:** 6:30pm - 7:30pm

Following on, we will have finger food and drinks to end the night  
(roughly around 9pm)

**Cost:** Complimentary to our members.

**RSVP by 25/4/14.**

Please phone The Hughenden Hotel to advise your attendance.

Ph: 02 9363 4863 or email [reservations@thehughenden.com.au](mailto:reservations@thehughenden.com.au)

### A.G.M. AGENDA

1. Apologies
2. Minutes of previous meeting
3. Treasurers Report/financials (year ending 31 Dec 2014)
4. Review of the POANSW activity over the past year & works in progress
5. Nominations for & election of Office Bearers & Committee of Management
6. General Business (Q & A)

### NOMINATIONS FOR COMMITTEE OF MANAGEMENT

Nominations for Committee of Management will be accepted in written form (post or email) to the Secretary prior to the election.

Financial members only are eligible for nominations which close on 23/4/14.

Executive Positions open: President, Vice President, 2nd Vice President, Treasurer, Secretary plus 5 spaces for Committee of Management.

## 2013 END OF YEAR DINNER WRAP UP

A big thank you for those who attended our special event dinner function on 4th December 2013. It was a well attended night of fine food, fine music and some fine conversations. Special VIP guests attended as well, from government and non-government sectors including REINSW CEO Tim McKibbon, former C.T.T.T chair Nick Vrabac and included our guest speaker of the night, the NSW Small Business Commissioner, Yasmin King (former A.C.C.C Commissioner) who was appointed to the job back in 2011, openly shared with us her own experiences in running a small family winery business in Adelaide and the reason she is so passionate about her role.

Small businesses are the backbone of Australia's economy, representing 96 per cent of all businesses in the country. There are an estimated 2 million small businesses across the nation providing nearly half of all employment. In NSW alone, there are 680,000 small businesses providing employment for around 50 per cent of the NSW workforce.

In addition to contributing to the economy directly, the small business sector is a crucial platform which underpins the efficient operation of many medium-sized and large businesses.

Yasmin's role is to support small businesses throughout NSW by:

- Providing dispute resolution services
- Delivering quality business advice through Small Biz Connect
- Speaking up for small business within government

This year as part of trying to achieve a fairer outcome for lessee's and lessors, the Retail Leases Act 1994 has been placed under review by the commissioner to streamline the Act.

Surprisingly not many have heard about the services provided by the Office of Small Business Commissioner, an issue Yasmin said was attributed to a low marketing budget, so if you do want to take up the opportunity to utilise their services please visit their website for more details

[www.smallbusiness.nsw.gov.au](http://www.smallbusiness.nsw.gov.au) or phone 1300 795 534



## NSW MINISTER FOR FAIR TRADING REPLACED

NSW Premier Barry O'Farrell has opted to make minimal changes to his cabinet in the wake of the resignation of a minister under investigation by the Independent Commission Against Corruption, with one new face and very limited changes of portfolios.

Chris Hartcher resigned in late December 2013 as Minister for Resources and Energy when ICAC investigators raided his electoral office, reportedly looking for evidence of electoral donation irregularities.

Mr O'Farrell announced Anthony Roberts, former minister for Fair Trading, would be promoted to Energy and Resources, which is considered both a crucial economic portfolio, as well as a politically sensitive one. If the Government decides to privatise the electricity distribution network, Mr Roberts, along with the Treasurer, will have to sell the idea to a sceptical public.

He will also have to balance farmers' concerns about coal seam gas with warnings about a looming gas shortage, as well concerns about the expansion of the coal industry.

Stuart Ayers, the member for Penrith, enters cabinet as the minister for Fair Trading, as well as assisting the Premier, who is the minister for Western Sydney. The police minister Mike Gallacher will take over Mr Hartcher's responsibilities as minister for Central Coast, while George Souris replaces Mr Gallacher as minister for the Hunter.

Barry O'Farrell comments "I'm delighted to reward Stuart Ayres for the passion and drive he has shown as Member for Penrith and parliamentary secretary for Western Sydney, and previously as a parliamentary secretary for Transport and Roads and Government Whip.

"Stuart has strongly represented the interests of small business owners in Penrith and as Fair Trading Minister I know he'll work hard to cut the red tape burden on small business to help reduce the costs of doing business in NSW.

"I'm delighted Stuart will assist me in my role as minister for Western Sydney - another sign of the importance my government places on region as we repay the trust put in us by the people of Western Sydney at the last election."



## **POANSW MEMBERS RECEIVE A 10% DISCOUNT AT RENT.COM.AU**

www.rent.com.au has become Australia's leading dedicated rental website servicing the needs of renters, landlords, and property managers nationally.

With about 45% of the nation's rental properties being managed privately, rent.com.au empowers property investors who choose to advertise and manage their rental property themselves, with the tools and information required to secure a tenant on the best possible rental terms.

With other major sites, like realestate.com.au only allowing agent listings, which represents only 55% of all national rental properties available, RENT's suite of services allows the private landlord sector to also professionally list their properties on-line, and access professional tools to maximise their return, and reduce their risk. The POANSW after receiving feedback and demand from its members has established an affiliate partnership with rent.com.au and has negotiated a deal for its members to access these services.

POANSW members receive a 10% discount on services offered by www.rent.com.au

The excellent range of essential new landlord services are:

1. Landlord Property Advertisement (\$99) – Landlords can place their own rental advertisement with a professional ad including photos, full description, and email alerts sent out.
2. RENT Report (\$35) – a complete rental market intelligence report for any suburb in Australia, providing the facts and knowledge for rental prices, trends, turnover and much more. This is an essential report for all property investors who own an investment property or who are researching an area to purchase in to maximize their rental return.
3. Tenant Check (\$35) – now available to landlords, a professional check on potential tenants before signing the lease, crucial to protect against potential risk and bad tenants.

**USE THE REFERRAL CODE  
'POANSW10' TO GET YOUR  
10% DISCOUNT.**

**VISIT:  
WWW.RENT.COM.AU  
TO GET STARTED!**



## **THE NSW CIVIL & ADMINISTRATIVE TRIBUNAL (NCAT) LAUNCHES**

The recently appointed NCAT President, Judge Robertson Wright, and the NCAT Principal Registrar, Ms Sian Leathem, have been appointed to head up NCAT.

In October 2013 the Civil and Administrative Tribunal Amendment Bill 2013 and the Civil and Administrative Legislation (Repeal and Amendment) Bill 2013 was introduced into the NSW Parliament

From 1 January 2014 NCAT absorbs the previously known C.T.T.T together with 24 other tribunals and becomes the "super tribunal" in NSW.

As the Consumer and Commercial Division of NCAT, existing C.T.T.T jurisdictions will be increased with the addition of disputes about retail tenancies and dividing fences.

Consultations are underway with the Small Business Commissioner, the Local Lands Board and the NCAT Project Team for the introduction of these new jurisdictions. Also working in partnership with senior representatives of the other tribunals to ensure a smooth transition to NCAT.

Apart from the process requirements, efforts are underway to promote awareness about NCAT at the Registry level.

For example, a brochure called "Introducing NCAT" is available at C.T.T.T Registry. It includes information about the tribunals that have amalgamated and the implications for applications that are lodged at the C.T.T.T (and the other tribunals) prior to and after 1 January. Members will find more information about NCAT – including Discussion Papers and newsletters on the NCAT website - [www.tribunals.lawlink.nsw.gov.au/tribunals](http://www.tribunals.lawlink.nsw.gov.au/tribunals)



## **NEW FREE VOLUNTARY DISPUTE SERVICE COMMENCES**

From 1 December 2013, NSW tenants, landlords and property managers can use Fair Trading's new dispute resolution service to resolve selected residential tenancy disputes.

The free voluntary service provides a convenient alternative to having residential tenancy matters heard by the Consumer, Trader and Tenancy Tribunal (C.T.T.T.).

Fair Trading can assist in resolving disputes about:

- Repairs and maintenance
- Non-urgent health and safety issues
- Alterations and additions
- Access to the premises including inspections
- Non-compliance with the tenancy agreement
- Water saving devices and smoke alarms
- Provisions of correct notices
- Ending a tenancy
- Breaking a lease, and
- Condition reports

If Fair Trading cannot get the parties to agree to a resolution to a dispute, either party may lodge a claim with the C.T.T.T. All other residential tenancy matters not dealt with by Fair Trading will continue to be heard by the NCAT.

For more information about the free dispute resolution service, go to the Residential tenancy dispute page on the Fair Trading website:  
[www.fairtrading.nsw.gov.au/ftw/About\\_us/Our\\_services/Resolving\\_issues](http://www.fairtrading.nsw.gov.au/ftw/About_us/Our_services/Resolving_issues)

For more information about the free tenancy service you can contact the Fair Trading hotline on 13 32 20.



## **STRATA REFORM UPDATE - STRATA LIVING FOR THE FUTURE**

The former Minister for Fair Trading Anthony Roberts released proposed reforms that will improve strata living for millions of people across NSW.

Mr Roberts said there are more than 72,000 strata schemes in NSW and an average of five new schemes are registered each day.

"It is estimated that by 2030 half of Sydney's housing stock will be multi-unit dwellings and the proposed reforms will strengthen a culture of community and cooperation in strata," Mr Roberts said.

"They support democratic, accountable and transparent decision-making and empower strata communities to chart their own futures."

A Position Paper: Strata and Community Title Law Reform highlights 70 proposed changes by the NSW Government, including:

- Requiring managing agents to disclose at each Annual General Meeting any commissions received in the previous 12 months and to seek approval for those expected during the next year. All non-monetary benefits and gifts from third parties will be banned;
- The model by-laws will allow for certain pets and prohibit smoke drift where it causes a nuisance or hazard;
- Hardwood floors will need owners corporation approval;
- Notice will be required for changes such as refitting a bathroom but approval will not be required for minor cosmetic changes such as painting a wall or inserting a picture hook;
- Owners corporations will be able to limit the number of people who occupy lots to prevent overcrowding;
- Owners corporations may enter into an arrangement with the local council to issue penalty notices for unauthorised parking;
- Tenants will be given the right to attend and participate in owners corporation meetings;
- When registering a scheme, unit entitlements must be determined by an independent valuation to provide more transparency and consistency;
- The limiting of proxy votes to prevent an individual or group controlling decisions; and
- Documents may be issued and meetings held electronically as an alternative method to traditional paperwork processes and meetings.

Mr Roberts said the NSW Government will introduce a high rise development bond to protect homeowners against building defects.

"The bond will be equivalent of two per cent of the cost of the building work. This will address defective work and give consumers added protection if a developer becomes insolvent.

“The bond will be released once an independent defects inspection has been undertaken and any defects have been rectified.”

Chief Executive of Urban Taskforce Australia, Chris Johnson, said "An independent assessment of defects by acknowledged experts is a much better way to resolve problems. We are supportive of the retention of some funds to cover the cost of possible defects as determined by the independent expert," Mr Johnson said.

Perhaps the most important reform is an attempt to address building defects that affect 80 per cent of all new strata schemes. Mr Roberts said the Position Paper also outlines a new system for the collective sale of strata schemes.

"The State's strata buildings are ageing and the cost of maintaining them with special levies can be too expensive for some owners. Trying to collectively sell a strata scheme can be a costly and drawn out process which creates conflict and ultimately sees all parties in the Supreme Court.

"To address these issues the Government has developed a new model for the collective sale and renewal of strata schemes where there is less than unanimous support from owners.

"The proposed model for the collective sale of strata schemes provides greater fairness, transparency and improves the level of protection for owners.

"It will inform and protect owners every step of the way and will help prevent conflicts between owners and third parties," Mr Roberts said.

The proposed threshold required for the collective sale of a strata scheme will be 75 per cent of lot owners, where each lot has one vote. Key features include:

- An opt-in provision which means that a general resolution is needed before owners can formally consider a collective sale;
  - A 'strata renewal committee' is appointed by owners to oversee the development of a collective sale/ renewal plan;
  - A minimum of 60 days for lot owners to consider and seek their own independent advice on the plan;

- Oversight of the process by an independent Strata Commissioner at the Land and Environment Court to ensure fairness; and
  - The Strata Commissioner to consider whether the process has been followed and everyone has been treated fairly. The Strata Commissioner will seek to resolve any dispute through mediation. If the matter can't be resolved it will proceed to a hearing.

"Our strata buildings are not designed to last 1,000 years so why have a strata system that does. It is contrary to the public interest to have strata titles that do not easily allow urban renewal," Mr Goddard said.

"The proposed changes that set a 75 per cent threshold to finalise a strata title can open up the opportunity to renew areas where 1960s and 1970s apartments were built to much lower standards than those used today," Mr Johnson said.

The POANSW welcomes the release of the Position Paper. However have since raised some concerns about certain issues in the Position Paper including budget and levying, dealing with pets and process of de-registration of strata plans.

A copy of the Position Paper is available at Fair Trading website:

[www.fairtrading.nsw.gov.au/biz\\_res/ftweb/pdfs/  
About us/Have your say/Strata title law reform  
position paper.pdf](http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/About_us/Have_your_say/Strata_title_law_reform_position_paper.pdf)



# **NEW LAWS FOR RESIDENTIAL LAND LEASE COMMUNITIES**

Minister for Fair Trading said the Liberals and Nationals Government has delivered another election commitment with new laws for Residential Land Lease Communities now passed by the Parliament.

NSW has the largest Residential Land Lease Communities sector in Australia with the 486 registered communities in the state home to around 33,700 permanent residents.

The minister said the new laws will deliver important protections for residents and operators. "The passing of the Bill fulfils the Government's election commitment to improve the governance of Residential Land Lease Communities, formerly known as residential parks. It is essential that

NSW has fair and balanced laws that benefit and protect the thousands of residents across the state while allowing the sector to realise its full potential."

The key changes include:

- New rules of conduct for operators and tougher sanctions for those who fail to comply with the law;
- Mandatory education requirements for all new operators;
- A simpler and more effective way for home owners to challenge excessive increases in the site fees they pay; and
- Voluntary sharing arrangements, where chosen by residents.

"Before the new laws commence we will also roll out an education program for residents and operators. I am proud to see these new laws passed and want to thank the many individuals and representative groups who have helped shape this important piece of legislation."

The new laws will take effect from mid 2014.



## CAN I TURN MY PROPERTY INTO A HOLIDAY LETTING?

ARTICLE ADAPTED FROM SMH NOV 2013

Thousands of Sydneysiders are unknowingly risking fines by opening their homes as short term rentals without seeking council consent.

NSW councils are grappling with how to manage the growing market for private short term holiday letting, which is expanding through social websites such as Airbnb.

The City of Sydney has warned an individual could face a \$750 fine for renting out their property without council approval.

'The City's Local Environment Plan does not permit mixing permanent residential use with tourist and visitor accommodation models in the same building.

Advice should be sought before using any dwelling for tourist and visitor accommodation in order to identify if development consent is required.

Some councils such as Gosford and Shoalhaven have sought to allow some residents to rent out properties to tourists without requiring special permission. But Waverley Council said it was "concerned" about the impact properties offering such accommodation without development consent would have.

Lynn Stanton, of Erskineville, said she contacted the City of Sydney before listing her apartment in a converted church on Airbnb, a San Francisco-based website that connects people who have spare rooms or an empty house with those seeking a place to stay.

"When I first investigated doing it, I did contact the council and they didn't know what Airbnb was at that stage so they couldn't really give me any guidance," said Ms Stanton, who relied on legal advice instead.

But Ms Stanton, who has received glowing ratings since she began operating on the site two years ago, said she heard from council about two months ago after a neighbour complained.

"They said they had to talk to their legal area because it is a bit of a grey area for them," said Ms Stanton, whose case is still being investigated by council.

"Maybe I'd have to put in a DA for approval for it, maybe I'd need a bed and breakfast licence. He didn't really know." It is a "growing issue" for the company, which opened an Australian office 12 months ago and has 10,000 listed properties across the country, 4000 in Sydney. This marks an 80 per cent increase in the metropolitan area's listings and 356 per cent growth in its guest stays in the past 12 months.

Airbnb's director for Asia-Pacific, Ole Ruch, conceded that hosts were ultimately responsible for ensuring they met all local requirements. But "mixed feedback" from councils has prompted the company to seek greater clarity in NSW's changes to the planning system."There are significant inconsistencies between the 150 or so local councils across the state," Mr Ruch said.

Airbnb's submission to the NSW government's planning white paper said the current definition of "tourist and visitor accommodation" was inappropriate for its users, and argued that the law should make clear that the occasional short term rental of a primary residence was not a commercial use.

It is a position strongly opposed by the Accommodation Association of Australia, which said hotels and motels designed for short term stays were required to meet rigorous health and safety standards, while private properties were not.

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## **WARNING ON TAX SCAMS**

POANSW is warning its members to avoid tax scams and report them to the Australian Tax Office (ATO).

NSW Fair Trading had received a report yesterday of a scam letter offering landlords living overseas the opportunity to claim tax exemption on rental income.

A member of the POANSW reported that his property manager received the scam email, which was sent to him and another reported a fax arriving of the same nature.

The scam advises agencies managing landlords to forward forms to them to complete and return to the scammers. The forms require detailed personal information as well as photocopies of passports and mortgage account numbers. The covering letter in the scam is badly written with numerous errors of grammar and spelling. It is designed to harvest details from real estate agents about Australian properties they manage on behalf of non-residents.

The scammers may then seek to assume the identities of non-residents and sell their properties without the real owners' knowledge.

The Australian Tax Office (ATO) has confirmed the scam and that identical fake Her Majesty's Revenue and Customs (HMRC) letters had been sent to real estate agents in the United Kingdom since at least March 2012.

A copy of the fake ATO letter is available on the Fair Trading website and attached for the information of the public and media and especially the real estate industry in NSW.

The HMRC and ATO signature on the scam letters is identical and in some places in the ATO letter, the scammers have failed to replace the HMRC references.

ATO Chief Technology Officer Todd Heather said the ATO's brand was often employed in scams due to the tax office's intensive interaction with the community and their willingness to comply with requests from the ATO.

Scammers are relying on more sophisticated methods to trick people into handing over their financial or personal contact details," he said.

"This scam, as with many others reported to the ATO, asks people for their personal details so they can likely commit identity theft and other types of fraud.

"We have seen this scam over the past two years and have dealt with it by informing real estate industry associations and asking them to warn their members."

In 2013, the ATO received 49,645 reports from the public about ATO branded scams.

If people suspect they have fallen victim to an email or phone scam they should call 1800 179 647 and send the details of the scam to:

[ReportEmailFraud@ato.gov.au](mailto:ReportEmailFraud@ato.gov.au)

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## **BOARDING HOUSE REFORMS IMPLEMENTATION UPDATE**

Recently, the NSW government, through the Boarding House Implementation Committee (BHIC), released some interesting statistical information from the new Boarding House register. Since mandatory registration of boarding houses was introduced, 611 boarding houses have registered, accommodating some 8998 people in NSW.

There are two categories of boarding houses under the new Boarding House Act, general boarding houses and assisted boarding houses:

### **ASSISTED BOARDING HOUSES**

A very small number, 23, are registered as assisted boarding houses. Formerly known as Licensed Residential Care facilities, these assisted boarding houses are licenced to accommodate people with "additional needs" (S36). As expected, assisted boarding houses have high proportion of residents that may be frail, have a disability or a mental illness. The statistic concur with this; 39% of residents over 60 years old, 63% living with a mental illness, and 47% having a disability. Of note, a high percentage, some 77%, of these residents are male.

### **GENERAL BOARDING HOUSES**

The vast majority of registered boarding houses, 588, are registered as general boarding houses. As per the Boarding House Act, they accommodate at least 5 unrelated residents with no more than 2 people (S37) with "additional needs".

Also as expected, the statistics show a very small percentage of residents in general boarding houses are either under 18 years old (0.6%), live with a mental illness (2%) or have a disability (2.5%). Notably only 12% of general boarding house residents are over 60 years of age.

The majority of general boarding house residents are male (68.5%), and as expected some 28% are students enrolled in tertiary institutions.

#### REFORM PROCESS UPDATE: FINANCIAL INCENTIVES

When the NSW government announced the legislative reform process for the Boarding House Industry, one of the major objectives was to address the illegal or non-compliant providers. The reform process promised to address this by introducing a number of reforms, including financial incentives to assist the industry.

The first steps of the reforms, such as the Act and new compliance standards, were fast tracked and have been implemented with urgency. But some 10 months have now passed and there appears to be no progress on the financial incentives to assist operators with the additional compliance and operating costs imposed by the reforms.

The POANSW remains concerned about the fulfilment of the whole promised reform package. Minister Pru Goward's Department of Family & Community services is responsible for the incentives component of the Boarding House reforms.

POANSW has made a number of representations about this delay, and we look forward to their timely response.

Further the POANSW remains concerned about the structure of the new Boarding House Evaluation committee (BHEC). This body has been established to evaluate the impact of the new Boarding House Act and Regulations over a 5 year period. We note that the body does not appear to be adequately balanced, especially with its capacity to address the "supply side issues".

POANSW has made a number of representations to relevant government departments about the need for the BHEC to have a better representation of people with economic and commercial backgrounds. This would allow a proper and balanced assessment of the impact on boarding house operators, the critical stakeholder in the reform process.

Commercial issues lie at the root of the Boarding House industries illegal operator problem, addressing these is the key to the success of the reform process.

The lack of progress in fulfilling the reform process, and the concerns the POA NSW has about the capacity of the BHIC and BHEC to adequately address 'supply side' issues has led to the POANSW issuing a Letter of Dissent to the BHIC.

We would reasonably expect that the BHIC and Interdepartmental Committee to be able to achieve an equivalent level of progress in implementing the whole promised reform package, and not just the small part of the package implemented to date. POANSW will continue to pursue these outstanding issues of behalf of the boarding house industry.



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# LEASING A PROPERTY WITH A SWIMMING POOL OR SPA POOL



With over 300,000 backyard swimming pools in New South Wales, swimming pool safety is a vital issue that affects the whole community. Supervising young children in and around swimming pools and developing water confidence through water familiarisation programs can save lives. Effective pool barriers also help keep young children safe.

## WHAT'S NEW?

New laws about swimming pool safety come into force from 29 April 2014.

### What do you need to do?

From 29 April 2014, all properties with a swimming pool or spa pool that are leased must have a valid swimming pool certificate of compliance. This includes any property with a swimming pool or spa pool that is on the market for lease at 29 April 2014.

### What type of pool is included?

'Swimming pools and spa pools' includes in ground, above-ground, indoor, portable and other types of pools and spa pools that are capable of being filled to a depth of 300mm or more of water. Bathroom spas that are used as baths and emptied after use are not included.

### Changes landlords need to know about

If you rent out your property and it has a swimming pool or spa pool, a valid swimming pool certificate of compliance or an occupation certificate issued within the last three years must be provided to your tenants as part of the residential tenancy agreement.

### What is a swimming pool certificate of compliance?

A swimming pool certificate of compliance certifies that the pool and pool barrier meet the safety requirements.

### Rental arrangements

The landlord must ensure that a valid swimming pool certificate of compliance exists for the property before entering into a new or renewed residential tenancy agreement for the property. A certificate of compliance remains valid for three years from the date of its issue.

### Strata and Community Title Schemes where a swimming pool is on common property

In a strata scheme, all the unit owners jointly own any swimming pool or spa pool that is on common property. The owners corporation (or 'body corporate') is responsible for ensuring there is a valid certificate of compliance or occupation certificate for such pools.

Similarly, in community title schemes, a community association is responsible for ensuring that there is a valid certificate of compliance or occupation certificate.



### Swimming pool certificate of compliance

#### Q: How do I get a swimming pool certificate of compliance?

A: Your local council or an accredited certifier under the Building Professional Act can conduct an inspection, and issue a certificate of compliance if the swimming pool or spa pool meets all the safety requirements.

#### Q: How can I check if a swimming pool already has a certificate of compliance?

A: The NSW Swimming Pool Register provides information on registered pools and whether a certificate of compliance has been issued. You can search the register by the property address. Go to [www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au).

#### Q: Is an Occupation Certificate adequate?

A: An Occupation Certificate that is less than three years old and that authorises the use of the swimming pool can take the place of a certificate of compliance. If such an Occupation Certificate is annexed to the Contract for Sale, the swimming pool registration certificate (created when the pool was registered on the NSW Swimming Pool Register) should also be provided.

#### Q: How long does the certificate of compliance remain valid?

A: A swimming pool certificate of compliance is valid for a period of three years from the date of its issue.

#### Q: Where there is a pool on common property, such as strata or community title property, does every unit owner need to have the pool inspected separately?

A: No. In case of strata, the owners corporation (the body corporate) should arrange for the swimming pool to be inspected and obtain the certificate of compliance. Individual lot owners may access the certificate of compliance through the Swimming Pool Register website ([www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au)).

#### Q: How much does it cost to get a certificate of compliance?

A: Local councils may charge up to \$150 for an initial pool safety inspection. If a second inspection is required as a follow-up, a fee of up to \$100 may be charged. No further charges may be made for inspections by a local council. Accredited certifiers set their own schedule of fees.

## Non compliance

**Q: What happens if the pool doesn't comply at inspection?**

A: If a pool is inspected by a local council and the pool barrier is found to be non-compliant with the pool safety requirements, the council will provide an owner with a list of requirements to achieve compliance. However, if after the second inspection, the pool barrier has not been fixed, the council may issue an order directing the owner to undertake the required actions within a reasonable time, as specified in the order.

B: If an accredited certifier inspects a pool and the pool barrier is found to be non-compliant with the pool safety requirements, the certifier must issue a Notice. This Notice advises the pool owner how the pool does not comply and what work needs to be done to make it comply.

If the accredited certifier who issued the Notice does not receive a request from the pool owner to re-inspect the pool within six weeks, they must notify the local council. The local council can then take any necessary compliance and enforcement action to ensure the pool complies with the relevant standard.

If a pool owner disagrees with the issuing of a non-compliance Notice, and is not satisfied with the outcomes of discussions they have with the organisation which did the inspection they may appeal to the Land and Environment Court.

**Q: What are the penalties for non-compliance?**

A: The owner of the pool may be liable for a penalty of up to \$5,500 for non-compliance with the pool safety requirements. On-the-spot fines of \$550 can also apply.

Enforcement action is taken by local councils, and may be triggered by a complaint or concern by a neighbour, or during a routine inspection of the swimming pool as part of the council's pool safety inspection program.

### Disclaimer:

The information contained in this fact sheet is of a general nature only, and is not a substitute for legal advice.

## BE POOL SAFE:

- When using the pool are you always within arms' reach of any child under 5 years of age?
- Are you aware of the dangers of leaving older children to supervise younger children when they are using the pool?
- During parties is an adult designated 'child supervisor' duties around the pool?
- Is your pool/spa fenced effectively? Complete checklist from [www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au)
- Do you regularly inspect your pool/spa fence and gate?
- Have climbable objects near the pool fence been removed? i.e. chairs, ladders, trees, pot plants, BBQ's.
- Are toys always removed from the pool and stored securely after use?
- Have trees or shrubs near the fence been trimmed so that children can't use them to climb the fence?
- Do you or your family members have up to date Resuscitation and First Aid skills?
- Does your house have a First Aid Kit handy?
- Is there a current Resuscitation Sign displayed prominently in the pool area?

Visit the Pool Safety website at [www.bepoolsafe.com.au](http://www.bepoolsafe.com.au) for more water safety information.

## NSW LEGISLATION

### The Swimming Pools Act 1992 & Swimming Pools Regulation 2008

Applies to all types of pools (both indoor and outdoor) on premises where there is a residential building, a moveable dwelling (such as a caravan), a hotel, a motel, tourist/visitor accommodation and other multi-occupancy developments (either as a common area pool or private pool).

### Conveyancing (Sale of Land) Regulation 2010

Amendments made to the Conveyancing (Sale of Land) Regulation 2010 mean that from 1 September 2010 contracts for the sale of land must include a warning in relation to a land owner's obligations under the Swimming Pools Act 1992 which states that:

"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."

### Residential Tenancies Act 2010

Section 52 of the Residential Tenancies Act provides that a landlord must comply with a landlord's statutory obligations relating to the health or safety of the residential premises. Section 52 includes the following note:

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

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# SELLING A PROPERTY WITH A SWIMMING POOL OR SPA POOL



With over 300,000 backyard swimming pools in New South Wales, swimming pool safety is a vital issue that affects the whole community. Supervising young children in and around swimming pools and developing water confidence through water familiarisation programs can save lives. Effective pool barriers also help keep young children safe.

## WHAT'S NEW?

New laws about swimming pool safety come into force from 29 April 2014.

### What do you need to do?

From 29 April 2014, all properties with a swimming pool or spa pool that are sold must have a valid swimming pool certificate of compliance. This includes any property with a swimming pool or spa pool that is on the market for lease at 29 April 2014.

### What type of pool is included?

'Swimming pools and spa pools' includes in ground, above-ground, indoor, portable and other types of pools and spa pools that are capable of being filled to a depth of 300mm or more of water. Bathroom spas that are used as baths and emptied after use are not included.

### Which pools does this apply to?

The new laws apply to swimming pools or spa pools associated with:

- Private houses, townhouses, units and other strata and community schemes, and moveable dwellings
- Hotels, motels and serviced apartments
- Backpackers' accommodation
- Homestay, farm stay and bed and breakfast accommodation
- Other tourist and visitor accommodation (excluding camping grounds, caravan parks and eco-tourist facilities).

### What is a 'pool'?

A swimming pool means an excavation, structure or vessel:

- (a) that is capable of being filled with water to a depth greater than 300 millimetres, and
- (b) that is solely or principally used, or that is designed, manufactured or adapted to be solely or principally used, for the purpose of swimming, wading, paddling or any other human aquatic activity, and includes a spa pool, but does not include a spa bath or anything that is situated within a bathroom.

Therefore, in ground, above-ground, indoor, portable and other types of swimming pools and spa pools are included in these new swimming pool safety laws.

### What is a swimming pool certificate of compliance?

A swimming pool certificate of compliance certifies that the pool and pool barrier meet the safety requirements.

### Contracts for the sale of land

#### Before entering into a contract:

A valid swimming pool certificate of compliance must be attached to the contract for sale of properties with a swimming pool or spa pool from 29 April 2014. Therefore, from 29 April 2014, when a property with a swimming pool is being sold, a valid swimming pool certificate of compliance (or an occupation certificate issued within the last three years) and a valid Certificate of Registration must be attached to the Contract for the Sale of Land. Failure to attach the certificate means that the purchaser may be entitled to rescind the Contract at any time within 14 days of exchange, unless settlement has already occurred.

### Swimming pool certificate of compliance

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