

Legislation Update

Good day. The House of Assembly will sit again on 14 September. Details of the legislation introduced and debated during last two weeks follows;

LEGISLATION PRESENTED TO PARLIAMENT DURING THIS SITTING

Gaming Control Amendment 5 of 2010
Secondary Colleges (Restoration) 6 of 2010
Audit Amendment 7 of 2010
Dangerous Goods (Road and Rail Transport) 9 of 2010
Health Practitioners Tribunal 18 of 2010
Intestacy 19 of 2010
Agricultural and Veterinary Chemicals (Control Of Use) Amendment (Ban 1080) 20 of 2010
Relationships Amendment (Recognition of Registered Relationships) 21 of 2010
Personal Property Securities (Commonwealth Powers) 22 of 2010
Irrigation Clauses Amendment 23 of 2010
Heavy Vehicle Road Transport Amendment 24 of 2010
Vehicle and Traffic Amendment 25 of 2010
Crown Lands (Shack Sites) Amendment 26 of 2010
Trade Measurement (Repeal) 27 of 2010
Gaming Control Amendment (No. 2) 28 of 2010
Electronic Transactions Amendment 29 of 2010
Roads and Jetties Amendment 30 of 2010
North-West Regional Hospital (Radiation Oncology Services) 31 of 2010
Evidence Amendment 32 of 2010
Perinatal Registry Amendment 33 of 2010
Security and Investigations Agents Amendment 34 of 2010
Subordinate Legislation (Miscellaneous Amendments) Bill 2010 35 of 2010
Chemical Trespass 36 of 2010

LEGISLATION STATUS AT 3 SEPT 2010

GAMING CONTROL AMENDMENT BILL 5 OF 2010

A Private Members Bill introduced by Kim Booth to amend the Gaming Control Act 1993 to provide for a \$1.00 bet limit for electronic gaming machines (poker machines).

This Bill has not yet been debated. The House of Assembly has appointed a Select Committee to enquire into the effects on state revenues and amelioration measures etc. Submissions close 17 September 2010.

SECONDARY COLLEGES (RESTORATION) BILL 6 OF 2010

This Act repeals the Education and Training (Tasmanian Academy) Act 2008 and the Education and Training (Tasmanian Polytechnic) Act 2007, to re-establish secondary colleges, provide for transitional arrangements for employees, property and liabilities and for related purposes.

The Bill has not yet been debated.

AUDIT AMENDMENT ACT OF 2010

The Act amends the *Audit Act 2008* to ensure that the Auditor-General is protected from liability in the event that a report is made public, before it has been given to Parliament, in cases when Parliament is not sitting.

The Act specifically ensures that the Auditor-General, or a person authorised by the Auditor-General, is protected from liability for acts done in good faith, irrespective of the discretionary or mandatory nature of the act undertaken or authorised.

The Act also provides for the protection of certain types of sensitive information, which the Auditor-General determines should not be disclosed in a report. This is information that could prejudice an entities commercial interest, damage an investigation, prejudice a fair trial or damage intergovernmental relations.

In such cases, the Act provides that the Auditor-General cannot be compelled to disclose sensitive information but that the Auditor-General may choose to include that sensitive information in a report to the Treasurer and the Public Accounts Committee

It has now passed both Houses of Parliament.

DANGEROUS GOODS (ROAD AND RAIL TRANSPORT) ACT OF 2010

The purpose is to improve land transport safety by regulating the transport of dangerous goods that, due to their physical, chemical and toxicological properties, can pose a significant risk to human life, health, property and the environment, particularly when being transported by adopting a new package of model laws produced by the National Transport Commission (NTC), an independent body funded by all States and Territories and the Commonwealth.

This will ensure that Tasmanian businesses can transport dangerous goods across Tasmania, through other states, and overseas under a consistent set of packaging, labelling and safety requirements.

LEGISLATION STATUS AT 3 SEPT 2010

It has now passed both Houses of Parliament.

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HEALTH PRACTITIONERS TRIBUNAL ACT 2010

The Practitioners Tribunal Act 2010 establishes the Health Practitioners Tribunal in Tasmania.

The Tribunal is being established to hear and determine disciplinary matters and reviews of decisions under the Health Practitioner Regulation National Law (Tasmania).

The Tribunal is to be presided over by a Chairperson and Deputy Chairperson, who are both to be Magistrates, appointed by the Minister for Justice on the recommendation of the Chief Magistrate.

The presiding members will have the powers to appoint professional and community members in appropriate circumstances.

It is expected that the Tribunal will deal with matters before it expeditiously, cost effectively and with as little formality as each matter allows.

It has passed both Houses of Parliament.

INTESTACY BILL 19 OF 2010

This Bill provides for the distribution of intestate estates and other purposes.

The Bill has not yet been debated.

AGRICULTURAL AND VETERINARY CHEMICALS (CONTROL OF USE) AMENDMENT BILL (BAN 1080) 20 OF 2010

Private Members Bill introduced by Kim Booth to amend the Agricultural and Veterinary Chemicals (Control of Use) Act 1995 by making it unlawful to poison or attempt to poison any native fauna using sodium fluoroacetate (compound 1080).

The Bill has not yet been debated.

RELATIONSHIPS AMENDMENT (RECOGNITION OF REGISTERED RELATIONSHIPS) BILL 21 OF 2010

A Bill to amend the Relationships Act 2003. This amendment provides recognition of relationships under corresponding laws.

This Bill has passed the House of Assembly and is being debated in the Legislative Council.

LEGISLATION STATUS AT 3 SEPT 2010

PERSONAL PROPERTY SECURITIES (COMMONWEALTH POWERS) ACT 2010

This Act provides for the adoption of the *Personal Property Securities Act 2009* of the Commonwealth as amended by the *Personal Property Securities (Consequential Amendments) Act 2009* of the Commonwealth and the *Personal Property Securities (Corporations and Other Amendments) Act 2010* of the Commonwealth. It also refers matters relating to security interests in personal property to the Parliament of the Commonwealth for the purposes of the Commonwealth Constitution

It has passed both Houses of Parliament.

IRRIGATION CLAUSES AMENDMENT BILL 23 OF 2010

This Bill proposes to amend the Irrigation Clauses Act 1973. The Irrigation Clauses Act 1973 provides the statutory basis for the construction, operation and funding of irrigation schemes by a responsible water entity and the statutory base for the development, operation and funding of all irrigation schemes in Tasmania.

The Act also provides for the supply of water for irrigation under the system of irrigation rights or general availability, and for the transfer of irrigation rights. The Act is incorporated with the Water Management Act 1999, for the purposes of the application of the Water Management Act to irrigation districts.

The Bill makes minor amendments to the Irrigation Clauses Act 1973. In its current form, a literal interpretation of the Act may give rise to uncertainty in relation to which persons the responsible water entity ("undertakers") of an irrigation district are able to grant irrigation rights. Section 23(2) currently provides that under the system of irrigation rights, the undertakers may grant to the occupiers of land in an irrigation district and their successors a right to be supplied each irrigation season with a certain volume of water.

The proposed amendments clarify that the Minister may declare that the undertakers may grant an irrigation right to a person other than an occupier of land, subject to any conditions that the Minister deems appropriate. Some further minor consequential amendments to other sections of the Act are made to clarify certain matters in relation to irrigation rights held by non-occupiers of land.

The amendments will also provide certainty to operators and prospective purchasers of rights in new irrigation schemes. It will also ensure that the current legislation is entirely consistent with the intent of the National Water Initiative.

The Department of Primary Industries, Parks, Water and Environment has undertaken a comprehensive review of the Irrigation Clauses Act 1973 and intends to make major amendments to the Act in 2011. In the interim these minor amendments are intended to remove any ambiguity around who may be granted irrigation rights in new irrigation districts.

This Bill has passed the House of Assembly and is being debated in the Legislative Council.

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HEAVY VEHICLE ROAD TRANSPORT AMENDMENT BILL 24 OF 2010

The purpose of the Bill is to introduce nationally consistent legislation, developed by the National Transport Commission, to improve safety in the heavy vehicle road transport industry.

It extends the reach of the Principal Act to include fatigue management and speed compliance. It also provides for the making of regulations for the purposes of the Intelligent Access Program.

The provisions of the Bill for fatigue management and speed compliance are based on the National Transport Commission's model compliance and enforcement legislation, which has been enacted in New South Wales, Victoria, Queensland and South Australia, and which is due to be introduced in all remaining States and Territories in the near future.

This Bill introduces the nationally uniform Work Diary which will replace the existing Log Books and Daily Driving Hours Records. The Work Diary, unlike existing documents, is a legally accountable document, with a unique number identifier recorded on the data base against the relevant driver licence.

The Bill contains general provisions dealing with enforcement officers and their powers as well as evidentiary and penalty provisions.

The general provisions of the Bill achieve a number of outcomes by-

- extending accountability to parties in the road transport supply chain, other than the driver and operator, who may bear significant responsibility for the occurrence of a fatigue or speeding offence;
- strengthen enforcement powers and sanctions in relation to chain of responsibility investigations attached to road laws; and
- encourage parties to the road transport task to actively adopt risk management strategies to prevent breaches of road laws.

The Bill also provides for the making of regulations for the purposes of the Intelligent Access Program. The Intelligent Access Program is a voluntary program that uses vehicle telematics technology, through certified service providers, to remotely monitor heavy vehicles to ensure they are complying with their agreed operating conditions and report non-compliance information to relevant road authorities to an evidentiary standard. The regulations provide for road authorities to be able to use the Intelligent Access Program as a condition of increased or extended access under existing concessions, permits and schemes and offers compliance assurance to the public and road authorities for this increased access.

The Bill has not yet been debated.

VEHICLE AND TRAFFIC AMENDMENT BILL 25 OF 2010

This Bill amends the definition of "traffic offence" in the Vehicle and Traffic Act 1999 to enable demerit points to be awarded against a driver of a regulated heavy vehicle for a prescribed fatigue management offence under the Heavy Vehicle Road Transport Act 2009 or the regulations. The other amendments under this Bill are a consequence of the provisions for fatigue management and the enforcement powers in relation to heavy vehicle limits being comprised in the Heavy Vehicle Road Transport Act 2009 on the commencement of that Act.

This Bill has passed the House of Assembly and is being debated in the Legislative Council.

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CROWN LANDS (SHACK SITES) AMENDMENT BILL 26 OF 2010

The Bill amends the Crown Lands (Shack Sites) Act 1997 by deleting section 17 Rental for replacement lease and substituting a provision to enable shack lease rental to be prescribed in regulations.

The amendment will enable the making of a Regulation to set shack rentals at 2% of the land value of a shack site as at 2007, or \$1500, whichever is the lesser, with rentals to be adjusted annually in line with the Consumer Price Index.

These measures will reduce rentals from the current 6% of land value. The amendment and subsequent Regulation implements the recommendation of the Joint Standing Committee on Environment, Resources and Development inquiring into the Shack Site Project, which recommended in their Interim Report of July 2009 that:

“The annual lease fees for shack sites on Crown land as per section 17 of the Crown Lands (Shack Sites) Act 1997 should be set at the lesser of \$1500 or 2% of the land valuation as at 2007, and thereafter adjusted in line with movements in the Consumer Price Index.

This amendment will affect 55 shacks on land reserved under the Nature Conservation Act 2002 and managed by the Parks and Wildlife Service (PWS) and 14 on Crown Land Services (CLS) managed sites. A further 24 Crown land shack sites, at Kingfish Beach, are potentially affected should leaseholds be offered in the future.

The Government has provided additional funds to PWS to compensate for loss of rental income.

This Bill has passed the House of Assembly and is being debated in the Legislative Council.

THE TRADE MEASUREMENT (REPEAL) BILL 27 OF 2010

The Trade Measurement Act 1999 (Tasmania) is part of the national Uniform Trade Measurement Legislation (UTML) scheme which regulates trade measurement in Australia. Under this national scheme, amendments to the Queensland Trade Measurement Act are mirrored in other jurisdictions. In accordance with the UTML and Administration Agreement of 1990, states and territories are jointly responsible for the regulation of trade measurement.

In February 2006, the Council of Australian Governments (COAG) identified trade measurement as an area requiring reform. Following a review of national arrangements, undertaken by the Ministerial Council on Consumer Affairs, on 13 April 2007, COAG agreed to establish a national system of trade measurement funded and administered by the Commonwealth. COAG further agreed that the Commonwealth's administration of trade measurement would commence on 1 July 2010.

On 8 December 2008, the Federal Parliament passed the National Measurement Amendment Act 2008 to provide the basis for the Commonwealth's legislative regime, operating through the National Measurement Institute and included a commencement date of 1 July 2010. Transition to the new administrative arrangements has now effectively taken place.

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Repeal of the Trade Measurement Act 1999 is now required to meet Tasmania's COAG commitment to allow the national regulation of trade measurement to begin from 1 July 2010.

The Trade Measurement (Repeal) Bill 2010 effects the necessary legislative arrangements for the transfer by repealing the Trade Measurement Act 1999 and the Trade Measurement (Tasmania) Administration Act 1999 and establishes appropriate transitional arrangements.

This Bill has passed the House of Assembly and is being debated in the Legislative Council.

GAMING CONTROL AMENDMENT ACT (NO. 2) 2010

The Gaming Control Amendment Act (No. 2) 2010 amends the Gaming Control Act 1993 to apply the special conditions that currently only apply to the holder of a Tasmanian gaming licence with a betting exchange endorsement or totalizator endorsement consistently to all Tasmanian gaming licence holders and to revise certain arrangements that apply to a Tasmanian gaming licence with a betting exchange endorsement.

The Act restructures Division 4 (Tasmanian gaming licence) of Part 4A of the Gaming Control Act to prescribe the general conditions that will apply to a Tasmanian gaming licence with a gaming endorsement. These provisions cover all endorsements and gaming activities. Gaming activity is defined in the Gaming Control Act to mean all wagering in a contingency relating to a sports event, race wagering event, brokered wagering event, wagering in a contingency by way of a totalizator, simulated game, major lottery, pools or other prescribed event.

These existing conditions include the requirement that the holder of a Tasmanian gaming licence with a gaming endorsement have rules in place in respect of a gaming activity. The licensed provider must ensure that players and the Commission can inspect the rules electronically at any time.

The Act provides the Tasmanian Gaming Commission with the authority to disallow gaming rules where it considers the rules to be: oppressive or unfair; inadequate or incomplete; misleading, inaccurate or poorly drafted; or unsatisfactory on other grounds.

The Commission may also instruct a licensed provider not to allow gaming activity on a competition, game or event that it considers is not a fit subject for gaming or wagering.

The Act extends the existing provisions that prohibit a licensed provider from allowing totalizator and betting exchange activities under disallowed rules or where there are no rules to apply to any gaming activity. The licensed provider also must not allow gaming activity on contingencies relating to competitions, games or events that are unlawful in Tasmania or that would be unlawful if they were to be held in Tasmania.

The Act also amends a number of other provisions.

It has passed both Houses of Parliament.

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ELECTRONIC TRANSACTIONS AMENDMENT BILL 29 OF 2010

A Bill to amend the Electronic Transactions Act 2000

The Bill has not yet been debated.

ROADS AND JETTIES AMENDMENT BILL 30 OF 2010

The purpose of the Bill is to remove any responsibility of the Crown for the maintenance of vehicular accesses from private property to a State highway or subsidiary road and to make the owner of the land served by the vehicular access responsible for its maintenance.

This Bill has passed the House of Assembly and is being debated in the Legislative Council.

NORTH-WEST REGIONAL HOSPITAL (RADIATION ONCOLOGY SERVICES) BILL 31 OF 2010

This is a private members Bill introduced by Jeremy Rockcliff provide for radiation oncology services at the North-West Regional Hospital in Burnie by 1 January 2013

The Bill has not yet been debated.

EVIDENCE AMENDMENT BILL 32 OF 2010

A Bill to amend the *Evidence Act 2001*

The Bill has not yet been debated.

PERINATAL REGISTRY AMENDMENT BILL 33 OF 2010

The *Perinatal Registry Act 1994* (the Act) establishes the Council of Obstetric and Paediatric Mortality and Morbidity (the Council). The functions of the Council include the maintenance of a perinatal data collection system; investigating the circumstances surrounding maternal deaths, perinatal deaths and the deaths of children up to 17 years; and investigating and reporting on matters relating to obstetric and paediatric mortality and morbidity referred to it by the Minister or Secretary.

The Act contains very strict confidentiality provisions such that the Council and its members are precluded from providing information to other persons except in very limited circumstances.

In 2009, as part of a coronial inquiry into the death of a child, the coroner called for urgent amendment of the Perinatal Registry Act to enable relevant information and opinion held by the Council to be provided to the coroner.

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The Council undertook a review of the Act and determined that there was merit in the coroner's recommendation. It also identified some other deficiencies in the Act.

The amendments will:

- enable the Council to communicate to a coroner information relevant to a coronial inquiry or possible coronial inquiry into the death of a child or woman, of its own motion or at the request of the coroner
- enable the Council to investigate and report to the Secretary or Minister (or any other relevant Minister) on any matter relating to obstetric and paediatric mortality and morbidity of its own motion without a reference from the Secretary or Minister
- enable the Council to communicate information regarding identified deaths or morbidities to the Secretary, a relevant Minister or the proposed Child Death and Serious Injury Council
- provide that the Council has the power to place a restriction upon the subsequent use of any information or reports provided by the Council to a coroner, the Secretary, a Minister or the Child Death and Serious Injury Council
- enable a Council member to communicate information that comes into its possession to the Secretary where there is a belief or suspicion, on reasonable grounds, that a child has been or is being abused or neglected or is at risk of being abused or neglected and
- allow the Council to report information about possible criminal offences to the Commissioner of Police.
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This Bill has passed the House of Assembly and is being debated in the Legislative Council.

THE SECURITY AND INVESTIGATIONS AGENTS AMENDMENT BILL 34 OF 2010

The *Security and Investigations Agents Act 2002* came into force on 25 June 2002. The Act regulates the private security industry in Tasmania.

Criminal exclusion rules and training standards in the private security industry in Australia have been of concern for some time. Concern has focused on variation in criminal exclusion rules between jurisdictions and a lack of mobility for security agents from jurisdiction to jurisdiction. There has also been concern that general standards in some jurisdictions are inadequate to reflect the increasing role played by the private security industry in Australia.

To address these concerns, on 3 July 2008, the Council of Australian Governments (COAG) agreed to adopt a nationally- consistent approach to the regulation of the private security industry. COAG agreed that the nationally consistent approach would be implemented in three phases:

- phase 1- improving the probity, competence, skills and mobility of employees in the security guarding industry;
- phase 2 - the establishment of regulatory standards for the technical sector; and

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- phase 3 - possible introduction of a national system for licensing arrangements.

The Amendment Bill adopts the (COAG) agreement of 3 July 2008 to implement phase 1. The Bill is similar to amendments being made by other states and territories to their security industry legislation.

The key changes relate to the probity requirements and licence categories and the intent is that these are standardised across the country. This will allow for easier portability of licences from one jurisdiction to another. The key change to probity requirements are that a person may be excluded from eligibility for a period of up to 10 if convicted of serious offences such as assault, theft, firearms, robbery. Where convictions are recorded but no penalty is imposed the exclusion may be for 5 years.

The licence categories are: general guarding; crowd or venue control; guarding with a dog; guarding with a firearm; monitoring centre operations; body guarding, and training. The key change is that training providers who are not currently required to be licensed will now be required to do so. The Amendment Bill also provides for provisional and temporary licenses.

In addition, there are rules that allow for a licence to be refused where an applicant has "close association" with a person who supports or is involved in criminal activity.

While training requirements are determined by the Director of Consumer Affairs and Fair Trading, the introduction of this new package across Australia is likely to result in an increase in the standards of training required for all applicants over the next two years.

The Bill has not yet been debated.

SUBORDINATE LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 35 OF 2010

A private members bill brought in by the Hon Ruth Jane Forrest in the Legislative Council to amend the Acts Interpretation Act 1931, the Subordinate Legislation Act 1992 and the Subordinate Legislation Committee Act 1969.

The Bill has not yet been debated.

CHEMICAL TRESPASS BILL 36 OF 2010

A private members bill brought in by Hon Tim Morris information is not yet available.

The Bill has not yet been debated.