

# Tasmanian Parliament

## Legislation Update

Details of the legislation considered by the State Parliament during the period of the Current Government to conclusion of the 2011 sittings.

### LEGISLATION PASSED BY PARLIAMENT DURING 2011

*	Audit Amendment Act
*	Penalty Units and Other Penalties Amendment Act
*	Marine Farming Planning Amendment Act
*	Integrity Commission Amendment Act
*	ANZAC Day Observance Amendment Act
*	Repeal of Regulations Postponement Act (No. 3)
*	Tasmanian Health Organisations Act
*	Repeal of Regulations Postponement Act (No. 2)
*	Vocational Education and Training (Commonwealth Powers) Act
*	Taxation and Related Legislation (Miscellaneous Amendments) Act (No. 2)
*	Public Health Amendment Act
*	Mental Health Amendment Act
*	Local Government Amendment Act
*	Passenger Transport Services Act
*	Passenger Transport Amendment (Accreditation Status and Validation of Actions). Act
*	Passenger Transport and Related Legislation (Consequential Amendments). Act
*	Taxi and Luxury Hire Car Industries Amendment Act
*	Business Names Registration (Transitional and Consequential Provisions) Act
*	Veterinary Surgeons Amendment Act
*	Associations Incorporation Amendment Act
*	Motor Vehicle Traders Amendment Act
*	Long Service Leave Amendment Act

## LEGISLATION STATUS AT 6 December 2011

*	Work Health and Safety Act
*	Work Health and Safety (Transitional and Consequential Provisions) Act
*	Education and Care Services National Law (Application) Act
*	Education and Care Services National Law (Application) (Consequential Amendments) Act
*	Crown Lands (Validation of Fees) Act

## ADDITIONAL LEGISLATION CURRENTLY BEING CONSIDERED BY STATE PARLIAMENT AND CARRIED INTO 2012

***	Gaming Control Amendment 5 of 2010
***	Secondary Colleges (Restoration) 6 of 2010
***	Agricultural and Veterinary Chemicals (Control Of Use) Amendment (Ban 1080) 20 of 2010
***	Subordinate Legislation (Miscellaneous Amendments) Bill 35 of 2010
***	Chemical Trespass 36 of 2010
***	Financial Integrity and Transparency 54 of 2010
***	Animal Welfare (Ban Battery Hens) Amendment 56 of 2010
***	Same-sex Marriage (Dissolution and Annulment) 63 of 2010
***	Same-sex marriage (Celebrant and Registration) 64 of 2010
***	Same-sex Marriage 65 of 2010
***	Whales Protection (State Sanctuary) Amendment 66 of 2010
***	Electoral Amendment (Legislative Council Ballot Papers) Bill 70 of 2010
***	Surrogacy 7 of 2011
***	Surrogacy (Consequential Amendments) 8 of 2011
***	Supporting Local Business and Jobs (Local Benefits Test) 10 of 2011
***	Supporting Local Business and Jobs (Red Tape) 11 of 2011
***	Right to Information Amendment 13 of 2011

## LEGISLATION STATUS AT 6 December 2011

***	Canal Estates (Prohibition) 15 of 2011
***	Electricity Supply Industry (Lower Power Prices for all Tasmanians) 16 of 2011
***	Constitution Amendment (Legislative Council Proceedings) Bill 19 of 2011
***	Constitution Amendment (Membership of State Parliament) 21 of 2011
**	Sale of Tote Tasmania Repeal Bill 28 of 2011
**	Education (Retention of Schools) Bill 42 of 2011
***	Agricultural and Veterinary Chemicals (Control of Use) Amendment Bill 48 of 2011
***	Financial Management & Audit (Quarterly Reporting) Amendment Bill 49 of 2011
***	Fruit and Nut Industry (Research, Development and Extension Trust Fund) Bill 53 of 2011
***	Animal Welfare Amendment Bill 55 of 2011
***	Explosives Bill 61 of 2011
***	Mines Work Health and Safety (Supplementary Requirements) Bill 62 of 2011
***	Wesley Vale Pulp And Paper Industry (Repeal) Bill 81 of 2011
***	Climate Change (State Action) Interim Targets Amendment. 82 of 2011

**Note:**

- \* Passed Parliament
- \*\* Defeated
- \*\*\* Being or to be debated

# LEGISLATION STATUS AT 6 December 2011

## **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).

The House of Assembly has appointed a Select Committee to enquire into the effects on state revenues and amelioration measures etc. Submissions closed on 17 September 2010.

The Bill has not yet been debated.

## **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.

## **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.

## **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 will enable scrutiny or examination of any draft regulations by the Subordinate Legislation Committee prior to Gazettal & therefore prior to the regulations becoming operational. This will address the problems experienced when a decision to disallow regulations or rules under legislation currently in force, occurs many months after the regulations have become operational, potentially leading to other groups or individuals being adversely impacted by disallowance of regulations that have been operational for some time.

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

## **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.

## **FINANCIAL INTEGRITY AND TRANSPARENCY BILL 54 OF 2010**

(Brought in by Peter Gutwein, Shadow Treasurer)

A Bill to provide for quarterly reports on the State budget and the financial performance of State-owned Companies and Government Business Enterprises

The Bill has not yet been debated.

## **LEGISLATION STATUS AT 6 December 2011**

### **ANIMAL WELFARE (BAN BATTERY HENS) AMENDMENT BILL 56 OF 2010**

(Brought in by Secretary to Cabinet)

No information available to date.

The Bill has not yet been debated.

### **SAME-SEX MARRIAGE (DISSOLUTION AND ANNULMENT) BILL 63 OF 2010**

(Brought in by Nick McKim)

No information available to date.

The Bill has not yet been debated.

### **SAME-SEX MARRIAGE (CELEBRANT & REGISTRATION) BILL 64 OF 2010**

(Brought in by Nick McKim)

No information available to date.

The Bill has not yet been debated.

### **SAME-SEX MARRIAGE BILL 65 OF 2010**

(Brought in by Nick McKim)

No information available to date.

The Bill has not yet been debated.

### **WHALES PROTECTION (STATE SANCTUARY) AMENDMENT BILL 66 OF 2010**

(Brought in by Casey O'Connor)

A Bill to amend the Whales Protection Act 1998 to declare state waters a Tasmanian Whale Sanctuary, & to make it an offence to assist any person in taking whales in State waters.

The Bill has not yet been debated.

### **ELECTORAL AMENDMENT (LEGISLATIVE COUNCIL BALLOT PAPERS) BILL 70 OF 2010**

The purpose of this Bill is to amend the Electoral Act 2004 to provide for equitable and consistent arrangements for independent candidates, with respect to the Ballot Papers, in Legislative Council elections commensurate with those arrangements presently in place for a candidate of a registered political party in Legislative Council elections.

The Bill will achieve those objectives by:

- Ensuring that a candidate in a Legislative Council election, who is not the endorsed candidate of a registered Party, states in his or her nomination whether or not they want the word "independent" to appear on the ballot paper under their name;
- Ensuring that if a person does state that he or she wants the word "independent" to appear on the ballot paper under his or her name, then the word "independent" is to appear on the ballot paper immediately under the name of that candidate.
- Not applying this amendment to a Legislative Council election where a writ for the holding of that election has been issued before the commencement of this amendment.

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

# LEGISLATION STATUS AT 6 December 2011

## **SURROGACY BILL 7 OF 2011**

The Surrogacy Bill is intended to repeal the Surrogacy Act 1993, and facilitate the transfer of parentage of a child from the birth parents to the intended parents, as part of a surrogacy arrangement. To be known as a parentage order.

The Bill provides numerous safeguards for all parties involved in a surrogacy arrangement to ensure that the parties entering into the agreement are fully informed about the surrogacy arrangement.

The Bill provides that the overriding principle when making an order to transfer the parentage of a child is that the best interests of the child are paramount. The Bill is not discriminatory.

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

## **SURROGACY (CONSEQUENTIAL AMENDMENTS) BILL 8 OF 2011**

The Surrogacy (Consequential Amendments) Bill 2011 makes a number of amendments to relevant Tasmanian legislation which are required as a result of the enactment of the Surrogacy Bill 2011.

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

## **SUPPORTING LOCAL BUSINESS & JOBS (LOCAL BENEFITS TEST) BILL 10 OF 2011**

A Bill introduced by Adam Brooks to provide for a local benefits test to apply to Tasmanian Government tenders & contracts, to ensure local businesses can benefit from Government spending.

The Bill has not yet been debated.

## **SUPPORTING LOCAL BUSINESS & JOBS (REDUCING RED TAPE) BILL 11 OF 2011**

A Bill introduced by Adam Brooks to provide for the reduction of State Government red tape.

The Bill has not yet been debated.

## **RIGHT TO INFORMATION AMENDMENT BILL 13 OF 2011**

This Bill seeks to fix wording errors which have become apparent during implementation of the Right to Information Act 2009 and to clarify some of the provision so as to ensure their intent is clear.

The Bill also extends the circumstances in which the Ombudsman can review decisions of a public authority when they refuse an application for assessed disclosure.

The Bill has not yet been debated.

## **CANAL ESTATES (PROHIBITION) BILL 15 OF 2011**

The purpose of the Canal Estates (Prohibition) Bill 2011 is to prohibit canal estate developments in Tasmania.

The prohibition effected through the Bill is intended to deliver certainty for potential investors and local communities and to protect Tasmania's coastal and estuarine environments.

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

## **LEGISLATION STATUS AT 6 December 2011**

### **ELECTRICITY SUPPLY (LOWER POWER PRICES FOR ALL TASMANIANS) BILL 16 OF 2011**

A Bill introduced by Matthew Groom to amend the Electricity Supply Industry Act 1995 to enable full retail contestability in the Tasmanian electricity market from 1 July 2012.

The Bill has not yet been debated.

### **CONSOLIDATED AMENDMENT (LEGISLATIVE COUNCIL PROCEEDINGS) BILL 19 OF 2011**

Introduced by former member Mr Wing

A Bill proposing to make three minor changes to change Section 20 of the Constitution Act 1934; recognising female presidency, all votes in the legislative Council to be decided by a majority of members present including President and where there is equality of votes, the question will pass in the negative.

This Bill is yet to be debated in the Legislative Council.

### **CONSTITUTION AMENDMENT (MEMBERSHIP OF STATE ) BILL 21 OF 2011**

Introduced by Mr Booth

A Bill to amend the Constitution Act 1934 to make it unlawful to sit in either House of the Parliament of Tasmania while elected as a representative on any local council within the State as defined by the Local Government Act 1993, and to make provision for this Bill to be ratified at a state referendum prior to proclamation.

This Bill is to be debated in the House of Assembly

### **SALE OF TOTE TASMANIA REPEAL BILL 28 OF 2011**

Introduced by Mr Shelton

An Act to provide certainty for the Tasmanian Racing Industry by repealing the Tote Tasmania Sale Act 2009.

The Bill was defeated.

### **EDUCATION (RETENTION OF SCHOOLS) BILL 42 OF 2011**

A Bill to provide for the retention of certain schools

- Retention of certain schools Notwithstanding section 18(2) of the Education Act 1994, it is the duty of the Minister administering that Act to ensure that the schools specified in Schedule 1 will remain open & that students will continue to be taught at them until 30<sup>th</sup> June 2014.
- Retrospective Application of this Act. In the event that the Minister administering the Act makes a decision under s18(2) of the Education Act 1994 to close any school specified in Schedule 1, between 16th June 2011 & this Act receiving Royal Assent, then that decision shall be reversed.

The Bill was defeated.

### **AGRICULTURAL AND VETERINARY CHEMICALS (CONTROL OF USE) AMENDMENT BILL 48 OF 2011**

The Agricultural and Veterinary Chemicals (Control of Use) Act 1995 (the Act) is the principal legislation concerned with the handling, use and application of agricultural and veterinary chemical products.

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The Act has given effect to the existing Agricultural Veterinary Chemicals (Control of Use) Regulations 1996. These regulations have been undergoing an extensive review & have now been re-drafted as the proposed Agricultural & Veterinary Chemicals (Control of Use) Regulations 2011.

Amendment was also required to broaden the regulation-making capabilities of the Act. This was necessary to ensure that there is a power under the primary legislation to make all regulations required for the Act to operate as intended.

The Act currently authorises the making of Ministerial orders in relation to certain matters. Amendment has been made to ensure that the power to make those orders does not preclude the making of regulations about the same matters, when it would be more suitable to do so.

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

### **FINANCIAL MANAGEMENT AND AUDIT (QUARTERLY REPORTING) AMENDMENT BILL 49 OF 2011**

(Introduced by Jim Wilkinson)

A Bill to amend the Financial Management & Audit Act 1990 to facilitate quarterly reporting on the State Budget.

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

### **VETERINARY SURGEONS AMENDMENT BILL 2011**

The primary purpose of the Veterinary Surgeons Amendment Bill 2011 is to allow national recognition of veterinary registration in accordance with a commitment given by the Tasmanian Government

The Bill:

- Allows for recognition of interstate registration of veterinary surgeons practising in Tasmania.
- Better defines "Veterinary services" to cover some current practices.
- Establishes that nothing in the Act is to be construed as permitting any person to contravene any law relating to animal welfare, control and use of chemicals, poisons or pharmaceuticals.
- Provides for the Veterinary Board of Tasmania (the Board) to make and maintain Standards in relation to veterinary practise, and to ensure that veterinarians practice according to these Standards.
- Provides for the Board to determine specialities, rather than these being prescribed by Regulation.

This Bill has passed both Houses.

### **ASSOCIATIONS INCORPORATION AMENDMENT ACT**

In 2001 the Associations Incorporation Act 1964 was amended to allow not-for-profit companies to transfer registration to an association under the Associations Incorporation Act. Section 25B of the Act gives effect to this transfer arrangement.

Applications for transfer are made in the first instance to the Australian Securities and Investments Commission (ASIC), and subsequently to the Tasmanian Commissioner for Corporate Affairs.

However, ASIC recently expressed concern about the drafting of this section. The concern is that the section does not guarantee the full continuity of a company's legal personality after the transfer, or fully preserve rights and claims against the company as required by the

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Corporations Act. As a consequence of this legal doubt, ASIC will not now approve an application for transfer or deregistration of a company, notwithstanding registration as an incorporated association.

The Amendment Bill removes the legal doubt by ensuring the full continuity of a company's legal identity after the transfer. It allows not-for-profit companies to gain the benefits of less onerous reporting requirements through transferring to state law as an incorporated association.

This Bill has passed both Houses.

### **FRUIT AND NUT INDUSTRY (RESEARCH, DEVELOPMENT AND EXTENSION TRUST FUND) BILL 53 OF 2011**

A Bill to continue the Apple and Pear Industry Research and Development Account as the Fruit and Nut Research, Development and Extension Trust Fund, to provide for a Board of Management to administer that Fund, to repeal the Apple and Pear Industry (Crop Insurance) Amendment and Repeal Act 1999 and for related purposes

This Bill is yet to be debated

### **LONG SERVICE LEAVE AMENDMENT ACT**

The Long Service Leave (Amendment) Bill 2011 (the Bill) proposes amendments to the Long Service Leave Act 1976 (the Act).

The Act provides long service leave entitlements for most Tasmanian private sector workers. Under the current provisions of the Act, workers must complete 15 years of continuous employment to qualify for long service leave entitlements.

In general terms, continuous employment means uninterrupted employment with a single employer, although the Act does allow for some interruptions in employment, including the taking of annual or long service leave, maternity leave, standing down for a period not exceeding 6 months on account of slackness of trade, jury duty etc. The Act also deems continuous employment where there has been a transmission of business and the worker has been employed by the new employer within 2 months. Current long service leave entitlements under the Act are as follows:

- 13 weeks' long service leave in respect of the first 15 years of continuous employment; and
- 8 2/3 weeks' long service leave in respect of each additional 10 years of continuous employment. The current qualification period of 15 years is much longer than that applied in other States and Territories and to workers in 2 other sectors and industries in Tasmania (i.e. State Service employees, Local Government employees, Commonwealth Government employees, mining employees and employees in relevant employment in the construction industry).

The proposed amendments are intended to commence on 1 July 2012. From that date, the new long service leave entitlements will apply to all workers who come within the scope of the Act.

The Bill also includes transitional arrangements.

This Bill has passed both Houses.

### **ANIMAL WELFARE AMENDMENT BILL 55 OF 2011**

This Bill amends section 39 of the existing Animal Welfare Act 1993 for the purpose of ensuring that the Animal Welfare Advisory Committee continues to function effectively and legislation reflects current practice in the appointment of its members.

The Advisory Committee provides advice to the Minister and ensures that laws keep pace with community attitudes to animal welfare.

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The state government agencies responsible for the Animal Welfare Act 1993 and the Nature Conservation Act 2002 are represented on the Advisory Committee by the Secretary of the responsible Department. Current departmental structure means that the Secretary for the Department of Primary Industries, Parks, Water and Environment must serve as a member in two capacities. By contrast, the state government agency responsible for the Police Service Act 2003 is represented on the Advisory Committee by a person nominated by the Secretary of that responsible department.

The Bill will allow the Secretaries of the Departments responsible for the Animal Welfare Act 1993 and the Nature Conservation Act 2002 to nominate representative as a member of the Advisory Committee.

A review of the entire Act is to be undertaken by the Animal Welfare Advisory Committee and DPIPWE, and recommendations for amendments to the Act will be provided to the Minister upon completion of that review.

This Bill is yet to be debated

### **PUBLIC HEALTH AMENDMENT ACT OF 2011**

This Bill introduces a number of important changes to the Public Health Act 1997 aimed at reducing the harms caused by smoking. Every year, smoking causes the death of more than 500 Tasmanians.

The Bill helps support social change to create a culture in which tobacco is less desirable and less acceptable. It will help protect children and others from harmful environmental (or second hand) tobacco smoke.

Denormalising tobacco is crucial to protecting the children of today from becoming the next generation of adult smokers. This is because most smokers begin smoking as a child. Children underestimate the addictive nature of tobacco and are at risk of becoming dependent before they are old enough to be fully aware of its damaging effects. It is then difficult to give up the addiction as an adult.

There are also changes reinforcing the message that smoking and sport do not mix. New smoke-free areas will be introduced at all outdoor sporting venues when an organised sporting event is being held.

This will apply to all sports that are planned in advance and conducted in accordance with established rules, by an established professional or amateur sporting body or by an educational institution (whether as a one-off event or as part of a round of events). The smoke-free area will apply during the game and for the period 30 minutes before and 30 minutes after.

As part of the changes, the Director of Public Health will also have the ability to designate particular public events as smoke-free. This will take place over time and will likely begin with those events at which children or teenagers are particularly likely to attend – such as regattas and music festivals. The Director will begin discussions with relevant event organisers next year and will allow them sufficient time to implement the change.

This Bill has passed Parliament.

### **MENTAL HEALTH AMENDMENT ACT OF 2011**

The Mental Health Amendment Bill 2011 seeks to amend section 19 to again extend the operation of the amendments for a further 2 years until 11 January 2014. A temporary measure designed to maintain the ability for community treatment orders to be enforced until such time as the new Mental Health Act commences.

This Bill has passed Parliament.

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## TASMANIAN HEALTH ORGANISATIONS ACT

The Tasmanian Health Organisations Bill 2011 (the Bill) establishes three Tasmanian Health Organisations in Tasmania. Tasmanian Health Organisation (THO) is the name given to local hospital networks in Tasmania for the purposes of national health reform. They have been called Tasmanian Health Organisations because they will focus on the health needs of the entire THO population. This name also reflects the intention to have integrated health systems across hospitals, primary care and aged care.

THOs will be responsible for providing and coordinating health care services in their local areas and their boundaries will mirror those of the existing Area Health Services. As required by the National Health Reform Agreement, this legislation will allow the THOs to be operational by 1 July 2012.

This Bill provides a comprehensive legislative basis for establishing and supporting the new THOs, their governing councils and chief executives. THOs will be independent statutory authorities and will have governance arrangements similar to that of Tasmanian Government Business Enterprises. THOs will be directly accountable (to the State Government and Parliament) for hospital and health service performance.

This Bill has passed Parliament.

## WORK HEALTH AND SAFETY ACT OF 2011 & WORK HEALTH AND SAFETY (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) ACT

A Bill to secure the health, safety and welfare of persons at work and for related purposes

The purpose of these Bills is to give effect in Tasmania to national uniform work health and safety laws and make the necessary transitional arrangements and consequential amendments.

The Work Health and Safety Bill 2011 (the WHS Bill) mirrors the provisions of the national Model Work Health and Safety Bill, developed by Safe Work Australia under the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety and approved by the Workplace Relations Ministers' Council.

The harmonisation of work health and safety laws is part of the Council of Australian Governments' National Reform Agenda aiming to reduce regulatory burdens and create a seamless national economy.

The Bills are two of a package of Bills developed to give effect to the national model work health and safety laws in Tasmania.

Two other Bills in the package include provisions for two matters not currently included in the Model Laws – mines work health and safety, and explosives.

The objects of harmonising work health safety laws through a model framework are to:

- protect the health and safety of workers;
- improve safety outcomes in workplaces;
- reduce compliance costs for business; and
- improve efficiency for regulator agencies.

The WHS Bill is one part of the proposed work health and safety legislative framework. Another part will be more detailed Work Health and Safety Regulations mirroring the requirements of the national Model Work Health and Safety Regulations.

The intended commencement date for the new laws is 1 January 2012.

This Bill has passed both Houses.

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## **EXPLOSIVES BILL 61 OF 2011**

This Bill is one of a package of Bills developed to give effect to the national model work health and safety laws in Tasmania.

The purpose of this Bill is to repackage and preserve Tasmania's laws on the storage and handling of explosives.

This is necessary because of the impact of the introduction of new work health and safety laws on the Dangerous Substances (Safe Handling) Act 2005.

The national Model Work Health and Safety Regulations contain two chapters that are intended to regulate much the same matters as the Dangerous Substances (Safe Handling) Act. These are the chapters on hazardous chemicals and major hazard facilities.

The Bill therefore repeals the Dangerous Substances (Safe Handling) Act, to prevent the duplication and confusion that would otherwise arise when the national model work health and safety laws come into effect.

This Bill, in conjunction with the proposed work health and safety laws, will as far as possible maintain the status quo so far as the requirements of explosives laws are concerned.

The requirements of the Bill will be supported by proposed Explosives Regulations which will be based on the requirements of the current Dangerous Substances (Safe Handling) Regulations 2009.

The Bill also contains the necessary consequential and transitional provisions arising from the new legislative arrangements.

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

## **MINES WORK HEALTH AND SAFETY (SUPPLEMENTARY REQUIREMENTS) BILL 62 OF 2011**

This Bill is one of a package of Bills developed to give effect to the national model work health and safety laws in Tasmania.

The purpose of this Bill is to repackage and preserve Tasmania's laws on mine safety when new, nationally harmonised work health and safety laws come into effect. The Work Health and Safety (Transitional and Consequential Provisions Bill) 2011 will repeal the existing Workplace Health and Safety Act 1995, and with it, Tasmania's mine safety laws.

Although a mine safety chapter of the Model Work Health and Safety Regulations has been drafted, the chapter is not finalised.

There will therefore be no mine safety chapter when Tasmania's new work health and safety laws are expected to come into effect on 1 January 2012.

This Bill preserves and repackages Tasmania's existing mine safety laws, allowing them to operate alongside and in conjunction with the provisions delivered by the Work Health and Safety Bill 2011.

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

## **REPEAL OF REGULATIONS POSTPONEMENT (NO. 2) ACT**

This Bill is one of a package of Bills developed to give effect to the national model work health and safety laws in Tasmania.

The Work Health and Safety Bill 2011 and the Work Health and Safety (Transitional and Consequential Provisions Bill) 2011 together repeal and replace the existing Workplace Health and Safety Act 1995 with a proposed Act mirroring the provisions of the national Model Work Health and Safety Bill.

This has passed both Houses.

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## **VOCATIONAL EDUCATION AND TRAINING (COMMONWEALTH POWERS) ACT**

This Bill provides for Commonwealth legislation to be adopted so that a new vocational education and training (VET) regulatory body – the Australian Skills Quality Authority - can operate in Tasmania. The new body will subsume the VET regulatory functions and powers of the Tasmanian Qualifications Authority.

The Bill also provides for the Commonwealth Parliament to amend the Commonwealth law within a strictly limited scope.

The effect of the Act, once proclaimed, will be to transfer state VET regulatory powers, as circumscribed in the legislation, to the Commonwealth.

This has passed both Houses.

## **EDUCATION AND CARE SERVICES NATIONAL LAW (APPLICATION) BILL 65 OF 2011 & (CONSEQUENTIAL AMENDMENTS) 66 OF 2011**

The Education and Care Services National Law (Application) Bill 2011, will apply the Education and Care Services National Law Act 2010 as passed in Victoria last year as a law of Tasmania. The National Law Act establishes a national education and care services quality framework for the delivery of education and care services to children.

The National Law Act sets out objectives for the quality framework. These include :

- Ensuring the safety, health and wellbeing of children attending education and care services;
- Improving the educational and developmental outcomes for children attending education and care services; and
- Promoting continuous improvement in the provision of quality education and care services.

Until now, licensing of child care services has been a function of State and Territory governments requiring compliance by services with relevant jurisdictional requirements. This has led to different regulations and standards between jurisdictions and has meant that national or cross jurisdictional service providers had numerous pieces of legislation with which they needed to comply. Accreditation has been the responsibility of the National Childcare Accreditation Council which has meant that each child care service had to deal with two distinct agencies for the purposes of licensing and accreditation.

This Bill has passed both Houses

## **TAXATION AND RELATED LEGISLATION (MISCELLANEOUS AMENDMENTS) (NO. 2) ACT**

The Taxation and Related Legislation (Miscellaneous Amendments) Bill (No.2) 2011 amends the Duties Act 2001, the First Home Owner Grant Act 2000, the Land Tax Act 2000, the Payroll Tax Act 2008, and the Taxation Administration Act 1997.

- The Duties Act is amended to:
  - o Allow the Commissioner of State Revenue to disregard the value of goods in determining the dutiable value of property in a transaction that consists of a grant, surrender or transfer of lease of a commercial property that also involves goods.
  - o Provide an exemption on a declaration of trust over property or transfer to the trustee of a special disability trust, if the property is to be used as the principal place of residence of the beneficiary of the special disability trust.
  - o Clarify that for the purposes of the land-rich provisions, an interest in a mineral tenement or an interest in a gas pipeline is taken to be an interest in land.
  - o Clarify that if a private corporation has an entitlement to or interest in land, anything that is part of the land as a fixture is to be taken into account in determining the extent of the interest in land.

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- o Update the intergenerational rural transfer exemption provisions to reflect contemporary ownership structures of family farming businesses.
- The First Home Owner Grant Act is to be amended to:
  - o Clarify that an applicant cannot apply for a review by the Court or administrative review body unless they have first followed the objection processes contained in the First Home Owner Grant Act.

This amendment will ensure that the review rights and processes applying to decisions under the First Home Owner Grant Act are consistent with those applying to taxpayers under the Taxation Administration Act.
- The Land Tax Act is amended to:
  - o Allow land held in a special disability trust to be classified as principal residence land, provided the land is occupied by the beneficiary of the trust as their principal place of residence and the beneficiary does not own any other principal residence land.
- The Payroll Tax Act is amended to:

Adopt the harmonised payroll tax treatment of shares and options granted to employees, deemed employees (generally contractors) and directors. At present, the Payroll Tax Act relies upon certain provisions contained in the Income Tax Assessment Act 1936 (Cwlth) which have been repealed and replaced with significantly different provisions. The previous link to, and reliance on, the Commonwealth's definitions and concepts has consequently been lost.

These amendments are to commence on 1 July 2012.
- The Taxation Administration Act is amended to:
  - o Modify the existing refund provisions to make it simpler for the Commissioner to issue a refund of overpaid tax when the overpayment has been identified as part of an investigation.
  - o Prevent a taxpayer from objecting to an assessment that results from the Commissioner's determination of a previous objection.
  - o Clarify that if an assessment is made and/or tax paid based on an interpretation or practice that applied at the time, the taxpayer cannot later request a reassessment or refund, nor the Commissioner issue a reassessment for additional tax, based on a new interpretation or practice that applied after the original assessment or payment, unless a legislative change brings about that change in interpretation or practice.

This amendment is to apply from 25 October 2008 to protect the revenue base for the full three year statutory refund period.
- The Revenue Legislation (Miscellaneous Amendments) Act 2002 and the Revenue Measures Act 2005 are to be repealed, and those "savings and transitional arrangements" that are still necessary are to be incorporated into the Duties Act and the Taxation Administration Act.

This Bill has passed Parliament.

### **CROWN LANDS (VALIDATION OF FEES) ACT**

This Bill will ensure that any fees collected by the Crown under, or in connection with the Crown Lands Act 1976 or its prior Acts, have been validly collected.

A review was undertaken of all application fees charged by the Crown in relation to the use, occupation or purchase of Crown land. In undertaking this review, an administrative anomaly was identified in the mechanism used to approve the application fees.

The Solicitor-General has advised that the appropriate mechanism for approving application fees is by prescribing them in regulation. The only fees currently prescribed in the Crown Lands Regulation 2001 relate to the transfer of Crown land held under a contract of sale, the

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assignment of a lease, and the transfer of a temporary licence. Other application fees have been approved by Cabinet since about the early 1970s, but not prescribed in the Regulations.

This Bill has passed both Houses.

### **AUDIT AMENDMENT ACT**

The Audit Amendment 2011 amends the Audit Act 2008 and addresses a number of issues raised by the Auditor-General.

The Act amends the definition of "State entity" in the Audit Act by including "single authorities, joint authorities and controlling authorities" within the meaning of the Local Government Act 1993. The amendment brings such authorities within the scope of the Audit Act and requires the Auditor-General to be the auditor for those authorities. These authorities were previously within the scope of the Financial Management and Audit Act 1990.

This Bill has passed Parliament.

### **PASSENGER TRANSPORT SERVICES ACT**

The primary purpose of this Bill is to improve and update the operator accreditation scheme by making it easier to administer, and more flexible, while maintaining the mandatory requirement for passenger transport operators to hold operator accreditation.

It clarifies to whom accreditation applies and ensures that the accreditation scheme primarily focuses on regulating commercial activities, not private car-pooling or private transport arrangements between families and friends.

The Bill amends the current seating capacity definitions for large and small passenger vehicles, and will no longer allow the removal of seats from vehicles simply to avoid regulation. Consistent with Commonwealth legislation defining the term 'bus', a large passenger vehicle will now be defined as one with 10 or more seats, as the vehicle was originally manufactured.

The legislation also makes it clear that, unless using a large passenger vehicle, community organisations that provide passenger transport to their clients do not require operator accreditation. It should be noted that community transport providers utilising vehicles with 10 to 12 seats will be subject to a modified (less onerous) operator accreditation scheme. Further, a significant number of community transport providers are already subject to operator accreditation under the current seating capacity definitions.

The Bill establishes a clearer process for the procurement of new services, which includes dealing with emergency situations and the scope for the Secretary to authorise the trial of new routes.

This Bill has passed both Houses

### **PASSENGER TRANSPORT AMENDMENT (ACCREDITATION STATUS) ACT**

The purpose of this Bill is to validate a number of administrative errors that have occurred during the administration of transport operator accreditation under the Passenger Transport Act 1997 (PTA). This Act provides the legislative basis for the management of accreditation and the Act requires a person who provides a public passenger service or a hire and drive service to be accredited.

Concerns were raised during the drafting of a new Passenger Transport Services Bill 2011, to replace the Passenger Transport Act 1997 (PTA), as to the legal status of operators whose accreditation had not been renewed in accordance with the prescribed process in the PTA.

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Accordingly, advice was sought from the Solicitor-General as to the legal status of these operators in respect to their accreditation. The Solicitor-General has confirmed that the administrative actions taken by DIER to renew operator accreditation were not in accordance with the legislation.

Nevertheless, it is essential that these passenger transport businesses have full certainty as to their legal position in terms of their accreditation. The Solicitor-General has recommended validating legislation to rectify this problem by confirming the status of existing accredited operators and actions taken by them under their accreditation.

It was subsequently established, while investigating the administrative processes employed by DIER to manage renewal of accreditation, that there are doubts about the standing of delegations issued by the Transport Commission.

This Bill has passed both Houses

### **PASSENGER TRANSPORT AND RELATED LEGISLATION (CONSEQUENTIAL AMENDMENTS) ACT**

The purpose of the Passenger Transport and Related Legislation (Consequential Amendments) Bill 2011 is to make amendments to certain Acts and statutory rules as a result of the enactment of the Passenger Transport Services Act 2011 and the Taxi and Hire Vehicle Industries Act 2008.

The Bill introduces a revised vehicle inspection program for Public Passenger Vehicles and Hire and Drive Vehicles in Regulation 102 of the Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010.

The Bill also amends Regulation 85 and 87 of the Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010 to confirm that public passenger vehicles are subject to defect notices.

The Bill amends the Vehicle and Traffic Act 1999 to introduce a new test to determine whether a driver of a public passenger vehicle needs an Ancillary Certificate. The concept of "for reward" in the Vehicle and Traffic Act is replaced and the problems associated with the practical application of that concept are addressed by introducing a three-part test, to determine which drivers are required to obtain an Ancillary Certificate.

A driver is now required to obtain an Ancillary Certificate if a fare is charged (a 'fare' meaning any financial consideration), the service is available to the general public and the service is a 'transport concern' (a transport concern relates to a service that is primarily based on delivering transport, rather than transport being an adjunct to a wider service of a different type), or the service is a 'regular passenger service' as defined in the Passenger Transport Services Act 2011.

This Bill has passed both Houses.

### **TAXI AND LUXURY HIRE CAR INDUSTRIES AMENDMENT ACT**

The purpose of the Taxi and Luxury Hire Car Industries Amendment Bill 2011 is to amend the Taxi and Luxury Hire Car Industries Act 2008 ("Taxi Act") to include the regulation of restricted hire vehicle services within that Act. It is part of a package that also includes the Passenger Transport Services Bill 2011 and the Passenger Transport and Related Legislation (Consequential Amendments) Bill 2011.

The new Act will be named the Taxi and Hire Vehicle Industries Act 2008 and it will, when enacted, encompass in the one instrument the regulation in respect of the licensing and vehicle standards for all small vehicles that are providing passenger transport services. In respect of services provided by small passenger vehicles, the Passenger Transport Services legislation will focus solely on ensuring that they are safe and that their operators are suitable people to provide transport services to member of the public.

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This Bill contains no changes to the policy framework that applies to taxis and luxury hire cars.

This Bill has passed both Houses.

## **PENALTY UNITS AND OTHER PENALTIES AMENDMENT ACT**

An Act to amend the Penalty Units and Other Penalties Act 1987.

This has passed both Houses.

## **MARINE FARMING PLANNING AMENDMENT ACT**

The Bill to amend the Act provides improvements to the processes and decision-making requirements for approval of amendments to marine farming development plans and allocation of marine farming leases.

The first objective is to improve consistency of provisions 9 and 42 of the Act, thereby establishing clearly that the Marine Farming Planning Review Panel makes recommendations to the Minister, while the Minister has responsibility for final decisions in relation to draft amendments to marine farming development plans. The second objective relates to the allocation provisions of section 52, and should encourage investment by increasing certainty of allocation for persons that prepare a draft Marine Farming Development Plan, or request an amendment to a Marine Farming Development Plan.

The Bill is drafted to be specific and prescriptive regarding the planning and allocation processes. This assists in providing certainty and efficiency by making the requirements of the planning process clear, but ensures discretionary functions of the Minister and Panel are clearly described. The key elements of the Amendment Bill provide for:

- the provision of Ministerial approval to the making of an amendment upon a recommendation from the Panel resulting from a request under section 33;
- the revision of sections 41 and 42 to provide for the Panel to make recommendation to the Minister with respect to draft amendments to a marine farming development plan, and for the Minister to have discretion in relation to each of the recommendations made. This will provide consistency with section 9 of the Act;
- the ability for the Minister to seek further advice, subsequent to receiving a recommendation from the Panel regarding a draft amendment, and the option that if a draft amendment has insubstantial modifications by the Panel or Planning Authority, for it to be exempt from certain provisions;
- the introduction of the concept of a privately prepared draft plan and privately requested draft amendment, to complement those that publicly initiated by either the Panel, Planning Authority or Minister, and the ability for the Minister to consider inviting a person to apply for a lease where the relevant person has prepared a draft plan, or requested the amendment to a plan leading to that allocation process;
- the requirement for the Minister to seek the advice of the Board of Advice and Reference in relation to the participating persons and method of allocation for any publicly initiated new plan, or amendment to a marine farming development plan; and
- the correction of several typographical errors in the existing legislation.

This has passed both Houses.

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## LOCAL GOVERNMENT AMENDMENT ACT (NO.2) OF 2011

The Local Government Amendment Act (No. 2) 2011 (the Act) ensures that councils have legislative certainty in regard to rating and provides additional rating tools and clarifications.

- Principles of taxation
- Rates and charges policy
- Clarification of the use of the minimum amount
- Waste Management services
- Averaged area rates
- Calculation of rates
- Consultation processes
- Certification of averaged rate areas
- Rectification of errors (rates or charges)
- Validation of previous rates and charges resolutions

This Bill has passed Parliament.

## INTEGRITY COMMISSION AMENDMENT ACT

This Bill corrects anomalies and clarifies the operation of the Integrity Commission Act 2009.

The major amendments made by the Bill are to:

- ensure that the definition of “investigator” (s 4) includes investigators appointed under any of the sections providing for their appointment (section 45 (own motion investigations) and for the purposes of sections 88 (take-over of police integrity investigations) and 89 (own motion investigations of police officers));
- clarify that the powers of investigators and of the Tribunal in relation to the investigation of complaints apply also to own motion investigations and other matters the Tribunal may or must investigate;
- ensure provisions relating to the reporting back by investigators to the CEO or the CEO to the Board include appropriate recommendations in relation to own motion investigations;
- ensure that persons who are or become the subject of own motion investigations have the same rights as person subject to complaint investigations;
- align subsections (1) and (2) of section 45 to match the scope of investigations to the decisions of the Board;
- amend section 58 (which covers outcomes of investigations) to cover the CEO’s recommendation under section 35(1)(d) (prior to investigation);
- ensure that the non-disclosure provisions of section 98 which apply to notices and other matters under various sections are effective and also apply to persons to whom the information may have been passed; and
- allow anonymous complaints to be accepted for assessment and possible investigation.

This Bill has passed both Houses.

# LEGISLATION STATUS AT 6 December 2011

## **BUSINESS NAMES REGISTRATION (TRANSITIONAL & CONSEQUENTIAL PROVISIONS) ACT**

The Business Names Registration (Transitional & Consequential Provisions) Act 2011 enacts the necessary transitional provisions to allow the registration of business names to be effectively transferred to the Commonwealth.

The Office of Consumer Affairs and Fair Trading is responsible for administration of the Business Names Act 1962 and currently registers business names in Tasmania. The Act establishes a public register from which to identify the persons who conduct business under specific business names.

On 3 July 2008, the Council of Australian Governments (COAG) agreed to transfer responsibility for the registration of business names to the Commonwealth.

The Business Names (Commonwealth Powers) Act 2011 which refers the power to register business names to the Commonwealth achieved Royal Assent on 4 October 2011, but has not yet commenced.

The national business names registration system is expected to commence operation on 28 May 2012.

The transfer will fulfill the Tasmanian Government's commitment to COAG to participate in the development of a national seamless economy.

This Bill has passed both Houses.

## **ANZAC DAY OBSERVANCE AMENDMENT ACT**

The Anzac Day Observance Amendment Act seeks to ensure that the legislation governing Anzac Day reflects contemporary views about the commemoration of the day and that the role and governance of the Anzac Day Trust remains appropriate.

The Act amends the Anzac Day Observance Act 1929 to provide that:

- the long title of the Act will include the role of the Anzac Day Trust;
- all restrictions relating to activities undertaken on Anzac Day will apply until 12.30pm;
- restrictions will be expanded to include shows, regattas, markets, bazaars and gambling activities;
- the protection of employees will be expanded to cover those who decline a request to work related to additional activities restricted on Anzac Day;
- the Governor will no longer approve the reimbursement of expenses incurred by Trust members;
- the Minister responsible for the Anzac Day Observance Act can set guidelines for the Trust; and
- the annual report of the Trust is to be made publicly available.

The Act also amends the Shop Trading Hours Act 1984 to provide that most shops, apart from pharmacies, service stations and small shops, will be closed on Anzac Day until 12.30pm.

The Act also ensures that the employee protection provisions in the Shop Trading Hours Act cover the employees that work in the shops that are included in the new restrictions.

This has passed both Houses.

# LEGISLATION STATUS AT 6 December 2011

## REPEAL OF REGULATIONS POSTPONEMENT ACT

*(Brought in by the Minister for Primary Industries and Water, the Honourable Bryan Alexander Green)*

A Bill to postpone the repeal of the Agricultural and Veterinary Chemicals (Control of Use) Regulations 1996

This has passed both Houses.

## WESLEY VALE PULP AND PAPER INDUSTRY (REPEAL) BILL 81 OF 2011

The Wesley Vale Pulp and Paper Industry (Repeal) Bill 2011 will repeal the Wesley Vale Pulp and Paper Industry Act 1961. Cabinet Decision ACD 737 (Matter AC 686) of 7 November 2011 approved the repeal of the Act.

The Wesley Vale Pulp and Paper Industry Act 1961 was developed to specify the terms and conditions under which a pulp and paper mill would operate at Wesley Vale. The mill ceased operations in March 2010 and decommissioning and rehabilitation of the site have been underway since that time.

There is no foreseeable intent to locate a similar enterprise at the site, and even if this was to occur, it is anticipated any new development would be more appropriately governed by more recent legislation including the Environmental Management and Pollution Control Act 1994.

The closure and subsequent rehabilitation of the mill site means the Wesley Vale Pulp and Paper Industry Act 1961 is redundant and can be repealed without consequence. In February 2011, the parent company of Tas Paper, the operator of the mill, endorsed the repeal of the Act.

Its repeal will also fulfil the Government's undertaking given to irrigators who have invested in the Sassafras Wesley Vale Irrigation Scheme. The Government committed to make legislative amendments to provide certainty on the allocation of water for the Scheme. As the rights to this water were previously held by Tas Paper, through the Wesley Vale Pulp and Paper Industry Act 1961, its repeal will ensure certainty on this matter.

Under the Wesley Vale Pulp and Paper Industry Act 1961, Tas Paper held rights to water as long as the industry was carried on. When operations at the mill ceased, these rights no longer existed, and the water previously held under these rights was allocated to Tasmanian Irrigation and irrigators on the Mersey River.

Notwithstanding the allocation of this water, some uncertainty remained while the Wesley Vale Pulp and Paper Industry Act 1961 remained on the State's statutes.

This Bill is yet to be debated

## CLIMATE CHANGE (STATE ACTION) INTERIM TARGETS AMENDMENT BILL 82 OF 2011

*(Brought in by Cassandra Stanwell O'Connor MP)*

A Bill to amend the Climate Change (State Action) Act 2008, to set a stronger greenhouse gas emission reduction target for the year 2050, and an interim greenhouse gas emission reduction target for the year 2020.

This Bill is yet to be debated

In the event you have a direct interest or concern with any specific legislation John Barker is available to assist by contact email: [john@johnbarker.biz](mailto:john@johnbarker.biz) or telephone; Office 6223 3333, mobile 0412 906 328.