

16 Tasmania

A5 Agricultural and veterinary chemicals¹

Agricultural and Veterinary Chemicals (Tasmania) Act 1994

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary (agvet) chemicals, which covers the evaluation, registration, handling and control of agvet chemicals to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority (formerly the National Registration Authority) administers the scheme. The Australian Government Acts establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994*. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral. The relevant Tasmanian legislation is the *Agricultural and Veterinary Chemicals (Tasmania) Act*.

The Australian Government Acts were subject to a national review (see chapter 19). The national processes established to implement the legislative reforms arising from the review have yet to complete their work. Until changes to these Acts are finalised, the reform of state and territory legislation that automatically adopts the code cannot be completed.

The National Competition Council thus assesses Tasmania as not having met its Competition Policy Agreement (CPA) obligations in relation to this legislation.

¹ The alpha-numeric descriptors for legislation review subject areas are listed in chapter 9, table 9.11.

C1 Health professions

Pharmacy Act 1908

Pharmacists Registration Act 2001

Council of Australian Governments (COAG) national processes for reviewing pharmacy regulation recommended that jurisdictions remove restrictions on the number of pharmacies that a pharmacist can own and on the ability of friendly society pharmacies to operate in the same way as other pharmacies (see chapter 19). Compliance with these requirements requires Tasmania to remove these restrictions from the Pharmacists Registration Act.

In the context of the Council's request for additional information following receipt of Tasmania's 2004 NCP annual report, the state advised that it had drafted an amendment Bill to implement pharmacy reforms in April 2004. However, this Bill was redrafted following correspondence from the Prime Minister on this issue, to constrain provisions to increase the number of pharmacies that both pharmacists and friendly societies can own from two to four. The Bill was subsequently tabled in Parliament on 19 October 2004. It also prohibits the entry of new friendly society pharmacies in Tasmania and, therefore, creates a new barrier to entry into the pharmacy market in Tasmania. The *Pharmacists Registration Amendment Act 2004* was passed by both houses of the Tasmanian Parliament during the November 2004 sitting and was proclaimed on 17 December 2004.

Given that the proposed reforms fall short of reforms recommended by COAG national processes, the Council assesses that Tasmania has failed to meet its CPA review and reform obligations in relation to pharmacy.

C2 Drugs, poisons and controlled substances

Poisons Act 1971

Alcohol and Drug Dependency Act 1968

Pharmacy Act 1908 (replaced by *Pharmacy Registration Act 2001*)

Criminal Code Act 1924 (drugs and poisons)

Following the outcome of the Galbally review (see chapter 19), the Australian Health Ministers' Advisory Council endorsed a proposed response to the review's recommendations that COAG has now endorsed. The proposed response provides for each jurisdiction's implementation of the recommendations over a 12-month period from July 2005, the date of CoAG's endorsement.

Tasmania advised that the Department of Health and Human Services is drafting a new Poisons Act that reflects the outcome of the national review. The department will also develop Regulations to support the operation of the

new Act. The government plans to introduce the legislation as a package in 2006, following consultation with key stakeholders.

The Council acknowledges that the Galbally review has been subject to national processes. It also notes that competition reforms required in relation to the Poisons Act are relatively minor and that the new legislation will be subject to Tasmania's gatekeeping requirements. Nevertheless, because Tasmania has not yet fully implemented the review recommendations, it has not met its CPA obligations in this area.

D Legal services

Legal Profession Act 1993

The recommendations of the Tasmanian review of the Legal Profession Act were to:

- reform the conveyancing market and remove the reservation of conveyancing work
- remove restrictions on advertising and on business structures for legal practices
- permit legal practitioners to arrange their own insurance
- introduce a new disciplinary process.

The government accepted these recommendations and proposed to progress the reform through a number of pieces of separate legislation. Tasmania has since implemented the *Conveyancing Act 2004*, which removes conveyancing practice reservations.

The Tasmanian Government introduced the Legal Profession Amendment Bill 2004, but was unable to get it passed through the Legislative Council. Consequently, the government committed to adopting national reforms based on the national legal profession model laws. It expects to have a new Bill incorporating the national model laws ready for introduction to Parliament in late 2005 or early 2006 (see chapter 19). Adoption of the national model laws will allow for multidisciplinary practices (for example, to combine accounting and law firms under the one practice) and the use of contingency fees. In this context, Tasmania will consider the requirement that insurance for legal practitioners must be provided by the Law Society of Tasmania.

Tasmania has significantly enhanced competition in the legal profession through the creation of the Conveyancing Act, with further reforms pending. However, because Tasmania has not yet completed its review and reform process, it has not met its CPA obligations in relation to the legal profession.

E Other professions

Auctioneers and Real Estate Agents Act 1991

The Department of Justice and Industrial Relations released the draft review report on the Auctioneers and Real Estate Agents Act for public comment in November 2001. The draft report's preliminary recommendations proposed:

- licensing real estate agents, subject to competency based qualifications and good character checks (both personal and financial), but not licensing:
 - real estate managers and sales consultants, because the educational qualifications and reputation checks of employees should be a matter for the employing agents
 - property managers, but requiring them to comply with general trust accounting and record management requirements
- continuing to exempt legal practitioners and accountants from the licensing requirement in relation to the sale of businesses that do not involve the sale of land
- allowing real estate agents to enter multidisciplinary partnerships
- transferring the regulatory and disciplinary functions of the Auctioneers and Real Estate Agents Council to the Office of Consumer Affairs and Fair Trading.

On 23 August 2005, the Property Agents and Land Transactions Bill 2005 was introduced into Parliament. This legislation will replace the Auctioneers and Real Estate Agents Act and implement the recommendations of the NCP review.

While the proposed reforms are consistent with the CPA guiding principle, the Council assesses that Tasmania has not met its CPA obligations in this area because it has not completed its reforms.

Travel Agents Act 1987

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a ministerial council working party, to review legislation regulating travel agents. The findings of the review and the working party response are outlined in chapter 19.

In 2004, Tasmania reported that it had implemented the majority of the review recommendations, but noted that further legislative change may be required in connection with national changes to travel agents' qualifications. Tasmania's 2005 NCP annual report advised that this issue has since been

addressed, as has the authorisation of travel agents licensed in a reciprocating jurisdiction to advertise and solicit business in Tasmania. The annual report noted that these actions complete Tasmania's involvement in the review. The Travel Agents Amendment Regulations 2005 and the Travel Agents (Exemption) Order 2005 contained the changes required for Tasmania to implement the outstanding recommendations of the national review. The Regulations and the Order were gazetted on 30 March 2005.

The Council assesses Tasmania as having met its CPA obligations in relation to travel agents legislation.

F1 Compulsory third party motor vehicle insurance

Motor Accidents (Liabilities and Compensation) Act 1973

Not assessed (see chapter 9).

I3 Gambling

Racing Act 1983

Racing and Gaming Act 1952 (except minor gaming)

Racing and Gaming Act 1952 (relating to minor gaming)

The Racing and Gaming Act (except for minor gaming) is now called the *Racing Regulation Act 1952*. The latter Act provided an exclusive licence for TOTE Tasmania (formerly the TAB) to conduct totalisator betting and regulated the relationship of TOTE Tasmania with the racing industry. The provisions of the Racing Regulation Act that relate to totalisator betting subsequently became the *Gaming (Totalisator Betting) Act 1952*.

Following a restructure of its racing industry, Tasmania prepared three new Bills to replace the Racing Act and the Racing Regulation Act, and these were assessed under Tasmania's gatekeeper arrangements. A regulatory impact statement prepared by representatives from the Department of Infrastructure, Energy and Resources found all major restrictions in the Bills as being in the public benefit. Parliament passed the new legislation in November 2004, with the Racing Act being repealed at this time.

In its 2004 NCP assessment, the Council noted that Tasmania's new legislation retains restrictions that were relaxed or removed in other jurisdictions following independent NCP reviews. These restrictions include:

- a prohibition on racing codes (other than thoroughbred, harness and greyhound racing) entering the regulated industry

- the requirement that bookmakers operate only as individuals or partnerships
- restrictions on the time, place and manner of betting with bookmakers
- a minimum telephone betting limit (\$100).

The Council also expressed concern that the Tasmania has retained TOTE Tasmania's monopoly on the provision of totalisator wagering services. This monopoly was not considered in the review of Tasmania's racing and betting legislation, which reported in July 2003.

The provisions of the Racing and Gaming Act that relate to minor gaming were initially reviewed as part of a review of Tasmania's gaming legislation. In 2001, the gaming components of this Act were transferred to the *Gaming Control Act 1993* and assessed under Tasmania's gatekeeper provisions. The Council's assessment of this Act is provided below.

Tasmania met its CPA clause 5 obligations in relation to the Racing Act with the repeal of this Act. However, the Council assesses Tasmania as not having met its CPA obligations in relation to the remainder of its racing and betting legislation because the state has not provided a convincing public benefit justification for the restrictions contained in its legislation.

Gaming Control Act 1993 (gaming machines, casino licensing and minor gaming)

Tasmania completed a minor review of its Gaming Control Act, finding that the restrictions on gaming machine operations should be retained on the grounds of probity. The review specifically excluded the 1993 deed between the Crown and Federal Hotels that gave Federal Hotels an exclusive 15-year licence to conduct casino, gaming machine and minor gaming (keno) operations. The deed is not a public document.

On 6 May 2003, the Tasmanian Treasurer advised that the government intended to extend the exclusive licence to conduct keno, casino and gaming machine operations until 2018. The Treasurer also announced the introduction of a statewide legislative cap of 3680 on gaming machines—287 more than the current number of machines in Tasmanian venues. The arrangements provide for a limit of 2500 gaming machines to be accessible through hotels and clubs. Venue limits for machines are to remain at 30 for licensed hotels and 40 for licensed clubs.

The changes to the Gaming Control Act that extend the exclusive licence were passed by Tasmania's Parliament in October 2003. Two regulation impact statements assessing the proposed reforms found that the benefits of the measures outweighed the costs. Central to the findings of the regulation impact statements is the contention that the 1993 deed entered with Federal Hotels means that extending licence exclusivity is the only way to achieve the government's objective of limiting gaming machine numbers—that is, without

licence exclusivity, Tasmania faced the prospect of Federal Hotels installing another 1500 machines before its licence expires in 2008.

In its 2004 NCP assessment, the Council indicated that it could perceive potential benefits from the statewide cap (although the effectiveness of statewide caps in controlling problem gambling may be overstated where gaming machine accessibility is already relatively easy). The Council expressed reservations as to whether Federal Hotels, without licence exclusivity, would have expanded machine numbers to the extent claimed. The Council noted the 2001-02 and 2002-03 annual reports of the Tasmanian Gaming Commission, which show that more gaming machine licences were surrendered than new licences issued. This suggests that the gaming machine market had reached saturation point, at least under current licensing requirements. The Council also observed that if Federal Hotels faced the possibility of losing exclusivity in 2008, the expansion of machine numbers would be a strategy of doubtful merit, because it would result in the company owning a large number of near new gaming machines without a certain right to operate them in future.

There have been no developments in 2005, so the Council maintains its assessment that Tasmania has not complied with its CPA obligations in relation to this legislation.

J3 Building occupations

Plumbers and Gas-fitters Registration Act 1951

Tasmania completed a review of the Plumbers and Gas-fitters Registration Act in October 1998. The Act restricts competition by requiring licensing and registration of plumbers and gasfitters, and specifying entry requirements, the reservation of practice for activities, and disciplinary processes. The review recommendations included allowing any person to work under the direct supervision of a registered plumber or gasfitter; allowing any person to do simple plumbing tasks; reducing the existing levels of registration; and limiting the qualifications and experience required for registration to a demonstration of competence.

The government accepted all of the review recommendations but had not introduced amending legislation at the time of the Council's 2004 NCP assessment. The Council concluded in that assessment that Tasmania had not met its CPA obligations because reform was incomplete.

The government foreshadowed that it would introduce legislation to Parliament in the autumn 2005 session to amend the Act to reduce reservation of practice, limit the qualifications and experience required for registration, implement a self-certification system, and amalgamate registration and plumbing inspection systems. In its 2005 annual NCP reporting, Tasmania advised that its proposed occupational licensing

legislation adopts the majority of the 1998 review's recommendations that were not adopted in the *Building Act 2000*. The proposed legislation is also consistent with legislation or proposed legislation of other jurisdictions (including Queensland, South Australia and the ACT) that have also prepared regulatory impact statements and made robust public benefit cases for the legislation. The Bill was introduced in Parliament on 25 May 2005 but is yet to pass through both houses. It is expected to be proclaimed in the spring 2005 Session.

Those review recommendations regarding competition restrictions that have not been adopted in the occupational licensing legislation and have not been justified as being in the public interest will be dealt with when the corresponding Regulations are completed.

The Council assesses Tasmania as not having met its CPA clause 5 obligations because the state has not completed the reform process.

Non-priority legislation

Table 16.1 provides details on non-priority legislation for which the Council considers that Tasmania's review and reform activity does not comply with its CPA clause 5 obligations.

Table 16.1: Noncomplying review and reform of Tasmania's non-priority legislation

| <i>Legislation (name)</i> | <i>Key restrictions</i> | <i>Review activity</i> | <i>Reform activity</i> |
|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Consumer Credit (Tasmania) Act 1996</i> | Regulates the provision of consumer credit. | National review completed. In March 2003, Cabinet agreed to drafting amendments to the Act to implement review findings. The amendments would remove doubt about the application of the Uniform Consumer Credit Code to conditional sale agreements, and prohibit the charging of valuation fees for household goods | The Consumer Credit (Tasmania) Bill 2003 received royal assent on 9 May 2003. The Consumer Credit (Tasmania) Act is template legislation based on the Uniform Consumer Credit Code, in accordance with the Uniform Credit Laws Agreement 1993. Implementation of the national review, completed in 2002, is being progressed at a national level by the Uniform Consumer Credit Code Ministerial Committee. As part of this process the government developed a package of amendments to align the state's Act with Australian Government changes. The amendments were proclaimed and gazetted on 20 July 2005. |
| <i>Historic Cultural Heritage Act 1995</i> | Places restrictions on building work on places of historic heritage significance that may affect historic cultural heritage. | Review, in conjunction with the review of the <i>Land Use Planning and Approvals Act 1993</i> , completed. | The government plans to introduce amending legislation to Parliament in the spring session 2005. |
| <i>Hospitals Act 1918</i> | Requires licensing, and certain qualifications to be held by hospital managers. | Review completed. The review recommended licensing private hospitals and day surgery facilities but not nursing homes. | The government considered a reform proposal in 2004. Amending legislation is expected to be introduced into Parliament in the spring session 2005. |
| <i>Radiation Control Act 1977</i> | Prohibits unlicensed dealings with radioactive materials and electronic products. Enables requirements to be imposed on premises and requires the registration of certain products and materials. | National review completed. The review recommended the continuation of a regulatory approach but with a move to outcome based (rather than prescriptive) controls over the possession or use of radiation sources. | The government has considered the outcomes of the review, and legislation is expected to be introduced to Parliament in the spring session 2005. |

(continued)

Table 16.1 continued

| <i>Legislation (name)</i> | <i>Key restrictions</i> | <i>Review activity</i> | <i>Reform activity</i> |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Survey Co-ordination Act 1994</i> | Prohibits the erection of a structure, building or any other erection that is likely to be mistaken for a standard permanent mark on a mountain, hill or elevated land without the approval of the Surveyor-General. | | The minor restrictive provision will be repealed in the legislation repeal Bill expected to go before Parliament in the spring session 2005 |
| <i>Trustee Companies Act 1953</i> | Provides for the establishment of trustee companies. Prohibits specific actions in relation to loans. Prohibits trustee companies from engaging in any business unless expressly authorised in the Act. | National review is underway. Standing Committee of Attorneys General (SCAG) released an issues paper and draft Bill in June 2001. Finalisation of the review was dependent on advice from the Australian Government as to whether it would provide for the regulation of trustee companies on a national basis via Australian Prudential Regulation Authority services being provided to the states and territories. The Australian Government declined to do so in early 2003. However, at the SCAG meeting in November 2003, the Australian Government minister agreed to reconsider this issue. New South Wales made a final submission to the Australian Government on behalf of states and territories in February 2004. However, in March 2005, the Australian Government declined to undertake the regulation of trustee companies via the Australian Prudential Regulation Authority. | Now that the Australian Government has confirmed that the Australian Prudential Regulation Authority will not undertake the prudential regulation of trustee companies, states and territories are moving to finalise the reform of the legislation based on the draft model, including seeking external advice on the form that prudential standards could take. New South Wales is the leading jurisdiction in this process. |