

Human  
Services



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## **National Competition Policy Review**

Of The

***Health Act 1958***

***Health (Infectious Diseases) Regulations 1990;***

***Health (Prescribed Accommodation) Regulations 1990;***

***Health (Pest Control Operators) Regulations 1992***

## **Government Response**

**February 2001**

## *Part 1 – Introduction*

Under the inter-governmental *Competition Principles Agreement* signed by the Council of Australian Governments (COAG) in April 1995, Victoria agreed to review, and where appropriate reform, statutory restrictions on competition. As part of the Agreement, all governments adopted the following guiding principle:

*Legislation should not restrict competition unless it can be demonstrated that:*

- *the benefits of the restriction to the community as a whole outweigh the costs; and*
- *the objectives of the legislation can only be achieved by restricting competition.*

To give effect to this principle, governments agreed to review, and where appropriate reform, all current legislation against this principle.

The *Health Act 1958*, the *Health (Infectious Diseases) Regulations 1990*; the *Health (Prescribed Accommodation) Regulations 1990*; and the *Health (Pest Control Operators) Regulations 1992* were identified as containing competitive restrictions and listed for review by the Department of Human Services.

In accordance with the *Guidelines for the Review of Legislative Restrictions on Competition* (1996) an in-house review panel was established which satisfied the independence criteria.

The recommendations of the review and the Government's Response to them are discussed below.

## ***Part 2 – The Recommendations Of The Review And The Government’s Response***

### **Qualification Requirements of Environmental Health Officers:**

#### ***Review Recommendations:***

- That the Health Act be amended to provide that local councils may employ as an environmental health officer a person with prescribed qualifications.
- The Secretary to the Department of Human Services be given power to prescribe the qualifications of environmental health officers.

#### ***Government Response:***

The review recommendations that the Act be amended to provide that local councils may employ as an environmental health officer (EHO) a person with qualifications nominated by the Secretary is supported.

The net public benefit of the employment of appropriately qualified EHOs is the prevention of serious health, social and financial consequences of breakdowns in the health protection system enforced by EHOs under the Health Act. If there were no regulations governing the persons who are suitable for employment by local councils as EHOs, there is the concern that those appointed may not have the qualifications and expertise necessary to fulfil those statutory obligations of local council. The risks to public health are such that there is a strong public health advantage to be gained from setting minimum qualification requirements for practice as an EHO.

It is expected that environmental health specific degree courses accredited by the Australian Institute of Environmental Health (AIEH) will be the courses which are nominated by the Secretary and published in the Government Gazette. However, with final approval of qualifications resting with the Secretary, it is open to consider people with qualifications other than an environmental health-specific degree, whilst still requiring core competencies.

A list of matters to be considered by the Secretary in deciding the qualification requirements necessary for appointment as an EHO will be developed in consultation with key stakeholders and these may be issued as Guidelines by the Department of Human Services.

The following key stakeholders were given the opportunity to make comments on the proposed amendment to the Health Act:

- Australian Institute of Environmental Health (AIEH);
- Municipal Association of Victoria (MAV);
- Victorian Local Governance Association (VLGA);
- Local Government Professional Association (LGPA);
- Swinburne University of Technology
- La Trobe University

The Swinburne University of Technology, La Trobe University, AIEH and MAV indicated support for the proposal. Whilst AIEH and MAV indicated that they will support the amendments to the Act, they raised matters relating more broadly to the environmental health workforce, including shortage of EHOs, diminished career paths particularly in local government, maintenance of competencies and professional accountability. The Department of Human Services will establish a working party with the AIEH and the MAV to progress the broader issues relating to the environmental health workforce

## **Pest Control**

### ***Review Recommendations:***

- That the requirement for registration of pest control operators be repealed from the Health Act.
- That the Health Act continue to require people who apply pesticides in the course of the business of a pest control operator to be licensed.

### ***Government Response:***

The review recommendations that the requirement for registration of pest control operators be removed from the Act and there be reliance on occupational licensing is supported. It is agreed that requiring pest control business registration does not provide demonstrable health and safety benefits for the workplace or the community which outweigh the costs imposed on industry in complying with registration. The criteria which the Department of Human Services uses to determine whether a business should be registered, in terms of having sufficiently experienced management, a minimum ratio of experienced to inexperienced staff, and adequate equipment and storage facilities, would be required anyway in order for the business to meet its general obligations under other legislation, in particular the *Occupational Health and Safety Act 1995* (Vic.).

Occupational licensing along with well trained pest controlled operators through recognition of the *National Pest Management Competency Standards* developed by the Australian National Training Authority (ANTA), which all jurisdictions recently agreed to recognise, will be effective in minimising the risk of misapplication of pesticides.

The public benefits of the regulation of the pest control are a decrease in the occupational, public health and environmental risks associated with the storage, mixing, disposal and application of pesticides. The licensing system achieves this by:

- Establishing minimum standards for people who work within pest management businesses; and
- Enabling a database to be established which identifies where pest management technicians are located, the type of pests they are dealing with, and the type of pesticides they are applying. This database can be

used to assist DHS to conduct information campaigns or safety audits in respect of pesticides or pest management practices which have been shown to represent a particular hazard.

There is no less restrictive alternative to occupation licensing that is adequate to deal with the risks to pesticide users, consumers, the public and the environment from over-exposure to pesticides.

The following key stakeholders were given the opportunity to make comments on the proposed amendment to the Health Act:

- Australian Environmental Pest Management Association;
- Victorian WorkCover Authority;
- Department of Natural Resources and Environment.

Victorian WorkCover Authority does not have an issue with this proposal. The requirement relating to the licensing and training of pest control operators is considered beneficial towards ensuring a certain level of knowledge and competency in carrying out safe pest control work.

The Australian Environmental Pest Manager Association had no objections to this proposal.

The Department of Natural Resources and Environment has been consulted and has not raised an objection to this proposal. However it has been noted that the proposal may require minor changes to the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992*.

**Review Recommendation:**

- That the Health Act be amended to remove commercial chemical control applicators licensed under the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* from the licensing requirements of the Health Act and regulations where they apply pesticides in the course of a business in areas where there is no substantial risk to public health.

**Government Response:**

The objective of the review recommendation that the Act be amended to remove commercial chemical control applicators licensed under the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* from the licensing requirements of the Act and Regulations where they apply pesticides in the course of a business in areas where there is no substantial risk to public health, that is that a more streamlined licensing system be achieved, is supported.

The Act should exempt people from the prohibitions on the unlicensed use of pesticide contained in the Act where in the course of the business of a pest control operator they apply pesticides for the purposes of horticulture, agriculture, water treatment, or to control weeds or vermin other than vermin

which may affect commercial or domestic premises. The regulation of pesticide application in these situations will be the responsibility of DNRE under the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992*.

The principal benefit of the removal of duplication or overlap with the DNRE licensing controls under the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* is the removal of additional and unnecessary costs on pest control applicators, without attendant risks to the public or the environment.

The following key stakeholders were given the opportunity to make comments on the proposed amendment to the Health Act:

- Victorian WorkCover Authority;
- DNRE.

The Victorian WorkCover Authority does not see the need to duplicate this requirement under the Health Act where there is already a licensing requirement for commercial chemical control operators.

The Department of Natural Resources and Environment has been consulted and has not raised an objection to this proposal. However, it has been noted that streamlining the two licensing systems will require minor changes to the relevant regulations for each department.

***Review Recommendation:***

- That controls on the use of prescribed pesticides in the Health Act be repealed.

***Government Response:***

The review recommendation that controls on the use of prescribed pesticides in the Act be removed is supported. The Agvet Code, which establishes a national system for the registration of chemical products and approval of container labels, adequately deals with the objectives of the current provisions for prescribed pesticides.

The Victorian WorkCover Authority supports the streamlining of legislative requirements and the avoidance of duplication.

***Review Recommendation:***

- That requirement that licensees submit to regular medical examinations in the Health Act be repealed.

***Government Response:***

The review recommendation that licensees submit to regular medical examinations be removed is supported. Protection against the potential health risks of the application of pesticides is more appropriately dealt with by Occupational Health and Safety legislation.

The Victorian WorkCover Authority considers that it is appropriate that this issue, as it relates to pest control operators, be addressed through the *Occupational Health and Safety (Hazardous Substances) Regulations 1999*. The *Hazardous Substances Regulations* already contain a requirement for health surveillance in certain circumstances where scheduled substances are used. 'Organophosphate pesticides' are an example of scheduled substances. There are also provisions in the *Hazardous Substances Regulations* for VWA to determine substance(s) for which health surveillance may be required.

The Australian Environmental Pest Manager Association has been consulted and has not raised an objection to this proposal.

### **Qualification Requirements for a Person Providing Pre- and Post-Test HIV Counselling**

#### ***Review Recommendation:***

- That the Health Act continue to provide qualification or experience requirements for a person providing pre test and post test counselling.

#### ***Government Response:***

The review recommendation that the Act continue to provide qualification requirements for a person providing pre- and post-test HIV counselling is supported.

The community as a whole benefits from access to informed pre and post test counselling in relation to testing for a disease as serious as HIV/AIDS. People who are not adequately informed are not likely to advise the person adequately or correctly. Such counselling also recognises the importance of prevention of transmission of HIV/AIDS. As there is no cure or vaccine available, the best protection remains education on behavioural change to minimise the spread of infection of those whose activities place them, and/or the general community, at risk of infection. This education is best provided by those who are adequately informed on the issues.

Continuation of the alternative to the completion of an accredited counselling course, namely a person having one year's experience in such counselling is not supported. The rationale for the removal of this alternative is that the amendment providing for the course and experiential recognition was introduced in 1991 and those practitioners with at least a year's experience in counselling, but without the requisite course qualification have had nine years to undertake the course or to apply for an exemption on the basis of their experience.

## **Limitation on which laboratories can Test for HIV**

### ***Review Recommendations:***

- That the Health continue to limit which laboratories can conduct HIV testing.
- That the Health Act continue to require prescribed places to provide information about the incidence of HIV.

### ***Government Response:***

The review recommendations that the Act continue to prescribe laboratories for the purposes of HIV testing, record keeping and reporting is supported, reflecting nationally agreed policies in this area.

The limitation on which laboratories can conduct HIV testing is important in ensuring quality control and expertise in this area; that in turn has benefits for patient, community and medical professional confidence. The costs associated with an application for nomination by the Secretary to conduct HIV testing and for the supply of non-identifying information about HIV testing and persons newly diagnosed with HIV infection are minimal. The benefits of maintaining a system which attempts to ensure accuracy of HIV testing and notification for epidemiological purposes is invaluable. There are no alternative regulatory or non-regulatory solutions that would achieve the same cost-benefit ratio.

## **Prescribed Accommodation**

### ***Review Recommendations:***

- That the Health Act continue to require the registration of prescribed accommodation.
- Regulation 7 of the *Health (Prescribed Accommodation) Regulations 1992* be amended to bring the room size requirement in line with NSW and South Australian requirements (one person for every two square metres) and to amend the short stay accommodation exclusion from 14 to 31 days or less.
- Regulation 15 of the *Health (Prescribed Accommodation) Regulations 1992* be amended to bring the toilet, bath and shower facilities requirement in line with the BCA requirement of one per 10 persons.

### ***Government Response:***

The review recommendations that the Act continue to require the registration of prescribed premises and that regulations in relation to minimum room size



(regulation 7) and toilet and bathing facilities (regulation 15) of the *Health (Prescribed Accommodation) Regulations* be amended is supported.

The appropriate regulation of these premises ensures that industry is in no doubt as to the standards that should apply to prescribed accommodation, and local councils are enabled to act if the standards are not maintained.

The net public benefit of the requirement that prescribed accommodation be registered include the reduction in the risk of transmission of communicable diseases to the wider community and higher standards of Victorian residential accommodation. Promotion of minimum standards for housing quality is a key aspect of Government policy.

It is recognised that overcrowding can have serious repercussions on people's health. Regulation 7 originated from the belief that by specifying a reasonable room size, the likelihood of transmission of infectious diseases would be reduced. Amendment of the room size requirement to 2m<sup>2</sup> for every 1 person, to be in line with the requirements prescribed in NSW and South Australia, and to apply only to prescribed accommodation which is occupied by a patron for more than 31 days, adequately meets the objectives of the regulation to provide reasonable standards in longer term accommodation, where market forces have little or no influence on patrons due to their financial or physical inability to move to alternative premises. In tourist accommodation that accommodates visitors for 31 days or less, market forces will dictate whether the room sizes provided by proprietors are acceptable to patrons.

Amendment of toilet and bathing facilities to be in line with the Building Control Association is in accordance with government policy to implement where possible a whole of government approach to regulatory arrangements.

## **Drugs, Substance and Articles**

### ***Review Recommendation:***

- That Sections 230, 231, 238, 242, 245, 246, 270A, 271 and 274 of the Health Act be repealed.

### ***Government Response:***

The review recommendation that restrictive provisions related to “drugs, substances and articles” in Part 14 of the Act be repealed is supported, as the objectives of these provisions, many of which are anachronistic, are more appropriately dealt with by specific legislation relating to therapeutic goods, agricultural and veterinary chemicals legislation, and drugs, poisons controlled substances legislation and more general fair trading and consumer protection legislation.

Although they were not specifically identified as imposing restrictions on competition, the other provisions in Part 14 of the Act are also suitable for

repeal on the basis that their subject matter has also been superceded by specific legislation relating to therapeutic goods, agricultural and veterinary chemicals legislation, drugs, poisons and more general fair trading and consumer protection legislation and they have not been used for many years.

### **Meat Supervision**

#### ***Review Recommendation:***

- That sections 305 and 309 of the Heath Act be repealed.

#### ***Government Response:***

The review recommendation that restrictive provisions related to “meat supervision” in Part 15 of the Act is supported, as the protection of health and safety standards in Victoria is adequately provided by existing food legislation.

The net public benefit of the regulation of the meat industry which aims to reduce the incidence of food- borne illnesses, is in the form of savings in direct socio-economic costs including losses incurred by society, either as economic costs through production losses resulting from sickness related absenteeism or costs to the affected individual and his/her family from illness-related expense. Industry benefits from increased opportunities for the sale of meat through the generation of higher levels of buyer confidence and reduced costs associated with independent audits, insurance, product recalls, volumes of spoiled goods through effective enforcement of existing meat standards and regulations reducing the risk of meat contamination. Meat workers benefit from reduced occupational exposure to zoonoses. Consumers benefit from the lower search costs be enhancing public confidence in the safety of meat and allowing consumers to source their requirements from more than one location without the need to test all products.

The amendment aims to lessen the regulatory burdens on business while at the same time providing for acceptable levels of consumer information and protection of health and safety standards by relying on existing food law where meat is sold or prepared for human consumption. All meat processing chains (production, processing and retail sectors (eg. butchers)) come within the ambit of the *Meat Industry Act* 1993, which is where the principal expertise regarding meat safety lies. The *Food Act* 1984 covers preparation of meat for sale, eg. restaurants, etc.

The amendment is supported by DNRE and VMA.

## **Registered Premises**

### ***Review Recommendation:***

- That the Health Act continue to require registration of premises from which the activities of hairdressing, beauty therapy and skin penetration procedures are conducted.

### ***Government Response:***

The review recommendation that the Act continue to register premises from which the businesses of hairdressing, beauty therapy and skin penetration are conducted is supported. The cost to business of the regulation is minimal whilst the benefits of registration enabling monitoring of these activities are significant to the broader community in the form of prevention of transmission of infectious disease and to businesses which benefit from the education they receive in this area.