

TASMANIA

INDUSTRIAL HEMP BILL 2015

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Act binds Crown
4. Interpretation
5. Delegation

PART 2 – LICENCES

6. Application for licence
7. Investigation of application
8. Suitability of applicant
9. Criminal history of applicant
10. Secretary must consult Minister
11. Determination of licence application
12. Industrial hemp licence
13. Special licence
14. Offence not to comply with licence
15. Duration of licence
16. Conditions of licence
17. Suspension or cancellation of licence
18. Renewal of licence

- 19. Application for review of decision
- 20. Review of decision

PART 3 – INSPECTORS

- 21. Inspectors
- 22. Powers of inspectors
- 23. Hemp to be tested
- 24. Search warrants
- 25. Interference with inspectors

PART 4 – OFFENCES

- 26. False or misleading statements
- 27. Offences
- 28. Provisions relating to requirements to furnish records, information or answer questions
- 29. Offences by corporations
- 30. Proceedings for offences
- 31. Infringement notices
- 32. Forfeiture and destruction of hemp and industrial hemp

PART 5 – MISCELLANEOUS

- 33. Approved fees
- 34. Protection from personal liability
- 35. Savings provisions for current licences
- 36. Regulations
- 37. Administration of Act
- 38. Principal Act
- 39. Section 4 amended (Relationship with other Acts)

INDUSTRIAL HEMP BILL 2015

*(Brought in by the Minister for Primary Industries and Water,
the Honourable Jeremy Page Rockliff)*

A BILL FOR

**An Act to authorise and regulate the cultivation of
industrial hemp and for related purposes**

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Industrial Hemp
Act 2015*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Act binds Crown

This Act binds the Crown in right of Tasmania
and, so far as the legislative power of Parliament
permits, in all its other capacities.

Industrial Hemp Act 2015
Act No. of

s. 4

Part 1 – Preliminary

4. Interpretation

In this Act, unless the contrary intention appears –

certified hemp seed means seed certified, in accordance with the regulations, as seed that will typically produce hemp plants with a concentration of THC in the leaves and flowering heads of not more than 0.5%;

corresponding law means a law of another Australian jurisdiction that is declared by the regulations to be a corresponding law for the purposes of this Act;

criminal history, in relation to a person, means any conviction of, and finding of guilt against, the person other than an annulled conviction, within the meaning of the *Annulled Convictions Act 2003*;

cultivate includes the following:

- (a) plant a seed, seedling or cutting;
- (b) graft, divide or transplant a plant;
- (c) nurture, tend, grow or harvest a plant;

drug-related offence means an indictable offence under the *Misuse of Drugs Act 2001*, the *Poisons Act 1971* or the *Criminal Code Act 1924* or under a corresponding law;

Industrial Hemp Act 2015
Act No. of

Part 1 – Preliminary

s. 4

function includes power, authority and duty;

hemp means any plant of the genus *Cannabis*;

industrial hemp means any plant of the genus *Cannabis* that –

- (a) has been grown from certified hemp seed; and
- (b) has a concentration of THC in the leaves and flowering heads of not more than 1% –

and includes the seed of any such plant and any product derived from any such plant;

industrial hemp licence means an industrial hemp licence issued in accordance with section 11;

inspector means a person appointed as an inspector under section 21;

licence means an industrial hemp licence, or a special licence, in force under this Act;

premises includes the following:

- (a) a building or structure;
- (b) land or a place (whether built on or not);
- (c) a conveyance;

Industrial Hemp Act 2015
Act No. of

s. 4

Part 1 – Preliminary

records includes plans, specifications, maps, reports, books and other documents whether in writing, in electronic form or otherwise;

regulations means regulations made under this Act;

Secretary means the Secretary of the Department;

sell means sell by wholesale or retail and includes the following:

- (a) agree to sell;
- (b) offer or expose for sale;
- (c) keep, or possess, for sale;
- (d) deal in, barter or exchange;
- (e) send, forward, deliver or receive for sale;
- (f) authorise, direct, cause, permit, or suffer any of the things in paragraph (a), (b), (c), (d) or (e) to be done;

special licence means a special licence issued in accordance with section 13;

supply includes the following:

- (a) deliver, sell, trade, give or distribute, whether for valuable consideration or not;

Industrial Hemp Act 2015
Act No. of

Part 1 – Preliminary

s. 5

- (b) offer or agree to supply;
- (c) cause or permit to supply;
- (d) hold in possession for the purpose of supply;
- (e) produce or pack for the purpose of supply;

THC means delta-9-tetrahydrocannabinol.

5. Delegation

- (1) The Minister or the Secretary may delegate any of his or her functions or powers under this Act, other than this power of delegation.
- (2) A delegation by the Minister or Secretary under this section –
 - (a) is to be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the Minister or Secretary, respectively, to act in any matter; and
 - (d) may be revoked by the Minister or Secretary, respectively.

Industrial Hemp Act 2015
Act No. of

s. 6

Part 2 – Licences

PART 2 – LICENCES

6. Application for licence

- (1) A person may apply to the Secretary for an industrial hemp licence or a special licence.
- (2) An application must –
 - (a) be in a form approved by the Secretary;
and
 - (b) be accompanied by the prescribed fee;
and
 - (c) contain such other information, and be accompanied by such other records, as the Secretary may require to determine the application.

7. Investigation of application

- (1) On receipt of an application for a licence, the Secretary may carry out such investigations and inquiries as the Secretary considers necessary to determine the application.
- (2) The Secretary may, by notice in writing, require an applicant to –
 - (a) provide such information, and produce such records, as are relevant to the investigation of the application and specified in the notice; and

Industrial Hemp Act 2015
Act No. of

Part 2 – Licences

s. 8

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- (b) provide the Secretary with such authorities and consents as the Secretary directs to enable the Secretary to obtain financial or other confidential information concerning the applicant from other persons.
 - (3) If a requirement made under this section is not complied with, the Secretary may refuse to determine the application.

8. Suitability of applicant

- (1) The Secretary must not grant a licence to an applicant unless satisfied that the applicant is a fit and proper person to be involved in the cultivation or supply of hemp or industrial hemp.
- (2) The Secretary must not grant a licence to a person if the person has been found guilty of a drug-related offence.
- (3) The Secretary may refuse to grant a licence to a person –
 - (a) if the person has been found guilty of an offence that, in the opinion of the Secretary, makes the person unsuitable to be involved in, the cultivation or supply of hemp or industrial hemp under a licence; or
 - (b) on any other grounds that the Secretary considers appropriate.

Industrial Hemp Act 2015
Act No. of

s. 9

Part 2 – Licences

- (4) The regulations may make further provision for the circumstances in which the Secretary may refuse, or is required to refuse, to grant a licence to a person.

9. Criminal history of applicant

- (1) The Secretary must take into account an applicant's criminal history.
- (2) Any costs incurred by the Secretary in investigating an applicant's criminal history under subsection (1) are to be paid by the applicant.

10. Secretary must consult Minister

Before determining an application for a special licence, the Secretary must consult with the Minister administering the *Poisons Act 1971*.

11. Determination of licence application

- (1) The Secretary is to determine an application for a licence –
 - (a) by granting the application and issuing an industrial hemp licence or a special licence to the applicant; or
 - (b) by refusing the application.
- (2) The Secretary is to give the applicant written notice of the determination of the application

Industrial Hemp Act 2015
Act No. of

Part 2 – Licences

s. 12

and, if the application is refused, written reasons for the refusal.

12. Industrial hemp licence

An industrial hemp licence may authorise a person to possess, cultivate or supply industrial hemp for any one or more of the following purposes specified in the licence:

- (a) commercial production;
- (b) use in any manufacturing process;
- (c) food production;
- (d) scientific research, instruction, analysis or study;
- (e) any other purpose approved by the Secretary.

13. Special licence

A special licence may authorise a person to possess, cultivate or supply hemp, that is not industrial hemp, for the purpose of scientific research, instruction, analysis or study.

14. Offence not to comply with licence

A person who is the holder of a licence –

- (a) must not possess, cultivate or supply hemp or industrial hemp otherwise than

Industrial Hemp Act 2015
Act No. of

s. 15

Part 2 – Licences

for the purpose for which the licence is granted; and

- (b) must comply with the terms and conditions of the licence.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

15. Duration of licence

A licence continues in force for a period of 5 years from the date on which it was granted or renewed, or such shorter period as may be specified in the licence.

16. Conditions of licence

- (1) A licence is subject to –
 - (a) such terms and conditions as are imposed by this Act or prescribed by the regulations; and
 - (b) such terms and conditions as may be imposed by the Secretary, at the time the licence is granted or renewed or at any later time.
- (2) A term or condition imposed by the Secretary after the licence is granted or renewed takes effect –

Industrial Hemp Act 2015
Act No. of

Part 2 – Licences

s. 17

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- (a) when written notice of the term or condition is given to the holder of the licence; or
 - (b) at such later date as may be specified in the notice.
- (3) The Secretary may at any time, by notice in writing to the holder of a licence, vary or revoke a term or condition imposed by the Secretary.

17. Suspension or cancellation of licence

- (1) The Secretary may, by written notice served on a licence holder, suspend or cancel an industrial hemp licence or a special licence –
 - (a) if satisfied that the person has breached a term or condition of the licence; or
 - (b) if satisfied that the person is no longer a fit and proper person to hold the licence; or
 - (c) for any other prescribed reason.
- (2) Before suspending or cancelling a licence, the Secretary is to –
 - (a) give to the holder of the licence one month's notice in writing to show cause why the licence should not be suspended or cancelled; and
 - (b) give consideration to any representations which the holder may make in that respect.

Industrial Hemp Act 2015
Act No. of

s. 18

Part 2 – Licences

- (3) The suspension or cancellation of a licence takes effect –
 - (a) on and from the day specified in the notice; and
 - (b) in the case of a suspension, for the period specified in the notice.

18. Renewal of licence

- (1) Not less than 30 days before the expiration of a licence, the holder of the licence may apply to the Secretary for the renewal of the licence.
- (2) The Secretary, at his or her discretion, may accept an application for the renewal of a licence lodged less than 30 days before the expiration of the licence.
- (3) An application for renewal must be –
 - (a) in a form approved by the Secretary; and
 - (b) accompanied by any prescribed fee and, in the case of an application accepted under subsection (2), any further prescribed late fee; and
 - (c) accompanied by any documents and information the Secretary requires.
- (4) Sections 7, 8, 11, 15, 16, 19 and 20 apply to an application for, and the grant and issue of, the renewal of a licence in the same manner as they apply to an application for, and the grant and issue of, a licence.

Industrial Hemp Act 2015
Act No. of

Part 2 – Licences

s. 19

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- (5) If an application for renewal of a licence is made under this section, the current licence continues in force until it is renewed or its renewal is refused.
 - (6) The renewal of a licence takes effect from the date on which the licence was due to expire.
 - (7) The refusal to renew a licence takes effect on the date of the notice of refusal.
 - (8) An applicant for renewal must disclose to the Secretary any offences committed within the period of the licence.

Penalty: Fine not exceeding 100 penalty units.

19. Application for review of decision

- (1) An applicant may apply to the Minister to review a decision of the Secretary.
- (2) The application –
 - (a) is to be made in writing within 30 days of the applicant receiving notice of the Secretary's decision; and
 - (b) is to specify the reasons for the application.
- (3) The Minister may extend the period referred to in subsection (2) for making an application.

Industrial Hemp Act 2015
Act No. of

s. 20

Part 2 – Licences

20. Review of decision

- (1) The Minister must, within 30 days after receiving an application under section 19 for a review of a decision, make a determination –
 - (a) substituting the decision with another decision; or
 - (b) confirming the decision; or
 - (c) revoking the decision.
- (2) The Minister must, by notice served on the applicant, notify the applicant of –
 - (a) the determination made; and
 - (b) the findings on material questions of fact; and
 - (c) the evidence or other material on which the findings are based; and
 - (d) the reasons for the determination.

Industrial Hemp Act 2015
Act No. of

Part 3 – Inspectors

s. 21

PART 3 – INSPECTORS

21. Inspectors

- (1) The Secretary may appoint persons to hold the office of inspector for the purposes of this Act.
- (2) An inspector may be appointed generally or for a specified purpose.
- (3) A person who is a State Service officer or State Service employee may hold the office of inspector in conjunction with his or her State Service employment.
- (4) An inspector is to exercise power subject to any conditions specified by the Secretary in the instrument of appointment.

22. Powers of inspectors

- (1) An inspector may –
 - (a) enter, inspect and examine any premises if the inspector believes on reasonable grounds that hemp is being kept, cultivated or supplied at those premises contrary to this Act; and
 - (b) inspect, take copies of or seize any records, documents or other matter kept at any premises or in any conveyance in relation to the possession, cultivation or supply of hemp; and

Industrial Hemp Act 2015
Act No. of

s. 23

Part 3 – Inspectors

- (c) test any hemp that is being kept, cultivated or supplied at any premises to determine the concentration of THC in the hemp; and
 - (d) do anything else necessary or desirable to ensure compliance with this Act; and
 - (e) exercise other prescribed powers.
- (2) An inspector exercising power under this section is not entitled to enter premises, or a part of premises, used for residential purposes, except –
 - (a) with the consent of the occupier or owner of the premises; or
 - (b) under the authority of a search warrant.

23. Hemp to be tested

- (1) An inspector may test any hemp cultivated under this Act to determine the concentration of THC in the hemp.
- (2) Testing under this section is to be carried out at the times and in the manner prescribed by the regulations.

24. Search warrants

- (1) An inspector may apply to a justice of the peace for the issue of a search warrant in respect of premises if –

Industrial Hemp Act 2015
Act No. of

Part 3 – Inspectors

s. 24

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- (a) it appears to the inspector that the premises, or any part of them, are used for residential purposes; and
 - (b) the inspector proposes to, and has reasonable grounds for proposing to, exercise a power under section 22 in respect of the premises; and
 - (c) the occupier of the premises has refused to allow the inspector entry to the premises for that purpose, or the inspector believes on reasonable grounds that the occupier is not likely to allow such entry.
- (2) If a justice of the peace is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for doing so, the justice may issue a search warrant authorising an inspector named in the warrant, and any assistants the inspector considers necessary, to enter the premises and exercise all or specified powers of an inspector under section 22 in respect of the premises.
- (3) In addition to any other requirement, a search warrant issued under this section must state –
- (a) the grounds for the issue of the warrant; and
 - (b) the premises to be searched; and
 - (c) any conditions to which the warrant is subject; and

Industrial Hemp Act 2015
Act No. of

s. 25

Part 3 – Inspectors

- (d) whether entry is authorised to be made at any time or during stated hours; and
 - (e) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) A police officer may accompany an inspector executing a search warrant issued under this section and may take all reasonable steps to assist in the exercise of the powers of the inspector under section 22.
- (5) Before executing a search warrant, the inspector named in the warrant or a person assisting the inspector must announce that he or she is authorised by the warrant to enter the premises and give any person at the premises an opportunity to allow entry to the premises.
- (6) The inspector or a person assisting the inspector need not comply with subsection (5) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure that the effective execution of the search warrant is not frustrated.
- (7) If an occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the inspector must give that person a copy of the warrant.

Industrial Hemp Act 2015
Act No. of

Part 3 – Inspectors

s. 25

25. Interference with inspectors

A person must not obstruct, hinder, threaten or attempt to influence an inspector in the exercise of a power under this Act.

Penalty: Fine not exceeding 100 penalty units.

Industrial Hemp Act 2015
Act No. of

s. 26

Part 4 – Offences

PART 4 – OFFENCES

26. False or misleading statements

A person must not, in giving any information under this Act –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

Penalty: Fine not exceeding 30 penalty units or imprisonment for a term not exceeding 2 years, or both.

27. Offences

- (1) A person must not, without lawful excuse, refuse or fail to comply with a requirement made of the person under this Act.

Penalty: Fine not exceeding 100 penalty units.

- (2) A person must not impersonate an inspector.

Penalty: Fine not exceeding 100 penalty units.

28. Provisions relating to requirements to furnish records, information or answer questions

- (1) A person is not guilty of an offence of failing to comply with a requirement under this Act to provide records or information or to answer a

Industrial Hemp Act 2015
Act No. of

Part 4 – Offences

s. 28

question unless the person was warned on that occasion that a failure to comply is an offence.

- (2) A person is not excused from a requirement under this Act to provide any records or information, or to answer a question, on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.
- (3) However, any information provided or answer given by a natural person in compliance with a requirement under this Act is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Act) if –
 - (a) the person objected at the time to doing so on the ground that it might incriminate the person; or
 - (b) the person was not warned on that occasion that the person may object to providing the information, or giving the answer, on the ground that it might incriminate the person.
- (4) Any record provided by a person in compliance with a requirement under this Act is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) Further information obtained as a result of a record or information provided or of an answer given in compliance with a requirement under this Act is not inadmissible on the ground that –

Industrial Hemp Act 2015
Act No. of

s. 29

Part 4 – Offences

- (a) the record or information had to be provided or the answer had to be given; or
 - (b) the record or information provided or answer given might incriminate the person.
- (6) This section extends to a requirement under this Act to state a person's name and address.

29. Offences by corporations

- (1) If a corporation contravenes any provision of this Act, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision, if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act.

30. Proceedings for offences

- (1) Proceedings for an offence under this Act may be dealt with summarily.

Industrial Hemp Act 2015
Act No. of

Part 4 – Offences

s. 31

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- (2) Any such proceedings must be commenced not later than 12 months from the time of the offence.

31. Infringement notices

- (1) In this section –

infringement offence means an offence against this Act that is prescribed by the regulations to be an infringement offence.

- (2) An inspector may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.
- (3) An infringement notice may not be served on an individual who has not attained the age of 16 years.
- (4) An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*.
- (5) The regulations –
- (a) may prescribe, for infringement offences, the penalties payable under infringement notices; and
 - (b) may prescribe different penalties for bodies corporate and individuals.

Industrial Hemp Act 2015
Act No. of

s. 32

Part 4 – Offences

32. Forfeiture and destruction of hemp and industrial hemp

- (1) If a person is found guilty by a court of an offence under this Act or the regulations, the court may order the forfeiture to the Crown of any hemp or industrial hemp that was, at the time of the commission of the offence, in the person's possession or apparently under the person's control.
- (2) If a licence is revoked, any hemp or industrial hemp in the possession of the former licensee or apparently under the former licensee's control is forfeited to the Crown.
- (3) Subject to subsection (4), any hemp or industrial hemp that is forfeited to the Crown under this section is to be destroyed in accordance with the directions of the Secretary.
- (4) The Secretary may, instead of directing the destruction of the hemp or industrial hemp, authorise a person to take possession of the hemp or industrial hemp, on behalf of the Crown or some other person, so that it can be cultivated or supplied for a purpose specified by the Secretary.
- (5) If any hemp or industrial hemp is destroyed under this section, the person referred to in subsection (1) or the former licensee, as the case requires, must pay to the Crown the reasonable costs of the destruction.

Industrial Hemp Act 2015
Act No. of

Part 5 – Miscellaneous

s. 33

PART 5 – MISCELLANEOUS

33. Approved fees

- (1) The regulations may prescribe fees for the purposes of this Act.
- (2) The Secretary may waive all or part of any fee payable under this Act in any circumstances the Secretary considers appropriate.

34. Protection from personal liability

- (1) In this section –

official means –

- (a) the Secretary; or
 - (b) a person acting under the direction of the Secretary; or
 - (c) a member of staff of the Department; or
 - (d) an inspector.
- (2) An official does not incur any personal liability in respect of any act done or omitted in good faith –
 - (a) in the performance or exercise, or the purported performance or exercise, of any function or power under this Act; or

Industrial Hemp Act 2015
Act No. of

s. 35

Part 5 – Miscellaneous

- (b) in the administration or execution, or
purported administration or execution, of
this Act.
- (3) A civil liability that would, but for this section,
attach to an official attaches to the Crown.

35. Savings provisions for current licences

- (1) Subject to subsection (2), a licence issued in
respect of the growing or cultivating of a
prohibited plant under Part V of the *Poisons Act*
1971, and in force immediately before the
commencement of this Act, continues in force
for 5 years from the date of issue of the licence
as if it were a licence issued under this Act.
- (2) The Secretary may vary the terms and conditions
of a licence referred to in subsection (1) as if it
were a licence issued under this Act.

36. Regulations

- (1) The Governor may make regulations for the
purposes of this Act.
- (2) The regulations may provide for fees and
charges payable in respect of any matter under
this Act.
- (3) The regulations may be made so as to apply
differently according to matters, limitations or
restrictions, whether as to time, circumstance or
otherwise, specified in the regulations.

Industrial Hemp Act 2015
Act No. of

Part 5 – Miscellaneous

s. 37

- (4) The regulations may authorise any matter to be from time to time determined, applied, approved, or regulated, by the Minister or the Secretary.

37. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Primary Industries and Water; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Primary Industries, Parks, Water and Environment.

38. Principal Act

In this Act, the *Misuse of Drugs Act 2001** is referred to as the Principal Act.

39. Section 4 amended (Relationship with other Acts)

Section 4 of the Principal Act is amended by inserting “or the *Industrial Hemp Act 2015*” after “*Poisons Act 1971*”.

*No. 94 of 2001