

TASMANIA

POISONS AMENDMENT (POPPY INDUSTRY REFORM) BILL 2016

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Sections 3A and 3B inserted
 - 3A. Matters to be taken into account in deciding whether a natural person is a fit and proper person
 - 3B. Matters to be taken into account in deciding whether a body corporate is a fit and proper person
6. Part 1A inserted
 - PART 1A – General Provisions Relating to Licences
 6. Applications for licences or renewal of licences
 7. Investigation of application
 8. Suitability of applicant
 9. Conditions and restrictions of licence
 10. Suspension or cancellation of licence
 11. Immediate suspension of licence
 12. Responsible officers
 13. Responsibilities of responsible officer
 - 13A. Obstruction of responsible officer
7. Section 16 amended (Licences)
8. Sections 16A, 16B, 16C and 17 repealed
9. Section 18 amended (Offences)
10. Section 27 amended (Licences to sell certain substances)

11. Section 46 amended (Manufacture of narcotic substances)
12. Section 47 amended (Sale and supply of narcotic substances, prohibited plants, and prohibited substances)
13. Section 49 amended (Prohibition of possession of prohibited plants except under licence)
14. Section 50 amended (Exceptions as to scientific institutions)
15. Section 52 amended (Growing of certain plants prohibited except under licence)
16. Section 53 substituted
 - Division 3 – Poppy research licence*
 - 53. Application for licence
 - 54. Poppy research licence
 - 54A. Duration of licence
 - 54B. Renewal of licence
 - Division 3A – Poppy grower’s licence*
 - 54C. Application for licence
 - 54D. Poppy grower’s licence
 - 54E. Conditions of licence
 - 54F. Duration of licence
 - 54G. Renewal of licence
 - 54H. Application for review of decision
 - 54I. Review of decision
17. Section 56 amended (Offences against this Part)
18. Section 59 amended (Regulations relating to narcotics and narcotic substances)
19. Part VB, Division 1: Heading inserted
 - Division 1 – Poppy Advisory and Control Board*
20. Section 59G amended (Interpretation)
21. Section 59H amended (Poppy Advisory and Control Board)
22. Sections 59N, 59O, 59P and 59Q inserted
 - 59N. Ministerial statement of expectation
 - 59O. Contents of ministerial statement of expectation
 - 59P. Statement of intent
 - 59Q. Conduct to be consistent with ministerial statement of expectation and statement of intent
23. Part VB, Division 2 inserted
 - Division 2 – General*
 - 59R. Guidelines
 - 59S. Indemnity of Board

24. Part VI, Division 1A inserted
 - Division 1A – Improvement notices*
 - 69AA. Improvement notices
 - 69AB. Compliance with improvement notice
 - 69AC. Contravention of improvement notice
 - 69AD. Review of improvement notice
25. Section 83C inserted
 - 83C. Offence to make false statement, &c.
26. Section 84 amended (Forfeiture of substances, &c., in certain cases)
27. Sections 84A and 84B inserted
 - 84A. Destruction of scheduled substances and prohibited plants
 - 84B. Directions to former holder of licence
28. Section 86B inserted
 - 86B. Savings provisions for current licences
29. Section 90 amended (Powers of inspectors with respect to licensed premises, &c.)
30. Section 92 amended (Revocation or suspension of rights)
31. Section 92B inserted
 - 92B. Infringement notices
32. Repeal of Act

POISONS AMENDMENT (POPPY INDUSTRY REFORM) BILL 2016

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
13 September 2016

*(Brought in by the Minister for Health, the Honourable
Michael Darrel Joseph Ferguson)*

A BILL FOR

An Act to amend the *Poisons Act 1971*

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:

1. Short title

This Act may be cited as the *Poisons Amendment (Poppy Industry Reform) Act 2016*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 3

3. Principal Act

In this Act, the *Poisons Act 1971** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definitions after the definition of *aircraft*:

alkaloid poppy means a plant of the species *Papaver somniferum* or *Papaver bracteatum*;

alkaloid poppy material means a part or product of an alkaloid poppy;

- (b) by inserting the following definition after the definition of *automatic machine*:

Board means the Poppy Advisory and Control Board established under section 59H(1);

- (c) by inserting the following definition after the definition of *eligible midwife*:

grow includes the following:

- (a) plant a seed, seedling or cutting;

*No. 81 of 1971

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 4

- (b) graft, divide or transplant a plant;
- (c) nurture, tend, grow, cultivate or harvest a plant;
- (d) by inserting the following definition after the definition of *hazardous poison*:
 - improvement notice*** means an improvement notice issued and served under section 69AA;
- (e) by inserting the following definition after the definition of *label*:
 - licence*** means a licence that is granted under this Act and is in force;
- (f) by omitting the definition of *opium poppy*;
- (g) by inserting the following definitions after the definition of *Poisons List*:
 - poppy grower's licence*** means a poppy grower's licence that is granted under section 54D and is in force;
 - poppy research licence*** means a poppy research licence that is granted under section 54 and is in force;
- (h) by inserting the following definitions after the definition of *potent substance*:

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 4

premises includes an area of land, a farm, and any part of premises;

primary industries Minister means the Minister administering the *Primary Industry Activities Protection Act 1995*;

(i) by omitting paragraph (a) from the definition of *prohibited plant* and substituting the following paragraph:

(a) any alkaloid poppy;

(j) by inserting the following definitions after the definition of *the regulations*:

responsible licensing authority, in relation to a licence or authorisation, means –

(a) the Board, if an application for the grant or renewal of the licence may be made to the Board or the licence has been granted or renewed by the Board; or

(b) the Minister, if an application for the grant or renewal of the licence or authorisation may be made to the Minister or the licence or authorisation has been

granted or renewed by the
Minister;

responsible officer, in relation to a
licence, means the person who is
appointed as the responsible
officer in relation to the licence
under section 12;

5. Sections 3A and 3B inserted

After section 3 of the Principal Act, the
following sections are inserted in Part I:

**3A. Matters to be taken into account in deciding
whether a natural person is a fit and proper
person**

- (1) Without limiting the matters to which the
responsible licensing authority may have
regard in deciding whether a natural
person is a fit and proper person to hold a
licence, the responsible licensing
authority may have regard to the
following:
 - (a) any conviction of the person for
an indictable offence;
 - (b) any civil penalty (however
described) imposed upon the
person under a law of the
Commonwealth, a State or a
Territory;

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 5

- (c) any revocation or suspension of a licence or permit (however described) held by the person under a law of the Commonwealth, a State, a Territory or another country, being a law relating to the prohibition or regulation of drugs;
- (d) the connections and associations that the person has with other persons (including but not limited to the person's relatives);
- (e) the person's previous business experience;
- (f) the capacity of the person to comply with conditions of the licence;
- (g) whether the person has a sound and stable financial background or is in financial circumstances that may significantly limit the person's capacity to comply with his or her obligations under a licence;
- (h) whether the person is of good repute, having regard to matters going to their character, honesty and professional and personal integrity;
- (i) the person's history of compliance with this Act.

- (2) Subsection (1)(d), (e), (g) and (h) does not apply in relation to a poppy research licence or a poppy grower's licence.

3B. Matters to be taken into account in deciding whether a body corporate is a fit and proper person

- (1) Without limiting the matters to which the responsible licensing authority may have regard in deciding whether a body corporate is a fit and proper person to hold a licence, the responsible licensing authority may have regard to the following:
- (a) any conviction of the body corporate for an offence against a law of the Commonwealth, a State or a Territory;
 - (b) any civil penalty (however described) imposed upon the body corporate under a law of the Commonwealth, a State or a Territory;
 - (c) if there is such a conviction or imposition of a civil penalty upon the body corporate –
 - (i) whether the offence concerned was committed, or the conduct to which the civil penalty relates occurred, at a time when any person who is

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 5

presently a director or officer of the body corporate was such a director or officer; and

- (ii) whether the offence concerned was committed, or the conduct to which the civil penalty relates occurred, at a time when any shareholder of the body corporate who is presently in a position to influence the management of the body corporate was such a shareholder;
- (d) any revocation or suspension of a licence or permit (however described) held by the body corporate under a law of the Commonwealth, a State, a Territory or another country, being a law relating to the prohibition or regulation of drugs;
- (e) whether a person who is, or is to be, the responsible officer in relation to the licence is a fit and proper person;
- (f) whether –
 - (i) each director of the corporation is a fit and proper person; or

- (ii) more than 10% of the corporation is owned by a person who is not a fit and proper person;
- (g) the connections and associations that the body corporate, and its directors and officers, have with other persons (including but not limited to relatives of such directors and officers);
- (h) the previous business experience of the directors and officers of the body corporate, and of the shareholders of the body corporate who are presently in a position to influence the management of the body corporate;
- (i) whether the body corporate has a sound and stable financial background or is in financial circumstances that may significantly limit the capacity of the body corporate to comply with its obligations under a licence;
- (j) the capacity of the body corporate to meet the conditions of the licence;
- (k) whether the directors and officers of the body corporate are of good

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 6

repute, having regard to matters going to their character, honesty and professional and personal integrity;

- (1) the body corporate's history of compliance with this Act.
- (2) Subsection (1)(g), (h), (i) and (k) does not apply in relation to a poppy research licence or a poppy grower's licence.

6. Part 1A inserted

After section 5 of the Principal Act, the following Part is inserted:

PART 1A – GENERAL PROVISIONS RELATING TO LICENCES

6. Applications for licences or renewal of licences

- (1) An application under this Act for a licence, or for the renewal of a licence, must –
 - (a) except in the case of a licence referred to in section 16, be in a form approved by the responsible licensing authority; and
 - (b) except in the case of a poppy research licence or a poppy grower's licence, be accompanied by the prescribed fee, if any; and

- (c) contain the information, and be accompanied by the records, that the responsible licensing authority requires to determine the application.
- (2) An application under this Act for the renewal of a licence must be lodged not less than 30 days before the expiration of the licence.
- (3) Despite subsection (2), the responsible licensing authority, in its discretion, may accept an application for the renewal of a licence lodged less than 30 days before the expiration of the licence.
- (4) If an application for renewal of a licence is lodged, or is accepted, under this section, the licence continues in force until the licence is renewed or the responsible licensing authority refuses to renew the licence.
- (5) The renewal of a licence takes effect, or is taken to have taken effect, from the date on which the licence was due to expire.

7. Investigation of application

- (1) On receipt of an application for a licence or the renewal of a licence, the responsible licensing authority may carry out the investigations and inquiries that the responsible licensing authority

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 6

considers necessary to determine the application.

- (2) The responsible licensing authority may, by notice in writing to a person who has applied for a licence, or for the renewal of a licence, require the person to –
 - (a) provide the information, and produce the records, that are relevant to the investigation of the application and are specified in the notice; and
 - (b) provide the responsible licensing authority with the authorities and consents that the responsible licensing authority requires in order to obtain from other persons financial or other confidential information concerning the applicant.
- (3) Despite subsection (2), a responsible licensing authority may not require a person who has applied for a poppy research licence or a poppy grower's licence, or for the renewal of such a licence, to –
 - (a) provide information, or produce records, that relate to financial matters or the connections or associations that the person has with other persons; or

- (b) provide an authority or consent so as to enable the authority to obtain, from other persons, financial information concerning the person or information as to the connections or associations that the person has with other persons.
- (4) If a requirement made under this section is not complied with, the responsible licensing authority may refuse to determine the application.

8. Suitability of applicant

- (1) The responsible licensing authority must not grant a licence to a person, or renew a licence granted to a person, unless satisfied that the person is a fit and proper person to hold the licence.
- (2) The responsible licensing authority must not grant a licence to a person, or renew a licence granted to a person, if the responsible licensing authority must, under the regulations, refuse to grant or to renew, respectively, the licence.
- (3) The responsible licensing authority may refuse to grant to a person a licence, or to renew a licence granted to a person, if –
 - (a) the person has been found guilty of an offence that, in the opinion of the responsible licensing

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 6

authority, makes the person unsuitable to be involved in any activity authorised by, or associated with, the licence; or

- (b) the responsible licensing authority may, under the regulations, refuse to grant or to renew, respectively, the licence.
- (4) The regulations may make further provision for the circumstances in which the responsible licensing authority may refuse, or is required to refuse, to grant a licence to a person or to renew, or to refuse to renew, a licence granted to a person.
- (5) A relevant licensing authority is to give to the applicant for a licence or the renewal of a licence, written notice of the decision of the authority to grant or renew, or to refuse to grant or renew, the licence and, if the authority refuses to grant or to renew the licence, written reasons for the refusal.

9. Conditions and restrictions of licence

- (1) A responsible licensing authority may grant or renew a licence on the conditions and restrictions it thinks fit and specifies in the licence.
- (2) A licence granted or renewed under this Act is subject to –

- (a) the conditions and restrictions that are imposed on the licence by this Act or the regulations; and
 - (b) the conditions and restrictions that are specified in the licence under subsection (1) at the time it is granted or renewed, or as varied at any other time under this section.
- (3) If the responsible licensing authority, either on receipt of an application for the renewal of a licence granted under this section or at any time while the licence is in force, considers it necessary or desirable in the public interest to do so, the authority may vary the conditions or restrictions to which the licence is subject under subsection (2)(b) –
 - (a) by amending the existing conditions or restrictions; or
 - (b) by substituting new conditions or restrictions for existing conditions or restrictions; or
 - (c) by imposing additional conditions or restrictions; or
 - (d) by amending a list or schedule of substances which forms part of those conditions or restrictions.
- (4) If the responsible licensing authority varies the conditions or restrictions of a

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 6

licence as provided by subsection (3), the authority is to do one of the following:

- (a) cause the licence to be appropriately amended to record the variation of the conditions or restrictions and to be returned to its holder;
 - (b) issue a new licence in place of the existing licence, specifying in the new licence the conditions or restrictions of the licence as so varied;
 - (c) serve on the holder of the licence a notice in writing specifying the variation of the conditions or restrictions.
- (5) A variation of the conditions or restrictions of a licence does not have effect until the licence is returned to its holder, the new licence is issued to its holder, or the notice specifying the variation of the conditions or restrictions is served on the holder of the licence, as the case may be.

10. Suspension or cancellation of licence

- (1) The responsible licensing authority may, by written notice served on the holder of a licence granted under this Act, suspend or cancel the licence –

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 6

- (a) if satisfied that –
- (i) the licence holder has breached a condition or restriction of the licence; or
 - (ii) the licence holder is no longer a fit and proper person to hold the licence; or
 - (iii) except in the case of a poppy research licence or a poppy grower's licence – the licence holder has failed to pay a fee in relation to the licence by the date on which the licence holder is required under this Act to pay the fee; or
 - (iv) the licence holder has become bankrupt, applied for relief of bankrupt or insolvent debtors, compounded with creditors or made an assignment of his or her remuneration for their benefit; or
 - (v) if the licence holder is a corporation – a receiver or manager has been

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 6

- appointed or the licence holder is being wound up or is under official management; or
- (vi) the licence holder has ceased to carry on business; or
 - (vii) the revocation or suspension is required because there is an imminent risk of harm to the public if the licence continues in force; or
 - (viii) the premises used for the purposes of the licence are unfit for use; or
 - (ix) the licence was obtained on the basis of incorrect or misleading information; or
- (b) if the licence holder requests the suspension or cancellation of the licence; or
 - (c) if the licence is a licence granted under section 27 – because, since the licence was granted or last renewed, a pharmaceutical chemist has commenced business at a pharmacy which is situated within 10 kilometres, by the nearest practicable route, of the

place where the shop of the holder of the licence is situated;
or

- (d) for any other prescribed reason.
- (2) Before suspending or cancelling, under this section, a licence, the responsible licensing authority is to –
- (a) give to the licence holder notice in writing specifying that the licence holder may, within 30 days from the date of the notice, make representations to the authority as to why the licence should not be suspended or cancelled; and
 - (b) give consideration to any representations that the licence holder makes under paragraph (a).
- (3) The suspension or cancellation under this section of a licence takes effect –
- (a) on and from the day specified in the notice under subsection (1); and
 - (b) in the case of a suspension, until the suspension is revoked, if at all.

11. Immediate suspension of licence

- (1) The responsible licensing authority may, by verbal or written notice to the licence holder, immediately suspend a licence if the responsible licensing authority is satisfied that –
 - (a) there is a high risk of a substance or plant to which the licence relates being diverted for illicit purposes; or
 - (b) if the licence continues in force there is likely to be an imminent risk of harm to the public.
- (2) If verbal notice of the suspension of a licence is given to a licence holder, the responsible licensing authority must, as soon as practicable, confirm the suspension by written notice to the licence holder.

12. Responsible officers

- (1) A holder of a licence who is not a natural person is to appoint a natural person as responsible officer in relation to the licence.
- (2) If the holder of a licence fails to appoint under subsection (1) a responsible officer in relation to the licence, the person responsible for the direction and management of the business of the holder

of the licence is taken to have been appointed as the responsible officer in relation to the licence.

- (3) A holder of a licence is to ensure that a responsible officer appointed under subsection (1) has sufficient authority to perform the duties of a responsible officer under this Act.
- (4) A holder of a licence must –
- (a) notify in writing a person whom the officer has appointed to be the responsible officer that the person has been so appointed; and
 - (b) except in the case of a poppy research licence or a poppy grower's licence, notify the Secretary in writing of the appointment of the responsible officer; and
 - (c) except in the case of a poppy research licence or a poppy grower's licence, give notice of that appointment as far as reasonably practicable to all persons employed or engaged for the purposes of the licence.

Penalty: Fine not exceeding 20 penalty units.

13. Responsibilities of responsible officer

(1) In this section –

responsibilities includes the duties imposed on the holder of a licence under this Act and any conditions or restrictions specified in the licence.

(2) A responsible officer must perform the responsibilities of the holder of the licence.

Penalty: Fine not exceeding 100 penalty units.

(3) A responsible officer is not to be taken to have failed to perform any responsibility of the holder of the licence, if –

(a) it was not reasonably practicable for the responsible officer to perform that responsibility; or

(b) the failure to perform the responsibility was due to causes over which the responsible officer had no control and against the happening of which it was not reasonably practicable for the responsible officer to make provision; or

(c) the responsible officer exercised due diligence to prevent the

failure to perform the responsibility; or

- (d) the responsible officer was unaware that he or she had been appointed, or was taken to have been appointed, as the responsible officer.
- (4) Nothing in subsection (2) relieves the holder of the licence of the requirement to perform the holder's responsibilities under this Act.
- (5) A responsible officer may be proceeded against and convicted of having failed to perform the responsibilities of the holder of the licence under this Act whether or not the employer of the responsible officer has been proceeded against or has been convicted of having failed to perform the responsibility.

13A. Obstruction of responsible officer

A person having authority or control over the responsible officer must not exercise that authority or control in any way to obstruct the responsible officer in the exercise of his or her responsibilities under this Act.

Penalty: In the case of –

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 7

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) a natural person, a fine not exceeding 100 penalty units.

7. Section 16 amended (Licences)

Section 16 of the Principal Act is amended as follows:

- (a) by inserting the following subsection before subsection (1):

(1AA) A person may apply to the Minister for –

- (a) the grant of a licence under subsection (1); or
- (b) the renewal of a licence granted to the person under subsection (1).

- (b) by omitting from subsection (1) “and on payment by that person of the prescribed fee, grant” and substituting “under subsection (1AA), grant, or refuse to grant,”;
- (c) by omitting from subsection (1)(b) “chemist.” and substituting “chemist –”;
- (d) by inserting the following after paragraph (b) in subsection (1):

“or renew, or refuse to renew,
such a licence granted to the
person.”

- (e) by omitting paragraph (b) from subsection (2);
- (f) by omitting paragraph (b) from subsection (3);
- (g) by omitting subsection (4);
- (h) by omitting from subsection (6) “and on payment for each renewal of the fee prescribed in relation to the renewal thereof”;
- (i) by omitting subsections (7), (8) and (9).

8. Sections 16A, 16B, 16C and 17 repealed

Sections 16A, 16B, 16C and 17 of the Principal Act are repealed.

9. Section 18 amended (Offences)

Section 18 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “20 penalty units” and substituting “100 penalty units and, in the case of a body corporate, a fine not exceeding 500 penalty units”;

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 10

- (b) by omitting from subsection (2) “20 penalty units” and substituting “100 penalty units and, in the case of a body corporate, a fine not exceeding 500 penalty units”;
- (c) by inserting the following subsection after subsection (2):
 - (2A) The holder of a licence granted under section 16 must not breach a condition or restriction of that licence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

10. Section 27 amended (Licences to sell certain substances)

Section 27 of the Principal Act is amended as follows:

- (a) by inserting the following subsection before subsection (1):
 - (1AA) A person may apply to the Minister for –

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 10

- (a) the grant of a licence under subsection (1); or
 - (b) the renewal of a licence granted to the person under subsection (1).
- (b) by omitting from subsection (1) “grant” and substituting “, on the application of the person under subsection (1AA), grant or refuse to grant,”;
- (c) by omitting from subsection (1)(b) “applies.” and substituting “applies –”;
- (d) by inserting the following after paragraph (b) in subsection (1):
- “or renew, or refuse to renew, such a licence granted to the person.”
- (e) by omitting subsection (2);
- (f) by omitting paragraphs (a) and (b) from subsection (3);
- (g) by omitting from subsection (3)(c) “this section” and substituting “Part 1A”;
- (h) by omitting from subsection (3)(c) “, on payment of the prescribed fee for each renewal,”;
- (i) by omitting subsections (3A), (3B), (3C) and (4);

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 11

- (j) by omitting from subsection (6) “Without affecting the power of the Minister under subsection (4) to revoke a licence under this section, if” and substituting “If”.

11. Section 46 amended (Manufacture of narcotic substances)

Section 46 of the Principal Act is amended by omitting “Part” and substituting “Act”.

12. Section 47 amended (Sale and supply of narcotic substances, prohibited plants, and prohibited substances)

Section 47(4) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “licence under section 52” and substituting “poppy research licence or a poppy grower’s licence”;
- (b) by inserting the following paragraph after paragraph (a):
 - (ba) the sale or supply of the seed of an alkaloid poppy; or

13. Section 49 amended (Prohibition of possession of prohibited plants except under licence)

Section 49 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(d) “section 52” and substituting “this Part”;
- (b) by omitting from subsection (1)(d) “him to grow or cultivate” and substituting “him or her to grow”;
- (c) by omitting from subsection (1)(e) “or cultivated”;
- (d) by omitting from subsection (3) “opium poppy” and substituting “alkaloid poppy”.

14. Section 50 amended (Exceptions as to scientific institutions)

Section 50 of the Principal Act is amended by inserting “or research” after “scientific”.

15. Section 52 amended (Growing of certain plants prohibited except under licence)

Section 52(1) of the Principal Act is amended as follows:

- (a) by omitting “the Minister” and substituting “a responsible licensing authority”;
- (b) by omitting “or cultivate”.

16. Section 53 substituted

Section 53 of the Principal Act is repealed and the following Divisions are substituted:

Division 3 – Poppy research licence

53. Application for licence

A person who wishes to grow alkaloid poppies for scientific or research purposes may apply to the Minister for a poppy research licence.

54. Poppy research licence

- (1) If the Minister receives from a person an application under section 53, the Minister must –
 - (a) grant to the person a poppy research licence; or
 - (b) refuse to grant to the person a poppy research licence.
- (2) A poppy research licence authorises the holder of the licence to possess and grow alkaloid poppies for scientific or research purposes in accordance with this Act and the conditions and restrictions specified in the licence.

54A. Duration of licence

Subject to this Act, a poppy research licence continues in force for 5 years from the date on which it was granted or renewed or a shorter period, if any, specified in the licence or renewal.

54B. Renewal of licence

- (1) The holder of a poppy research licence may apply to the Minister for the renewal of the licence.
- (2) The Minister may renew, or refuse to renew, a licence to which an application under subsection (1) relates.

Division 3A – Poppy grower’s licence

54C. Application for licence

A person who wishes to grow alkaloid poppies for commercial purposes may apply to the Board for a poppy grower’s licence.

54D. Poppy grower’s licence

- (1) If the Board receives from a person an application under section 54C, the Board must –
 - (a) grant to the person a poppy grower’s licence; or
 - (b) refuse to grant to the person a poppy grower’s licence.
- (2) A poppy grower’s licence authorises the holder of the licence to possess, grow, sell and supply alkaloid poppies in accordance with this Act and the

conditions and restrictions specified in the licence.

54E. Conditions of licence

It is a condition of a poppy grower's licence that the holder of the licence must, before cultivating alkaloid poppies under the licence –

- (a) ensure that there is a contract, in force between the holder of the licence and a manufacturing chemist, that requires alkaloid poppies to be grown under the licence; and
- (b) provide to the Board a copy of the contract.

54F. Duration of licence

Subject to this Act, a poppy grower's licence continues in force for 5 years from the date on which it was granted or renewed or a shorter period, if any, specified in the licence or renewal.

54G. Renewal of licence

- (1) The holder of a poppy grower's licence may apply to the Board for the renewal of the licence.

- (2) The Board may renew, or refuse to renew, a licence to which an application under subsection (1) relates.

54H. Application for review of decision

- (1) An applicant for a poppy grower's licence who is aggrieved by a decision of the Board to refuse to grant the applicant a poppy grower's licence may apply to the primary industries Minister to review the decision.
- (2) The holder of a poppy grower's licence who is aggrieved by a decision of the Board –
- (a) to specify under section 9 in a poppy grower's licence conditions or restrictions or to vary under section 9 the conditions or restrictions specified in the licence; or
 - (b) to suspend or revoke under section 10 or 11 a poppy grower's licence –
- may apply to the primary industries Minister to review the decision.
- (3) An application –
- (a) is to be made in writing within 30 days of the applicant receiving

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 16

notice of the Board's decision;
and

(b) is to specify the reasons for the application.

(4) The primary industries Minister may extend the period referred to in subsection (3)(a) for making an application.

54I. Review of decision

(1) The primary industries Minister must, within 30 days after receiving an application under section 54H in relation to a decision of the Board, review the decision and make a determination in relation to the decision.

(2) The primary industries Minister may, in a determination under subsection (1) in relation to a decision of the Board –

(a) confirm the decision; or

(b) declare that the decision was not in accordance with the requirements of this Act.

(3) If the primary industries Minister makes a determination in accordance with subsection (2)(b) in relation to a decision, the primary industries Minister must, in the determination, require the Board to make, in accordance with –

- (a) the provisions of this Act; and
- (b) any directions, as to compliance with those provisions, that are specified in the determination –

a further decision in substitution for the decision to which the determination relates.

- (4) The primary industries Minister must, by notice served on the applicant and the Board, notify the applicant of the determination and the reasons for the determination.

- (5) If the primary industries Minister makes a determination under subsection (2)(b) in relation to a decision (the *first decision*), the Board must, in accordance with –

- (a) the provisions of this Act; and
- (b) any directions, as to compliance with those provisions, that are specified in the determination –

make another decision (a *further decision*) in substitution for the first decision.

- (6) The first decision of the Board ceases to have effect when the Board makes a further decision in relation to the matter in accordance with subsection (5).

17. Section 56 amended (Offences against this Part)

Section 56(1) of the Principal Act is amended by omitting paragraph (c).

18. Section 59 amended (Regulations relating to narcotics and narcotic substances)

Section 59(1)(k) of the Principal Act is amended by inserting “(other than a poppy research licence or a poppy grower’s licence)” after “licence”.

19. Part VB, Division 1: Heading inserted

Part VB of the Principal Act is amended by inserting the following heading before section 59G:

Division 1 – Poppy Advisory and Control Board

20. Section 59G amended (Interpretation)

Section 59G of the Principal Act is amended as follows:

- (a) by omitting the definitions of *alkaloid poppy*, *alkaloid poppy material* and *Board*;
- (b) by omitting the definition of *cultivate*.

21. Section 59H amended (Poppy Advisory and Control Board)

Section 59H of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from subsection (2);
- (b) by omitting paragraph (e) from subsection (2) and substituting the following paragraphs:
 - (e) the Secretary of the responsible Department in relation to the *Primary Industry Activities Protection Act 1995* or a person nominated by that Secretary;
 - (f) 2 persons, appointed by the Minister, who –
 - (i) have qualifications, experience or skills relevant to the poppy growing industry or the poppy processing industry; and
 - (ii) are not engaged in poppy growing or the poppy processing industry –

and one of whom is to be appointed by the Minister to be the chairperson.

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 22

(c) by inserting the following subsections after subsection (4):

(4A) The Secretary of the responsible Commonwealth department in relation to the grant of licences to manufacture drugs under Part II of the *Narcotic Drugs Act 1967* of the Commonwealth may attend, or send a representative to attend, every meeting of the Board as an observer.

(4B) A person who attends a meeting of the Board as an observer under subsection (4A) is entitled to view and take copies of any documentation provided, whether at a meeting or otherwise, to members of the Board.

22. Sections 59N, 59O, 59P and 59Q inserted

After section 59M of the Principal Act, the following sections are inserted in Division 1:

59N. Ministerial statement of expectation

- (1) The Minister may provide to the Board a ministerial statement of expectation.
- (2) The Minister may at any time, at his or her discretion or on receipt of an application by the Board –

- (a) amend the ministerial statement of expectation; or
 - (b) revoke the ministerial statement of expectation and substitute another ministerial statement of expectation –

by providing the amendment or substituted ministerial statement of expectation to the Board.
- (3) In preparing the ministerial statement of expectation, the Minister must consult with the Board.
 - (4) The ministerial statement of expectation and any amendment to the ministerial statement of expectation is to be in writing and signed by the Minister.
 - (5) The ministerial statement of expectation or an amendment to the ministerial statement of expectation takes effect on a day specified in it, being a day not earlier than the day on which it is provided to the Board under subsection (1).
 - (6) The Board is to make the ministerial statement of expectation provided to it under subsection (1) available to the public in the manner determined by the Board.

59O. Contents of ministerial statement of expectation

- (1) The ministerial statement of expectation is to specify the objectives of the Minister on any matter relating to the functions of the Board.
- (2) The ministerial statement of expectation –
 - (a) may not prevent the Board from performing a function it is required to perform or otherwise complying with any Act; and
 - (b) may not extend the functions and powers of the Board.

59P. Statement of intent

- (1) Within 3 months after receiving the ministerial statement of expectation or any amendment to the ministerial statement of expectation, the Board must provide to the Minister a statement of intent.
- (2) A statement of intent is to –
 - (a) specify the objectives of the Board for the period covered by the statement of intent; and
 - (b) address matters raised in the ministerial statement of expectation; and

- (c) state the nature and scope of the activities to be carried out by the Board during the period covered by the statement of intent; and
 - (d) specify the performance criteria and other measures by which the performance of the Board is to be assessed against the objectives of the Board for the period covered by the statement of intent.
- (3) The statement of intent may contain any other matter the Board considers appropriate.
- (4) The Board may at any time at its own discretion or on the request of the Minister –
 - (a) amend the statement of intent; or
 - (b) revoke the statement of intent and substitute another statement of intent.
- (5) The statement of intent and any amendment to the statement of intent are to be in writing and signed by the chairperson of the Board.
- (6) The statement of intent or any amendment to the statement of intent takes effect on the day on which it is approved by the Minister or on a later day specified by the Minister.

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 23

- (7) The Board is to make a statement of intent approved by the Minister under subsection (6) available to the public in the manner determined by the Board.

59Q. Conduct to be consistent with ministerial statement of expectation and statement of intent

The Board is to conduct its business and affairs in a manner that is consistent with the ministerial statement of expectation and the statement of intent.

23. Part VB, Division 2 inserted

After section 59M of the Principal Act, the following Division is inserted in Part VB:

Division 2 – General

59R. Guidelines

- (1) The Board may issue guidelines for the education and guidance of holders of a poppy research licence or poppy grower's licence.
- (2) The guidelines are not –
- (a) a statutory rule for the purposes of the *Rules Publication Act 1953*; or

- (b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.
- (3) The *Acts Interpretation Act 1931* applies to the interpretation of the guidelines as if the guidelines were by-laws.

59S. Indemnity of Board

The Board or a member of it does not incur any personal liability in respect of any act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of any function or power under this Act.

24. Part VI, Division 1A inserted

After section 69 of the Principal Act, the following Division is inserted in Part VI:

Division 1A – Improvement notices

69AA. Improvement notices

- (1) If the responsible licensing authority believes on reasonable grounds that a person who is the holder of a licence or authorisation has contravened or is contravening a provision of this Act or the regulations, the responsible licensing authority, or an inspector authorised by the responsible licensing authority to

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 24

issue such notices, may issue and serve an improvement notice and serve it on the person.

- (2) An improvement notice may –
 - (a) require specified action to be taken within 7 days from the service of the notice (or a lesser period specified in the notice) to rectify the contravention to which the notice relates; or
 - (b) require specified action to be taken within 7 days from the service of the notice (or a lesser period specified in the notice) to ensure that the provision of this Act or regulations to which the notice relates is complied with.
- (3) An improvement notice must –
 - (a) be in writing; and
 - (b) specify the grounds on which it is issued; and
 - (c) specify the requirements of the notice, including the action which must be taken to comply with the notice.

69AB. Compliance with improvement notice

- (1) If a requirement of an improvement notice is complied with, the responsible

licensing authority or inspector that issued and served the notice on a person is to notate on a copy of the notice the date on or by which the notice is complied with.

- (2) The responsible licensing authority or inspector that issued and served under section 69AA(1) an improvement notice on a person must, if requested to do so by the person, give to the person a copy of the notice containing the notation referred to in subsection (1).

69AC. Contravention of improvement notice

A person must not, without reasonable excuse, contravene or fail to comply with an improvement notice served on the person under section 69AA(1).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

69AD. Review of improvement notice

A person aggrieved by a decision in relation to an improvement notice may apply to the Magistrates Court

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 25

(Administrative Appeals Division) for a review of the decision.

25. Section 83C inserted

After section 83B of the Principal Act, the following section is inserted in Division 2:

83C. Offence to make false statement, &c.

A person must not, for the purpose of obtaining the issue, grant or renewal of a licence or authorisation, make a declaration or statement that is false in any particular, or knowingly utter, produce or make use of such a declaration or statement or a document containing such a declaration or statement.

Penalty: Fine not exceeding 100 penalty units.

26. Section 84 amended (Forfeiture of substances, &c., in certain cases)

Section 84(1)(b) of the Principal Act is amended by omitting “opium” and substituting “alkaloid”.

27. Sections 84A and 84B inserted

After section 84 of the Principal Act, the following sections are inserted in Division 2:

84A. Destruction of scheduled substances and prohibited plants

(1) In this section –

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 section;

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

- (2) If a person is found guilty by a court of a drug-related offence, the court may order the forfeiture to the Crown of any scheduled substances, or prohibited plants, that were, at the time of the commission of the offence, in the person's possession or apparently under the person's control.
- (3) If an inspector believes on reasonable grounds that a person who is the holder of a licence has contravened this Act or the licence, the inspector may detain or seize any scheduled substances, or prohibited plants, that are in the possession of the person.
- (4) If a licence is suspended or cancelled, any scheduled substances or prohibited plants in the possession of, or apparently

Poisons Amendment (Poppy Industry Reform) Act 2016
Act No. of

s. 27

under the control of, the person who was the licence holder are –

- (a) in the case of suspension, forfeited to the Crown for the duration of the suspension; or
 - (b) in the case of cancellation, forfeited to the Crown.
- (5) Subject to subsection (6), any scheduled substances or prohibited plants that are forfeited to the Crown under subsection (4)(b) are to be destroyed in accordance with the directions of the Secretary.
- (6) The Secretary may, instead of directing the destruction of the scheduled substances or prohibited plants, authorise a person to take possession of the scheduled substances or prohibited plants, on behalf of the Crown or some other person, for a purpose specified by the Secretary.
- (7) If any scheduled substances or prohibited plants that were in the possession, or apparently under the control, of a person referred to in subsection (2), (3) or (4) are destroyed under this section, the person must pay to the Crown the reasonable costs of the destruction.

84B. Directions to former holder of licence

- (1) An inspector or a responsible licensing authority may give to a person who has ceased to be the holder of a licence under this Act directions in relation to the disposal, removal or destruction of any prohibited plant or substance to which the licence related.
- (2) A person must comply with a direction given to the person under subsection (1).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 50 penalty units; or
 - (b) a natural person, a fine not exceeding 10 penalty units.
- (3) If a person has ceased to be the holder of a licence under this Act that authorised the possession of a prohibited plant or a substance, the person is not to be taken, in relation to the plant or substance, to contravene, after ceasing to hold the licence, a provision of this Act in relation to the possession of a plant or substance, if the person –
 - (a) takes all reasonable steps to secure the plant or substance from loss or theft; and

- (b) complies with any directions given to the person under subsection (1) in relation to the plant or substance.

28. Section 86B inserted

After section 86A of the Principal Act, the following section is inserted in Division 2A:

86B. Savings provisions for current licences

- (1) Subject to this Act, a licence granted in respect of the growing of a prohibited plant under Part V and in force immediately before the commencement of the *Poisons Amendment (Poppy Industry Reform) Act 2016 (the amending Act)* is to be taken to be a poppy grower's licence granted under this Act and remains in force as such a licence for –
 - (a) subject to paragraph (b), the period for which the licence would have remained in force if the amending Act had not commenced; or
 - (b) if, before the expiry of the period referred to in paragraph (a), the person has provided to the Board a document, issued by a body approved by the Board, providing evidence that the person is a fit and proper person and the Board

has not notified the person that the Board is of the opinion that the person is not a fit and proper person – a period of 5 years from the date on which the document was issued by the body.

- (2) Nothing in subsection (1) is to be taken to prevent the conditions and restrictions in a licence to which that subsection applies from being varied under section 9.

29. Section 90 amended (Powers of inspectors with respect to licensed premises, &c.)

Section 90(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “, or in the previous 6 months was,” after “is”;
- (b) by inserting in paragraph (c) “, or in the previous 6 months was,” after “person who is”;
- (c) by omitting from paragraph (d) “or cultivate”.

30. Section 92 amended (Revocation or suspension of rights)

Section 92(1)(b) of the Principal Act is amended by omitting “or cultivate”.

31. Section 92B inserted

After section 92A of the Principal Act, the following section is inserted in Division 3:

92B. Infringement notices

(1) In this section –

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

(2) The Board or an inspector may issue and serve an infringement notice on a person if the Board or inspector 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 –

(a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and

(b) is not to relate to more than 3 offences.

(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.

32. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.