

## CLAUSE NOTES

### *Industrial Hemp Bill 2015*

#### PART I – PRELIMINARY

Clause 1                      **Short Title**

Clause 2                      **Commencement**

This Act will commence on a day to be proclaimed.

Clause 3                      **Act to bind the Crown**

The Crown is required to comply with the provisions of the Act.

Clause 4                      **Interpretation**

This clause defines the key phrases and terms used throughout the legislation.

Clause 5                      **Delegation**

The Minister for Primary Industries and Water or the Secretary of the Department of Primary Industries, Parks, Water and Environment may authorise another person to exercise any of his or her powers and functions under the Act.

A delegation under this section:-

- made must be in writing;
- may be absolute or subject to conditions;
- does not remove the power of the Minister or the Secretary to act in any matter; and
- can be revoked.

Clause 6                      **Application for licence**

A person may apply to the Secretary for an industrial hemp licence or a special licence.

An industrial hemp licence permits a person to grow or supply industrial hemp for commercial production, manufacturing, food production, scientific research or any other purpose approved by the Secretary.

Industrial hemp is defined in the Bill as cannabis that has a concentration of delta-9-tetrahydrocannabinol of no more than 1%.

The Bill introduces a special licence for research into varieties of cannabis that exceed the 1% THC threshold to allow broader research into the use of industrial hemp as a commercial fibre and seed crop.

A licence application must be submitted in a manner approved by the Secretary, accompanied by a fee (if prescribed) and contain supporting information, as required by the Secretary.

Specific detail regarding the application process will be contained in supporting instruments, namely regulations and guidelines. These will be developed in consultation with the key stakeholders.

#### Clause 7

##### **Investigation of application**

The Secretary has the power to investigate an application and request further information from an applicant. This includes financial and confidential information.

The general power of the Secretary under clause 6 to request supporting information for an application does not cover financial or confidential information.

These provisions will not be invoked for every licence application but they are a protection to mitigate the risk of industrial hemp being used as a cover to grow illicit cannabis

All licensing information will be collected and held in accordance with the *Personal Information Protection Act 2004*. This Act, in particular the Personal Information Principles, governs how personal information should be collected, used, stored and accessed.

#### Clause 8

##### **Suitability of applicant**

The Secretary must determine that an applicant is suitable to be involved in the industrial hemp industry. The purpose of the provision is to reduce the risk of industrial hemp being used as a cover for illicit cannabis production.

The Secretary must not issue a licence to a person who has been found guilty of an indictable offence under the *Misuse of Drugs Act 2001*, the *Poisons Act 1971* or the *Criminal Code Act 1924*, or under an equivalent law in another jurisdiction.

#### Clause 9

##### **Criminal history of applicant**

An applicant's criminal history must be considered.

This is not a new requirement. Police checks are required under the current licensing scheme as a means of ensuring that only suitable individuals are involved in the industrial hemp industry.

The costs incurred for conducting a police check are to be borne by the licence applicant.

#### Clause 10

##### **Secretary must consult Minister**

The Secretary is required to consult with the Minister administering the *Poisons Act 1971* before issuing a special licence.

Research licences for cannabis can currently be issued under poisons legislation. The requirement for consultation ensures that all research licences are issued under the correct legislation, according to the purpose of the research being undertaken.

**Clause 11**

**Determination of licence application**

The Secretary may grant or refuse a licence application.

The Secretary must provide written reasons when a licence application is refused.

**Clause 12**

**Industrial hemp licence**

Industrial hemp is defined in the Bill as cannabis that has a concentration of delta-9-tetrahydrocannabinol of no more than 1%.

An industrial hemp licence permits a person to grow or supply industrial hemp for commercial production, manufacturing, food production, scientific research or any other purpose approved by the Secretary.

**Clause 13**

**Special licence**

The Bill introduces a special licence for research into varieties of cannabis that exceed the 1% THC threshold.

This licence will allow broader research into the use of industrial hemp as a commercial fibre and seed crop. It also supports the development of new or improved strains of industrial hemp.

**Clause 14**

**Offence not to comply with licence**

It is an offence for a licence holder to cultivate or supply industrial hemp other than in accordance with a licence.

**Clause 15**

**Duration of licence**

A licence will be issued for 5 years, unless a shorter time period is specified in a licence.

A shorter licence term may be specified either at the request of the applicant or at the Secretary's discretion. The provision is aimed at giving the sector flexibility, rather than having fixed licence terms.

**Clause 16**

**Conditions of licence**

The Secretary may impose terms and conditions on a licence..

The Secretary can vary or revoke a term or condition by written notice.

**Clause 17**

**Suspension or cancellation of licence**

The Secretary may suspend or cancel a licence if satisfied that the holder of that licence has breached a term or condition of a licence, is no longer considered to be a fit and proper person to hold a licence, or

for any other advised reason.

The Secretary can cancel or suspend a licence by written notice.

Before cancelling a licence, the Secretary must give the holder of the licence one month's notice to provide an explanation as to why the licence should not be cancelled.

#### **Clause 18**

##### **Renewal of licence**

The holder of a licence can apply to renew their licence not less than 30 day before it expires.

A licence application must be submitted in a manner approved by the Secretary, accompanied by a fee (if prescribed) and contain supporting information, as required by the Secretary.

A renewal application is subject to the same consideration as if it were an initial licence application.

Specific detail regarding the renewal process will be contained in supporting instruments, namely regulations and guidelines. These will be developed in consultation with the key stakeholders.

#### **Clause 19**

##### **Application for review of decision**

An applicant may request the Minister to review a decision of the Secretary.

The application must be made in writing within 30 days of the Secretary's decision.

#### **Clause 20**

##### **Review of decisions**

Within 30 days of receiving an application to review a decision of the Secretary, the Minister must make a determination to:

- confirm the decision;
- revoke the decision; or
- replace the decision with another decision.

The Minister must advise the applicant in writing of the decision and the reasons for the determination.

#### **Clause 21**

##### **Inspectors**

The Secretary may appoint inspectors to enforce compliance with the Act subject to any conditions identified by the Secretary.

A person can be appointed generally or for a particular purpose under the Act, such as crop testing.

Appointment as an inspector can be held alongside State Service employment.

Clause 22	<p><b>Powers of inspectors</b></p> <p>Inspectors have powers of entry, inspection, examination and seizure, for such purposes as determining whether there has been a contravention of the Act, or a holder of a licence is suspected of growing illicit cannabis.</p> <p>An inspector must have search warrant to enter residential premises if they do not have the consent of the owner or occupier.</p>
Clause 23	<p><b>Hemp to be tested</b></p> <p>The THC level of all hemp crops regulated under this Act must be tested to ensure compliance with a licence.</p> <p>The Poppy Advisory and Control Board will undertake testing under the Act. The Board has the expertise, facilities, and officers to undertake testing and compliance activities.</p> <p>Specific detail regarding the testing process will be contained in supporting instruments, namely regulations and guidelines. These will be developed in consultation with the key stakeholders.</p>
Clause 24	<p><b>Search warrants</b></p> <p>An inspector may apply to a Justice of the Peace for a search warrant to search residential premises if the inspector thinks that there has been a contravention of the Act.</p>
Clause 25	<p><b>Interference with inspectors</b></p> <p>It is an offence to interfere or attempt to influence an inspector from carrying out their duties under the Act.</p>
Clause 26	<p><b>False or misleading statements</b></p> <p>It is an offence to intentionally make a statement that is not true or misleading.</p> <p>It is also an offence to knowingly leave something out of a statement.</p>
Clause 27	<p><b>Offences</b></p> <p>It is an offence not to comply with a direction under the Act.</p> <p>It is an offence to impersonate an inspector.</p>
Clause 28	<p><b>Provisions relating to requirements to furnish records, information or answer questions</b></p> <p>As is standard legal procedure, a person is not guilty of an offence to refuse to answer questions or provide information unless that person was warned that a failure to comply is an offence.</p> <p>It is not an excuse to not provide information when requested on the basis that it might be incriminating or lead to a penalty.</p>

However, information provided will not be admissible in court if:

- the person objected to providing information on the grounds that it might be incriminating; or
- the person was not warned that they could object to providing the information on the grounds that it might incriminate the person.

Any information given willingly is admissible.

Further information obtained as a result of information given willingly is admissible.

This section extends to a person's name and address.

#### Clause 29

##### **Offences by corporations**

As is standard legal procedure, if a corporation contravenes a provision of the Act, each director is taken to have contravened that provision.

A person may be prosecuted under this clause even if action is not brought against the corporation itself.

This clause does not affect a corporation's liability for offences committed by the corporation under the Act.

#### Clause 30

##### **Proceedings for offences**

Proceedings under this Act can be dealt with summarily in the Magistrates Court.

Any proceedings must be commenced not later than 12 months after the offence.

#### Clause 31

##### **Infringement notices**

Infringement notices can be served on persons over 16 years if an inspector believes that the person has committed an infringement offence.

The regulations will provide specific detail on what constitutes an infringement offence and the penalties.

These regulations will be developed in consultation with the key stakeholders.

Infringement notices must be issued in accordance with the requirements of the Monetary Penalties Enforcement Act 2005.

#### Clause 32

##### **Forfeiture and destruction of industrial hemp**

If a person is found guilty of an offence under this Act, the Court may order that person to forfeit any hemp or industrial hemp that was in his or her possession when the offence was committed.

Further, if a licence is revoked, any hemp or industrial hemp in the possession of the former licence holder is forfeited to the Crown.

Any hemp or industrial hemp forfeited to the Crown will be destroyed unless the Secretary authorises another person to take possession of it so that it can be cultivated.

The costs of destruction are to be borne by the former licence holder or person who was convicted of an offence.

**Clause 33**

**Approved fees**

The regulations may set out fees for the purposes of the Act.

At present, licence fees are not charged. It is not intended to immediately introduce a licence fee with this legislation. A separate consultation process will be undertaken prior to the introduction of any licence fees.

The Secretary has the discretion to waive any fees under the Act.

**Clause 34**

**Protection from personal liability**

Officials will not incur personal liability for any act done or omitted in good faith under the Act.

An official is defined as the Secretary, a person acting under the direction of the Secretary, Departmental staff or an inspector.

Civil liability that would attach to an official, but for this clause, attaches to the Crown.

**Clause 35**

**Savings provisions for current licences**

On commencement of the Act, current industrial hemp licences issued under the *Poisons Act 1971* will continue in force for 5 years as if they were industrial hemp licences issued under this Act.

The Secretary may vary the terms and condition of a licence as if they were an industrial hemp licence issued under this Act.

**Clause 36**

**Regulations**

The Governor may make regulations under this Act for matters including fees, infringement notices and licence conditions.

The regulations will be developed in consultation with key industry stakeholders.

**Clause 37**

**Administration of Act**

The Minister for Primary Industries and Water is responsible for administration of this Act.

The responsible Department is the Department of Primary Industries, Parks, Water and Environment.

This will be clarified by an order under section 4 of the *Administrative Arrangements Act 1990*.

Clause 38

**Consequential Amendments**

The *Misuse of Drugs Act 2001* will be amended to allow for the operation of this Act, as outlined in Clause 39.

Clause 39

**SCHEDULE I CONSEQUENTIAL AMENDMENTS**

The *Misuse of Drugs Act 2001* has been amended to ensure that it will not affect any provision made by or under this Act.