



Australian Capital Territory

# Hemp Fibre Industry Facilitation Act 2004

A2004-48

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2003 197B

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Australian Capital Territory

# Hemp Fibre Industry Facilitation Act 2004

**A2004-48**

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An Act about the cultivation of hemp for certain commercial uses, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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2003 197B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Hemp Fibre Industry Facilitation Act 2004*.

### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*offence*, for part 3 (Enforcement)—see section 43.’ means that the term ‘offence’ is defined in that section.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

#### **4 Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

#### **5 Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

#### **6 Object of Act**

The object of this Act is to facilitate—

- (a) the processing and marketing of, and trade in, industrial hemp fibre and fibre products; and
- (b) the processing and marketing of, and trade in, industrial hemp seed and seed products, other than for the purpose, directly or indirectly, of producing anything for administration to, or consumption or smoking by, anyone.

**7 Ways of achieving Act's object**

- (1) The ways of achieving this Act's object include allowing the following activities to be carried out under controlled conditions:
- (a) commercial production of industrial hemp fibre and seed;
  - (b) research into the use of industrial hemp as a commercial fibre and seed crop;
  - (c) plant breeding programs using class A or class B research hemp plants and seed, but only for developing new or improved strains of hemp for use by growers for the commercial production of industrial hemp fibre and seed.

**Example for par (b)**

field trials using fertilisers or irrigation and different planting rates

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Another way of achieving this Act's object is to allow research to be carried out into—
- (a) how hemp seed may be denatured; and
  - (b) how processed hemp may be used.



## **Part 2**                      **Licences**

### **Division 2.1**              **Licenses generally**

#### **8**                      **Meaning of *close associate* for pt 2**

(1) In this part:

*close associate*—a person is a *close associate* of someone (the *related person*) if—

- (a) the person holds or will hold an executive position (however described) in the related person’s business; or
- (b) the chief executive is satisfied that the person is or will be able to exercise a significant influence in relation to the conduct of the related person’s business because the person holds or will hold a financial interest, or is entitled to exercise a relevant power, in the business.

(2) In this section:

*executive position*—a position (however described) in the related person’s business is an *executive position* if the holder of the position is concerned with, or takes part in, the management of the business.

*exercise* a power includes exercise the power on behalf of someone else.

*financial interest*, in a business, means—

- (a) a share in the capital of the business; or
- (b) an entitlement to receive income derived from the business, however the entitlement arises.

*hold* a position includes hold the position on behalf of someone else.

*power* means a power exercisable—

- (a) by voting or otherwise; and
- (b) alone or with others.

*relevant power*, in a business, means a power—

- (a) to take part in a directorial, managerial or executive decision for the business; or
- (b) to elect or appoint a person to an executive office in the business.

## **9 Categories of licences**

The chief executive may issue the following licences:

- (a) category 1 researcher licences;
- (b) category 2 researcher licences;
- (c) grower licences.

## **10 What category 1 researcher licence authorises**

- (1) A category 1 researcher licence authorises the licensee, in accordance with the licence—
  - (a) to possess for research purposes—
    - (i) industrial hemp plants and seed; and
    - (ii) class A and class B research hemp plants and seed; and
  - (b) to produce, for use in plant breeding programs for developing new commercial strains of industrial hemp—
    - (i) industrial hemp plants and seed; and
    - (ii) class A and class B research hemp plants and seed; and

- (c) to supply—
    - (i) class A and class B research hemp plants and seed to a category 1 researcher; or
    - (ii) class B research hemp plants and seed to a category 2 researcher; and
  - (d) to supply industrial hemp plants and seed to—
    - (i) a category 1 or category 2 researcher; or
    - (ii) a grower; and
  - (e) to supply class A and class B research hemp seed to a grower for use, under the licensee's supervision, as part of a field trial the licensee is conducting on land owned or leased by the grower; and
  - (f) to supply class A and class B research hemp seed and industrial hemp seed to someone in a State who is authorised under the law of the State to possess hemp seed that, if grown, will produce plants with a THC concentration in their leaves and flowering heads that the person in the State may possess; and
  - (g) if the licensee holds a licence under the *Customs Act 1901* (Cwlth) authorising the licensee to export hemp—to supply class A and class B research hemp seed and industrial hemp seed to someone in a foreign country who is authorised under the law of that country to possess the seed.
- (2) In this section:  
*State* includes an external territory.

**11 What category 2 researcher licence authorises**

- (1) A category 2 researcher licence authorises the licensee, in accordance with the licence—
  - (a) to possess for research purposes—
    - (i) industrial hemp plants and seed; and
    - (ii) class B research hemp plants and seed; and
  - (b) to produce, for use in plant breeding programs for developing new commercial strains of industrial hemp—
    - (i) industrial hemp plants and seed; and
    - (ii) class B research hemp plants and seed; and
  - (c) to supply class B research hemp plants and seed to a category 1 or category 2 researcher; and
  - (d) to supply industrial hemp plants and seed to—
    - (i) a category 1 or category 2 researcher; or
    - (ii) a grower; and
  - (e) to supply class B research hemp seed to a grower for use, under the licensee's supervision, as part of a field trial the licensee is conducting on land owned or leased by the grower; and
  - (f) to supply class B research hemp seed and industrial hemp seed to someone in a State who is authorised under the law of the State to possess hemp seed that, if grown, will produce hemp plants with a THC concentration in their leaves and flowering heads the person in the State may possess; and
  - (g) if the licensee holds a licence under the *Customs Act 1901* (Cwlth) authorising the licensee to export hemp—to supply class B research hemp seed and industrial hemp seed to

someone in a foreign country who is authorised under the law of that country to possess the seed.

(2) In this section:

*State* includes an external territory.

## **12 What grower licence authorises**

A grower licence authorises the licensee, in accordance with the licence—

- (a) to possess industrial hemp plants and seed; and
- (b) to produce industrial hemp plants and seed from certified hemp seed; and

*Note* While industrial hemp plants may have a THC concentration in their leaves and flowering heads of not more than 1%, certified hemp seed must be seed harvested from a plant with a THC concentration in its leaves and flowering heads of not more than 0.5%. The difference recognises that the leaves and flowering heads of plants grown using certified hemp seed may have more than 0.5% THC because of environmental conditions beyond a grower's control.

- (c) to supply industrial hemp seed to—
  - (i) a category 1 or category 2 researcher; or
  - (ii) a grower; and
- (d) to possess class A or class B research hemp seed for use under the supervision of a category 1 or category 2 researcher, as part of a field trial conducted on land owned or leased by the grower; and
- (e) to produce class A or class B research hemp plants and seed under the supervision of a category 1 or category 2 researcher, as part of a field trial conducted on land owned or leased by the grower; and

- (f) to supply to a category 1 or category 2 researcher class A or class B research hemp plants and seed produced on land owned or leased by the grower as part of a field trial conducted under the supervision of the category 1 or category 2 researcher; and
- (g) to supply industrial hemp seed to someone in a State who is authorised under the law of the State to possess hemp seed that, if grown, will produce hemp plants with a THC concentration in their leaves and flowering heads the person in the other State may possess; and
- (h) if the licensee holds a licence under the *Customs Act 1901* (Cwlth) authorising the licensee to export hemp—to supply industrial hemp seed to someone in a foreign country who is authorised under the law of that country to possess the seed.

## **Division 2.2 Licence applications**

### **13 Application for licence**

- (1) A person may apply to the chief executive for a licence.
- (2) The application must—
  - (a) include information establishing that the person is eligible to obtain the licence; and
  - (b) state the place where the applicant proposes to carry on the activity under the licence and an address where the applicant may be personally served.

*Note 1* A fee may be determined under s 60 for an application.

*Note 2* If a form is approved under s 61 for an application, the form must be used.

- (3) In deciding an application, the chief executive must consider—
  - (a) the applicant's suitability to hold a licence; and
  - (b) the applicant's eligibility to hold the licence.

**14 Requirement to give information or material about application**

- (1) The chief executive may ask an applicant for a licence, in writing, to give the chief executive, within a stated reasonable time, information or material the chief executive reasonably requires to consider the application.
- (2) The applicant is taken to have withdrawn the application if, within the stated time, the applicant fails to comply with the request.

**Division 2.3 Eligibility and suitability to hold licence**

**15 Eligibility for researcher licence**

- (1) A person is eligible to hold a category 1 or category 2 researcher licence only if the person satisfies the chief executive that—
  - (a) the person has the necessary educational or other qualifications and experience to engage in plant breeding or other research involving the use of industrial hemp or class A or class B research hemp plant or seed; or
  - (b) for a corporation—someone employed by the corporation to carry out plant breeding under the licence has the necessary educational or other qualifications and experience to engage in plant breeding or other research involving the use of industrial hemp or class A or class B research hemp plant or seed.
- (2) However, an individual is not eligible to obtain a category 1 or category 2 researcher licence if the person has been convicted or found guilty within the previous 5 years of an offence involving drugs that is prescribed under the regulations.

**16 Eligibility for grower licence**

An individual is not eligible to hold a grower licence if the person—

- (a) has been convicted or found guilty within the previous 5 years of an offence involving drugs that is prescribed under the regulations; or
- (b) is affected by bankruptcy action.

**17 Consideration of suitability of applicant or licensee**

The chief executive must, in deciding whether someone is a suitable person to hold a licence, consider the following:

- (a) whether the person is of good repute, having regard to character, honesty and integrity;
- (b) whether the person's close associates are of good repute, having regard to character, honesty and integrity;
- (c) whether the person held a licence under this Act that was suspended or cancelled;
- (d) for an individual—
  - (i) the person's criminal history; and
  - (ii) whether the person has been convicted or found guilty of an offence against the this Act or the Drugs of Dependence Act or an offence that, if committed in the ACT, would be an offence against this Act or the Drugs of Dependence Act; and
  - (iii) whether the person can satisfactorily perform the activities of a licensee;
- (e) for a corporation—
  - (i) whether the corporation has been placed in receivership or liquidation; and



- (ii) whether an executive officer of the corporation has been convicted or found guilty of an offence against this Act or the Drugs of Dependence Act or an offence that, if committed in the ACT, would be an offence against this Act or the Drugs of Dependence Act; and
- (iii) whether each executive officer of the corporation is a suitable person to hold a licence.

## **18 Suitability of applicant or licensee—corporation**

A corporation is not a suitable person to hold a licence if an executive officer of the corporation—

- (a) has been convicted or found guilty within the previous 5 years of an offence involving drugs that is prescribed under the regulations; or
- (b) is affected by bankruptcy action; or
- (c) is someone the chief executive decides under section 17 (Consideration of suitability of applicant or licensee) is not a suitable person to hold a licence.

## **19 Investigation about suitability of applicant or licensee**

- (1) The chief executive may make investigations about any of the following people to help the chief executive decide whether an applicant or licensee is a suitable person to hold a licence:
  - (a) the applicant or licensee;
  - (b) if the applicant or licensee is a corporation—the corporation's executive officers;
  - (c) a person stated by the applicant or licensee to be a close associate of the applicant or licensee.

- (2) Without limiting subsection (1), the chief executive may ask the chief police officer for a written report (a *criminal history report*) about the criminal history of any of the people.
- (3) For subsection (2), the chief executive must give the chief police officer any particulars the chief executive tells the chief police officer are relevant for each application for a licence or renewal of a licence.
- (4) On receiving particulars of the application, the chief police officer—
  - (a) must make inquiries about the applicant’s criminal history; and
  - (b) must make any other inquiries about the applicant the chief police officer considers appropriate.
- (5) As soon as practicable after considering the applicant’s suitability to hold a licence, the chief executive must destroy any criminal history report given to the chief executive in relation to the application.

**20 Disclosure of criminal history—offence**

- (1) A person commits an offence if the person, directly or indirectly, discloses to anyone else a criminal history report, or information in a criminal history report.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) does not apply to—
  - (a) a disclosure authorised by the chief executive for the exercise of a function under this Act; or
  - (b) a disclosure otherwise required or allowed by law.

## **Division 2.4                      Issue of licence**

### **21                      Chief executive may issue or refuse to issue licence**

- (1) The chief executive may issue or refuse to issue a licence to an applicant.
- (2) The chief executive may issue a licence to an applicant only if the chief executive is satisfied that—
  - (a) the applicant is eligible to hold the licence; and
  - (b) the applicant is a suitable person to hold a licence; and
  - (c) if the applicant is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and
  - (d) if the applicant intends performing activities under the licence in partnership or with others—each member of the partnership, or each person with whom the applicant intends performing activities under the licence, is a suitable person to hold a licence.
- (3) If the chief executive decides to refuse to issue the licence, the chief executive must give the applicant written notice of the decision within 14 days after the day the decision is made.

### **22                      Conditions of licence**

- (1) The chief executive may issue a licence for a period of not longer than 3 years.
- (2) A licence may be issued subject to any conditions stated in the licence.
- (3) Without limiting subsection (2), it is a condition of every licence—
  - (a) that the licensee must not contravene this Act; and

- (b) that the licensee must tell the chief executive about any change of address or close associates as soon as practicable after the change happens (but within 7 days after the day the change happens).
- (4) The regulations may prescribe additional conditions a licensee must comply with.
- (5) If the chief executive decides to issue a licence subject to a condition under subsection (2), the chief executive must give the applicant written notice of the decision within 14 days after the day the decision is made.

### **23 Offence—contravention of licence conditions**

A person commits an offence if the person engages in conduct that contravenes a condition of the person's licence.

Maximum penalty: 100 penalty units.

## **Division 2.5 Licence renewals**

### **24 Application for renewal**

- (1) A licensee may apply for renewal of a licence.
  - Note 1* A fee may be determined under s 60 for an application.
  - Note 2* If a form is approved under s 61 for an application, the form must be used.
- (2) The chief executive may ask the licensee, in writing, to give the chief executive, within a stated reasonable time, information or material the chief executive reasonably requires to consider the application.
- (3) The licensee is taken to have withdrawn the application if, within the stated time, the licensee fails to comply with the request.

**25 Chief executive may renew or refuse to renew licence**

- (1) The chief executive may renew or refuse to renew a licence.
- (2) The chief executive may renew a licence only if the chief executive is satisfied that—
  - (a) the licensee is eligible to hold the licence; and
  - (b) the licensee is a suitable person to hold a licence; and
  - (c) if the licensee is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and
  - (d) if the licensee carries on business in partnership or with others—each member of the partnership, or each person with whom the licensee carries on business, is a suitable person to hold a licence.
- (3) If the chief executive decides to refuse the application, the chief executive must give the applicant written notice of the decision within 14 days after the day the decision is made.

**26 Licence in force while application for renewal considered**

If an application is made under section 24 (Application for renewal), the licensee's licence is taken to continue in force from the day that it would, apart from this section, have ended until the licensee's application for renewal is—

- (a) decided; or
- (b) withdrawn by the licensee; or
- (c) taken to have been withdrawn under section 24 (3).

*Note* For what happens to hemp plants and seed in the licensee's possession if the chief executive decides to refuse to renew a licence, see s 40 and s 41.

**27 Return of licence if renewal refused**

A person commits an offence if—

- (a) the person's application for renewal of a licence is refused; and
- (b) the person fails to return the licence to the chief executive within 14 days after the day the chief executive tells the person of the refusal.

Maximum penalty: 100 penalty units.

**Division 2.6 Amendment and surrender of licence**

**28 Amendment of licence**

- (1) The chief executive may amend a licence—

- (a) on the licensee's application; or
- (b) on the chief executive's own initiative.

*Note 1* A fee may be determined under s 60 for an application.

*Note 2* If a form is approved under s 61 for an application, the form must be used.

- (2) Before amending a licence under subsection (1) (a), the chief executive must be satisfied that the licensee meets the eligibility requirements the chief executive tells the applicant are relevant to the amendment.
- (3) Before amending a licence under subsection (1) (b), the chief executive must—
- (a) give written notice to the licensee—
    - (i) of the particulars of the proposed amendment; and
    - (ii) that the licensee may make written submissions to the chief executive about the proposed amendment before a stated day, not later than 14 days after the day the notice is given to the licensee; and

- (b) have regard to submissions made to the chief executive by the licensee before the stated day.
- (4) Subsection (3) does not apply if the chief executive decides that the amendment must be made urgently to ensure compliance with this Act.
- (5) If the chief executive decides to amend a licence under subsection (1) (b), the chief executive must give the licensee written notice of the decision within 14 days after the day the decision is made.
- (6) The amendment takes effect—
  - (a) on the day the written notice of the amendment is given to the licensee; or
  - (b) if a later day is stated in the notice—on that day.
- (7) If the chief executive decides to refuse to make an amendment applied for under subsection (1) (a), the chief executive must give the applicant written notice of the decision within 14 days after the day the decision is made.

## **29 Return of licence for amendment**

- (1) If the chief executive amends a licence under section 28, the chief executive may ask the licensee to produce the licence for amendment within a stated period of not less than 14 days.
- (2) A licensee commits an offence if the licensee fails to comply with a request under subsection (1).

Maximum penalty: 100 penalty units.

**30 Surrender of licence**

- (1) A licensee may surrender the licensee's licence by returning the licence to the chief executive.
- (2) Before the licensee surrenders the licence, the licensee must destroy or otherwise lawfully dispose of all hemp plants and seed the licensee possesses.
- (3) A licence surrendered under this section ends at the end of the day it is surrendered.

**Division 2.7 Suspension and cancellation of licence**

**31 Grounds for suspension action or cancellation**

- (1) A ground for suspending or cancelling a licence exists if the licensee—
  - (a) is not a suitable person to hold the licence; or
  - (b) the licensee is no longer eligible to hold the licence for contravening a provision of this Act or a condition of the licence.
- (2) Also, a ground for suspending or cancelling a licence exists if the licence was issued because of a materially false or misleading representation or declaration.

**32 Show cause notice**

- (1) This section applies if the chief executive considers a ground exists to suspend or cancel a licence.
- (2) The chief executive must give the licensee a written notice (a *show cause notice*) stating the following:
  - (a) the action (the *proposed action*) the chief executive proposes taking under this division;



- (b) the grounds for the proposed action;
  - (c) an outline of the facts and circumstances forming the basis for the grounds;
  - (d) if the proposed action is suspension of the licence—the proposed suspension period;
  - (e) an invitation to the licensee to show cause within a stated period (the *show cause period*) why the proposed action should not be taken.
- (3) The show cause period must end at least 21 days after the show cause notice is given to the licensee.
  - (4) The licensee may make written representations about the proposed action to the chief executive in the show cause period.

### **33 Consideration of representations**

The chief executive must consider all written representations (the *accepted representations*) made in the show cause period by the licensee.

### **34 Ending show cause process without further action**

- (1) This section applies if, after considering the accepted representations for the show cause period, the chief executive no longer believes a ground exists to suspend or cancel a licence.
- (2) The chief executive must not take further action about the show cause notice.
- (3) The chief executive must, immediately after making the decision, give the licensee written notice that no further action about the show cause notice is to be taken.

**35 Suspension and cancellation of licence**

- (1) This section applies if, after considering the accepted representations for the show cause notice, the chief executive—
  - (a) still believes a ground exists to suspend or cancel a licence; and
  - (b) believes suspension or cancellation of the licence is justified.
- (2) This section also applies if there are no accepted representations for the show cause notice.
- (3) The chief executive may—
  - (a) if the proposed action stated in the show cause notice was to suspend the licence for a stated period—suspend the licence for not longer than the stated period; or
  - (b) if the proposed action stated in the show cause notice was to cancel the licence—cancel the licence or suspend it for a period.
- (4) The chief executive must immediately give written notice of the decision to the licensee.
- (5) The decision takes effect—
  - (a) on the day notice of the decision is given to the licensee; or
  - (b) if a later day is stated in the notice—on that day.

**36 Immediate suspension**

- (1) This section applies if the chief executive considers that a licensee—
  - (a) has contravened or is contravening this Act; or
  - (b) is likely, or is proposing, to engage in conduct that would contravene this Act.

- (2) The chief executive may suspend the licensee's licence with immediate effect.
- (3) The licence may be suspended for the period (not more than 28 days) and on the conditions the chief executive decides.
- (4) The chief executive must give the licensee written notice of the decision to suspend the licensee's licence within 3 days after the day the decision is made.

### **37 Immediate cancellation**

A licensee's licence is cancelled immediately on the happening of any of the following events:

- (a) the licensee is convicted or found guilty of an offence involving drugs that is prescribed under the regulations;
- (b) if the licensee is an individual—the licensee is affected by bankruptcy action;
- (c) if the licensee is a corporation—the licensee goes into liquidation.

### **38 Return of licence if suspended or cancelled**

A person commits an offence if—

- (a) the person's licence is suspended or cancelled; and
- (b) the person fails to return the licence to the chief executive within 14 days after the day the chief executive tells the person of the suspension or cancellation.

Maximum penalty: 100 penalty units.

## Division 2.8 Action after suspension or cancellation of licence

### 39 What happens to hemp plants and seed if licence suspended

- (1) This section applies if the chief executive suspends a licensee's licence under section 35 (Suspension and cancellation of licences) or section 36 (Immediate suspension).
- (2) While the licence is suspended, the licensee may, despite the suspension—
  - (a) continue to possess the hemp plants and seed in the person's possession on the day the licence is suspended (the *suspension day*); and
  - (b) for hemp plants in the licensee's possession on the suspension day—
    - (i) do anything reasonably necessary to help the plants continue to grow; and
    - (ii) harvest the plants and any seed on the plants; and
  - (c) supply harvested hemp seed to a person lawfully entitled to possess the seed.
- (3) Subsection (2) does not authorise the doing of anything not mentioned in that subsection in relation to hemp plants and seed in the licensee's possession on the suspension day.
- (4) No compensation is payable by the Territory because of the suspension.

#### **40 What happens to hemp plants if licence cancelled**

- (1) This section applies if—
  - (a) the chief executive cancels a licensee's licence under section 35 (Suspension and cancellation of licence) or section 37 (Immediate cancellation); and
  - (b) the licensee possesses hemp plants.
- (2) If the hemp plants cannot be harvested, the chief executive may destroy the plants in the way the chief executive considers appropriate.

**Examples**

- 1 ploughing or burning plants that are too small to harvest
- 2 burning plants that cannot be harvested because of flooding

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) However, if the hemp plants can be harvested, the chief executive may—
  - (a) harvest the plants and any seed on the plants; and
  - (b) for industrial hemp seed—
    - (i) denature the seed; or
    - (ii) supply processed hemp to a person who may lawfully possess it; and
  - (c) for class A or class B research hemp plant or seed—supply the harvested material to a person who may lawfully possess it.
- (4) For this section, the chief executive may—
  - (a) enter and re-enter the place stated in the cancelled licence as often as is reasonable and necessary; and

- (b) bring onto the place help, machinery and other equipment that is reasonable and necessary.
- (5) For subsections (2) to (4)—
- (a) the chief executive is taken to hold a licence identical to the cancelled licensee for the place stated in the cancelled licence; and
  - (b) hemp plants in the possession of the former licensee immediately before the cancellation are taken to be in the chief executive's possession and not the possession of the former licensee; and
  - (c) if—
    - (i) the cancelled licence was a category 1 or category 2 researcher licence; and
    - (ii) under the cancelled licence, class A or class B research hemp plants are growing on land owned or leased by a grower as part of a field trial conducted under the supervision of the grower or former licensee;the class A or class B research hemp plants are taken to be in the chief executive's possession and not in the possession of the grower or former licensee.
- (6) However, section 10 (1) (b) (What category 1 researcher licence authorises), section 11 (1) (b) (What category 2 researcher licence authorises) and section 12 (b) and (e) (What grower licence authorises) do not apply to the chief executive, other than to the extent necessary to allow the following plants to continue to grow until they can be destroyed or harvested:
- (a) hemp plants already growing on land to which the cancelled licence relates;
  - (b) for land owned or leased by a grower for a former licensee—hemp plants growing on that land.

- (7) No compensation is payable by the Territory because of the cancellation or because of the destruction of hemp plants or seed under this section.

**41 What happens to hemp seed if licence cancelled or renewal refused**

- (1) This section applies if—
- (a) the chief executive refuses to renew a licence under section 25 (Chief executive may renew or refuse to renew licence) and the licensee possesses hemp seed, other than harvested material under section 40; or
  - (b) the chief executive cancels a licensee's licence under section 35 or section 37.
- (2) The chief executive may—
- (a) for industrial hemp seed—
    - (i) denature the hemp seed; or
    - (ii) supply the seed to a prescribed person to denature the seed at another place; or
    - (iii) supply the seed to a category 1 or category 2 researcher or a grower; or
  - (b) for class A research hemp seed—supply the seed to a category 1 researcher; or
  - (c) for class B research hemp seed—supply the seed to a category 1 or category 2 researcher or a prescribed person; or
  - (d) destroy the seed.
- (3) For subsection (2)—
- (a) the chief executive is taken to hold a licence identical to the cancelled licence for the place stated in the cancelled licence; and

- (b) hemp seed in the possession of the former licensee immediately before the cancellation are taken to be in the chief executive's possession and not the possession of the licensee; and
- (c) if—
  - (i) the cancelled licence was a category 1 or category 2 researcher licence; and
  - (ii) under the cancelled licence, class A or class B research hemp seed is in the possession of a grower for use for growing class A or class B research hemp plants on land owned or leased by the grower as part of a field trial conducted under the supervision of a category 1 or category 2 researcher;

the class A or class B hemp seed is taken to be in the chief executive's possession and not in the possession of the grower or former licensee.

- (4) For subsections (2) and (3), the chief executive may—
  - (a) enter and re-enter the place stated in the cancelled licence as often as is reasonable and necessary; and
  - (b) bring onto the place help, machinery and other equipment that is reasonable and necessary; and
  - (c) open anything in which the chief executive suspects, on reasonable grounds, hemp seed may be kept; and
  - (d) inspect anything opened under paragraph (c) and seize any hemp seed found.
- (5) For subsection (4), the chief executive is taken to have the powers of an inspector who enters a place.
- (6) No compensation is payable by the Territory because of the destruction of the seed.



**42 Cost recovery**

- (1) The chief executive may recover the cost incurred by the chief executive under section 40 or section 41 as a debt payable to the Territory by the former licensee.
- (2) For subsection (1), the chief executive may recover the costs from the proceeds of the sale of harvested material under section 40 or hemp seed under section 41.
- (3) However, if the proceeds are more than the costs, the chief executive must pay any balance to the former licensee.
- (4) Despite subsection (3), if before the proceeds are paid, the chief executive becomes aware that the proceeds may be subject to an application for forfeiture of tainted property under the *Confiscation of Criminal Assets Act 2003*, the chief executive must not pay the proceeds to the former licensee unless no order for forfeiture is made under that Act.
- (5) Also, if the chief executive becomes aware that the harvested material is subject to a lien under the *Instruments Act 1933* that has not been satisfied, the chief executive must pay any balance—
  - (a) first, in satisfaction of the lien; and
  - (b) then, to the former licensee.

## Part 3 Enforcement

### Division 3.1 Definitions for pt 3

#### 43 Definitions for pt 3

In this part:

*connected*—a thing is *connected* with a particular offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

*occupier*, of premises, includes—

- (a) a person believed, on reasonable grounds, to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

*offence* includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

### Division 3.2 Inspectors

#### 44 Appointment of inspectors

The chief executive may appoint a public servant to be an inspector for this Act.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

**45 Identity cards**

- (1) The chief executive must issue an inspector with an identity card that states the person's name and appointment as an inspector, and shows—
  - (a) a recent photograph of the person; and
  - (b) the date of issue of the card; and
  - (c) the date of expiry for the card; and
  - (d) anything else prescribed under the regulations.
- (2) A person commits an offence if the person—
  - (a) ceases to be an inspector; and
  - (b) does not return the person's identity card to the chief executive within 7 days after the day the person ceases to be an inspector.

Maximum penalty: 1 penalty unit.

- (3) An offence against this section is a strict liability offence.

**Division 3.3 Powers of inspectors**

**46 Power to enter premises**

- (1) For this Act, an inspector may—
  - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
  - (b) at any time, enter premises with the consent of a person in charge of the premises; or
  - (c) enter premises under a search warrant; or
  - (d) at any time, enter premises if the inspector believes, on reasonable grounds, that the circumstances are so serious and

urgency that immediate entry to the premises without the authority of a search warrant is necessary.

*Note*      **Premises** includes any land, structure or vehicle and any part of an area of land, a structure or vehicle (see dict).

- (2) An inspector may, without the occupier's consent, enter the land around premises to ask for consent to enter the premises.
- (3) For subsection (1) (d), the inspector may enter the premises with any necessary assistance and force.

#### **47            Production of identity card**

An inspector must not remain on premises entered under this part if, when asked by the occupier, the inspector does not produce his or her identity card for inspection by the occupier.

#### **48            Consent to entry**

- (1) When seeking the consent of an occupier to enter premises under this part, an inspector must—
  - (a) produce his or her identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused.
- (2) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and

- (iii) that consent may be refused; and
  - (b) that the occupier consented to the entry; and
  - (c) stating the time, and date, when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.
- (4) A court must assume that an occupier of premises did not consent to an entry to the premises by an inspector under this part if—
  - (a) the question whether the occupier consented to the entry arises in a proceeding in the court; and
  - (b) an acknowledgment under this section is not produced in evidence for the entry; and
  - (c) it is not proved that the occupier consented to the entry.

#### **49 Warrants**

- (1) An inspector may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity connected with an offence against this Act or the Drugs of Dependence Act; and
  - (b) the thing or activity is at the premises, or may be at the premises within the next 14 days.

- (5) The warrant must state—
- (a) that an inspector may, with any necessary assistance and force, enter the premises and exercise the inspector's powers under this part; and
  - (b) the offence for which the warrant is sought; and
  - (c) the evidence that may be seized under the warrant; and
  - (d) the hours when the premises may be entered; and
  - (e) the date, within 14 days after the day of the warrant's issue, the warrant ends.

**50 Warrants—application made other than in person**

- (1) An inspector may apply for a warrant by phone, fax, radio or other form of communication if the inspector considers it necessary because of—
- (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.
- (3) The inspector may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the inspector—
- (a) the magistrate must—
    - (i) tell the inspector the terms of the warrant; and
    - (ii) tell the inspector the date and time the warrant was issued; and

- (b) the inspector must complete a form of warrant (the *warrant form*) and write on it—
  - (i) the magistrate's name; and
  - (ii) the date and time the magistrate issued the warrant; and
  - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the inspector's powers under this part.
- (7) The inspector must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the inspector completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must assume that a power exercised by an inspector was not authorised by a warrant under this section if—
  - (a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

## **51 General powers on entry to premises**

- (1) An inspector who enters premises under this part may, for this Act, do any of the following in relation to the premises or anything on the premises:
  - (a) inspect or examine;
  - (b) take measurements or conduct tests;
  - (c) take samples of or from anything on the premises;
  - (d) take photographs, films, or audio, video or other recordings;
  - (e) subject to section 53 (Power to seize things), seize a thing;
  - (f) require the occupier, or a person on the premises, to give the inspector reasonable help to exercise a power under this part.
- (2) A person commits an offence if the person engages in conduct that contravenes a requirement under subsection (1) (f).

Maximum penalty: 50 penalty units.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

## **52 Power to require name and address**

- (1) An inspector may require a person to state the person's name and address if the inspector—
  - (a) finds the person committing an offence against this Act or the Drugs of Dependence Act; or
  - (b) has reasonable grounds for believing that the person has just committed an offence against this Act or the Drugs of Dependence Act.
- (2) If an inspector makes a requirement of a person under subsection (1), the inspector must—
  - (a) tell the person the reasons for the requirement; and



(b) as soon as practicable, record those reasons.

- (3) A person commits an offence if the person contravenes a requirement under subsection (1).

Maximum penalty: 5 penalty units.

- (4) However, a person is not required to comply with a requirement under subsection (1) if, when asked by the person, the inspector does not produce his or her identity card for inspection by the person.
- (5) An offence against this section is a strict liability offence.

### **53 Power to seize things**

- (1) An inspector who enters premises under a warrant under this part may seize the evidence for which the warrant was issued.
- (2) An inspector who enters premises under this part with the occupier's consent may seize a thing on the premises if—
- (a) the inspector is satisfied, on reasonable grounds, that the thing is connected with an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of the entry as told to the occupier when seeking the occupier's consent.
- (3) An inspector may also seize anything on premises entered under this part if satisfied on reasonable grounds that—
- (a) the thing is connected with an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing from being—
    - (i) concealed, lost or destroyed; or
    - (ii) used to commit, continue or repeat the offence.
- (4) Having seized a thing, an inspector may—
- (a) remove the thing from the premises where it was seized; or

(b) leave the thing at the premises where it was seized but restrict access to it.

- (5) A person commits an offence if the person intentionally interferes with a thing to which access has been restricted under subsection (4) (b).

Maximum penalty: 50 penalty units.

- (6) Subsection (5) does not apply if the Minister approved the interference.

#### **54 Receipt for things seized**

- (1) As soon as practicable after a thing is seized by an inspector under this part, the inspector must give a receipt for it to the occupier of the premises where it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must leave the receipt, secured conspicuously at the place of seizure.

#### **55 Access to things seized**

A person who would, apart from the seizure of a thing under this part, be entitled to the thing may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

#### **56 Return of things seized**

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
- (a) a prosecution for an offence relating to the thing is not begun within 90 days after the day of the seizure; or

- (b) if a prosecution is begun within the 90 days—the court does not find the offence proved.
- (2) A thing seized under this part is forfeited to the Territory if a court—
  - (a) finds an offence relating to the thing to be proved; and
  - (b) orders the forfeiture.
- (3) If subsection (2) (a) applies, but the court does not order the forfeiture of the thing seized, the chief executive must return the thing to its owner or the Territory must pay reasonable compensation to the owner for the loss of the thing.
- (4) For subsections (1) and (3), if the thing seized was a fruit, vegetable or other plant that has deteriorated or perished since it was seized, the owner is entitled to reasonable compensation for the deterioration or loss.

## Part 4 Review of decisions

### 57 Notice of reviewable decisions

- (1) If the chief executive makes a reviewable decision, the chief executive must give written notice of the decision to each person entitled to apply for review of the decision.
- (2) The notice must comply with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (3) In particular, the notice must tell the person—
  - (a) that the person may apply to the administrative appeals tribunal for review of the decision, and how the application must be made; and
  - (b) about the options available under other Territory laws to have the decision reviewed by a court or the ombudsman.

### 58 Review of decisions by AAT

- (1) Application may be made to the administrative appeals tribunal for review of the following decisions (a *reviewable decision*) of the chief executive:
  - (a) to refuse to issue a licence under section 21 (1);
  - (b) to refuse to renew a licence under section 25 (1);
  - (c) to amend or refuse to amend a licence on application by the licensee under section 28 (1) (a);
  - (d) to suspend or cancel a licence under section 35 (1);
  - (e) to immediately suspend a licence under section 36 (2);
  - (f) to immediately cancel a licence under section 37.

- (2) Application for review of a decision mentioned in subsection (1) (a), (b) or (c) may be made by the applicant for the licence, renewal or amendment.
- (3) Application for review of a decision mentioned in subsection (1) (d), (e) or (f) may be made by the licensee whose licence is suspended or cancelled.

## Part 5 Miscellaneous

*Note* Regulations about infringement notices may be made under the *Magistrates Court Act 1930* for offences against this Act.

### 59 Evidentiary certificates

- (1) In a proceeding under this Act, a certificate signed by the chief executive stating any of the following matters is evidence of that matter:
  - (a) that, on a stated day or during a stated period, a person was, or was not, the holder of a stated licence;
  - (b) that, on a stated day or during a stated period, a person's licence was, or was not, suspended.
- (2) A document purporting to be a certificate under subsection (1) is taken, unless the contrary is proved, to be such a certificate and to be evidence of the matters it states.

### 60 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**61 Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**62 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The regulations may make provision in relation to—
  - (a) applications for licences; and
  - (b) renewals of licences; and
  - (c) the surrender of licences; and
  - (d) the keeping of accounts and other records by licensees.
- (3) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 20 penalty units for offences against the regulations.

## Part 6 Consequential amendments— Drugs of Dependence Act 1989

### 63 New section 162 (6)

insert

- (6) This section does not apply to the cultivation of cannabis in accordance with a researcher licence or grower licence under the *Hemp Fibre Industry Facilitation Act 2004*.

### 64 New section 165 (2A)

*insert*

- (2A) Subsection (1) also does not apply to the sale, supply or possession of cannabis in accordance with a researcher licence or grower licence under the *Hemp Fibre Industry Facilitation Act 2004*.

### 65 Section 165

*renumber subsections when Act next republished under Legislation Act*

### 66 New section 171 (4) (da)

*insert*

- (da) a person who possesses cannabis in accordance with a researcher licence or grower licence under the *Hemp Fibre Industry Facilitation Act 2004*.

### 67 Section 171 (4)

*renumber paragraphs when Act next republished under Legislation Act*



## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the Legislation Act, dict, pt 1, defines the following terms:

- appoint
- exercise
- function.

***accepted representation***—see section 33.

***affected by bankruptcy action***—an individual is ***affected by bankruptcy action*** if the person—

- (a) is bankrupt; or
- (b) has compounded with creditors; or
- (c) has otherwise taken, or applied to take, advantage of any law about bankruptcy.

***business*** includes—

- (a) a business not carried on for profit; and
- (b) a trade or profession.

***category 1 researcher*** means a person who holds a category 1 researcher licence that is in force.

***category 2 researcher*** means a person who holds a category 2 researcher licence that is in force.

***certified hemp seed*** means seed certified, in the way prescribed under the regulations, by any of the following as seed that will produce hemp plants with a THC concentration in their leaves and flowering heads of not more than 0.5%:

- (a) a grower;

(b) a category 1 or category 2 researcher.

**class A research hemp plant** means a hemp plant that has a THC concentration in its leaves and flowering heads of 3% or more.

**class A research hemp seed** means—

- (a) seed harvested from a class A research hemp plant; or
- (b) seed that, if grown, will produce a class A research hemp plant.

**class B research hemp plant** means a hemp plant that has a THC concentration in its leaves and flowering heads of more than 1% but less than 3%.

**class B research hemp seed** means—

- (a) seed harvested from a class B research hemp plant; or
- (b) seed that, if grown, will produce a class B research hemp plant.

**close associate**, for part 2 (Licences)—see section 8.

**connected**, for part 3 (Enforcement)—see section 43.

**criminal history report**—see section 19 (2).

**denatured**, for seed harvested from industrial hemp plants, means that the seed will not grow because it has been cracked, de-hulled, heated, or treated in another way that prevents growth.

**Drugs of Dependence Act** means the *Drugs of Dependence Act 1989*.

**engage in conduct** means—

- (a) do an act; or
- (b) omit to do an act.

**executive officer**, of a corporation, means anyone, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

**grower** means a person who holds a grower licence that is in force.

**hemp** means cannabis sativa.

**industrial hemp fibre** means fibre from industrial hemp plants.

**industrial hemp plant** means a hemp plant with a THC concentration in its leaves and flowering heads of not more than 1%.

**industrial hemp seed** means—

- (a) hemp seed harvested from an industrial hemp plant; or
- (b) certified hemp seed.

**inspector** means a person appointed under this Act as an inspector.

**licence** means a licence issued under this Act.

**licensee** means the holder of a licence that is in force.

**occupier**, of premises, for part 3 (Enforcement)—see section 43.

**offence**, for part 3 (Enforcement)—see section 43.

**premises** includes land or a structure or vehicle and any part of an area of land or a structure or vehicle.

**processed hemp** means—

- (a) industrial hemp plants that—
  - (i) have been harvested or chemically or mechanically treated or artificially treated in another way; and
  - (ii) have no leaf, flowers or seed; or
- (b) seed from industrial hemp plants grown by a holder of a grower licence and denatured at the place stated in the growers licence.

**proposed action**—see section 32 (2) (a).

**reviewable decision**, for part 4 (Review of decisions)—see section 58 (1).

*show cause notice*—see section 32 (2).

*show cause period*—see section 32 (2).

*THC* means tetrahydrocannabinol.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 30 June 2004.

**2 Notification**

Notified under the Legislation Act on 16 August 2004.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Hemp Fibre Industry Facilitation Bill 2004, which was passed by the Legislative Assembly on 4 August 2004.

Clerk of the Legislative Assembly

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