



New South Wales

Poppy Industry Regulation 2016

under the

Poppy Industry Act 2016

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Poppy Industry Act 2016*.

NIALL BLAIR, MLC
Minister for Primary Industries

Explanatory note

The object of this Regulation is to prescribe matters as required by the *Poppy Industry Act 2016* including matters relevant to the following:

- (a) the definitions of *alkaloid poppy*, *interstate poppy licence* and *interstate processing licence*,
- (b) the test for determining whether a person is a fit and proper person to hold a poppy licence or poppy permit,
- (c) the checks and requirements for persons employed or engaged in activities under a poppy licence or poppy permit,
- (d) identification cards for persons employed or engaged in activities under a poppy licence, and
- (e) conditions of licences and permits,
- (f) timing of applications for renewal of licences,
- (g) the date for payment of an annual fee for a cultivation licence,
- (h) the criteria for determination of an application for the grant, renewal or amendment of a licence or permit,
- (i) the period within which certain orders may be made following expiry, surrender or cancellation of a poppy licence,
- (j) penalty notice offences and penalties.

This Regulation is made under the *Poppy Industry Act 2016*, including sections 4, 5, 11, 13, 14, 18, 19, 20, 22, 37 and 47 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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1 Name of Regulation

This Regulation is the *Poppy Industry Regulation 2016*.

2 Commencement

This Regulation commences on 1 January 2017 and is required to be published on the NSW legislation website.

3 Definitions

(1) In this Regulation:

the Act means the *Poppy Industry Act 2016*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Meaning of alkaloid poppy

For the purposes of paragraph (a) of the definition of *alkaloid poppy* in section 4 (1) of the Act, the following classes are specified:

- (a) a plant of the species *Papaver bracteatum*,
- (b) a plant of the species *Papaver somniferum*,
- (c) a plant that is a hybrid of a plant of either of those species.

5 Meaning of interstate poppy licence

For the purposes of the definition of *interstate poppy licence* in section 4 (1) of the Act, each of the following is declared to be a licence or other form of authority under a law of another State or Territory that corresponds to a poppy licence:

- (a) a poppy licence within the meaning of the *Poppy Regulation Act* of the Northern Territory,
- (b) a poppy cultivation licence, or poppy processing licence, within the meaning of Part 4A of the *Controlled Substances Act 1984* of South Australia,
- (c) a poppy grower's licence, or poppy research licence, within the meaning of the *Poisons Act 1971* of Tasmania or a licence under section 16 (1) (a) of that Act,
- (d) a poppy cultivation licence, or poppy processing licence, within the meaning of Part IVB of the *Drugs, Poisons and Controlled Substances Act 1981* of Victoria.

6 Meaning of interstate processing licence

For the purposes of the definition of *interstate processing licence* in section 4 (1) of the Act, each of the following is declared to be a licence or other form of authority under a law of another State or Territory that corresponds to a processing licence:

- (a) a poppy licence, within the meaning of the *Poppy Regulation Act* of the Northern Territory, that authorises the processing of poppy material,
- (b) a poppy processing licence within the meaning of Part 4A of the *Controlled Substances Act 1984* of South Australia,
- (c) a licence under section 16 (1) (a) of the *Poisons Act 1971* of Tasmania,
- (d) a poppy processing licence within the meaning of Part IVB of the *Drugs, Poisons and Controlled Substances Act 1981* of Victoria.

7 Fit and proper person

- (1) For the purposes of section 5 (5) (c) (iv) of the Act, the *Hemp Industry Act 2008* and regulations made under that Act are specified.
- (2) For the purposes of section 5 (5) (e) of the Act, each of the following is specified:
 - (a) whether an authority held by a person under a law of the Commonwealth or a State or Territory dealing with a prohibited drug or prohibited plant has been suspended, cancelled, revoked or withdrawn,
 - (b) whether a person who held such an authority has been disqualified from obtaining such an authority.

8 Checks and requirements for person employed or engaged

For the purposes of section 11 (a) of the Act, a person must not be employed or engaged in activities under a poppy licence or poppy permit unless:

- (a) the person has attained the age of 17 years or, if the person has not attained that age, the person is an apprentice or trainee within the meaning of the *Apprenticeship and Traineeship Act 2001*, and
- (b) the person is not, and has not been within the last 5 years, an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, and
- (c) the person has provided at least 1 satisfactory character reference to the licence or permit holder, and
- (d) a criminal record check of the person has been conducted within the last 12 months, and
- (e) the person has not, within the last 10 years, been convicted of any of the following offences, whether committed under the law of New South Wales or the law of another jurisdiction:
 - (i) an offence involving theft, dishonesty, fraud or violence that would, if committed in New South Wales, be an indictable offence,
 - (ii) an offence involving alkaloid poppies, alkaloid poppy material, prohibited plants, prohibited drugs, medicines, poisons or therapeutic goods that would, if committed in New South Wales, be an indictable offence,
 - (iii) an offence that would, if committed in New South Wales, be punishable under a law of New South Wales by imprisonment for life or for a term of 5 years or more or by a fine of \$500,000 or more,

- (iv) an offence committed under a law of the Commonwealth that is punishable by imprisonment for life or for a term of 5 years or more or by a fine of \$500,000 or more, and
- (f) the person has not, within the last 5 years, been convicted of any of the following offences:
 - (i) an offence against the *Narcotic Drugs Act 1967* of the Commonwealth or regulations under that Act,
 - (ii) an offence against the *Drug Misuse and Trafficking Act 1985* or regulations under that Act or against a corresponding law of another jurisdiction,
 - (iii) an offence against the *Poisons and Therapeutic Goods Act 1966* or regulations under that Act or against a corresponding law of another jurisdiction,
 - (iv) an offence, whether committed under the law of New South Wales or the law of another jurisdiction, involving theft that would, if committed in New South Wales, be punishable under a law of New South Wales by imprisonment for 3 months or more.

9 Identification card for person employed or engaged

- (1) Section 11 (b) of the Act does not apply to a person employed or engaged in activities under a poppy permit.
- (2) For the purposes of section 11 (b) (i) of the Act, an identification card issued to a person employed or engaged in activities under a poppy licence must display:
 - (a) the date on which it is issued, and
 - (b) the date on which it expires (which must not be longer than 5 years after it is issued).

10 Further conditions of licence

For the purposes of section 11 (g) of the Act, a poppy licence is also subject to the following conditions:

- (a) reasonable steps must be taken to regularly inspect for, and destroy, any alkaloid poppies that grow from unintended seeding or cultivation,
- (b) the holder of the licence must inform the Secretary by written notice within 7 days after either of the following occurs:
 - (i) a person is employed or engaged in activities under the licence (and the notice must include the full name, date of birth, residential address of the person and a description of the duties for which the person is employed or engaged),
 - (ii) a person ceases to be employed or engaged in activities under the licence (and the notice must identify the person).

11 Further conditions of permit

For the purposes of section 11 (g) of the Act, a poppy permit is also subject to the condition that the holder of the permit must ensure that each person employed or engaged in activities under the permit is:

- (a) issued with a document indicating that the person is employed or engaged in those activities, and
- (b) required to be in possession of that document while employed or engaged in those activities so as to be able to produce it to an authorised officer on request, and

- (c) required to produce the document to an authorised officer on request at any time while employed or engaged in those activities.

12 Timing of application for renewal of licence

For the purpose of section 13 (5) of the Act, an application for renewal of a licence must be made no later than 3 months before the date of expiry of the licence.

13 Date for payment of annual fee for cultivation licence

For the purposes of section 14 (2) of the Act, the holder of a cultivation licence must pay to the Secretary the annual fee fixed by Schedule 2 on or before the date of the annual anniversary of the grant of the licence.

14 Criteria for determination of applications

For the purposes of section 19 (1) (f) of the Act, the Secretary may refuse an application for the grant, renewal or amendment of a poppy licence or poppy permit if the applicant does not satisfy the Secretary that the grant, renewal or amendment is consistent with the public interest and the objects of the Act.

15 Timing of order on expiry, surrender or cancellation of licence

For the purposes of section 22 (3) of the Act, an order under section 22 may be made within 12 months after the expiry, surrender or cancellation of the licence.

16 Death of holder of licence or permit

If the holder of a poppy licence or poppy permit dies, the personal representative of the deceased, or, if the Secretary so requires or the personal representative so requests, some other person approved by the Secretary, is to be taken to be the holder of the licence or permit (on the same conditions as were applicable to the former holder of the licence or permit) as from the date of death until the expiration of 6 months from that date or until such later date as may be fixed by the Secretary.

Schedule 1 Penalty notice offences

For the purposes of section 37 of the Act:

- (a) each offence specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable under any such penalty notice is the amount specified in this Schedule for the offence.

Column 1	Column 2
Provision	Penalty
Offences under the Act	
Section 12—in the case of a corporation	\$5,500
Section 12—in the case of an individual	\$1,100
Section 21 (10)—in the case of a corporation	\$1,100
Section 21 (10)—in the case of an individual	\$220
Section 22 (4)—in the case of a corporation	\$5,500
Section 22 (4)—in the case of an individual	\$1,100

Schedule 2 Fees and costs of audit

1 Fees and costs of audit

The following amounts are payable under the Act:

		Amount
1	Poppy cultivation licence	
(a)	Application fee for grant or renewal of licence	\$900
	plus, for each hour or part of an hour of an inspection that is, in the opinion of the Secretary, reasonably required for the determination of the application	\$150
	plus, for a late application for renewal of licence	\$65
(b)	Licence fee	\$1,300
(c)	Annual fee	\$1,300
2	Poppy processing licence	
(a)	Application fee for grant or renewal of licence	\$1,300
	plus, for each hour or part of an hour of an inspection that is, in the opinion of the Secretary, reasonably required for the determination of the application	\$150
	plus, for a late application for renewal of licence	\$65
(b)	Licence fee	\$10,300
3	Poppy permit	
	Application fee for grant of permit	\$550
4	Recovery of cost of audit	
	Pursuant to section 20 (2) of the Act, the cost of an audit that may be recovered from the holder of a licence is the specified fee for each hour or part of an hour reasonably required for the conduct of the audit.	\$150

2 Indexation for inflation

- (1) Each of the amounts specified in clause 1 is to be adjusted for inflation as provided by this clause on 1 July 2018 and on 1 July in each subsequent year.
- (2) The amount is to be adjusted on each 1 July by multiplying the amount that applied immediately before that 1 July by $\frac{B}{A}$ where:
B is the Consumer Price Index number for the last quarter for which such a number was published before that 1 July.
A is the Consumer Price Index number for the last quarter for which such a number was published before the previous 1 July.
- (3) However, the amount is not to be adjusted if $\frac{B}{A}$ is less than 1 (as a result of deflation).
- (4) If the adjusted amount is not a whole number multiple of \$1, the adjusted amount is to be rounded up to the nearest whole number multiple of \$1.
- (5) The Secretary is to publish notice of each adjusted amount under this clause on the NSW legislation website.

(6) In this clause:

Consumer Price Index means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

Consumer Price Index number for a quarter means the number for that quarter appearing in the Consumer Price Index.