

# Hemp Industry Act 2008 No 58

[2008-58]



New South Wales

## Status Information

### Currency of version

Historical version for 1 July 2008 to 9 December 2008 (accessed 24 November 2024 at 21:59)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2008](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 14 November 2008

# Hemp Industry Act 2008 No 58



New South Wales

## Contents

<b>Long title</b> .....	5
<b>Part 1 Preliminary</b> .....	5
1 Name of Act .....	5
2 Commencement .....	5
3 Definitions .....	5
4 Meaning of “close associate” .....	6
<b>Part 2 Licensing scheme</b> .....	7
5 Licence to cultivate or supply low-THC hemp .....	7
6 Offence not to comply with licence .....	7
7 Application for licence .....	8
8 Investigation of application .....	8
9 Suitability of applicant and close associates of applicant .....	9
10 Determination of licence application .....	9
11 Duration of licence .....	9
12 Conditions of licence .....	10
13 Renewal of licence .....	10
14 Transfer of licence .....	10
15 Suspension of licence .....	11
16 Revocation of licence .....	11
<b>Part 3 Investigation and enforcement powers</b> .....	12
<b>Division 1 Preliminary</b> .....	12

17 Purposes for which powers under Part may be exercised .....	12
18 Appointment of inspectors .....	12
19 Identification of inspectors .....	13
20 Police officers to be inspectors .....	13
<b>Division 2 Powers to require information or records and give directions</b> .....	13
21 Requirement to provide information and records .....	13
22 Provisions relating to records .....	13
23 Power to give directions to rectify breach of licence .....	13
24 Application of Division .....	14
<b>Division 3 Powers of entry and search of premises</b> .....	14
25 Power to enter premises .....	14
26 Entry into residential premises only with permission or warrant .....	14
27 Powers to inspect and seize things .....	14
28 Search warrants .....	15
29 Assistance to be given to inspectors .....	16
30 Dealing with seized things .....	16
<b>Division 4 Power to question persons</b> .....	16
31 Power to require answers .....	16
32 Power to demand name and address .....	17
<b>Division 5 General</b> .....	17
33 Offences under this Part .....	17
34 Provisions relating to requirements to furnish records, information or answer questions .....	17
<b>Part 4 Miscellaneous</b> .....	18
35 False or misleading statements .....	18
36 Forfeiture and destruction of low-THC hemp .....	19
37 Arrangements for supply of information .....	19
38 Review by ADT of certain licence decisions .....	20
39 Approved fees .....	20
40 Protection from personal liability .....	20
41 Delegation .....	20

42 Service of documents .....	21
43 Offences by corporations.....	21
44 Proceedings for offences .....	21
45 Penalty notices .....	22
46 Regulations.....	22
47 Act to bind Crown .....	23
48 Savings, transitional and other provisions.....	23
49 Amendment of Acts .....	23
50 Review of Act.....	23
<b>Schedule 1 Savings, transitional and other provisions .....</b>	<b>23</b>
<b>Schedule 2 Amendment of Acts.....</b>	<b>25</b>

# Hemp Industry Act 2008 No 58



New South Wales

An Act to authorise and regulate the cultivation and supply of low-THC hemp for commercial production and other legitimate uses; to amend the [Drug Misuse and Trafficking Act 1985](#); and for other purposes

## Part 1 Preliminary

### 1 Name of Act

This Act is the [Hemp Industry Act 2008](#).

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Section 3 and Schedules 1 and 2.1 [1] and [3] commence on the date of assent to this Act.

### 3 Definitions

- (1) In this Act:

**close associate**—see section 4.

**corresponding authority** means an authority issued under a corresponding law that, in the opinion of the Director-General, is similar to a licence under this Act.

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

**cultivate** includes grow, harvest or produce.

**Department** means the Department of Primary Industries.

**Director-General** means the Director-General of the Department.

**drug related offence** means an indictable offence under the [Drug Misuse and Trafficking Act 1985](#) or under a corresponding law.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**inspector** means a person appointed by the Director-General under section 18.

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

**low-THC hemp** means any plant of the genus Cannabis, by whatever name that plant may be called, that has a concentration of THC in its leaves and flowering heads of no more than 1%, and includes the seed of any such plant and any product (such as oil or fibre) derived from any such plant.

**premises** includes:

- (a) a building or structure, or
- (b) land or a place (whether built on or not), or
- (c) a vehicle, vessel or aircraft.

**records** includes plans, specifications, maps, reports, books and other documents (whether in writing, in electronic form or otherwise).

**sell** includes sell whether by wholesale or retail or dispose of by barter or exchange, and also includes dealing in, agreeing to sell, or offering or exposing for sale, or keeping or having in possession for sale, or sending, forwarding, delivering or receiving for sale or on sale, or authorising, directing, causing, suffering, permitting or attempting any of those acts or things.

**supply** includes sell and distribute, and also includes agreeing to supply, or offering to supply, or keeping or having in possession for supply, or sending, forwarding, delivering or receiving for supply, or authorising, directing, causing, suffering, permitting or attempting any of those acts or things.

**THC** means tetrahydrocannabinol.

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

#### **4 Meaning of “close associate”**

- (1) For the purposes of this Act, a person is a **close associate** of an applicant for, or the holder of, a licence if the person:
  - (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the licence applicant or holder, and by virtue of that interest or power is or will be able (in the opinion of the Director-General) to exercise a significant influence over or with respect to the conduct of that

business, or

- (b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the licence applicant or holder.

(2) In this section:

**relevant financial interest** in relation to a business means:

- (a) any share in the capital of the business, or
- (b) any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.

**relevant position** means the position of director, manager or secretary or any executive position, however designated, if it is an executive position.

**relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- (a) to participate in any directorial, managerial or executive decision, or
- (b) to elect or appoint any person to any relevant position.

## Part 2 Licensing scheme

### 5 Licence to cultivate or supply low-THC hemp

The Director-General may grant a licence authorising a person to cultivate or supply low-THC hemp for any one or more of the following purposes:

- (a) for commercial production,
- (b) for use in any manufacturing process,
- (c) for scientific research, instruction, analysis or study,
- (d) for any other purpose prescribed by the regulations.

**Note—**

The possession of low-THC hemp is not an offence under the [Drug Misuse and Trafficking Act 1985](#) if it is cultivated or supplied under the authority of this Act.

### 6 Offence not to comply with licence

A person who is the holder of a licence:

- (a) must not cultivate or supply low-THC hemp otherwise than for the purpose for which the licence is granted, and
- (b) must comply with the conditions to which the licence is subject.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

## **7 Application for licence**

- (1) A person may apply to the Director-General for a licence.
- (2) An application for a licence must:
  - (a) be in the form approved by the Director-General, and
  - (b) be accompanied by such fee (if any) as may be approved by the Director-General to cover the costs associated with the assessment and determination of the application, and
  - (c) contain such information and particulars as are prescribed by the regulations, and
  - (d) contain such other information, and be accompanied by such other documents, as the Director-General may require to determine the application.

## **8 Investigation of application**

- (1) On receiving an application for a licence, the Director-General is authorised to carry out such investigations and inquiries as the Director-General considers necessary to determine the application.
- (2) In particular, the Director-General must conduct a criminal record check in relation to the applicant and may conduct a criminal record check in relation to any person who, in the opinion of the Director-General, is a close associate of the applicant. It is the duty of the Commissioner of Police to assist in any such criminal record check.
- (3) The Director-General may, by notice in writing, require a person who is an applicant for a licence or who, in the opinion of the Director-General, is a close associate of the applicant to do any one or more of the following things:
  - (a) to provide, in accordance with directions in the notice, such information as is relevant to the investigation of the application and specified in the notice,
  - (b) to produce, in accordance with directions in the notice, such records as are relevant to the investigation of the application and specified in the notice,
  - (c) to furnish to the Director-General such authorities and consents as the Director-General directs for the purpose of enabling the Director-General to obtain information (including financial and other confidential information) from other persons concerning the applicant or close associate.
- (4) If a requirement made under this section is not complied with, the Director-General may refuse to determine the application concerned.
- (5) Any costs incurred by the Director-General in conducting a criminal record check



under this section are to be paid by the applicant for the licence concerned.

### **9 Suitability of applicant and close associates of applicant**

- (1) This section applies in relation to a close associate of an applicant for a licence only if the Director-General is satisfied that the close associate is likely to be concerned in, or associated with, the cultivation or supply of low-THC hemp under the licence.
- (2) The Director-General must not grant a licence to a person unless satisfied that the person, and each close associate of the person, is a suitable person to be concerned in or associated with the cultivation or supply of low-THC hemp under a licence.
- (3) In particular, the Director-General is to consider whether the person, and each close associate of the person, is of good repute, having regard to the person's or close associate's (as the case requires) character, honesty and integrity.
- (4) The Director-General must not grant a licence to a person if the person, or a close associate of the person, has been found guilty of a drug related offence.
- (5) The Director-General may refuse to grant a licence to a person:
  - (a) if the person, or a close associate of the person, has been found guilty of an offence that, in the opinion of the Director-General, makes the person or close associate unsuitable to be concerned in or associated with the cultivation or supply of low-THC hemp under a licence, or
  - (b) on such other grounds the Director-General considers appropriate.
- (6) The regulations may make further provision for the circumstances in which the Director-General may refuse, or is required to refuse, to grant a licence to a person.

### **10 Determination of licence application**

- (1) The Director-General is to determine an application for a licence:
  - (a) by granting the application and issuing a licence to the applicant, or
  - (b) by refusing the application.
- (2) The Director-General is to give the applicant written notice of the determination of the application. However, the Director-General is not required to give any reasons for his or her decision.
- (3) The Director-General's decision in relation to a licence application is final and is not subject to review.

### **11 Duration of licence**

Unless it is sooner revoked or suspended under this Act, a licence continues in force for a

period of 5 years from the date on which it was granted, renewed or transferred (or such shorter period as may be specified in the licence).

## **12 Conditions of licence**

- (1) A licence is subject to:
  - (a) such conditions as are imposed by this Act or prescribed by the regulations, and
  - (b) such conditions as may be imposed by the Director-General, at the time the licence is granted, renewed or transferred or at any later time, and specified in the licence.
- (2) A condition imposed by the Director-General after the licence is granted, renewed or transferred takes effect when written notice of the condition is given to the licensee, or at such later date as may be specified in the notice.
- (3) The Director-General may at any time, by notice in writing to the holder of a licence, vary or revoke a condition of the licence imposed by the Director-General.

## **13 Renewal of licence**

- (1) An application for the renewal of a licence may be made to the Director-General by the holder of the licence.
- (2) If an application for the renewal of a licence is received by the Director-General no later than 28 days before the date on which the licence is due to expire, the licence is taken to continue in force until the application is determined by the Director-General.
- (3) Subject to the regulations, an application for the renewal of a licence is to be dealt with as if it were an initial application for a licence. Accordingly, sections 7–9 apply in relation to an application under this section.
- (4) The Director-General is to determine an application for the renewal of a licence:
  - (a) by granting the application and issuing a licence to the applicant, or
  - (b) by refusing the application.
- (5) The Director-General is to give the applicant in writing of the determination of the application.

## **14 Transfer of licence**

- (1) An application for the transfer of a licence may be made jointly by the holder of the licence and the person named in the application as the transferee.
- (2) Subject to the regulations, an application for the transfer of a licence is to be dealt with as if it were an initial application by the transferee for a licence. Accordingly,

sections 7-9 apply in relation to an application under this section.

- (3) The Director-General is to determine an application for the transfer of a licence:
  - (a) by granting the application and transferring the licence to the transferee, or
  - (b) by refusing the application.
- (4) The Director-General is to give the joint applicants written notice of the determination of the application. However, the Director-General is not required to give any reasons for his or her decision.
- (5) The Director-General's decision in relation to an application for the transfer of a licence is final and is not subject to review.

### **15 Suspension of licence**

- (1) The Director-General may, if the Director-General is satisfied there may be grounds for revoking a licence, suspend the licence by giving the licensee a written notice stating that the licence is suspended. The regulations may specify other grounds on which a licence may be suspended by the Director-General.
- (2) The suspension of a licence continues until either:
  - (a) the licence is revoked under section 16, or
  - (b) the Director-General gives the licensee a written notice stating that the suspension is lifted.
- (3) The authority conferred by a licence ceases to have effect during the period that the licence is suspended.
- (4) However, the Director-General may authorise a person, during the period that a licence is suspended, to cultivate or supply, in accordance with the conditions of the licence, any low-THC hemp that was in the possession of the licence holder immediately before the suspension took effect.

### **16 Revocation of licence**

- (1) A licence may be revoked by the Director-General:
  - (a) if the licensee contravenes any provision of this Act or the regulations, whether or not the licensee has been convicted of an offence for the contravention, or
  - (b) on such other grounds as may be prescribed by the regulations.

#### **Note—**

Failing to comply with the conditions of a licence is a contravention of the Act.

- (2) The Director-General must revoke a licence if the Director-General is satisfied that, if the licensee were applying for a new licence, the application would be required by this Act to be refused.
- (3) A licence is revoked by the Director-General by serving on the licensee a written notice stating that the licence is revoked. The revocation takes effect when the notice is served or on a later date specified in the notice.
- (4) The Director-General may, by serving a further written notice on the holder of a licence, cancel a notice revoking a licence before the notice takes effect.

## **Part 3 Investigation and enforcement powers**

### **Division 1 Preliminary**

#### **17 Purposes for which powers under Part may be exercised**

- (1) Powers may be exercised under this Part for the following purposes:
  - (a) for determining whether there has been compliance with, or a contravention of, this Act or the regulations,
  - (b) for determining whether the holder of a licence is cultivating or supplying any cannabis that is not low-THC hemp,
  - (c) in connection with exercising the functions of an inspector under this Act,
  - (d) for obtaining information or records for purposes connected with the administration of this Act,
  - (e) generally for administering this Act.
- (2) For the purposes of subsection (1) (b), **cannabis** means cannabis leaf, cannabis oil, cannabis plant and cannabis resin as defined in the [Drug Misuse and Trafficking Act 1985](#).

#### **18 Appointment of inspectors**

- (1) The Director-General may appoint any person, or persons included in a class of persons, to be an inspector or inspectors for the purposes of this Act.
- (2) The Director-General may, in and by the instrument of an inspector's appointment, limit the functions that the inspector may exercise under this Act.
- (3) An inspector is, to the extent to which the inspector is exercising functions as an inspector under this Act, subject to the control and direction of the Director-General.

### **19 Identification of inspectors**

- (1) The Director-General is to cause each inspector to be issued with a means of identification in the form approved by the Director-General.
- (2) In the course of exercising the functions of an inspector under this Act, the inspector must, if requested to do so by any person affected by the exercise of any such function, produce the inspector's identification for inspection by the person unless to do so would defeat the purpose for which the functions are to be exercised.

### **20 Police officers to be inspectors**

- (1) A police officer may exercise the functions of an inspector under this Act.
- (2) A reference in this Act (other than in section 18 or 19) to an inspector includes a reference to a police officer in the course of exercising, as referred to in this section, the functions of an inspector.

## **Division 2 Powers to require information or records and give directions**

### **21 Requirement to provide information and records**

- (1) The Director-General or an inspector may, by notice in writing given to a person, require the person to furnish to the Director-General or inspector such information or records (or both) as the Director-General or inspector requires by the notice in connection with any matter arising under or in connection with this Act or the regulations.
- (2) Any such notice must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.

### **22 Provisions relating to records**

- (1) A notice under this Division may only require a person to furnish records that are in the person's possession or that are within the person's power to obtain lawfully.
- (2) The person to whom any record is furnished under this Division may take copies of it.
- (3) If any record required to be furnished under this Division is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.

### **23 Power to give directions to rectify breach of licence**

- (1) The Director-General or an inspector may direct the holder of a licence, by notice in writing, to carry out such work or other actions as the Director-General or inspector

considers necessary to rectify any breach of the licence.

- (2) If the requirements of the notice are not complied with within the period specified in it, the Director-General or inspector:
  - (a) may cause the work or actions specified in the notice to be carried out, and
  - (b) may, by proceedings brought in any court of competent jurisdiction, recover as a debt from the licensee to whom the notice was given the reasonable cost of complying with those requirements.

## **24 Application of Division**

This Division applies whether or not a power of entry under Division 3 is being or has been exercised.

## **Division 3 Powers of entry and search of premises**

### **25 Power to enter premises**

- (1) An inspector may enter any premises at any time for the purposes referred to in section 17.
- (2) Entry may be effected under this Act by an inspector with such assistance as the inspector considers necessary and with the use of reasonable force.

### **26 Entry into residential premises only with permission or warrant**

This Division does not empower an inspector to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant under section 28.

### **27 Powers to inspect and seize things**

- (1) An inspector may, on any premises lawfully entered, do anything that in the opinion of the inspector is necessary to be done for the purposes of this Part, including (but not limited to) the things specified in subsection (2).
- (2) An inspector may do any or all of the following:
  - (a) carry out surveillance activities,
  - (b) examine and inspect any part of the premises or any article or thing on the premises,
  - (c) make such examinations and inquiries as the inspector considers necessary,
  - (d) require records to be produced for inspection,
  - (e) examine and inspect any records,

- (f) take copies of any records,
  - (g) take and remove samples of any plant or thing for analysis,
  - (h) seize anything that the inspector has reasonable grounds for believing is connected with an offence under this Act, the regulations or the *Drug Misuse and Trafficking Act 1985*,
  - (i) do any other thing the inspector is empowered to do under this Part.
- (3) The power to seize anything connected with an offence includes a power to seize:
- (a) a thing with respect to which the offence has been committed, and
  - (b) a thing that will afford evidence of the commission of the offence, and
  - (c) a thing that was used for the purpose of committing the offence.

A reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

## 28 Search warrants

- (1) An inspector may apply to an authorised officer for the issue of a search warrant if the inspector believes on reasonable grounds that:
- (a) a provision of this Act, the regulations or the *Drug Misuse and Trafficking Act 1985* is being or has been contravened at any premises, or
  - (b) there is in or on any premises any matter or a thing that is connected with an offence under this Act, the regulations or the *Drug Misuse and Trafficking Act 1985*.
- (2) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:
- (a) to enter the premises, and
  - (b) to exercise any function of an inspector under this Division.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:

**authorised officer** has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**matter or a thing** connected with an offence means:

- (a) matter or a thing with respect to which the offence has been committed, or
- (b) matter or a thing that will afford evidence of the commission of an offence, or
- (c) matter or a thing that was used, or is intended to be used, for the purpose of committing the offence.

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

## **29 Assistance to be given to inspectors**

- (1) This section applies for the purpose of enabling an inspector to exercise any of the powers of an inspector under this Division in connection with any premises.
- (2) The Director-General may, by notice in writing given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.
- (3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations.

## **30 Dealing with seized things**

- (1) If an inspector seizes anything under section 27 on any premises, the inspector must issue the person apparently in charge of the premises with a written receipt for the thing seized.
- (2) An inspector may retain anything seized under section 27 until the completion of any proceedings (including proceedings on appeal) in which it may be evidence.
- (3) A record may only be retained under subsection (2) if the person from whom the record was seized is provided, within a reasonable time after the seizure, with a copy of the record certified by the inspector as a true copy. The copy is, as evidence, of equal validity to the document of which it is certified to be a copy.
- (4) Subsection (2) ceases to have effect in relation to anything seized if, on the application of a person aggrieved by the seizure, the court in which proceedings referred to in that subsection are commenced so orders.
- (5) For the removal of any doubt, anything seized under section 27 may be used as evidence in proceedings for an offence under this or any other Act.

## **Division 4 Power to question persons**

### **31 Power to require answers**

- (1) An inspector may require a person whom the inspector suspects on reasonable



grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of this Act to answer questions in relation to those matters.

- (2) The Director-General may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.

### **32 Power to demand name and address**

An inspector may require a person whom the inspector suspects on reasonable grounds to have offended or to be offending against this Act or the regulations to state his or her full name and residential address.

## **Division 5 General**

### **33 Offences under this Part**

- (1) A person must not, without lawful excuse, refuse or fail to comply with a requirement made of the person under this Part.
- (2) A person must not furnish any information or do any other thing in purported compliance with a requirement made under this Part, knowing that it is false or misleading in a material respect.
- (3) A person must not wilfully:
  - (a) obstruct, delay, hinder, assault, threaten, insult or intimidate an inspector in the exercise of the inspector's powers under this Part, or
  - (b) refuse to allow an inspector to enter any premises the inspector may lawfully enter under this Part.
- (4) A person must not impersonate an inspector.

Maximum penalty: 100 penalty units.

### **34 Provisions relating to requirements to furnish records, information or answer questions**

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement under this Part to furnish any records or information or to answer a question on the ground that

the record, information or answer might incriminate the person or make the person liable to a penalty.

- (3) **Information or answer not admissible if objection made** However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:
- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
  - (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
- (4) **Records admissible** Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) **Further information** Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:
- (a) that the record or information had to be furnished or the answer had to be given, or
  - (b) that the record or information furnished or answer given might incriminate the person.
- (6) **Requirement to state name and address** This section extends to a requirement under this Part to state a person's name and address.

## Part 4 Miscellaneous

### 35 False or misleading statements

- (1) A person must not, in any official document, make a statement that the person knows, or could reasonably be expected to know:
- (a) is false or misleading in a material respect, or
  - (b) omits material matter.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) In this section:

**official document** means any application under this Act or any other document that is required to be provided to the Director-General under this Act or the regulations.

### **36 Forfeiture and destruction of low-THC hemp**

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

### **37 Arrangements for supply of information**

- (1) For the purposes of assisting in the administration of this Act, the Director-General may enter into arrangements with a relevant agency for the supply to the Director-General of any information held by the agency.
- (2) Any such arrangement is sufficient authority for the supply of the information concerned.
- (3) In this section:

**relevant agency** means:

- (a) the NSW Police Force or the police force of another State or Territory or of an overseas jurisdiction, or
- (b) the Australian Federal Police, or
- (c) the New South Wales Crime Commission, or
- (d) the Australian Crime Commission, or
- (e) any other authority or person responsible for the investigation or prosecution of offences against the laws of the State or of the Commonwealth, another State or Territory or an overseas jurisdiction, or
- (f) any person or agency exercising functions under a corresponding law, or

- (g) any other person or body prescribed by the regulations for the purposes of this section.

### **38 Review by ADT of certain licence decisions**

A person may apply to the Administrative Decisions Tribunal for a review of a decision by the Director-General:

- (a) to impose a condition on a licence held by the person or to vary any such condition imposed by the Director-General, or
- (b) to refuse to renew a licence granted to the person, or
- (c) to suspend or revoke a licence held by the person.

### **39 Approved fees**

- (1) The amount of a fee approved by the Director-General under this Act must not exceed the amount (if any) prescribed in respect of any such fee by the regulations.
- (2) The Director-General may waive all or part of any fee payable under this Act in any circumstances the Director-General considers appropriate.

### **40 Protection from personal liability**

- (1) Any matter or thing done or omitted to be done by a person who is:
  - (a) the Director-General, or
  - (b) acting under the direction of the Director-General, or
  - (c) a member of staff of the Department, or
  - (d) an inspector,

does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising a function under this Act, make the person personally liable to any action, liability, claim or demand in respect of that matter or thing.

- (2) However, any such liability attaches instead to the Crown.

### **41 Delegation**

The Director-General may delegate the exercise of any function of the Director-General under this Act (other than this power of delegation) to:

- (a) any member of staff of the Department, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

## **42 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on, or given to, any person may be served or given by:
  - (a) in the case of a natural person:
    - (i) delivering it to the person personally, or
    - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) sending it by facsimile transmission to the last known facsimile number of the person, or
  - (b) in the case of a body corporate:
    - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
    - (ii) sending it by facsimile transmission to the last known facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

## **43 Offences by corporations**

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

## **44 Proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

- (2) Any such proceedings must be commenced not later than 12 months from when the offence was alleged to have been committed.

#### **45 Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay within a time and to a person specified in the notice the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section:

***authorised officer*** means a police officer or an inspector.

#### **46 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may:

- (a) require holders of licences to keep records for the purposes of this Act and to provide reports to the Director-General on such matters as may be prescribed by the regulations, and
- (b) make provision for the charging of annual licence fees and other fees associated with the administration of the licensing scheme under this Act (including provision for the payment of such fees by instalments), and
- (c) make further provision for or with respect to the suspension, renewal and transfer of licences.

(3) The regulations may create offences punishable by a penalty not exceeding 50 penalty units.

#### **47 Act to bind Crown**

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

#### **48 Savings, transitional and other provisions**

Schedule 1 has effect.

#### **49 Amendment of Acts**

The Acts specified in Schedule 2 are amended as set out in that Schedule.

#### **50 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

### **Schedule 1 Savings, transitional and other provisions**

(Section 48)

## **Part 1 General**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent

on the enactment of the following Acts:

this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Existing authorities under [Drug Misuse and Trafficking Act 1985](#) in relation to low-THC hemp**

(1) In this clause:

***existing authority*** means an authority:

- (a) granted by the Director-General of the Department of Health under section 23 (4) (b) of the [Drug Misuse and Trafficking Act 1985](#) (whether or not in conjunction with an authority granted by that Director-General under any other provision of that Act), and
  - (b) that relates to the cultivation, possession or supply of low-THC hemp for the purpose of scientific research, instruction, analysis or study, and
  - (c) that is in force immediately before the date of assent to this Act.
- (2) An existing authority ceases to have effect on the commencement of Part 2 of this Act.
- (3) A person acting in accordance with an existing authority is, on the commencement of Part 2 of this Act, taken to be the holder of a licence under this Act authorising the person to cultivate or supply low-THC hemp for the purpose of scientific research, instruction, analysis or study:
- (a) for the remainder of the term for which the existing authority was granted, or
  - (b) if the existing authority was not granted for a specified term—for such period as the Director-General may specify by written notice given to the holder of the



licence.

- (4) The conditions to which any such existing authority is subject are taken to be conditions imposed by the Director-General under this Act and may be varied or revoked in accordance with this Act.
- (5) If, but for this subclause, an existing authority would expire before the commencement of Part 2 of this Act, the existing authority continues to have effect under and for the purposes of the *Drug Misuse and Trafficking Act 1985* until such time as Part 2 of this Act commences.

## Schedule 2 Amendment of Acts

(Section 49)

### 2.1 Drug Misuse and Trafficking Act 1985 No 226

#### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

**low-THC hemp** has the same meaning as in the *Hemp Industry Act 2008*.

#### [2] Section 8A

Insert after section 8:

#### **8A Relationship with Hemp Industry Act 2008**

- (1) Nothing in this Act affects any provision of or made under the *Hemp Industry Act 2008* or renders unlawful anything done in accordance with any such provision.
- (2) Without limiting the generality of subsection (1), nothing in this Act renders unlawful:
  - (a) cultivating or supplying, or taking part in cultivating or supplying, low-THC hemp under the authority conferred by the *Hemp Industry Act 2008*, or
  - (b) manufacturing or producing, or taking part in manufacturing or producing, low-THC hemp or anything containing low-THC hemp if that hemp was cultivated or supplied under the authority conferred by the *Hemp Industry Act 2008* or under a corresponding authority, or
  - (c) possessing low-THC hemp or anything containing low-THC hemp if that hemp was cultivated or supplied under the authority conferred by the *Hemp Industry Act 2008* or under a corresponding authority.

(3) In this section, **corresponding authority** has the same meaning as in the *Hemp Industry Act 2008*.

**[3] Section 41A**

Insert after section 41:

**41A Authorities for low-THC hemp not to be granted**

The Director-General of the Department of Health is not authorised to grant an authority under section 10 (2) (b), 11C (2) (b), 23 (4) (b), 24 (4) (b), 25 (4) (b) or 25A (9) (b) in relation to low-THC hemp.

**2.2 Fines Act 1996 No 99**

**Schedule 1 Statutory provisions under which penalty notices issued**

Insert in alphabetical order of Acts:

*Hemp Industry Act 2008*, section 45

**2.3 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

**Schedule 2 Search warrants under other Acts**

Insert in alphabetical order of Acts:

*Hemp Industry Act 2008*, section 28

**2.4 Poisons and Therapeutic Goods Act 1966 No 31**

**Section 5A**

Insert after section 5:

**5A Relationship with *Hemp Industry Act 2008***

Nothing in this Act or the regulations under this Act or in the Commonwealth therapeutic goods laws (to the extent they apply as a law of New South Wales) affects any provision of or made under the *Hemp Industry Act 2008* or renders unlawful anything done in accordance with any such provision.