

# Poppy Industry Act 2016 No 37

[2016-37]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Note**

Amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### 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](#).

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# Poppy Industry Act 2016 No 37



New South Wales

An Act to facilitate and regulate the cultivation of alkaloid poppies and the receipt and supply of material derived from alkaloid poppies for use in manufacturing or producing therapeutic goods and in scientific research, analysis, education and training; to amend the *Drug Misuse and Trafficking Act 1985* and the *Poisons and Therapeutic Goods Act 1966*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Poppy Industry Act 2016*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Object of Act

- (1) The object of this Act is to facilitate and regulate the cultivation of alkaloid poppies and the receipt and supply of material derived from alkaloid poppies for use in manufacturing or producing therapeutic goods and in scientific research, analysis, education and training.
- (2) That object is to be achieved by:
  - (a) establishing a scheme of licences and permits to authorise activities relating to alkaloid poppies or material derived from alkaloid poppies, and
  - (b) ensuring that the authorised activities are limited to activities supporting the manufacture or production of therapeutic goods, whether in or outside Australia, or scientific research, analysis, education or training, and
  - (c) regulating the authorised activities in a manner designed:
    - (i) to keep alkaloid poppies and certain material derived from alkaloid poppies secure and ensure that they are not diverted for unlawful purposes, and
    - (ii) to minimise the risk of environmental harm or harm to humans arising from

the activities.

#### 4 Definitions

(1) In this Act:

**alkaloid poppy** means a plant of:

- (a) a class specified in the regulations, or
- (b) if the regulations do not specify a class—the species *Papaver bracteatum* or *Papaver somniferum*.

**alkaloid poppy material** means:

- (a) poppy straw, however prepared or treated, or
- (b) any other thing derived from alkaloid poppies declared by the regulations to be alkaloid poppy material.

**amend a poppy licence or poppy permit** includes:

- (a) vary or revoke a condition of the licence or permit, and
- (b) impose a further condition on the licence or permit.

**authorised officer** means:

- (a) a person appointed as an authorised officer under Part 3, or
- (b) a police officer.

**corporation** includes any body corporate.

**criminal intelligence** means:

- (a) information classified by the Commissioner of Police as criminal intelligence within the meaning of the [Crimes \(Criminal Organisations Control\) Act 2012](#), or
- (b) information declared by the Supreme Court under that Act to be criminal intelligence, or
- (c) other information of a kind specified in the regulations.

**cultivate alkaloid poppies** means:

- (a) sow seeds of alkaloid poppies, or
- (b) plant, grow, tend or nurture alkaloid poppies, or
- (c) graft, divide or transplant alkaloid poppies, or

(d) any other activity declared by the regulations to comprise cultivating alkaloid poppies.

**cultivation licence**—see section 7 (1) (a).

**designated person** for a poppy licence or poppy permit means:

- (a) the holder of the licence or permit, or
- (b) a person employed or engaged by the holder of the licence or permit for the activities authorised by the licence or permit, or
- (c) a person who is a designated person for a related licence or permit.

**director of a corporation** includes a person occupying or acting in the position of director or member of the governing body of the corporation, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position.

**fit and proper person**—see section 5.

**government sector agency** has the same meaning as in the [Government Sector Employment Act 2013](#).

**government sector employee** means an employee of a government sector agency.

**harvest alkaloid poppies** includes any activity declared by the regulations to comprise harvesting of alkaloid poppies.

**interstate poppy licence** means a licence or other form of authority under a law of another State or Territory declared by the regulations to correspond to a poppy licence.

**interstate processing licence** means a licence or other form of authority under a law of another State or Territory declared by the regulations to correspond to a processing licence.

**manufacturing, export or research licence** means:

- (a) a licence under the [Narcotic Drugs Act 1967](#) of the Commonwealth, or the [Therapeutic Goods Act 1989](#) of the Commonwealth, that authorises the manufacture of a drug or therapeutic goods from alkaloid poppy material, or
- (b) a licence under the [Customs Act 1901](#) of the Commonwealth that authorises the export of alkaloid poppy material, or
- (c) a licence or authority under the [Poisons and Therapeutic Goods Act 1966](#), or under a corresponding law of another State or Territory, that authorises the manufacture of a drug or therapeutic goods from alkaloid poppy material, or

- (d) a licence or authority under the law of the Commonwealth or a State or Territory that authorises the use of alkaloid poppies or alkaloid poppy material in scientific research, analysis, education or training, or
- (e) any other licence or form of authority declared by the regulations to be a manufacturing, export or research licence.

**poppy licence** means a cultivation licence or processing licence.

**poppy permit**—see section 7 (1) (c).

**poppy straw** means the upper parts of alkaloid poppies (including the stems and capsules) that are harvested.

**processing licence**—see section 7 (1) (b).

**prohibited drug** has the same meaning as in the [Drug Misuse and Trafficking Act 1985](#).

**prohibited plant** has the same meaning as in the [Drug Misuse and Trafficking Act 1985](#).

**related licence or permit**—a poppy licence or poppy permit is related to another poppy licence or poppy permit if an authorisation attaches or will attach to the same alkaloid poppies or alkaloid poppy material under both of the licences, both of the permits or both the licence and the permit.

**Secretary** means the Secretary of the Department that is responsible under the Minister for the administration of this Act.

**supply** includes:

- (a) sale and any other form of supply, and
- (b) offer to sell or supply,

but does not include export from Australia.

**therapeutic goods** has the same meaning as in the [Therapeutic Goods Act 1989](#) of the Commonwealth.

**transport** means transport by road, rail, air or sea (other than only on or above private land).

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

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



## 5 Fit and proper person

- (1) A corporation is not a **fit and proper person** to hold a poppy licence or poppy permit if:
  - (a) the corporation has, in the previous 10 years, been convicted of a serious offence, whether committed under the law of New South Wales or the law of another jurisdiction, or
  - (b) the corporation is being wound up or is under official management or in receivership, or
  - (c) a director of the corporation would not, if the director were the applicant, be a fit and proper person to hold the poppy licence or poppy permit.
- (2) An individual is not a **fit and proper person** to hold a poppy licence or poppy permit if the person:
  - (a) has, in the previous 10 years, been convicted of a serious offence, whether committed under the law of New South Wales or the law of another jurisdiction, or
  - (b) is, or has been within the last 5 years, an insolvent under administration within the meaning of the [Corporations Act 2001](#) of the Commonwealth, or
  - (c) has, within the last 5 years, been a director of a corporation that has been wound up for the benefit of creditors:
    - (i) when the corporation was being wound up, or
    - (ii) within 6 months before the commencement of the winding up, or
  - (d) is, or has been within the last 5 years, disqualified from managing corporations under Part 2D.6 of Chapter 2D of the [Corporations Act 2001](#) of the Commonwealth.
- (3) In assessing whether a person is a **fit and proper person** to hold a poppy licence or poppy permit, the Secretary may have regard to:
  - (a) the character, reputation and financial background of the person and the person's close associates, and
  - (b) for a corporation—its corporate structure.
- (4) For the purposes of this section, 2 persons are **close associates** if:
  - (a) one is a spouse, de facto partner, parent, child, brother or sister of the other, or
  - (b) they live in the same household, or
  - (c) they are in partnership, or

- (d) they are related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth), or
  - (e) one is a corporation and the other is a director, manager, secretary or public officer of the corporation, or
  - (f) one is a corporation (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the corporation, or
  - (g) one is a trustee of a trust and the other is a beneficiary of the trust or, in the case of a discretionary trust, an object of the trust, or
  - (h) one has a right to participate, or participates, (otherwise than as a shareholder in a corporation) in income or profits derived from a business conducted by the other, or
  - (i) one is in a position to exercise, or exercises, control or significant influence over the conduct of the other.
- (5) Without limiting the matters that may be considered under subsection (3), the following matters are relevant to a person's character, reputation and financial background:
- (a) whether the person has been found guilty of a serious offence, whether committed under the law of New South Wales or the law of another jurisdiction,
  - (b) whether the person has been found guilty of an offence against:
    - (i) the *Narcotic Drugs Act 1967* of the Commonwealth or regulations under that Act, or
    - (ii) the *Drug Misuse and Trafficking Act 1985* or regulations under that Act or a corresponding law of another jurisdiction, or
    - (iii) any other law specified in the regulations,
  - (c) whether the Secretary is satisfied that the person has contravened (whether or not the person has been prosecuted for or convicted of an offence arising out of the contravention):
    - (i) this Act or the regulations or a corresponding law of another jurisdiction, or
    - (ii) the *Poisons and Therapeutic Goods Act 1966* or regulations under that Act or a corresponding law of another jurisdiction, or
    - (iii) the *Therapeutic Goods Act 1989* of the Commonwealth or regulations under that Act, or
    - (iv) any other law specified in the regulations,

- (d) whether the person is or has been suspended or disqualified from practising or carrying on a relevant occupation, trade or business under a law of the Commonwealth or a State or Territory,
  - (e) any other matters specified in the regulations.
- (6) For the purposes of this section, the following offences, whether committed under the law of New South Wales or the law of another jurisdiction, are **serious offences**:
- (a) an offence involving theft, dishonesty, fraud or violence that would, if committed in New South Wales, be an indictable offence,
  - (b) 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,
  - (c) 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,
  - (d) 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.

## Part 2 Licences and permits

### 6 Requirement for licence or permit

- (1) A person must not undertake, or take part in, any of the following activities except as authorised by a poppy licence or poppy permit:
- (a) cultivating or harvesting alkaloid poppies,
  - (b) conducting scientific research, analysis, education or training using alkaloid poppies or alkaloid poppy material,
  - (c) receiving alkaloid poppies or alkaloid poppy material,
  - (d) preparing or treating alkaloid poppy material,
  - (e) storing alkaloid poppies or alkaloid poppy material,
  - (f) supplying alkaloid poppies or alkaloid poppy material,
  - (g) transporting alkaloid poppies or alkaloid poppy material.

Maximum penalty:

- (a) in the case of a corporation—500 penalty units, or

- (b) in the case of an individual—100 penalty units or imprisonment for 1 year, or both.

**Note—**

An offence against this section is an executive liability offence—see section 31.

- (2) Nothing in this section renders unlawful the storage of alkaloid poppies or alkaloid poppy material cultivated, harvested or received by a licensee under a poppy licence, or the preparation or treatment of such alkaloid poppy material, to the extent that the storage, preparation or treatment is reasonably necessary for the purposes of an interstate poppy licence or manufacturing, export or research licence held by the licensee.

## **7 Licences and permits**

- (1) The following classes of licence or permit may be granted under this Act:
- (a) **cultivation licence**—a licence that authorises the licensee, as specified in the licence:
- (i) to cultivate and harvest alkaloid poppies, and
  - (ii) to prepare and treat alkaloid poppy material harvested under the licence, and
  - (iii) to conduct scientific research, analysis, education or training using alkaloid poppies cultivated or alkaloid poppy material harvested under the licence, and
  - (iv) to supply alkaloid poppies cultivated, or alkaloid poppy material harvested, under the licence to a person who holds a processing licence or an interstate processing licence, and
  - (v) to store and transport alkaloid poppies and alkaloid poppy material as reasonably necessary for a purpose authorised by the licence,
- (b) **processing licence**—a licence that authorises the licensee, as specified in the licence:
- (i) to receive alkaloid poppies or alkaloid poppy material, and
  - (ii) to prepare and treat alkaloid poppy material received under the licence, and
  - (iii) to conduct scientific research, analysis, education or training using alkaloid poppies or alkaloid poppy material received under the licence, and
  - (iv) to supply alkaloid poppies or alkaloid poppy material received under the licence to a person who holds a poppy licence, interstate poppy licence or manufacturing, export or research licence, and
  - (v) to store and transport alkaloid poppies and alkaloid poppy material as

reasonably necessary for a purpose authorised by the licence,

(c) **poppy permit**—a permit that authorises the holder:

- (i) to transport alkaloid poppies or alkaloid poppy material in New South Wales, or
- (ii) to carry out activities of a kind specified in the regulations involving alkaloid poppies or alkaloid poppy material.

(2) A poppy licence:

- (a) authorises the receipt and supply of alkaloid poppies or alkaloid poppy material, and the manufacture or production of a prohibited drug, in the course of:
  - (i) laboratory or other testing reasonably necessary for an activity authorised by the licence, including chemical analysis of the levels of alkaloids in alkaloid poppies cultivated, or alkaloid poppy material harvested or received, under the licence, or investigation of a problem incurred in undertaking the activity, or
  - (ii) scientific research, analysis, education or training authorised by the licence, and
- (b) does not otherwise authorise the manufacture, production or possession of a prohibited drug, and

**Note—**

This means that a poppy licence does not authorise alkaloid poppy material to be subjected to a process of refinement, concentration, extraction or reaction in order to extract or produce a prohibited drug from the alkaloid poppy material or from an extract from the alkaloid poppy material.

(c) does not authorise the supply of a prohibited drug.

- (3) A poppy permit does not authorise the manufacture, production, supply or possession of a prohibited drug.
- (4) Authorisation under a poppy licence or poppy permit extends to all persons employed or engaged by the holder of the licence or permit to carry on the activities authorised by the licence or permit while acting within the scope of their employment or engagement.

## **8 Conditions of cultivation licence**

A cultivation licence is subject to the following conditions:

- (a) only alkaloid poppies of a class specified in the licence may be cultivated,
- (b) alkaloid poppies may only be cultivated on land, or at premises, specified in the licence,
- (c) alkaloid poppy material may only be stored, prepared or treated on land, or at

premises, specified in the licence,

- (d) the area of land on which alkaloid poppies are planted at any one time must not exceed the area specified in the licence,
- (e) before cultivation of alkaloid poppies is commenced in any season, arrangements must be in place for the use of all the plants cultivated and all the alkaloid poppy material harvested from the plants so cultivated for one or more of the following purposes:
  - (i) for the purposes of scientific research, analysis, education or training under the licence,
  - (ii) for supply to a person who holds a processing licence or an interstate processing licence,
  - (iii) for use under an interstate poppy licence, or manufacturing, export or research licence, held by the licensee,
- (f) if an arrangement referred to in paragraph (e) is altered or ceases to be in effect, the licensee must, within 3 days after becoming aware of that fact, give the Secretary notice of the alteration or cessation in the form required by the Secretary,
- (g) a risk management plan for the activities authorised by the licence that complies with requirements specified by the Secretary and has been approved by the Secretary must be implemented,
- (h) reasonable steps must be taken to prevent a person from entering or remaining in an area where there are alkaloid poppies or alkaloid poppy material unless the person is an authorised officer or a designated person or a person accompanied by a designated person,
- (i) reasonable steps must be taken to remove or treat any residue of material derived from alkaloid poppies after harvesting, after moving alkaloid poppy material, and as otherwise reasonably required, to avoid unintended seeding or cultivation of alkaloid poppies,
- (j) if the licence authorises the conduct of scientific research, analysis, education or training—a person with appropriate scientific qualifications and experience must be responsible for the conduct of the research, analysis, education or training.

**Note—**

See section 11 for other conditions of licence.

## **9 Conditions of processing licence**

A processing licence is subject to the following conditions:

- (a) the quantity of alkaloid poppy material received must not exceed the quantity specified in the licence,
- (b) alkaloid poppy material may only be stored, prepared or treated on land, or at premises, specified in the licence,
- (c) before the receipt, preparation or treatment of alkaloid poppies or alkaloid poppy material, arrangements must be in place for the use of all the alkaloid poppies and alkaloid poppy material for one or more of the following purposes:
  - (i) for use in scientific research, analysis, education or training to be conducted under the licence,
  - (ii) for use under an interstate poppy licence, or manufacturing, export or research licence, held by the licensee,
  - (iii) for supply to another person who holds a poppy licence, interstate poppy licence or manufacturing, export or research licence,
- (d) if an arrangement referred to in paragraph (c) is altered or ceases to be in effect, the licensee must, within 3 days after becoming aware of that fact, give the Secretary notice of the alteration or cessation in the form required by the Secretary,
- (e) a risk management plan for the activities authorised by the licence that complies with requirements specified by the Secretary and has been approved by the Secretary must be implemented,
- (f) reasonable steps must be taken to prevent a person from entering or remaining in an area where there are alkaloid poppies or alkaloid poppy material unless the person is an authorised officer or a designated person or a person accompanied by a designated person,
- (g) reasonable steps must be taken to remove or treat any residue of material derived from alkaloid poppies after moving alkaloid poppy material, and as otherwise reasonably required, to avoid unintended seeding or cultivation of alkaloid poppies,
- (h) if the licence authorises the conduct of scientific research, analysis, education or training—a person with appropriate scientific qualifications and experience must be responsible for the conduct of the research, analysis, education or training.

**Note—**

See section 11 for other conditions of licence.

## **10 Conditions of poppy permit authorising transport**

A poppy permit that authorises the holder to transport alkaloid poppies or alkaloid poppy material is subject to the following conditions:

- (a) the transport may only take place on the occasion or occasions specified in the permit,
- (b) the transport must only be from and to the places specified in the permit,
- (c) reasonable steps must be taken to prevent a person from accessing alkaloid poppies or alkaloid poppy material during transit unless the person is an authorised officer or a designated person or a person accompanied by a designated person.

**Note—**

See section 11 for other conditions of permit.

**11 General conditions of licences and permits**

A poppy licence or poppy permit is also subject to the following conditions:

- (a) a person must not be employed or engaged in activities under the licence or permit unless the person has been subjected to the checks required by the regulations and meets criteria specified in the regulations,
- (b) subject to the regulations, each person employed or engaged in activities under the licence or permit:
  - (i) must be issued with an identification card that identifies the licence or permit and displays the person's name and date of birth and a recent photograph of the person and complies with any other requirements of the regulations, and
  - (ii) must, while employed or engaged in activities under the licence or permit, carry on his or her person the identification card,
- (c) the theft, loss or apparent unauthorised interference with alkaloid poppies or alkaloid poppy material to which the licence or permit relates must be reported immediately to a police officer and the Secretary,
- (d) the holder of the licence or permit must immediately inform the Secretary by written notice if a licence or other authority held by the person under Commonwealth, State or Territory law that regulates activities involving alkaloid poppies, alkaloid poppy material, prohibited plants, prohibited drugs, medicines, poisons or therapeutic goods is suspended, cancelled or amended or proceedings are commenced in which the licence or authority may be suspended, cancelled or amended,
- (e) the holder of the licence or permit must inform the Secretary by written notice within 7 days after any of the following occurs:
  - (i) the holder changes the holder's name, address or contact details as previously notified to the Secretary,
  - (ii) for a corporation:



- (A) a person ceases to be or commences to be a director of the corporation, or
  - (B) a director changes the director's name, address or contact details as previously notified to the Secretary,
  - (iii) the holder becomes aware of any other factor that may affect whether the person is a fit and proper person to hold the licence or permit,
- (f) other conditions specified by the Secretary, which may, without limitation, include conditions specifying:
- (i) surveillance and security measures that must be complied with, and
  - (ii) matters relating to the preparation or treatment of alkaloid poppy material, and
  - (iii) records that must be kept, and
  - (iv) returns that must be provided to the Secretary,
- (g) any other conditions set out in the regulations.

## **12 Offence to contravene licence or permit conditions**

If a condition of a poppy licence or poppy permit is contravened, the holder of the licence or permit is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—500 penalty units, or
- (b) in the case of an individual—100 penalty units or imprisonment for 1 year, or both.

## **13 Grant or renewal of licence or permit**

- (1) The Secretary may, on application by a person, grant or renew a poppy licence.
- (2) The Secretary may, on application by a person, grant a poppy permit.
- (3) Subject to this Act, a poppy licence or poppy permit remains in force for the period specified in the licence or permit on its grant or renewal.
- (4) The period specified must not exceed:
  - (a) for a cultivation licence—3 years, or
  - (b) for a processing licence or poppy permit—1 year.
- (5) An application for renewal of a licence must be made within the period required by the regulations before the date of expiry of the licence but the Secretary may accept a late application for renewal of a licence on payment of the late application fee fixed by the regulations.

- (6) If an application for renewal of a licence is duly made or a late application is accepted by the Secretary, the licence is taken to continue in force until the Secretary notifies the applicant of a decision to grant or refuse the application.

#### **14 Licence fee for poppy licences and annual fees for cultivation licence**

- (1) Before a poppy licence is granted or renewed, the applicant must pay to the Secretary the licence fee fixed by the regulations.

**Note—**

A licence fee is payable in addition to an application fee under section 18 (1) (c).

- (2) The holder of a cultivation licence must pay to the Secretary an annual fee as set out in the regulations.
- (3) If the holder of a cultivation licence fails to pay an annual fee in accordance with this section, the Secretary may, by written notice, require the holder to make good the default and, in addition, to pay to the Secretary the amount fixed by the regulations as a penalty for default.
- (4) An annual fee (including a penalty for default) payable under this section is recoverable by the Secretary as a debt due to the Secretary.

#### **15 Amendment of licence or permit**

- (1) A poppy licence or poppy permit may be amended on application by the holder of the licence or permit.
- (2) A poppy licence may be amended, on the Secretary's own initiative, on renewal of the licence.

**Note—**

A poppy licence or poppy permit may also be amended under section 21.

#### **16 Licences and permits not transferable**

A poppy licence or poppy permit is not transferable.

#### **17 Surrender of licence or permit**

The Secretary may, on application by the holder of a poppy licence or poppy permit, approve the surrender of the licence or permit.

#### **18 Applications**

- (1) An application under this Part:
  - (a) must be made in the form approved by the Secretary, and
  - (b) must be accompanied by:

(i) for an application for the grant or renewal of a poppy licence:

(A) a risk management plan for the activities authorised by the licence that complies with requirements specified by the Secretary (submitted for the approval of the Secretary), and

(B) a description of the arrangements required as a condition of the licence, and

**Note—**

See section 8 (e) for a cultivation licence and section 9 (c) for a processing licence.

(C) if the arrangements involve a contract with another person—a copy of the contract and of any relevant licence or authority held by that other person, and

(ii) in any case—any other material required by the Secretary, and

(c) must be accompanied by the application fees fixed by the regulations (which may include an amount for any inspection that is, in the opinion of the Secretary, reasonably required for the determination of the application, calculated on an hourly or other basis).

(2) The Secretary may require an applicant to provide further information or evidence as reasonably required for the determination of an application.

(3) The Secretary may refuse an application if the applicant does not comply with such a requirement.

(4) The Secretary must, as far as reasonably practicable, determine an application under this Part within 2 months after receipt of the application (disregarding any period when the Secretary is waiting for further information or evidence from the applicant or a response from the Commissioner of Police).

## **19 Criteria for determination of applications and conditions**

(1) 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:

(a) that the applicant is a fit and proper person to hold the licence or permit or to hold the licence or permit as proposed to be amended, and

(b) for the grant or renewal of a poppy licence or poppy permit—that the applicant has attained 18 years of age or, for an application made by a corporation, that each of the directors of the corporation has attained 18 years of age, and

(c) that the applicant has the capacity, including financial capacity, or has made or proposes to make appropriate arrangements, to satisfy the requirements of this Act and the regulations applicable to the activities proposed to be authorised by

the licence or permit, or by the licence or permit as proposed to be amended, and

(d) for the grant, renewal or amendment of a licence:

- (i) that any land and premises proposed to be used under the licence, or under the licence as proposed to be amended, are suitable for that purpose in terms of location, facilities and security arrangements, and
- (ii) that the arrangements required as a condition of the licence, or the licence as proposed to be amended, are suitable for that purpose, and

**Note—**

See section 8 (e) for a cultivation licence and section 9 (c) for a processing licence.

- (iii) that the risk management plan proposed to be implemented under the licence, or under the licence as proposed to be amended, is suitable for that purpose, and

(e) that, taking the conditions of the licence or permit into account, the risk of alkaloid poppies or alkaloid poppy material being diverted for unlawful purposes and the risk of environmental harm or harm to humans arising from the activities authorised by the licence or permit, if the application is granted, will be reduced to an acceptable level, and

(f) that any other criteria specified in the regulations have been met.

**Note—**

Also see section 23.

(2) In determining an application for the grant, renewal or amendment of a poppy licence and licence conditions, the Secretary may also make a decision on grounds relating to Australia's obligations under the *Single Convention on Narcotic Drugs 1961*, as amended from time to time.

(3) A person is not eligible to be granted a cultivation licence, processing licence or poppy permit if the person is disqualified from obtaining the licence or permit under section 21.

## **20 Audit of operations of holder of licence or permit**

- (1) The Secretary may cause an audit of the operations of the holder of a poppy licence or poppy permit to be conducted by an authorised officer at intervals as the Secretary thinks fit for the purposes of assessing compliance with this Act and the regulations or obtaining information reasonably required for the administration of this Act and the regulations.
- (2) The regulations may provide for recovery of the cost of an audit from the holder of the poppy licence or poppy permit.

## 21 Suspension, cancellation or amendment of licence or permit

- (1) The Secretary may suspend, cancel or amend a poppy licence or poppy permit as the Secretary considers appropriate if satisfied that:
- (a) the licence or permit was obtained improperly, or
  - (b) the holder of the licence or permit:
    - (i) has ceased to carry on the activities authorised by the licence or permit, or
    - (ii) has not paid fees or charges payable to the Secretary as required by this Act or the regulations, or
    - (iii) has contravened this Act or the regulations or the *Drug Misuse and Trafficking Act 1985* or a law of the Commonwealth or another State or Territory that regulates activities involving alkaloid poppies, alkaloid poppy material, prohibited plants, prohibited drugs, medicines, poisons or therapeutic goods, or
  - (c) an event has occurred or circumstances have come to light such that, if an application were now to be made by the holder of the licence or permit for the licence or permit, it would not be granted or it would not be granted on the same conditions of the licence or permit, or
  - (d) for a licence:
    - (i) an arrangement required as a condition of the licence has ceased to be in effect or has been altered in a manner that results in a contravention of the condition of the licence, or
    - (ii) a person with whom such an arrangement has been entered into has ceased to hold the poppy licence, interstate poppy licence or manufacturing, export or research licence required for the arrangement or the licence held by the person has been suspended, or

### **Note—**

See section 8 (e) for a cultivation licence and section 9 (c) for a processing licence.

- (e) an emergency situation has arisen warranting the suspension, cancellation or amendment:
- (i) to keep alkaloid poppies and alkaloid poppy material secure and ensure that they are not diverted for unlawful purposes, or
  - (ii) to minimise the risk of environmental harm or harm to humans arising from the activities under the licence or permit.

- (2) The regulations may specify further grounds on which the Secretary may suspend, cancel or amend a poppy licence or poppy permit.
- (3) A suspension may be for a specified period, or until the fulfilment of specified conditions, or until further order of the Secretary.
- (4) A suspension, cancellation or amendment may be expressed to have effect at a specified future time, or to have effect at a specified future time unless a specified condition is fulfilled.
- (5) If the Secretary cancels a poppy licence or poppy permit, the Secretary may also disqualify the holder of the cancelled licence or permit, or if the holder is a corporation, a director of the corporation, from obtaining a poppy licence or a specified class of poppy licence or a poppy permit.
- (6) A disqualification may be expressed to have effect permanently, for a specified period, until the fulfilment of specified conditions or until further order of the Secretary.
- (7) A condition of a poppy licence or poppy permit imposed under this section may, without limitation, do either or both of the following:
  - (a) restrict or prohibit the activities otherwise authorised by the poppy licence or poppy permit,
  - (b) require the holder of the poppy licence or poppy permit to take specified action or to refrain from taking specified action, including, without limitation, a requirement:
    - (i) to cultivate or harvest alkaloid poppies, or
    - (ii) to destroy alkaloid poppies or material derived from alkaloid poppies, or
    - (iii) to store or transport alkaloid poppies or material derived from alkaloid poppies, or
    - (iv) to allow an arrangement to be put in place for another person to do so under the licence or permit.
- (8) If the holder of a poppy licence or poppy permit contravenes a condition imposed under this section requiring the holder to take specified action, the Secretary may take that action and recover the cost of doing so from the holder as a debt in a court of competent jurisdiction.
- (9) Before the Secretary acts under this section, the Secretary must:
  - (a) give written notice to the holder of the poppy licence or poppy permit of the proposed action specifying the reasons for the proposed action, and
  - (b) unless satisfied that urgent action is required, allow the holder of the poppy

licence or poppy permit at least 28 days within which to make submissions to the Secretary in relation to the proposed action.

- (10) If the Secretary suspends or cancels a poppy licence or poppy permit and the licence or permit is not returned to the Secretary within 14 days after the suspension or cancellation, the holder of the licence or permit is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in the case of an individual—20 penalty units.

- (11) The Secretary must cause notice of a suspension or cancellation of a poppy licence or poppy permit to be given to:

- (a) the Commissioner of Police, and
- (b) the holder of each related licence or permit.

## **22 Order on expiry, surrender or cancellation of licence**

- (1) If a poppy licence expires or is surrendered or cancelled under this Act, the Secretary may order the former licensee to take specified action, or to refrain from taking specified action, for the purposes of:
- (a) keeping alkaloid poppies and alkaloid poppy material secure and ensuring that they are not diverted for unlawful purposes, or
  - (b) minimising the risk of environmental harm or harm to humans arising from the former activities under the licence.
- (2) An order under this section may, for example, require the former licensee:
- (a) to provide information or prepare a report on specified matters, or
  - (b) to destroy alkaloid poppies, or alkaloid poppy material, formerly possessed under the licence, or
  - (c) to clean up any residue of material derived from alkaloid poppies, or
  - (d) to treat the premises or place, or anything at the premises or place, formerly used under the licence in a specified manner, or
  - (e) to allow an arrangement to be put in place for another person to undertake such action.
- (3) An order under this section may be made on or in anticipation of the expiry, surrender or cancellation of the licence or within the period fixed by regulation after the expiry, surrender or cancellation of the licence.

- (4) If an order made under this section is contravened, the former holder of the poppy licence is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—500 penalty units, or
- (b) in the case of an individual—100 penalty units or imprisonment for 1 year, or both.
- (5) If the former holder of a poppy licence contravenes an order under this section requiring the holder to take specified action, the Secretary may take that action and recover the cost of doing so from the holder as a debt in a court of competent jurisdiction.

### **23 Referral of applications and matters to Commissioner of Police**

- (1) The Secretary:
- (a) must refer each application for the grant or renewal of a poppy licence to the Commissioner of Police, and
- (b) may refer to the Commissioner of Police:
- (i) an application for the grant of a poppy permit, or
- (ii) any matter that may give rise under section 21 to the suspension, cancellation or amendment of a poppy licence or poppy permit.
- (2) If the Secretary refers a matter to the Commissioner of Police, the Commissioner must cause the matter to be investigated and provide a report to the Secretary.
- (3) If the Commissioner of Police informs the Secretary, within a period agreed between the Commissioner and the Secretary, that the Commissioner opposes the grant or renewal of a poppy licence or poppy permit, or opposes the grant or renewal of a poppy licence or poppy permit unless specified conditions are met, for reasons that, if given, would disclose criminal intelligence, the licence or permit must not be granted or renewed or must not be granted or renewed unless the specified conditions are met (as the case requires).
- (4) The Commissioner of Police is not required to give reasons under subsection (3) to the extent that those reasons would disclose criminal intelligence.

### **24 Administrative review of decisions of Secretary by Civil and Administrative Tribunal**

A person may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of a decision of the Secretary under this Act as follows:



- (a) an applicant for the grant, renewal or amendment of a poppy licence or poppy permit may apply for an administrative review of a decision of the Secretary not to grant, renew or amend the licence or permit or as to the terms or conditions of the licence or permit,
- (b) the holder or former holder of a poppy licence or poppy permit may apply for an administrative review of a decision of the Secretary:
  - (i) to refuse approval of a surrender of the licence or permit under section 17, or
  - (ii) to suspend, cancel or amend the licence or permit under section 21,
- (c) the former holder of a poppy licence may apply for an administrative review of a decision of the Secretary to make an order against the former holder under section 22.

## **25 Non-disclosure of criminal intelligence**

- (1) The Secretary is not, under this or any other Act or law, required to give reasons for not granting or renewing a poppy licence or poppy permit, or for suspending, cancelling or amending a poppy licence or poppy permit, to the extent that those reasons would disclose criminal intelligence.
- (2) The Secretary is not, under this Act, required to give reasons to an applicant for or the holder of a poppy licence or poppy permit for proposing not to grant or renew the licence or permit or proposing to suspend, cancel or amend the licence or permit, to the extent that those reasons would disclose criminal intelligence.
- (3) In determining an application for a review of a decision of the Secretary under this Part, the Civil and Administrative Tribunal (and any Appeal Panel of the Tribunal in determining any internal appeal against such a review under the [Civil and Administrative Tribunal Act 2013](#)):
  - (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose any criminal intelligence without the approval of the Commissioner of Police, and
  - (b) in order to prevent the disclosure of any criminal intelligence, is to receive evidence and hear argument in the absence of the public, the applicant for the administrative review, the applicant's representative and any other interested party, unless the Commissioner of Police approves otherwise.

## **Part 3 Authorised officers**

### **26 Authorised officers**

- (1) The Secretary may appoint a government sector employee to be an authorised officer for the purposes of this Act.
- (2) An appointment may apply to a specified employee or to employees of a specified

class.

- (3) An appointment may be made subject to conditions specified in the instrument of appointment.
- (4) The Secretary may, at any time, revoke an appointment of an authorised officer or vary or revoke a condition of appointment or impose a further condition of appointment.
- (5) All police officers are authorised officers for the purposes of this Act.
- (6) Nothing in this Act limits the powers of a police officer under the *Law Enforcement (Powers and Responsibilities) Act 2002* or any other law.

## **27 Identity cards**

- (1) The Secretary must issue an authorised officer appointed by the Secretary with an identity card.
- (2) The identity card must contain a recent photograph of the person.
- (3) An authorised officer must, before exercising a power in relation to a person under this Act, produce for the inspection of the person:
  - (a) in the case of an authorised officer who is a police officer—evidence of his or her authority as a police officer, or
  - (b) in the case of an authorised officer appointed under this Act—his or her identity card.

## **28 Powers**

- (1) An authorised officer may, as reasonably required for the enforcement of this Act or the regulations or for the conduct of an audit under this Act of the operations of the holder of a poppy licence or poppy permit:
  - (a) enter and inspect and, if necessary, use reasonable force to break into or open:
    - (i) a place or vehicle to which this section applies, or
    - (ii) part of, or anything in or on, a place or vehicle to which this section applies, and
  - (b) require a person to provide or take samples of or from a substance or thing for analysis, and
  - (c) examine, test or analyse any equipment, sample or other thing, or cause or require it to be examined, tested or analysed, or seize it or require its production for examination, testing or analysis, and

- (d) require a person to produce a record or other document, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process, and
  - (e) examine, copy or take extracts from a record, document or information so produced or require a person to provide a copy of any such record, document or information, and
  - (f) take photographs, films or audio, video or other recordings, and
  - (g) seize and retain anything that the authorised officer reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act or the regulations, and
  - (h) require a person whom the authorised officer reasonably suspects has committed, is committing, or is about to commit, a contravention of this Act or the regulations to state the person's full name and usual place of residence and to produce evidence of the person's identity, and
  - (i) require a person whom the authorised officer reasonably suspects has knowledge of matters in respect of which information is required for the enforcement action or audit to answer questions in relation to those matters, and
  - (j) require a person holding or required to hold a licence or permit to produce it for inspection, and
  - (k) give a direction required in connection with the exercise of a power conferred by a paragraph above or otherwise in connection with the enforcement action or audit.
- (2) An authorised officer may make a requirement under this section by written notice in the name of the authorised officer or the Secretary.
- (3) However, an authorised officer requires the authority of a search warrant issued under this Part, or the consent of the occupier of the place or vehicle concerned, to exercise the power:
- (a) to enter and inspect a building, caravan, or other structure or vehicle, used only for residential purposes, or
  - (b) to use force.
- (4) A search warrant is not required:
- (a) to enter and inspect, without the use of force, a place, structure or vehicle not of a kind referred to in subsection (3) (a) (for example, a yard, carport, garage or shed), or
  - (b) to inspect, without the use of force, a structure or vehicle of a kind referred to in

subsection (3) (a) in a manner that does not require entry to that structure or vehicle (for example, by inspecting guttering or a roof or an area under the structure or vehicle).

- (5) In the exercise of powers under this Act, an authorised officer may be assisted by such persons as the authorised officer considers necessary in the circumstances.
- (6) An authorised officer may require an occupier of premises or a place, or a person apparently in charge of a vehicle, vessel, aircraft, plant or other thing, to give to the authorised officer, or a person assisting the authorised officer, such assistance as is reasonably required by the authorised officer for the effective exercise of powers conferred by this Act.
- (7) Division 2 of Part 17 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to anything seized under this section as if it had been seized under that Act, subject to the following modifications:
  - (a) a reference to a police officer is to be read as a reference to an authorised officer,
  - (b) a reference to the Commissioner is, in a case involving seizure by an authorised officer who is not a police officer, to be read as a reference to the Secretary,
  - (c) any other modifications specified in the regulations.
- (8) An authorised officer may, in accordance with directions of the Secretary, dispose of alkaloid poppies or material derived from alkaloid poppies voluntarily surrendered to the officer by the holder of a poppy licence or poppy permit or any other person.
- (9) Each of the following is a place or vehicle to which this section applies:
  - (a) premises or a place, vehicle, vessel or aircraft that an authorised officer reasonably suspects is being, or has been, used by a person for or in connection with an activity authorised by a poppy licence or poppy permit,
  - (b) premises or a place, vehicle, vessel or aircraft in which an authorised officer reasonably suspects there may be records relating to an activity authorised by a poppy licence or poppy permit,
  - (c) premises or a place, vehicle, vessel or aircraft in which an authorised officer reasonably suspects a person is committing, or is about to commit, a contravention of this Act or the regulations or there may be anything that has been used in, or may constitute evidence of, a contravention of this Act or the regulations.

## **29 Search warrants**

- (1) An authorised officer may apply to an issuing officer for a search warrant.

- (2) On application, an issuing officer may, if satisfied that a search warrant is reasonably required for the administration or enforcement of this Act or the regulations, issue a search warrant authorising a police officer, or an authorised officer named in the warrant when accompanied by a police officer, and any other person named in the warrant:
- (a) if the warrant relates to a structure or vehicle of a kind referred to in section 28 (3) (a)—to enter and inspect the structure or vehicle, and
  - (b) in any case—to use reasonable force to break into or open the place or vehicle to which the warrant relates and part of, or anything in or on, the place or vehicle to which the warrant relates.
- (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:

**issuing officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### **30 Offence to hinder authorised officer and related offences**

- (1) A person must not:
- (a) intentionally or recklessly obstruct or hinder an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act, or
  - (b) refuse or fail to comply with a requirement or direction of an authorised officer under this Act, or
  - (c) when required by an authorised officer to state the person's full name and usual place of residence, or to produce evidence of the person's identity, provide false or misleading information or evidence, or
  - (d) falsely represent, by words or conduct, that the person is an authorised officer.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units, or
  - (b) in the case of an individual—50 penalty units.
- (2) However, a person is not guilty of an offence of refusing or failing to comply with a requirement or direction of an authorised officer under this Act unless the person was warned on that occasion that a failure to comply is an offence.

## Part 4 Other offences and proceedings

### 31 Liability of directors etc for offences by corporation—offences attracting executive liability

- (1) For the purposes of this section, an **executive liability offence** is an offence against section 6 that is committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:  
**reasonable steps**, in relation to the commission of an executive liability offence,

includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes,relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

### **32 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 31.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:

- (i) aids, abets, counsels or procures the commission of the corporate offence, or
- (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
- (iii) conspires with others to effect the commission of the corporate offence, or
- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

### **33 Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the ***state of mind*** of a person includes:
  - (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

### **34 Ancillary offences**

- (1) A person who:
  - (a) causes or permits another person to commit, or
  - (b) aids, abets, counsels or procures another person to commit, or
  - (c) conspires to commit,



an offence under another provision of this Act or the regulations is guilty of an offence against that other provision and is liable, on conviction, to the same penalty applicable to an offence against that other provision.

- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 32.

### **35 Offence—false or misleading information**

A person must not make a statement that the person knows is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided, or records kept, under this Act or the regulations.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units, or  
(b) in the case of an individual—50 penalty units or imprisonment for 6 months, or both.

### **36 Continuing offences**

- (1) If an offence against a provision of this Act or the regulations is committed by a person by reason of a continuing act or omission:
- (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-tenth of the maximum fine prescribed for that offence, and
- (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one-tenth of the maximum fine prescribed for that offence.
- (2) An obligation to do something is to be regarded as continuing until the act is done despite the fact that a period within which, or time before which, the act is required to be done has expired or passed.
- (3) An omission is to be regarded as continuing for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

### **37 Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.

(3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

(4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).

(5) 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.

### **38 Proceedings for offences**

(1) Proceedings for an offence against this Act or the regulations may be dealt with summarily before the Local Court or before the Supreme Court in its summary jurisdiction.

(2) If proceedings for an offence are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is, despite any other provision of this Act, 200 penalty units (including within that maximum amount any daily penalty) or the maximum monetary penalty provided for the offence, whichever is the lesser.

(3) Proceedings for an offence against this Act or the regulations may be commenced at any time within 2 years after the date on which it is alleged the offence was committed.

### **39 Evidentiary certificates**

(1) The Secretary may appoint an analyst for the purposes of providing an evidentiary certificate for proceedings and, in proceedings, a certificate apparently executed by an analyst and setting out details as to an analysis carried out by or under the direction of the analyst and the results of the analysis constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(2) In proceedings, a certificate signed by the Secretary certifying as to a matter relating to any of the following constitutes proof, in the absence of proof to the contrary, of the matter so certified:

(a) the appointment of a person as an authorised officer or analyst,

(b) whether a person holds a poppy licence or poppy permit and the terms and conditions of the licence or permit,

(c) a notice given by the Secretary or an authorised officer under this Act or the regulations,

- (d) the receipt or non-receipt of a notice or information required to be given to the Secretary under this Act or the regulations,
- (e) any other decision of the Secretary under this Act or the regulations.

## **Part 5 Miscellaneous**

### **40 Self incrimination**

- (1) A person who is required to answer a question or to provide information or a document under this Act must do so even if the answer, information or document would tend to incriminate the person or make the person liable to a penalty.
- (2) However, an answer, information or document provided by an individual is not admissible in evidence against the person in proceedings for an offence, other than proceedings in respect of the making of a false or misleading statement, if:
  - (a) the person objected at the time to providing the answer, information or document 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 providing the answer, information or document on the ground that it might incriminate the person.

### **41 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.

### **42 Delegation**

The Secretary may delegate the exercise of any function or power of the Secretary under this Act (other than this power of delegation) to a government sector employee.

### **43 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:
  - (a) in the case of an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
  - (d) in the case of a corporation—by post to the registered office or any other office of

the corporation or by leaving it at any such office with a person apparently over the age of 16 years,

- (e) by email to an email address specified by the person for the service of documents of that kind,
- (f) by any other method authorised by the regulations for the service of documents of that kind.

(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 by any other method.

(3) In this section, **serve** includes give or send.

#### **44 Disclosure of information**

A person must not disclose information obtained (whether by that person or some other person) in connection with the administration or enforcement of this Act or the regulations except:

- (a) as required or authorised by this Act or the regulations or any other Act or law, or
- (b) with the consent of the person from whom the information was obtained, or
- (c) in connection with the administration or enforcement of this Act or the regulations, or
- (d) for the purposes of any legal proceedings arising out of the administration or enforcement of this Act or the regulations, or
- (e) to a government sector agency, or an agency or instrumentality of the Commonwealth or another State or Territory, for the purposes of the proper performance of its functions.

Maximum penalty: 100 penalty units.

#### **45 Information sharing arrangements**

(1) The Secretary may enter into an arrangement (an **information sharing arrangement**) with any of the following (a **relevant agency**):

- (a) the Commissioner of Police or a person holding an equivalent position in relation to the police force of another State or Territory or the Australian Federal Police,
- (b) a government sector agency or an agency of an equivalent kind in another State or Territory or the Commonwealth,
- (c) any other person or body prescribed by the regulations.

(2) A party to an information sharing arrangement is, despite any other Act or law of the State, authorised to request and receive information from, and to disclose information

to, any other party to the arrangement as reasonably necessary for the performance of the functions of the parties, including for the administration and enforcement of laws by the parties.

- (3) This section does not limit the operation of any Act under which the Secretary or a relevant agency is authorised or required to disclose information to another person or body.

#### **46 Seeds**

Nothing in this Act affects the use of alkaloid poppy seeds for a purpose other than cultivation.

#### **47 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) A regulation may apply, adopt or incorporate any publication as in force at a particular time or as in force from time to time.
- (3) Without limitation, the regulations may:
  - (a) create an offence punishable by a penalty not exceeding, in the case of a corporation, 100 penalty units and, in the case of an individual, 20 penalty units, and
  - (b) provide for exemptions (conditional or unconditional) from specified provisions of this Act.

#### **48 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 commencement of 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 Amendment of Acts**

### **1.1 Drug Misuse and Trafficking Act 1985 No 226**

#### **[1] Section 3 Definitions**

Omit “or *Papaver orientale*, also known as” from paragraph (b) of the definition of ***prohibited plant*** in section 3 (1).

Insert instead “, *Papaver orientale* or”.

#### **[2] Section 8B**

Insert after section 8A:

##### **8B Relationship with [Poppy Industry Act 2016](#)**

Nothing in this Act affects any provision of or made under the [Poppy Industry Act 2016](#) or renders unlawful anything done in accordance with any such provision.

#### **[3] Section 10 Possession of prohibited drugs**

Insert after section 10 (2) (a):

(a1) a person acting under a poppy licence under the [Poppy Industry Act 2016](#),

#### **[4] Section 23 Offences with respect to prohibited plants**

Insert after section 23 (4) (a):

(a1) a person acting under a poppy licence or poppy permit under the [Poppy Industry Act 2016](#), or

#### **[5] Section 24 Manufacture and production of prohibited drugs**

Insert after section 24 (4) (a).

(a1) a person acting under a poppy licence under the [Poppy Industry Act 2016](#), or

#### **[6] Section 24 (4)**

Insert “, (a1)” after “paragraph (a)”.

#### **[7] Section 24A Possession of precursors and certain apparatus for manufacture or production of prohibited drugs**

Insert “the possession of a precursor or drug manufacture apparatus for use in” after

“unlawful” where firstly occurring in section 24A (2).

**[8] Section 24A (2)**

Insert after section 24A (2) (a):

(a1) a person acting under a poppy licence under the *Poppy Industry Act 2016*, or

**[9] Section 24A (2)**

Omit “, or renders unlawful the taking part by any other person in the manufacture or production of a prohibited drug by a person to whom paragraph (a) or (b) applies”.

**[10] Section 41A Authorities for low-THC hemp or alkaloid poppy plants not to be granted**

Insert “or an authority under section 23 (4) (b) in relation to an alkaloid poppy plant within the meaning of the *Poppy Industry Act 2016* or an authority under section 24 (4) (b) or 24A (2) (b) in relation to the manufacture of a prohibited drug using alkaloid poppy material within the meaning of the *Poppy Industry Act 2016*” after “hemp”.

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

### **Schedule 2 Search warrants under other Acts**

Insert in alphabetical order:

*Poppy Industry Act 2016*, section 29

## **1.3 Poisons and Therapeutic Goods Act 1966 No 31**

### **Section 5A Relationship with Hemp Industry Act 2008 and Poppy Industry Act 2016**

Insert “or the *Poppy Industry Act 2016*” after “*Hemp Industry Act 2008*”.