

Serial 91
Hemp Industry Bill 2019
Mr Kirby

A Bill for an Act to regulate the development and operation of a hemp industry

NORTHERN TERRITORY OF AUSTRALIA

HEMP INDUSTRY ACT 2019

Act No. [] of 2019

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2019

An Act to regulate the development and operation of a hemp industry

[Assented to [] 2019]
[Introduced [] 2019]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Hemp Industry Act 2019*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Definitions

In this Act:

acting in an official capacity, in relation to the CEO or an inspector, means the CEO or inspector is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

applicant means a person who makes an application under Part 2, Division 1.

approved form means a form approved under section 40.

approved hemp seed means hemp seed approved in accordance with the regulations as seed that will typically produce hemp plants with a THC concentration in the leaves and flowering heads of not more than 0.5%.

*Note for definition **approved hemp seed***

The THC concentration limit for approved hemp seed is lower than that for low THC hemp plants. This recognises that the leaves and flowering heads of plants grown using approved hemp seed may have more than 0.5% THC because of environmental conditions beyond the licensee's control.

associate, of an applicant or a licensee, see section 4.

at, in relation to a place, includes on and in the place.

CEO means the Chief Executive Officer.

classified information means information that is classified by the Commissioner of Police as criminal intelligence under the *Serious Crime Control Act 2009*.

cultivate includes the following:

- (a) plant a seed, seedling or cutting;
- (b) promote, maintain or improve the growth of a plant;
- (c) harvest a plant or any part of a plant;
- (d) use a plant tissue culture technique.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

hemp means a plant, or a part or product of a plant, of the genus *Cannabis*.

inspector, see section 23(1).

licence means a licence issued under this Act.

licensee means the holder of a licence.

low THC hemp means any of the following:

- (a) a hemp plant with a THC concentration in the leaves and flowering heads of not more than 1%;
- (b) a part or product of a plant referred to in paragraph (a);

- (c) approved hemp seed.

*Examples for definition **low THC hemp***

A part of the plant includes the seed and a product of the plant includes fibre made from the plant or oil made from the seed.

place includes the following:

- (a) land;
- (b) a permanent or temporary building or structure on land;
- (c) a vehicle, vessel or aircraft.

supply means do or offer to do any of the following:

- (a) distribute, give, sell, trade or transport, whether or not for valuable consideration;
- (b) an act for, to prepare for, or to further an act referred to in paragraph (a).

THC means tetrahydrocannabinol.

Note for section 3

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

4 Meaning of associate

- (1) A person is an **associate** of an applicant or a licensee if:
- (a) the person holds or will hold any relevant position, including on behalf of someone else, in the applicant or licensee's business; or
 - (b) the CEO is satisfied that the person is or will be able to exercise a significant influence in relation to the conduct of the applicant or licensee's business because:
 - (i) the person holds or will hold any share in the capital of the business or any entitlement to receive any income derived from the business; or
 - (ii) the person is or will be entitled to exercise any relevant power in the business, including on behalf of someone else.

(2) In this section:

relevant position, in relation to a business, means any position (however described) whose holder is concerned with, or takes part in, the management of the business.

relevant power, in relation to a business, means any power, whether exercisable by voting or otherwise and whether exercisable alone or with others:

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

5 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

6 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 6

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

7 Interaction with *Narcotic Drugs Act 1967 (Cth)*

This Act does not authorise the exercise of a power or the performance of a function that would be inconsistent with the *Narcotic Drugs Act 1967 (Cth)* or the regulations made or directions given under that Act.

Part 2 Licences

Division 1 Applications and conditions

8 Types of licence

- (1) A commercial licence authorises the licensee to possess, cultivate, process or supply low THC hemp for commercial purposes.

- (2) A class A research licence authorises the licensee to possess, cultivate, process or supply low THC hemp for scientific research, instruction, analysis or study purposes.
- (3) A class B research licence authorises the licensee to possess, cultivate, process or supply hemp for scientific research, instruction, analysis or study purposes.
- (4) While the licence is in force, any of the following persons may carry out the activities authorised by the licence in accordance with the conditions of the licence:
 - (a) the licensee;
 - (b) a contractor of the licensee, in accordance with the terms of the contract with the licensee;
 - (c) an employee of the licensee, or of a contractor of the licensee, in accordance with the employee's terms of employment.

9 Application for licence

- (1) A person may apply to the CEO for a licence.
- (2) The application must be:
 - (a) made in the approved form; and
 - (b) accompanied by the prescribed fee; and
 - (c) accompanied by any other documents or information required by the CEO under section 10.
- (3) The CEO may treat the application as having been withdrawn if an applicant fails to comply with a requirement made under section 10.
- (4) The withdrawal of an application does not prevent a further application being made by the applicant.

10 Investigation of application

- (1) The CEO may carry out any investigation that the CEO considers necessary to determine the application.
- (2) The CEO may, by written notice, require an applicant to do any of the following within a reasonable period specified in the notice:
 - (a) provide documents or information relevant to the investigation of the application as specified in the notice;

- (b) provide authorities and consents to enable the CEO to obtain financial or other confidential information about the applicant from other persons.
- (3) The CEO must give a copy of the application and any accompanying documents or information to the Commissioner of Police.
- (4) The Commissioner of Police must inquire into and report to the CEO on any matters concerning the application:
 - (a) that the CEO requests; and
 - (b) that the Commissioner believes are appropriate or reasonably necessary.
- (5) The Commissioner of Police must give the CEO written notice of the Commissioner's decision to support or oppose the application, including reasons for the decision, within 60 days after receiving the application, documents or information under subsection (3).
- (6) If the CEO is notified that the Commissioner of Police opposes the application, the CEO must refuse to issue the licence to the applicant.

11 Eligibility of applicant

- (1) An individual is eligible to hold a licence if the individual:
 - (a) ordinarily resides in Australia; and
 - (b) is not affected by bankruptcy action.
- (2) A body corporate is eligible to hold a licence if none of its executive officers are affected by bankruptcy action.
- (3) In this section:

affected by bankruptcy action, for an individual, means the individual has:

- (a) become bankrupt; or
- (b) applied to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (c) compounded with creditors or made an assignment of remuneration for their benefit.

12 Suitability of applicant

- (1) The CEO must not issue a licence unless the CEO is satisfied that:
 - (a) the applicant is a suitable person to hold a licence; and
 - (b) if the applicant is a body corporate – each executive officer of the applicant is a suitable person to hold a licence; and
 - (c) if the regulations prescribe other suitability requirements – the applicant satisfies the prescribed requirements.
- (2) In deciding whether a person is a suitable person, the CEO may consider any of the following:
 - (a) the character, honesty and integrity of the person and any of the person's associates;
 - (b) the criminal history of the person and any of the person's associates;
 - (c) whether the person or any of the person's associates has a history of non-compliance with this Act;
 - (d) the financial circumstances of the applicant;
 - (e) any other matter that may significantly limit the applicant's capacity to comply with any condition of the licence.
- (3) An applicant is not a suitable person to hold a class B research licence unless the CEO is satisfied that:
 - (a) the applicant has the necessary resources, qualifications and experience to carry out the activities authorised by the licence; or
 - (b) if the applicant is a body corporate – the body corporate has the necessary resources, and employs an individual who has the necessary qualifications and experience, to carry out the activities authorised by the licence.

13 Determination of application

- (1) The CEO must determine the application by issuing or refusing to issue a licence to the applicant.
- (2) If the CEO refuses to issue the licence, the CEO must give the applicant written notice of the decision.

14 Duration of licence

A licence continues in force for up to 5 years as specified in the licence, unless it is sooner suspended or cancelled.

15 Conditions of licence

- (1) A licence is subject to the conditions prescribed by the regulations.
- (2) The CEO may impose conditions on a licence at any time by written notice to the licensee.
- (3) A licence is not transferable.

16 Contravention of licence condition

- (1) A person commits an offence if:
 - (a) the person is a licensee; and
 - (b) the person's licence is subject to a condition prescribed or imposed under this Act; and
 - (c) the person intentionally engages in conduct; and
 - (d) the conduct results in a contravention of the condition and the person is reckless in relation to the result.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) Strict liability applies to subsection (1)(a) and (b).

17 Amendment of licence condition

- (1) The CEO may amend or revoke a condition of a licence at any time by written notice to the licensee.
- (2) The CEO may exercise a power under subsection (1) on application by the licensee or on the CEO's own initiative.
- (3) The application must be:
 - (a) made in the approved form; and
 - (b) accompanied by the prescribed fee; and
 - (c) if the regulations prescribe other documents or information to accompany the application – accompanied by the prescribed documents or information.

- (4) If the CEO refuses to amend or revoke a condition on application by a licensee, the CEO must give the licensee written notice of the decision.

18 Renewal of licence

- (1) A licensee may apply to the CEO for renewal of a licence.
- (2) Sections 10 to 13 apply to an application for renewal of a licence as if it were an application for a licence to be issued.
- (3) The application must be:
- (a) made in the approved form at least 60 days before the licence is due to expire; and
 - (b) accompanied by the prescribed fee; and
 - (c) accompanied by any other documents or information required by the CEO under section 10.
- (4) If a licensee applies for renewal of a licence in accordance with this section, the licence is taken to continue in force from the day it would have expired to the day the application is determined.

Division 2 Suspension, cancellation and review

19 Suspension or cancellation of licence

- (1) The CEO must, by written notice, suspend or cancel a licence if the CEO:
- (a) is no longer satisfied that the licensee is eligible to hold a licence; or
 - (b) is no longer satisfied about any of the matters referred to in section 12(1); or
 - (c) is satisfied that the licensee obtained the licence by fraud or misrepresentation.
- (2) The CEO may, by written notice, suspend or cancel a licence:
- (a) at the written request of the licensee; or
 - (b) if satisfied that the licensee has contravened a condition of the licence; or

- (c) if the Commissioner of Police requests suspension or cancellation of the licence on the basis of classified information concerning the licensee; or
 - (d) for any other reason prescribed by the regulations.
- (3) The CEO must notify the Commissioner of Police if a licence is suspended or cancelled.

20 Action after suspension or cancellation

- (1) While a licence is suspended, the persons who were authorised under section 8(4) to carry out activities under the licence may, despite the suspension:
- (a) continue to possess any hemp that is in their possession on the day the licence is suspended; and
 - (b) cultivate existing hemp plants that are in their possession on the day the licence is suspended.
- (2) The persons referred to in subsection (1) are not authorised to carry out any other activities not specified under subsection (1) in relation to hemp that is in their possession on the day the licence is suspended.
- (3) No compensation is payable by the Territory because of the suspension.
- (4) A licensee may surrender hemp produced under a licence to the CEO on suspension or cancellation of the licence and the surrendered hemp must be dealt with in accordance with the regulations.

21 Review by NTCAT

- (1) NTCAT has jurisdiction to review a decision (a **reviewable decision**) specified in the Schedule.
- (2) An **affected person**, for a reviewable decision, is a person specified in the Schedule for the decision.
- (3) An affected person for a reviewable decision may apply to NTCAT for review of the decision.

Note for section 21

The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the procedure for applying to NTCAT for review and other relevant matters in relation to reviews.

22 Classified information

- (1) Classified information may not be disclosed to any person other than the CEO, the Minister, NTCAT, a court or a person to whom the Commissioner of Police authorises its disclosure.
- (2) Despite section 35 of the *Northern Territory Civil and Administrative Tribunal Act 2014*, if the Commissioner of Police opposes an application or requests the suspension or cancellation of a licence on the basis of classified information, the CEO is not required to give any reasons for refusing to issue or renew a licence or for suspending or cancelling a licence, other than that the decision was made in the public interest.
- (3) In any proceeding under this Act, NTCAT or a court:
 - (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of classified information, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
 - (b) may take evidence consisting of or relating to classified information by way of affidavit of a police officer of or above the rank of superintendent.

Part 3 Enforcement

Division 1 Inspectors

23 Appointment of inspectors

- (1) An *inspector* is:
 - (a) a person appointed as an inspector under subsection (2); or
 - (b) a police officer.
- (2) The CEO may, in writing, appoint a public sector employee to be an inspector.
- (3) The CEO must not appoint a person to be an inspector unless satisfied that the person has the skills, qualifications, training and experience to properly perform the functions of an inspector.
- (4) A police officer has the powers and functions of an inspector under this Act.

- (5) A power conferred by this Act on a police officer is in addition to, and does not limit, any other power the officer may have under any other law in force in the Territory.

24 Identity cards

- (1) The CEO must give an inspector who is not a police officer an identity card stating the person's name and that the person is an inspector.
- (2) The identify card must:
- (a) show a recent photograph of the inspector; and
 - (b) show the card's date of issue and expiry; and
 - (c) be signed by the inspector.
- (3) This section does not prevent the issue of a single identity card to a person for this and any other Act.
- (4) For an inspector who is a police officer, a reference in this Act to an identity card includes a reference to the officer's police identification.

25 Production of identity card

An inspector exercising a power or performing a function under this Act in relation to a person must, if asked by the person, produce the inspector's identity card for the person's inspection.

26 Return of identity card

- (1) A person who ceases to be an inspector appointed under section 23(2) must return the person's identity card to the CEO within 21 days after the cessation.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Division 2 Powers of inspectors

27 Power to require information

- (1) An inspector may require a person:
- (a) to state the person's name and address if the inspector believes on reasonable grounds that the person has committed, is committing or is about to commit an offence against this Act; or
 - (b) to provide specified documents or information to the inspector to enable the inspector to determine whether a licensee is complying with the licensee's licence or this Act.
- (2) A person commits an offence if the person contravenes a requirement given under subsection (1).

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) Subsection (2) does not apply if:
- (a) the inspector did not produce the inspector's identity card for inspection by the person if asked; or
 - (b) the inspector did not, before giving the requirement, warn the person that failure to comply with the requirement is an offence.

Note for subsection (4)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

28 Power to enter place

An inspector may, at any reasonable time, enter a place occupied by a licensee, other than a place used as a residence, to determine whether the licensee is complying with the licensee's licence or this Act.

29 Powers on entry

- (1) An inspector who enters a place under section 28 may do any of the following:
- (a) inspect the place or anything at the place;
 - (b) take copies of, or extracts from, documents at the place;

- (c) take photographs or make other recordings of the place or anything at the place;
 - (d) take measurements of, or conduct tests in relation to, the place or anything at the place;
 - (e) subject to the requirements prescribed by the regulations – take and remove samples for analysis from the place or anything at the place;
 - (f) subject to section 30 – seize hemp at the place;
 - (g) require a person at the place to do any of the following:
 - (i) answer questions asked by the inspector;
 - (ii) produce documents to the inspector;
 - (iii) give the inspector reasonable help to exercise the inspector's powers under this Act.
- (2) A person given a requirement under subsection (1)(g) must take reasonable steps to comply with the requirement.

Maximum penalty: 100 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

30 Power to seize hemp

- (1) An inspector may seize hemp if:
- (a) the inspector believes on reasonable grounds that the licensee has contravened a provision of this Act; or
 - (b) the hemp is required for evidence in a proceeding; or
 - (c) the licensee's licence is suspended or cancelled.
- (2) Material seized under this section must be dealt with in accordance with the regulations.

31 Power to possess hemp

An inspector is authorised to possess hemp in the exercise of any power or the performance of any function under this Act.

37 Time for commencing proceedings

A proceeding for an offence against this Act must be commenced within 3 years after the day on which the CEO first became aware of the commission of the alleged offence.

38 Evidentiary certificates

In a proceeding for an offence against this Act, a certificate signed by the CEO and stating any of the following matters is evidence of the matter:

- (a) a specified person was an inspector having specified powers under this Act at a specified time;
- (b) a specified document was made or given at a specified time;
- (c) a specified person was or was not licensed under this Act at a specified time.

Part 4 Miscellaneous**39 Hemp industry register**

- (1) The CEO must establish and maintain a hemp industry register.
- (2) The register must contain the following information in respect of each licence:
 - (a) the name of the licensee;
 - (b) the locations at which the licensee cultivates, processes or stores hemp under the licence;
 - (c) if the regulations prescribe any other information – the prescribed information.
- (3) The CEO must ensure that the register, or any part of the register, is accessed only by:
 - (a) the Commissioner of Police; or
 - (b) a prescribed person, or a person of a prescribed class, who is authorised to do so by the CEO (an **authorised person**).
- (4) The CEO or an authorised person may disclose information in the register to a public authority as defined in section 5 of the *Ombudsman Act 2009*:
 - (a) for the purpose of law enforcement; or

-
- (b) if authorised or required under any law in force in the Territory; or
 - (c) if the CEO or authorised person believes on reasonable grounds that the disclosure is necessary to enable the proper administration of this Act.

40 Approved forms

The CEO may approve forms for this Act.

41 Delegation

The CEO may delegate any of the CEO's powers and functions under this Act to a person.

42 Acquisition on just terms

If the operation of this Act would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

43 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as the CEO or an inspector.

Note for subsection (1)

This section has effect subject to Part VIIA of the Police Administration Act 1978 to the extent that it applies to the civil liability of an inspector who is a police officer.

- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

exercise of a power includes the purported exercise of the power.

performance of a function includes the purported performance of the function.

44 Regulations

- (1) The Administrator may make regulations under this Act.
- (2) A regulation may do any of the following:
 - (a) prescribe fees payable under this Act;
 - (b) provide for procedurs to be followed, and the recovery by the CEO of any costs incurred, in relation to any of the following:
 - (i) taking, removing and analysing samples;
 - (ii) conducting tests;
 - (iii) dealing with seized or surrendered materials;
 - (c) prescribe minimum land areas for cultivation of low THC hemp;
 - (d) provide for the disposal or destruction of hemp;
 - (e) provide for an offence against a regulation to be an offence of strict or absolute liability;
 - (f) provide for a fine not more than:
 - (i) 50 penalty units for an offence against a regulation that is an offence of strict or absolute liability; or
 - (ii) 100 penalty units for any other offence against a regulation;
 - (g) provide for the application, adoption or incorporation (with or without changes) of the whole or part of a document as in force or existing at a particular time or from time to time.

Part 5 Consequential amendments

Division 1 Medicines, Poisons and Therapeutic Goods Act 2012

45 Act amended

This Division amends the *Medicines, Poisons and Therapeutic Goods Act 2012*.

46 Section 31A inserted

After section 31

insert

31A Relationship with *Hemp Industry Act 2019*

- (1) This Act does not affect the operation of the *Hemp Industry Act 2019* or make unlawful anything done in accordance with that Act.
- (2) Without limiting subsection (1), this Act does not apply to processed low THC hemp as defined in section 4A(3) of the *Misuse of Drugs Act 1990*.

Division 2 Misuse of Drugs Act 1990

47 Act amended

This Division amends the *Misuse of Drugs Act 1990*.

48 Section 4A replaced

Section 4A

repeal, insert

4A Relationship with *Hemp Industry Act 2019*

- (1) This Act does not affect the operation of the *Hemp Industry Act 2019* or make unlawful anything done in accordance with that Act.
- (2) Without limiting subsection (1), this Act does not apply to processed low THC hemp.
- (3) In this section:

low THC hemp, see section 3 of the *Hemp Industry Act 2019*.

processed low THC hemp means low THC hemp that is:

- (a) treated by mechanical, chemical or other artificial means and substantially free of leaves and flowering heads; or
- (b) non-viable if it is seed.

49 Repeal of Part

This Part is repealed on the day after it commences.

Schedule Reviewable decisions and affected persons

section 21

Reviewable decision	Affected person
Refusing to issue or renew a licence under section 13	Applicant
Imposing a condition under section 15(2)	Applicant or licensee
Amending or revoking or refusing to amend or revoke a condition under section 17	Applicant or licensee
Suspending or cancelling a licence under section 19	Licensee
