

Explanatory Statement

HEMP INDUSTRY BILL 2019
SERIAL NO. 91

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR PRIMARY INDUSTRY AND RESOURCES

THE HON PAUL KIRBY MLA

GENERAL OUTLINE

The Hemp Industry Bill 2019 ('the Bill') creates the authorising environment for the regulation of low Tetrahydrocannabinol (THC) *Cannabis spp.* (less than or equal to 1% THC) for food, fibre and seed production uses. If consumed Low THC Cannabis foods have no psycho-active effects on individuals. This authorising environment is to be achieved through:

- Establishing a licencing regime that will enable:
 - the lawful possession, cultivation, processing or supply of industrial hemp for the commercial production of industrial hemp products including food, fibre and seed; and
 - the lawful possession, cultivation, processing or supply of industrial hemp for scientific research, instruction, analysis or study.
- Providing exemptions where applicable to the *Misuse of Drugs Act* to allow for licenced persons to undertake activities in accordance with the new Act.
- Setting out how the responsibility and accountability for specified administrative powers of the Bill are shared between the Chief Executive Officer of the responsible regulatory agency and the Commissioner of Police.
- Providing authorised inspectors under the Act with appropriate powers of entry, inspection and seizure to allow for the enforcement of necessary provisions to ensure compliance.
- Allowing for the right of review by persons affected by administrative decisions made under the Act.
- Providing for offences and penalties for contravening specified provisions of the Act.

NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Hemp Industry Act 2019*.

Clause 2. Commencement

This clause sets out how the Bill, once it becomes as Act, will be commenced. In this case this will be done by notice given by the Administrator in the Northern Territory (NT) Government Gazette.

Clause 3. Definitions

The Definitions are listed in alphabetical order and entail a wide range of necessary legal definitions, as well as explanation of certain technical terms around the Bill associated with the crop.

Clause 4. Meaning of associate

This clause defines who qualifies to be considered an associate. It determines this by the level of positional, financial, managerial, or voting powers that either an applicant or licensee is able to exercise.

Clause 5. Act binds Crown

This clause provides that the Crown in right of the NT must comply with the legislation. It also provides that, as far as possible under NT constitutional law, the Crown in right of its other capacities is also bound by the legislation.

Clause 6. Application of Criminal Code

This is a standard clause that provides that Part IIAA of the Criminal Code applies to an offence against this Act. Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences and deals with the burden of proof. Part IIAA also defines, or elaborates on, certain concepts commonly used in the creation of criminal offences.

Clause 7. Interaction with Narcotic Drugs Act 1967 (Cth)

The *Narcotic Drugs Act 1967* (Cth), regulates the cultivation and manufacture in Australia of drugs for medicinal and therapeutic use and associated research. In practical terms this means that where there is an inconsistency, this Bill is subordinate to the auspices of the *Narcotic Drugs Act 1967*.

Part 2 Licences

Division 1 Applications and conditions

Clause 8. Types of licence

This is a critically important section of the Bill as it delineates the licencing provisions planned to be made available to operators. Broadly it entails authorising licensees to possess, cultivate, process or supply industrial hemp for the commercial production of industrial hemp products including food, fibre and seed. The seed could be used for either human consumption (i.e. as a grain), or for propagation purposes. Note: hemp grain destined for human consumption must be 'hulled' i.e. processed by having the epidermis removed thereby making it unviable. This would likely occur beyond the farm gate.

This clause also makes allowances for research-based licences, which also includes utilisation in research program (e.g. for plant breeding purposes) for cultivars of *Cannabis spp.* that might exceed 1% THC. Use of such genetics may be very important in order to introduce new commercially attractive traits into industrial hemp lines. Such traits could be for dwarfing characteristics, seed yield, or pest and disease resistance.

The licences will also provide a legitimate operating environment for employees, contractors, and subcontractors of licensees. Security issues around premises involved in this space will be addressed in conditions of the licence.

Clause 9. Application for licence.

This clause describes how a licence can be sought via the CEO of the administering agency through a designated process with a prescribed fee. An application can be made by a person or jointly by persons who constitute a partnership. It will also involve the necessary accompaniment of a set of documents detailed in Clause 10.

Clause 10. Investigation of application

Described here is the application process, and the roles of the CEO and the regulatory agency, and the Commissioner of Police in the issuing of licences. The Commissioner has a time limit of 60 days to respond to a licence request from the CEO of the regulatory agency. If the Commissioner opposes the granting of a particular licence then the CEO must refuse to issue that licence.

Clause 11. Eligibility of applicant

A licence will only be granted to persons who ordinarily reside in Australia. They must not presently be affected by bankruptcy action.

Clause 12. Suitability of applicant

This clause details the parameters around which a licence applicant or holder may be found to be suitable to hold a licence. It asserts the necessity for the CEO, prior to the granting of a licence, to investigate and make judgement on the character, honesty, integrity, criminal history and other matters specified of the applicant and any of their associates. The Commissioner of Police can decide to oppose an application based on classified information. If the Commissioner opposed an application then the CEO must not issue a licence.

Clause 13. Determination of application

The CEO has the right to grant or refuse a licence. If a licence is refused, the CEO must advise the applicant in writing.

Clause 14. Period of licence

Licences are limited to a maximum of five years – unless suspended or cancelled.

Clause 15. Conditions of licence

Respective licences will be subject to conditions in the Act or by prescribed conditions developed under regulations in support of the Act.

A licence is not transferable.

Clause 16. Contravention of licence condition

What constitutes a contravention of a licence is explained in this clause. It applies to the licence holder and is based on situations where a licensee intentionally engages in conduct in breach of their licence conditions, or where their conduct is deemed reckless.

A maximum penalty of 100 penalty units or imprisonment for 12 months is applicable.

Clause 17. Amendment of licence condition

The CEO has power to amend conditions or revoke a licence at any time, but must notify the licensee of the CEO's intentions in writing.

Clause 18. Renewal of licence

This clause outlines the process of licence renewal. A minimum time-frame for application of a licence is set at 60 days to allow for administrative processes to be completed. Note, once a renewal application has been raised, the current licence continues in force until the application for renewal is determined or withdrawn. A new licence will come into effect on and from the day on which the licence was due to expire.

Division 2 Suspension, cancellation and review

Clause 19. Suspension or cancellation of licence

This clause has been inserted to address issues that might become apparent to regulators after a person or corporate entity has secured a licence(s). It explains the conditions under which a licence can be revoked. It captures issues relating to: eligibility to hold a licence, the suitability of the applicant, breaches of conditions, or fraud or misrepresentation. The Commissioner of Police can also request cancellation of a licence should Police become aware of circumstances (including using classified information) about the applicant or their associates.

Clause 20. Action after suspension or cancellation

This section explains what a licensee can do around possessing or cultivating any existing hemp crop or material they are responsible for at the point of suspension. For example, should a failure by the licensee to undertake an administrative requirement result in the suspension or cancellation of a licence, for what up until that point was a low THC crop that had been lawfully grown, this still allows the licensee (or others acting on his her behalf e.g. an administrator) to harvest the crop so monies can be recouped. This also ensures that crops are not left abandoned and derelict in the landscape. No compensation is payable by the NT Government for a suspension or cancellation arising from a failure of a licensee to meet their obligations under the Act or subsequent regulations.

Clause 21. Review by NTCAT

Applicants have a right of review. The Northern Territory Civil and Administrative Tribunal (NTCAT) has jurisdiction to review decisions. Note: certain Police information may remain classified during this process.

Clause 22. Classified information

This clause explains the ordinate nature of classified information as it might relate to issue or cancellation of licences; who it can be disclosed to, and the extent to which it must be kept confidential. Classified information means confidential information that is privileged or otherwise protected from disclosure under law. Classified information under this Act 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. Classified information is often highly sensitive information gained from Police intelligence sources.

Should an investigation result in the suspension or cancellation of a licence on the basis of such information, the CEO is not required to provide any reasons for refusing to issue or renew a licence or suspending or cancelling a licence, other than that the decision was made in the public interest. If it emerges in legal proceedings, the Commissioner of Police can apply for receiving evidence and hearing argument about the information in private, and in the absence of the parties to the proceedings and their representatives. Classified information can be provided by way of an affidavit of a police officer of, or above, the rank of Superintendent.

Only the Commissioner of Police, Deputy Commissioner or Assistant Commissioner of Police can classify information as such.

Part 3 Enforcement

Division 1 Inspectors

Clause 23. Appointment of inspectors

The CEO under clause 23(2) has the power to appoint a public sector employee as an inspector. Clause 23(3) states that the CEO must not appoint a person as an inspector unless satisfied that the person has the necessary skills, qualification, training and experience to properly perform the functions of an inspector. Clause 23(5) states that a police officer has the powers and functions of an inspector under this Bill.

Clause 24. Identity card

Inspectors, with the exception of a police officers, will be required to possess an identity card that shows the name, recent photograph and signature of the inspector; and displays the card's date of issue and expiry. Inspectors will be required to present this card if requested. Police officers only need to carry and show their own police identification.

Clause 25. Production of identity card

Inspectors when exercising a power or performing a function under this Act must produce an identity card if asked to do so.

Clause 26. Return of identity card

Inspectors are require to surrender their identity cards within 21 days of their cessation of their duty or expiry. It is an offence with a maximum penalty of 20 penalty points for those failing to meet this requirement.

Division 3 Powers of inspectors

Clause 27. Power to require information

This clause provides a power for an authorised inspector to ask for and be given a person's name and address, or to be provided with specified documents or information (if the person is a licensee), if the inspector believe on reasonable grounds that the person has committed, is committing, or is about to commit an offence against the Bill. It is an offence for a person not to provide his/her name and address or a specified document(s) or information, if requested to do so, with a maximum penalty fine of 50 penalty units. Strict liability applies for this offence.

Clause 27(4) excuses a person for not complying with a request made by an inspector for the person's name and address, if the inspector did not show his or her identity card if requested by the person to do so, and the authorised officer did not inform the person that a failure to comply with the requirement is an offence.

Clause 28. Power to enter place

This clause allows an inspector at any reasonable time, to enter a place occupied by a licensee (other than a place used as a residence), to determine whether the licensee is complying with a licence or this Act. This is a normal inspectorial power across NT Government departments involved in regulating a wide range of industry and community areas. The term '*place*' is defined under Part 1, clause 3 of the Bill.

Clause 29. Powers on entry

This clause sets out the powers that allow inspectors to inspect the place or anything on the place; take copies of, or extracts from, documents; take photographs or make other recordings of or anything on the place; take measurements of, or conduct tests; take and remove samples for analysis; in accordance with any prescribed requirements; seize material within prescribed requirements; require a person on the place to answer questions; produce documents or assist the inspector to exercise their powers.

A person must take reasonable steps to comply with the requirements asked of them by an inspector authorised under the Act. Failure to do so is an offence with a maximum fine of up to 100 penalty units.

Clause 30. Power to seize hemp

This clause sets out the circumstances under which an inspector can seize and lawfully be in possession of hemp, which is when they are exercising their powers under the Act.

Clause 31. Power to possess hemp

This provides an authorisation for Inspectors to seize and possess hemp material for analysis or other purposes, without themselves being in breach of the law.

Division 3 Other offences

Clause 32. Obstruction of inspector

This clause sets out the offences for obstructing i.e. hindering and resisting, an authorised person from carrying out their duties relating to the Act. A fine of up to a 100 penalty units or imprisonment for 12 months applies to this offence.

Clause 33. Misleading information

This clause addresses intentional misleading behaviour. Misleading information means information that is misleading in a material particular or because of the omission of details. The maximum penalty is fine of up to 100 penalty units or 12 months imprisonment. The defendant has an evidential burden in relation to the matters mentioned.

Clause 34. Falsely representing to be an inspector

This is where someone intentionally represents, by words or conduct, that the person or another person is an inspector; and knows this is false. This can incur a maximum fine of up to 100 unit penalty or 12 months imprisonment.

Clause 35. Unauthorised disclosure of confidential information

This clause sets the parameters that defines unauthorised disclosure of confidential information and a range of range of specific exemptions around the issue. These exemptions typically include instances where the disclosure are undertaken in carrying out the functions of the Act. For instance, this could mean conversations or correspondence between NT and interstate regulators around a specific applicant or licensee. A maximum of 200 penalty units or 2 years imprisonment is stipulated for this offence.

Division 4 Legal proceedings

Clause 36. Authority to prosecute

The CEO of the department or their authorised person can advance a case for prosecution under the Act. Note: the Attorney-General or Director of Public Prosecutions can also instigate proceedings independent of the CEO.

Clause 37. Time for commencing proceedings

Proceedings for an offence against this Act must be commenced within three (3) years after the date on which the CEO becomes aware of the alleged offence.

Clause 38. Evidentiary certificates

This clause means that a certificate (e.g. a document) on a specified matter, that is tendered in Court proceedings for an offence against the Act, and which has purported (allegedly) been signed by the CEO, will be taken as evidence of that particular matter (i.e. a fact not in dispute).

For example, a photo identification card stating that the holder is an authorised inspector appointed under the Bill, and which bears the signature of the CEO and the authorised inspector, will be regarded as evidence that the holder of the card has in fact been authorised by the CEO to exercise those powers.

Clause 38 goes on to detail which matters signed by the CEO will be treated as evidence by the Court of that matter (e.g. an appointment of an authorised inspector); that a specified document or notice was given at a particular date and time, or was not received back within a specified date and time; or whether a specified person was or was not licenced under the Bill (once an Act) at a specified date and time.

Part 4 Miscellaneous

Clause 39. Industrial hemp register

Under the Act the department must maintain a register of growers of industrial hemp, which is to be readily accessible to Police. An Industrial hemp register will include details such as the name of the licensee, the place where the hemp is grown or processed, and any other relevant prescribed details such as cultivars of hemp under cultivation, THC test results, or stocks of processed produce etc. Personal information on the register will only be disclosed in accordance with the Act. An authorised person can on reasonable grounds disclose/share information necessary to enable the proper administration of this Act. An example could be to validate the licence arrangements of certain persons interstate receiving hemp produce, or to inform interstate regulators or businesses that the NT-based licensee has the necessary authority to receive material such as viable industrial hemp seed for planting purposes.

Clause 40. Approved forms

The CEO may approve forms for this Act. This will include forms around activities such as applying for or renewing a licence, reporting on areas cropped, varieties employed and THC levels recorded etc.

Clause 41. Delegation

The CEO may delegate any of the CEO's powers and functions to various subordinates in their department.

Clause 42. Acquisition on just terms

Section 50(1) of the *Northern Territory (Self Government) Act 1978 (Cth)* limits the authority of the Northern Territory Legislative Assembly to only making laws that do not result in the acquisition of property otherwise than on just terms. That section provides that in the event that the operation of section 42 of this Act, would result in an acquisition of property from a person that is not on just terms, then:

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

Clause 43. Protection from liability

This clause is aimed at protecting those acting in good faith in accordance with the Act from criminal or civil liability. This means a level of indemnity for inspectors or the CEO of the department or the Police Commissioner exists for actions involved in enforcing the Act.

Clause 44. Regulations

The proposed regulations will set the operational parameters that will underpin the Bill once it becomes an Act. It will incorporate aspects around the following:

- (a) the prescribing of fees payable under the Bill;
- (b) providing for offences;
- (c) protocols for testing of hemp;
- (e) the circumstances in which seized material may be retained, destroyed or otherwise disposed of;
- (f) parameters around the recovery by the CEO of any costs incurred in testing of hemp and dealing with seized material;
- (g) prescribing minimum land areas for cultivation of industrial hemp; and
- (h) the destruction or disposal of crops or crop material.

Part 5 Consequential amendments

Division 1 *Medicines, Poisons and Therapeutic Goods Act 2012*

Clause 45. Act amended

This Division refers to the necessity to amend the *Medicines, Poisons and Therapeutic Goods Act 2012*, so that there are no conflicts with other statutes.

Clause 46. Section 31A inserted

This clause is to be inserted into the *Medicines, Poisons and Therapeutic Goods Act 2012* to make lawful activities relating to low-THC hemp and its processed products as stipulated in the Act.

Division 2 *Misuse of Drugs Act 1990*

Clause 47. Act amended

This Division amends the *Misuse of Drugs Act 1990* so that there are no conflicts in the statutes.

Clause 48. Section 4A replaced

This insertion into the *Misuse of Drugs Act 1990* will allow for a Hemp Industry Act to function lawfully. It provides relevant exemptions around low-THC hemp.

Clause 49. Repeal of Part

This pertains to the repeal of the previous aspects of the *Misuse of Drugs Act 1990* that would have otherwise not allowed the possession, cultivation or supply of low-THC industrial hemp.

Schedule Reviewable decisions and affected persons

This Schedule lists the specific decisions (and those persons affected) which are reviewable under the Act (see clause 21) by the NTCAT.