

Queensland



# **DRUGS MISUSE AMENDMENT ACT 2002**

**Act No. 35 of 2002**



# Queensland



## DRUGS MISUSE AMENDMENT ACT 2002

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Queensland



## **Drugs Misuse Amendment Act 2002**

**Act No. 35 of 2002**

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**An Act to amend the *Drugs Misuse Act 1986*, and for other purposes**

*[Assented to 16 August 2002]*

**The Parliament of Queensland enacts—****1 Short title**

This Act may be cited as the *Drugs Misuse Amendment Act 2002*.

**2 Commencement**

This Act commences on a day to be fixed by proclamation.

**3 Act amended**

This Act, other than the schedule, amends the *Drugs Misuse Act 1986*.

**4 Amendment of s 4 (Definitions)**

Section 4—

*insert—*

‘**“smoke”** includes inhale.

**“THC”** means tetrahydrocannabinol.’.

**5 Insertion of new ss 4D and 4E**

After section 4C—

*insert—*

**‘4D Non-application of ss 5, 6, 8 and 9 to particular manufactured products**

‘(1) Sections 5, 6, 8 and 9<sup>1</sup> do not apply to a manufactured product.

‘(2) In this section—

**“industrial cannabis plant”** has the same meaning as in section 46.

**“manufactured product”** means a product that—

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1 Sections 5 (Trafficking in dangerous drugs), 6 (Supplying dangerous drugs), 8 (Producing dangerous drugs) and 9 (Possessing dangerous drugs)



- (a) is made from, or partly from, processed cannabis that—
  - (i) is harvested from industrial cannabis plants; and
  - (ii) has a concentration of THC in it of not more than 0.1%; and
- (b) is in a form that stops it from being smoked or administered or consumed.

“**processed cannabis**” has the same meaning as in section 46.

#### ‘4E Notes

‘A note in the text of this Act is part of this Act.’.

### 6 Amendment of s 8A (Publishing or possessing instructions for producing dangerous drugs)

(1) Section 8A(2)—

*renumber* as section 8A(3).

(2) Section 8A—

*insert*—

‘(2) It is a defence to a charge of an offence against subsection (1) of unlawfully publishing instructions, or unlawfully possessing a document containing instructions, about the way to produce cannabis as a commercial fibre or seed crop, for a person to prove that the person published the instructions, or possessed the document containing the instructions, for a purpose authorised under part 5B.<sup>2</sup>’.

### 7 Replacement of pt 5B

Part 5B—

*omit, insert*—

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2 Part 5B (Commercial production of industrial cannabis)

## **‘PART 5B—COMMERCIAL PRODUCTION OF INDUSTRIAL CANNABIS**

### *‘Division 1—Preliminary*

#### **‘44 Object of pt 5B**

‘The object of this part is to facilitate—

- (a) the processing and marketing of, and trade in, industrial cannabis fibre and fibre products; and
- (b) the processing and marketing of, and trade in, industrial cannabis seed and seed products, other than for the purpose, directly or indirectly, of producing anything for administration to, or consumption or smoking by, a person.

#### **‘45 Ways of achieving part’s objects**

‘(1) The ways of achieving this part’s objects include enabling the following activities to be carried out under controlled conditions—

- (a) commercial production of industrial cannabis fibre and seed;
- (b) research into the use of industrial cannabis as a commercial fibre and seed crop;

*Example of research for paragraph (b)—*

Field trials using fertilisers or irrigation and different planting rates.

- (c) plant breeding programs using class A or class B research cannabis plants and seed, but only for developing new or improved strains of cannabis for use by growers for the commercial production of industrial cannabis fibre and seed.

‘(2) Another way of achieving this part’s objects is to enable research to be carried out into—

- (a) how cannabis seed may be denatured; and
- (b) how processed cannabis may be used.

#### **‘46 Definitions for pt 5B**

‘In this part—

**“affected by bankruptcy action”**, for an individual, means the individual, in any jurisdiction—

- (a) is bankrupt; or
- (b) has compounded with creditors; or
- (c) has otherwise taken, or applied to take, advantage of any law about bankruptcy.

**“cannabis”** means cannabis sativa.

**“category 1 researcher”** means a person who holds a category 1 researcher licence that is in force.

**“category 1 researcher licence”** means a category 1 researcher licence issued under section 49.

**“category 2 researcher”** means a person who holds a category 2 researcher licence that is in force.

**“category 2 researcher licence”** means a category 2 researcher licence issued under section 49.

**“certified cannabis seed”** means seed certified, in the way prescribed under a regulation, by any of the following as seed that will produce cannabis plants with a THC concentration in their leaves and flowering heads of not more than 0.5%—

- (a) a grower; or
- (b) a category 1 or category 2 researcher; or
- (c) a person authorised under a regulation under section 48 to supply industrial cannabis seed.

**“class A research cannabis plant”** means a cannabis plant that has a THC concentration in its leaves and flowering heads of 3% or more.

**“class A research cannabis seed”** means—

- (a) seed harvested from a class A research cannabis plant; or
- (b) seed that, if grown, will produce a class A research cannabis plant.

**“class B research cannabis plant”** means a cannabis plant that has a THC concentration in its leaves and flowering heads of more than 1% but less than 3%.

**“class B research cannabis seed”** means—

- (a) seed harvested from a class B research cannabis plant; or
- (b) seed that, if grown, will produce a class B research cannabis plant.

**“close associate”**, of an applicant or licensee, means any of the following—

- (a) a person who—
  - (i) holds or will hold any relevant financial interest in the business of the applicant or licensee; and
  - (ii) because of the interest, is or will be able to exercise a significant influence over or in relation to the conduct of that business;
- (b) a person who—
  - (i) is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the applicant or licensee; and
  - (ii) because of the power, is or will be able to exercise a significant influence over or in relation to the conduct of that business;
- (c) a person who holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the applicant or licensee.

**“convicted”** of an offence means that the person has been found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction was recorded.

**“criminal history”**, of a person, means the person’s criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

**“denatured”**, for seed harvested from industrial cannabis plants, means that the seed will not grow because it has been cracked, de-hulled, heated, or treated in another way that prevents growth.

**“executive officer”**, of a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

**“grower”** means a person who holds a grower licence that is in force.

**“grower licence”** means a grower licence issued under section 49.

**“industrial cannabis fibre”** means fibre from industrial cannabis plants.

**“industrial cannabis plant”** means a cannabis plant with a THC concentration in its leaves and flowering heads of not more than 1%.

**“industrial cannabis seed”** means—

- (a) cannabis seed harvested from an industrial cannabis plant; or
- (b) certified cannabis seed.

**“information notice”**, for a decision of the chief executive under this part, is a written notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the person to whom the notice is given may appeal to the District Court against the decision within 21 days after receiving the notice.

**“inspector”** means a person appointed under this part as an inspector.

**“licence”** means a licence issued under section 49.<sup>3</sup>

**“licensee”** means the holder of a licence that is in force.

**“processed cannabis”** means—

- (a) industrial cannabis plants that—
  - (i) have been harvested or chemically or mechanically treated or artificially treated in another way; and
  - (ii) have no leaf, flowers or seed; or
- (b) seed from industrial cannabis plants grown by a holder of a grower licence under part 5B and denatured—
  - (i) on the place stated in the licence; or
  - (ii) by a person authorised under a regulation under section 48 to denature the seed at another place.

**“relevant position”**, in relation to a business, means a position whose holder participates in the management of the business (whether in the capacity of a director, manager or secretary or in another capacity).

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3 Section 49 (Categories of licences)

**“relevant power”**, in relation to a business, means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

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

**“serious offence”** means—

- (a) any of the following offences, whether or not prosecuted on indictment—
  - (i) an offence involving fraud or dishonesty punishable by 3 or more years imprisonment;
  - (ii) an offence against section 5, 6 or 8;<sup>4</sup>
  - (iii) an offence against section 8A or 9<sup>5</sup> punishable by 3 or more years imprisonment;
  - (iv) an offence involving the use or threatened use of violence punishable by 3 or more years imprisonment; or
- (b) extortion; or
- (c) an offence against a provision of the Criminal Code mentioned in the schedule; or
- (d) an offence that, if committed in Queensland, would be a serious offence under paragraph (a), (b) or (c).

#### **‘47 Authorisations for licensees**

‘(1) A licensee is authorised to perform the activities stated in sections 50, 51 or 52 for the licensee’s licence.

‘(2) The activities are lawful for the purposes of sections 5, 6, 8, 8A and 9.

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4 Section 5 (Trafficking in dangerous drugs), 6 (Supplying dangerous drugs) or 8 (Producing dangerous drugs)

5 Section 8A (Publishing or possessing instructions for producing dangerous drugs) or 9 (Possessing dangerous drugs)

‘(3) However, the activities are lawful only while the licensee performs the activities—

- (a) in accordance with this Act and the conditions of the licence; and
- (b) for a purpose consistent with the purposes of this part.

‘(4) Subsection (3) is subject to section 81(2).<sup>6</sup>

#### **‘48 Authorisations for persons other than licensees**

‘(1) A regulation may authorise a person other than a licensee to perform activities stated under a regulation for the person for the time and on the conditions stated in the regulation.

‘(2) Without limiting subsection (1), a regulation may, for example, authorise a person other than a licensee to possess lawfully obtained cannabis seed that will produce industrial cannabis plants or class A or class B research cannabis plants.

‘(3) However, a regulation made for this section must be for a purpose consistent with the purposes of this part.

‘(4) The activities mentioned in subsections (1) and (2) are lawful for the purposes of sections 5, 6, 8, 8A and 9.

‘(5) Subsection (4) applies only if the conditions stated in the regulation are complied with.

### ***‘Division 2—Licences generally***

#### **‘49 Categories of licences**

‘The chief executive may issue the following licences—

- (a) category 1 researcher licences;
- (b) category 2 researcher licences;
- (c) grower licences.

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6 Section 81 (What happens to cannabis plants and seed if licence suspended)

**‘50 What category 1 researcher licences authorise**

‘(1) A category 1 researcher licence authorises the licensee, in accordance with the licence—

- (a) to possess for research purposes—
  - (i) industrial cannabis plants and seed; and
  - (ii) class A and class B research cannabis plants and seed; and
- (b) to produce, for use in plant breeding programs for developing new commercial strains of industrial cannabis—
  - (i) industrial cannabis plants and seed; and
  - (ii) class A and class B research cannabis plants and seed; and
- (c) to supply—
  - (i) class A and class B research cannabis plants and seed to a category 1 researcher or a person authorised under a regulation under section 48 to possess class A and class B research cannabis plants and seed; or
  - (ii) class B research cannabis plants and seed to a category 2 researcher; and
- (d) to supply class A and class B research cannabis seed to a grower for use, under the licensee’s supervision, as part of a field trial the licensee is conducting on land owned or leased by the grower; and
- (e) to supply industrial cannabis plants or seed to—
  - (i) a category 1 or category 2 researcher; or
  - (ii) a grower; or
  - (iii) a person authorised under a regulation under section 48 to possess industrial cannabis plants or seed; and
- (f) to supply class A or class B research cannabis seed or industrial cannabis seed to a person in another State who is authorised under the law of that State to possess cannabis seed that, if grown, will produce plants with a THC concentration in their leaves and flowering heads that the person in the other State may possess; and
- (g) if the licensee holds a licence under the *Customs Act 1901* (Cwlth) authorising the licensee to export cannabis—to supply



class A or class B research cannabis seed or industrial cannabis seed to a person in another country who is authorised under the law of that country to possess the seed; and

- (h) to supply processed cannabis to a person authorised under a regulation under section 48 to possess processed cannabis.

‘(2) In this section—

“State” includes an external territory.

### **‘51 What category 2 researcher licence authorises**

‘(1) A category 2 researcher licence authorises the licensee, in accordance with the licence—

- (a) to possess for research purposes—
  - (i) industrial cannabis plants and seed; and
  - (ii) class B research cannabis plants and seed; and
- (b) to produce, for use in plant breeding programs for developing new commercial strains of industrial cannabis—
  - (i) industrial cannabis plants and seed; and
  - (ii) class B research cannabis plants and seed; and
- (c) to supply class B research cannabis plants or seed to—
  - (i) a category 1 or category 2 researcher; or
  - (ii) a person authorised under a regulation under section 48 to possess class B research cannabis plants or seed; and
- (d) to supply industrial cannabis plants or seed to—
  - (i) a category 1 or category 2 researcher; or
  - (ii) a grower; or
  - (iii) a person authorised under a regulation under section 48 to possess industrial cannabis plants or seed; and
- (e) to supply class B research cannabis seed to a grower for use, under the licensee’s supervision, as part of a field trial the licensee is conducting on land owned or leased by the grower; and

- (f) to supply class B research cannabis seed or industrial cannabis seed to a person in another State who is authorised under the law of that State to possess cannabis seed that, if grown, will produce cannabis plants with a THC concentration in their leaves and flowering heads the person in the other State may possess; and
- (g) if the licensee holds a licence under the *Customs Act 1901* (Cwlth) authorising the licensee to export cannabis—to supply class B research cannabis seed or industrial cannabis seed to a person in another country who is authorised under the law of that country to possess the seed; and
- (h) to supply processed cannabis to a person authorised under a regulation under section 48 to possess processed cannabis.

‘(2) In this section—

“**State**” includes an external territory.

## ‘52 What grower licence authorises

‘A grower licence authorises the licensee, in accordance with the licence—

- (a) to possess industrial cannabis plants and seed; and
- (b) to produce industrial cannabis plants and seed from certified cannabis seed; and

Note—

While industrial cannabis plants may have a THC concentration in their leaves and flowering heads of not more than 1.0%, certified cannabis seed must be seed harvested from a plant with a THC concentration in its leaves and flowering heads of not more than 0.5%. The difference recognises that the leaves and flowering heads of plants grown using certified cannabis seed may have more than 0.5% THC because of environmental conditions beyond a grower’s control.

- (c) to supply industrial cannabis seed to—
  - (i) a category 1 or category 2 researcher; or
  - (ii) a grower; or
  - (iii) a person authorised under a regulation under section 48 to possess the seed; and
- (d) to possess class A or class B research cannabis seed for use under the supervision of a category 1 or category 2 researcher, as part

of a field trial the category 1 or category 2 researcher is conducting on land owned or leased by the grower; and

- (e) to produce class A or class B research cannabis plants and seed under the supervision of a category 1 or category 2 researcher, as part of a field trial the category 1 or category 2 researcher is conducting on land owned or leased by the grower; and
- (f) to supply to a category 1 or category 2 researcher class A or class B research cannabis plants and seed produced on land owned or leased by the grower as part of a field trial conducted under the supervision of the category 1 or category 2 researcher; and
- (g) to supply industrial cannabis seed to a person in another State who is authorised under the law of that State to possess cannabis seed that, if grown, will produce cannabis plants with a THC concentration in their leaves and flowering heads the person in the other State may possess; and
- (h) if the licensee holds a licence under the *Customs Act 1901* (Cwlth) authorising the licensee to export cannabis—to supply industrial cannabis seed to a person in another country who is authorised under the law of that country to possess the seed; and
- (i) to supply processed cannabis to a person authorised under a regulation under section 48 to possess processed cannabis.

### ***‘Division 3—Licence applications***

#### **‘53 Applying for a licence**

‘(1) A person who wishes to obtain a licence must be a suitable person to hold the licence.

‘(2) The person must apply for the licence by—

- (a) submitting an application showing, among other things, the person is eligible to obtain the licence; and
- (b) paying the fee prescribed under a regulation; and
- (c) giving the chief executive the other information required under section 54 or 56.

‘(3) The chief executive decides the person’s application after having regard, among other things, to—

- (a) the person's suitability to hold a licence; and
- (b) the person's eligibility to hold the licence.

#### **'54 Application for licence**

'(1) An applicant for a licence must—

- (a) apply to the chief executive in the approved form; and
- (b) state the licence being applied for; and
- (c) give the chief executive information for establishing the applicant's eligibility to hold the licence; and
- (d) state the names and addresses of—
  - (i) the applicant's close associates; and
  - (ii) if the applicant is a corporation—its executive officers; and
- (e) provide any information the chief executive reasonably requires to decide whether the applicant is a suitable person to hold a licence.

'(2) The application must be accompanied by the application fee prescribed under a regulation.

#### **'55 Application must state address**

'The applicant must also specify in the application—

- (a) the place or places in Queensland where the applicant proposes to carry on activities under the licence; and
- (b) an address where a document can be served personally.

*Example—*

A post office box is not a place the applicant may specify as a place or an address for this division.

#### **'56 Requirement to give information or material about application**

'(1) The chief executive may, by written notice given to the applicant for a licence, require the applicant to give the chief executive, within a stated reasonable time, information or material the chief executive reasonably considers is needed to consider the applicant's application for the licence.

‘(2) The applicant is taken to have withdrawn the application if, within the stated reasonable time, the applicant fails to comply with the chief executive’s requirement.

#### ***‘Division 4—Eligibility and suitability to hold licence***

##### **‘57 Eligibility for researcher licence**

‘(1) A person is eligible to obtain a category 1 or category 2 researcher licence only if the person satisfies the chief executive that—

- (a) the person has the necessary educational or other qualifications and experience to engage in plant breeding or other research involving the use of industrial cannabis or class A or class B research cannabis; or
- (b) if the applicant is a corporation—a person employed by the corporation to carry out plant breeding under the licence has the necessary educational or other qualifications and experience to engage in plant breeding or other research involving the use of industrial cannabis or class A or class B research cannabis.

‘(2) However, an individual is not eligible to obtain a category 1 or category 2 researcher licence if the person has been convicted within the preceding 10 years of a serious offence.

##### **‘58 Eligibility for grower licence**

‘An individual is not eligible to hold a grower licence if the person—

- (a) has been convicted within the preceding 10 years of a serious offence; or
- (b) is affected by bankruptcy action.

##### **‘59 Suitability of applicants or licensees—corporation**

‘(1) A corporation is not a suitable person to hold a licence if an executive officer of the corporation is—

- (a) affected by bankruptcy action; or
- (b) a person who has been convicted within the preceding 10 years of a serious offence; or

(c) a person the chief executive decides under section 60 is not a suitable person to hold a licence.

‘(2) A corporation that is not a suitable person can not hold a licence.

### **‘60 Consideration of suitability of applicant or licensee**

‘The chief executive must, when deciding whether a person is a suitable person to hold a licence, consider the following things—

- (a) whether the person is of good repute, having regard to character, honesty and integrity;
- (b) whether the person’s close associates are of good repute, having regard to character, honesty and integrity;
- (c) whether the person held a licence under this part that was suspended or cancelled;
- (d) for an individual—
  - (i) the person’s criminal history; and
  - (ii) whether the person has been convicted of an offence against this Act or an offence that, if committed in Queensland, would be an offence against this Act; and
  - (iii) whether the person is capable of satisfactorily performing the activities of a licensee;
- (e) for a corporation—
  - (i) whether the corporation has been placed in receivership or liquidation; and
  - (ii) whether an executive officer of the corporation has been convicted of an offence against this Act or an offence that, if committed in Queensland, would be an offence against this Act; and
  - (iii) whether each executive officer of the corporation is a suitable person to hold a licence;
- (f) another thing the chief executive may consider under this part.

**‘61 Investigation about the suitability of applicant or licensee**

‘(1) The chief executive may make investigations about any of the following persons to help the chief executive decide whether an applicant or licensee is a suitable person to hold a licence—

- (a) the applicant or licensee;
- (b) if the applicant or licensee is a corporation—the corporation’s executive officers;
- (c) a person stated by the applicant or licensee to be a close associate of the applicant or licensee.

‘(2) Without limiting subsection (1), the chief executive may ask the commissioner of the police service for a written report about the criminal history of any of the persons.

‘(3) For subsection (2), the chief executive must give the commissioner any particulars the chief executive advises the commissioner are relevant for each application for a licence or renewal of a licence.

‘(4) On receiving particulars of the application, the commissioner—

- (a) must make inquiries about the applicant’s criminal history; and
- (b) must make any other inquiries about the applicant the commissioner considers appropriate.

‘(5) For subsection (4)(a), the applicant or licensee must consent to the person’s fingerprints being taken by a police officer.

‘(6) The chief executive must refuse to consider the applicant’s or licensee’s application if the person refuses to consent to the person’s fingerprints being taken.

‘(7) The commissioner must report to the chief executive after receiving the results of the inquiries.

‘(8) The commissioner’s report must include disclosure of convictions of the person mentioned in the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6.<sup>7</sup>

‘(9) Fingerprints taken under this section—

- (a) may be used only for the purposes of subsection (4)(a); and

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<sup>7</sup> *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6 (Non-disclosure of convictions upon expiration of rehabilitation period)

- (b) must be destroyed as soon as practicable after the commissioner reports to the chief executive under subsection (7).

## **‘62 Criminal history is confidential document**

‘(1) An officer, employee or agent of the department must not, directly or indirectly, disclose to anyone else a report about a person’s criminal history, or information contained in the report, given under section 61.

Maximum penalty—100 penalty units.

‘(2) However, the person does not contravene subsection (1) if—

- (a) disclosure of the report or information to someone else is authorised by the chief executive for the performance of a function under or in relation to this part; or
- (b) the disclosure is otherwise required or permitted by law.

‘(3) The chief executive must destroy the report as soon as practicable after considering the person’s suitability to hold a licence.

## ***‘Division 5—Decision-making for licence issue***

## **‘63 Chief executive may issue or refuse to issue licence**

‘(1) The chief executive may issue or refuse to issue a licence to an applicant.

‘(2) The chief executive may issue a licence to an applicant only if the chief executive is satisfied that—

- (a) the applicant is a suitable person to hold a licence; and
- (b) if the applicant intends performing activities under the licence in partnership or in conjunction with others—each member of the partnership, or each person with whom the applicant intends performing activities in conjunction, is a suitable person to hold a licence; and
- (c) if the applicant is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and
- (d) the applicant is eligible to hold the licence; and
- (e) the application is properly made.



‘(3) For subsection (2)(e), an application is properly made only if the applicant complies with section 54.<sup>8</sup>

‘(4) If the chief executive decides to refuse to issue the licence, the chief executive must give the applicant an information notice for the decision within 14 days after the decision is made.

#### **‘64 Term and conditions**

‘(1) The chief executive may issue a licence for the term, of not more than 3 years, and on the conditions, the chief executive considers necessary or desirable for the proper performance of the activities authorised by the licence.

‘(2) Without limiting subsection (1), it is a condition of every licence—

- (a) that the licensee must not contravene this Act; and
- (b) that the licensee must notify the chief executive of any change of address or close associates as soon as practicable after the change happens.

‘(3) A regulation may prescribe additional conditions a licensee must comply with.

‘(4) If the chief executive decides to issue a licence on a condition mentioned in subsection (1), the chief executive must give the applicant an information notice for the decision within 14 days after the decision is made.

#### ***‘Division 6—Licence renewals and decision-making for renewals***

#### **‘65 Application for renewal**

‘(1) A licensee may apply for renewal of the licensee’s licence.

‘(2) The application must—

- (a) be made to the chief executive in the approved form; and
- (b) be made before the licence expires; and

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8 Section 54 (Application for licence)

- (c) state the names and addresses of the licensee's close associates; and
- (d) be accompanied by—
  - (i) the licence renewal fee prescribed under a regulation; and
  - (ii) for a licensee who is an individual, 2 recent colour photographs of the licensee of a size prescribed under a regulation and certified as photographs of the licensee in the way prescribed under a regulation.

‘(3) The chief executive may, by written notice given to the licensee, require the licensee to give to the chief executive, within a stated reasonable time, information or material the chief executive considers is needed to consider the licensee's application for renewal of the licence.

‘(4) The licensee is taken to have withdrawn the application if, within the stated reasonable time, the licensee fails to comply with the chief executive's requirement.

#### **‘66 Chief executive may renew or refuse to renew licence**

‘(1) The chief executive must consider a renewal application made under section 65 and may renew or refuse to renew the licence.

‘(2) The chief executive may renew the licence only if the chief executive is satisfied—

- (a) the licensee is a suitable person to hold a licence; and
- (b) if the licensee carries on business in partnership or in conjunction with others—each member of the partnership, or each person with whom the licensee carries on business in conjunction, is a suitable person to hold a licence; and
- (c) if the licensee is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and
- (d) the application is properly made; and
- (e) the licensee is eligible to hold the licence.

‘(3) For subsection (2)(d), an application is properly made only if it complies with section 65(2).

‘(4) If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice for the decision within 14 days after the decision is made.

**‘67 Licence taken to be in force while application for renewal is considered**

‘If an application is made under section 65, the licensee’s licence is taken to continue in force from the day that it would, apart from this section, have expired until the licensee’s application for renewal is—

- (a) decided under section 66; or
- (b) withdrawn by the licensee; or
- (c) taken to have been withdrawn under section 65(4).

Note—

For what happens to cannabis plants and seed in the licensee’s possession if the chief executive decides to refuse to renew a licence, see sections 82 and 83.

**‘68 Return of licence if renewal refused**

‘A person whose application for renewal of a licence has been refused must return the licence to the chief executive within 14 days after the refusal, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

***‘Division 7—Dealing with licences*****‘69 Transfer of licence prohibited**

A licence may not be transferred.

**‘70 Amendment of licence conditions**

‘(1) The chief executive may amend the conditions of a licence—

- (a) on the licensee’s application; or
- (b) on the chief executive’s own initiative.

‘(2) An application under subsection (1)(a) must be made in the approved form and be accompanied by the application fee prescribed under a regulation.

‘(3) Before making an amendment under subsection (1)(a), the chief executive must be satisfied the licensee meets the eligibility requirements

the chief executive specifies as relevant to the amendment of the condition and advises to the applicant.

‘(4) Before making an amendment under subsection (1)(b), the chief executive must—

- (a) give written notice to the licensee—
  - (i) of the particulars of the proposed amendment; and
  - (ii) that the licensee may make written submissions to the chief executive about the proposed amendment before a stated day, not later than 14 days after the notice is given to the licensee; and
- (b) have regard to submissions made to the chief executive by the licensee before the stated day.

‘(5) Subsection (4) does not apply if the chief executive decides that the amendment must be made urgently to ensure compliance with this Act.

‘(6) If the chief executive decides to amend the conditions of a licence under subsection (1)(b), the chief executive must give written notice of the amendment to the licensee and an information notice for the decision within 14 days after the decision is made.

‘(7) The amendment takes effect—

- (a) on the day the written notice of the amendment is given to the licensee; or
- (b) if a later day is stated in the notice, the stated day.

‘(8) If the chief executive decides to refuse to make an amendment requested under subsection (1)(a), the chief executive must give the applicant an information notice for the decision within 14 days after the decision is made.

## **‘71 Return of licence for amendment of conditions**

‘(1) If the chief executive amends the conditions of a licence under section 70, the chief executive may ask the licensee to produce the licence for amendment within a stated period of not less than 14 days.

‘(2) The licensee must comply with a request under subsection (1), unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## **‘72 Surrender of licence**

‘(1) A licensee may surrender the licensee’s licence by giving written notice to the chief executive and returning the licence.

‘(2) Before the licensee surrenders the licence, the licensee must destroy or otherwise lawfully dispose of all cannabis plants and seed the licensee possesses.

Note—

Unless otherwise authorised, continued possession of the plants and seed after the surrender takes effect will be unlawful.

‘(3) A licence surrendered under this section stops having effect at the end of the day it is surrendered.

## ***‘Division 8—Suspension and cancellation of licences***

### **‘73 Grounds for suspension action or cancellation**

‘(1) A ground for suspending or cancelling a licence exists if the licensee—

- (a) is not a suitable person to hold the licence; or
- (b) contravenes a provision of this Act or a condition of the licence with the effect that the licensee is no longer eligible to hold the licence.

‘(2) Also, a ground for suspending or cancelling a licence exists if the licence was issued because of a materially false or misleading representation or declaration.

### **‘74 Show cause notice**

‘(1) This section applies if the chief executive considers a ground exists to suspend or cancel a licence.

‘(2) The chief executive must give the licensee a written notice (a “**show cause notice**”) stating the following—

- (a) the action (the “**proposed action**”) the chief executive proposes taking under this division;
- (b) the grounds for the proposed action;

- (c) an outline of the facts and circumstances forming the basis for the grounds;
- (d) if the proposed action is suspension of the licence, the proposed suspension period;
- (e) an invitation to the licensee to show cause within a stated period (the “**show cause period**”) why the proposed action should not be taken.

‘(3) The show cause period must be a period ending at least 21 days after the show cause notice is given to the licensee.

‘(4) The licensee may make written representations about the proposed action to the chief executive in the show cause period.

#### **‘75 Consideration of representations**

‘The chief executive must consider all written representations (the “**accepted representations**”) made in the show cause period by the licensee.

#### **‘76 Ending show cause process without further action**

‘(1) This section applies if, after considering the accepted representations for the show cause period, the chief executive no longer believes a ground exists to suspend or cancel a licence.

‘(2) The chief executive must not take further action about the show cause notice.

‘(3) the chief executive must, immediately after making the decision, give the licensee written notice that no further action about the show cause notice is to be taken.

#### **‘77 Suspension and cancellation of licences**

‘(1) This section applies if, after considering the accepted representations for the show cause notice, the chief executive—

- (a) still believes a ground exists to suspend or cancel a licence; and
- (b) believes suspension or cancellation of the licence is warranted.

‘(2) This section also applies if there are no accepted representations for the show cause notice.

‘(3) The chief executive may—

- (a) if the proposed action stated in the show cause notice was to suspend the licence for a stated period—suspend the licence for not longer than the stated period; or
- (b) if the proposed action stated in the show cause notice was to cancel the licence—either cancel the licence or suspend it for a period.

‘(4) The chief executive must immediately give an information notice for the decision to the licensee.

‘(5) The decision takes effect—

- (a) on the day the information notice is given to the licensee; or
- (b) if a later day is stated in the notice—the later day.

### **‘78 Immediate suspension**

‘(1) This section applies if the chief executive considers, on reasonable grounds, that a licensee—

- (a) has contravened or is contravening this Act; or
- (b) is likely or is proposing to engage in conduct that would contravene this Act.

‘(2) The chief executive may suspend the licensee’s licence with immediate effect.

‘(3) The licence may be suspended for the period, of not more than 28 days, and on the conditions, the chief executive decides.

‘(4) The chief executive must give the licensee an information notice for the decision to suspend within 3 days after suspending the licensee’s licence.

### **‘79 Immediate cancellation**

‘A licensee’s licence is cancelled immediately on the happening of any of the following events—

- (a) the licensee is convicted of a serious offence;
- (b) if the licensee is an individual, the licensee is affected by bankruptcy action;

- (c) if the licensee is a corporation, the licensee has gone into liquidation.

### **‘80 Return of licence if suspended or cancelled**

‘A person whose licence has been suspended or cancelled must return the licence to the chief executive within 14 days after the suspension or cancellation, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

### *‘Division 9—Action after suspension or cancellation of licence*

### **‘81 What happens to cannabis plants and seed if licence suspended**

‘(1) This section applies if the chief executive suspends a licensee’s licence under section 77 or 78.<sup>9</sup>

‘(2) While the licence is suspended, the licensee may, despite the suspension—

- (a) continue to possess the cannabis plants and seed in the person’s possession on the day the licence is suspended (the “**suspension day**”); and
- (b) for cannabis plants in the licensee’s possession on the suspension day—
  - (i) do anything reasonably necessary to help the plants continue to grow; and
  - (ii) harvest the plants and any seed on the plants; and
- (c) supply harvested cannabis seed to a person lawfully entitled to possess them.

‘(3) Subsection (2) does not authorise the doing of anything other than a thing mentioned in that subsection in relation to cannabis plants and seed in the licensee’s possession on the suspension day.

‘(4) No compensation is payable by the State because of the suspension.

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9 Section 77 (Suspension and cancellation of licences) or 78 (Immediate suspension)



**‘82 What happens to cannabis plants if licence cancelled**

‘(1) This section applies if—

- (a) the chief executive cancels a licensee’s licence under section 77 or 79;<sup>10</sup> and
- (b) the licensee possesses cannabis plants.

‘(2) If the cannabis plants can not be harvested, the chief executive may destroy the plants in the way the chief executive considers appropriate, including, for example, by ploughing them in or burning them.

*Examples for subsection (2)—*

1. The plants may be too small to harvest and ploughing them in or burning them may be the most appropriate way of destroying them.
2. It may be appropriate to burn plants because flooding may prevent the plants being harvested.

‘(3) However, if the cannabis plants can be harvested, the chief executive may—

- (a) harvest the plants and any seed on the plants; and
- (b) for industrial cannabis seed—
  - (i) denature the seed; or
  - (ii) supply the seed to a person authorised under a regulation under section 48 to denature the seed at another place; or
  - (iii) supply processed cannabis to a person who may lawfully possess it; and
- (c) for research cannabis—supply the harvested material to a person who may lawfully possess it.

‘(4) For giving effect to this section, the chief executive may—

- (a) enter and re-enter the place stated in the cancelled licence as often as is reasonably necessary; and
- (b) bring onto the place reasonably necessary help, machinery and other equipment.

‘(5) For subsections (2) to (4)—

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10 Section 77 (Suspension and cancellation of licences) or 79 (Immediate cancellation)

- (a) the chief executive is taken to hold a licence identical to the cancelled licensee for the place stated in the cancelled licence; and
- (b) cannabis plants in the possession of the former licensee immediately before the cancellation are taken to be in the chief executive's possession and not the possession of the former licensee; and
- (c) if—
  - (i) the cancelled licence was a category 1 or category 2 researcher licence; and
  - (ii) under the cancelled licence, class A or class B research cannabis is growing on land owned or leased by a grower as part a field trial conducted under the supervision of a category 1 or category 2 researcher;

the class A or class B cannabis plants are taken to be in the chief executive's possession and not in the possession of the grower or the former licensee.

‘(6) However, sections 50(1)(b), 51(1)(b) and 52(b) and (e)<sup>11</sup> do not apply to the chief executive, other than to the extent necessary to allow—

- (a) cannabis plants already growing on land to which the cancelled licence relates; or
- (b) for cannabis plants growing on land owned or leased by a grower, for a former licensee, cannabis plants growing on that land;

to continue to grow until they can be destroyed or harvested.

‘(7) No compensation is payable by the State because of the cancellation or because of the destruction of cannabis plants or seed under this section.

### **‘83 What happens to cannabis seed if licence cancelled or renewal refused**

‘(1) This section applies if—

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11 Sections 50 (What category 1 researcher licences authorise), 51 (What category 2 researcher licence authorises) and 52 (What grower licence authorises)

- (a) the chief executive refuses to renew a licence under section 66<sup>12</sup> and the licensee possesses cannabis seed, other than harvested material under section 82; or
- (b) the chief executive cancels a licensee's licence under section 77 or 79.<sup>13</sup>

‘(2) The chief executive may—

- (a) for industrial cannabis seed—
  - (i) denature the cannabis seed; or
  - (ii) supply the seed to a person authorised under a regulation under section 48<sup>14</sup> to denature the seed at another place; or
  - (iii) supply the seed to a category 1 or category 2 researcher, a grower, or a person authorised under a regulation under section 48 to possess industrial cannabis seed; or
- (b) for class A research cannabis seed—supply the seed to a category 1 researcher or a person authorised under a regulation under section 48 to possess class A research cannabis seed; or
- (c) for class B research cannabis seed—supply the seed to a category 1 or category 2 researcher or a person authorised under a regulation under section 48 to possess class B research cannabis seed; or
- (d) destroy the seed.

‘(3) For subsection (2)—

- (a) the chief executive is taken to hold a licence identical to the cancelled licence for the place stated in the cancelled licence; and
- (b) the cannabis seed in the possession of the former licensee immediately before the cancellation are taken to be in the chief executive's possession and not the possession of the licensee; and
- (c) if—
  - (i) the cancelled licence was a category 1 or category 2 researcher licence; and

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12 Section 66 (Chief executive may renew or refuse to renew licence)

13 Section 77 (Suspension and cancellation of licences) or 79 (Immediate cancellation)

14 Section 48 (Authorisations for persons other than licensees)

- (ii) under the cancelled licence, class A or class B research cannabis seed is in the possession of a grower for use for growing class A or class B research cannabis on land owned or leased by the grower as part a field trial conducted under the supervision of a category 1 or category 2 researcher;

the class A or class B cannabis seed are taken to be in the chief executive's possession and not in the possession of the grower or the former licensee.

‘(4) For subsections (2) and (3), the chief executive may—

- (a) enter and re-enter the place stated in the cancelled licence as often as is reasonably necessary; and
- (b) bring onto the place reasonably necessary machinery and other equipment; and
- (c) open anything in which the chief executive reasonably suspects cannabis seed may be kept; and
- (d) inspect anything opened under paragraph (c) and seize any cannabis seed found.

‘(5) For subsection (4), the chief executive is taken to have the powers of an inspector who enters a place.

‘(6) No compensation is payable by the State because of the destruction of the seed.

#### ‘84 Cost recovery

‘(1) The chief executive may recover the cost incurred by the chief executive under section 82 or 83 as a debt payable to the State by the former licensee.

‘(2) For subsection (1), the chief executive may recover the costs from the proceeds of the sale of harvested material under section 82 or cannabis seed under section 83.

‘(3) However, if the proceeds are more than the costs, the chief executive must pay any balance to the former licensee.

‘(4) Despite subsection (3), if before the proceeds are paid, the chief executive becomes aware that the proceeds may be subject to an application for forfeiture of tainted property under the *Crimes (Confiscation) Act 1989*, the chief executive must not pay the proceeds to the former licensee unless no order for forfeiture is made under that Act.

‘(5) Also, if the chief executive becomes aware that the harvested material is subject to a lien under the *Bills of Sale and Other Instruments Act 1955* that has not been satisfied, the chief executive must pay any balance—

- (a) first, in satisfaction of the lien; and
- (b) then, to the former licensee.

### *‘Division 10—Appeals*

#### **‘85 Appeals**

‘A person who is dissatisfied with a decision of the chief executive under this part (“**aggrieved person**”) may appeal to the District Court against the decision.

#### **‘86 Starting appeal**

‘(1) An appeal is started by—

- (a) filing a written notice of appeal with the District Court; and
- (b) serving a copy of the notice on the chief executive.

‘(2) The notice of appeal must be filed within 21 days after the day the aggrieved person is given notice of the decision appealed against (“**original decision**”).

‘(3) The court may, at any time, extend the period for filing the notice of appeal.

‘(4) The notice of appeal must state fully the grounds of the appeal.

#### **‘87 Stay of operation of decision**

‘(1) The court may grant a stay of the operation of the original decision to secure the effectiveness of the appeal.

‘(2) The stay—

- (a) may be given on conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

‘(3) The period of the stay must not extend past the time when the court decides the appeal.

‘(4) The appeal affects the decision, or carrying out of the decision, only if the decision is stayed.

### **‘88 Hearing procedures**

‘(1) In deciding an appeal, the court—

- (a) has the same powers as the chief executive; and
- (b) is not bound by the rules of evidence; and
- (c) must comply with natural justice.

‘(2) An appeal is by way of rehearing, unaffected by the original decision.

### **‘89 Powers of court on appeal**

‘(1) In deciding an appeal, the court may—

- (a) confirm the original decision; or
- (b) set aside the original decision; or
- (c) amend the original decision in the way the court considers appropriate; or
- (d) send the matter back to the chief executive and give the directions the court considers appropriate; or
- (e) set aside the original decision and substitute it with a decision the court considers appropriate.

‘(2) If the court amends the original decision or substitutes another decision for the original decision, the amended or substituted decision is, for this part (other than this division) taken to be the chief executive’s decision.

### **‘90 Appeal to Supreme Court**

‘An appeal against a decision of the District Court may only be made on a point of law.

### ***‘Division 11—Appointment of inspectors***

#### **‘91 Appointment and qualifications**

‘(1) The chief executive may appoint any of the following as an inspector—

- (a) a public service employee employed in the department;
- (b) another person engaged by the chief executive for the purposes of this division.

‘(2) However, the chief executive may appoint a person as an inspector only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

#### **‘92 Appointment conditions and limit on powers**

‘(1) An inspector holds office on any conditions stated in—

- (a) the inspector’s instrument of appointment; or
- (b) a signed notice given to the inspector; or
- (c) a regulation.

‘(2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector’s powers under this Act.

‘(3) In this section—

**“signed notice”** means a notice signed by the chief executive.

#### **‘93 Issue of identity card**

‘(1) The chief executive must issue an identity card to each inspector.

‘(2) The identity card must—

- (a) contain a recent photo of the inspector; and
- (b) contain a copy of the inspector’s signature; and
- (c) identify the person as an inspector under this Act; and
- (d) state an expiry date for the card.

‘(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

**‘94 Production or display of identity card**

‘(1) In exercising a power under this Act in relation to a person, an inspector must—

- (a) produce the inspector’s identity card for the person’s inspection before exercising the power; or
- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

‘(2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person’s inspection at the first reasonable opportunity.

‘(3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 98(1)(b) or (2).<sup>15</sup>

**‘95 When inspector ceases to hold office**

‘(1) An inspector ceases to hold office if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the inspector ceases to hold office;
- (c) the inspector’s resignation under section 96 takes effect.

‘(2) Subsection (1) does not limit the ways an inspector may cease to hold office.

‘(3) In this section—

“**condition of office**” means a condition on which the inspector holds office.

**‘96 Resignation**

‘(1) An inspector may resign by signed notice given to the chief executive.

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15 Section 98 (Power of entry)



‘(2) However, if holding office as an inspector is a condition of the inspector holding another office, the inspector may not resign as an inspector without resigning from the other office.

### **‘97 Return of identity card**

‘A person who ceases to be an inspector must return the person’s identity card to the chief executive within 21 days after ceasing to be an inspector unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

## *‘Division 12—Powers of inspectors*

### **‘98 Power of entry**

‘(1) An inspector may enter and stay at a place if—

- (a) its occupier consents to the entry; or
- (b) the inspector reasonably suspects any delay in entering the place will result in the concealment or destruction of anything at the place that is—
  - (i) evidence of an offence against this Act; or
  - (ii) being used to commit, continue or repeat, an offence.

‘(2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier’s consent—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

### **‘99 Procedure for entry with consent**

‘(1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 98(1)(a).

‘(2) Before asking for the consent, the inspector must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

‘(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

‘(4) The acknowledgment must state—

- (a) the occupier has been told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the inspector or another inspector consent to enter the place and exercise powers under this part; and
- (d) the time and date the consent was given.

‘(5) If the occupier signs the acknowledgment, the inspector must promptly give a copy to the occupier.

‘(6) If—

- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
- (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

### **‘100 Procedure for other entries**

‘(1) This section applies if—

- (a) an inspector is intending to enter, under section 98(1)(b), a place; and
- (b) the occupier of the place is present at the place.

‘(2) Before entering the place, the inspector must do, or make a reasonable attempt to do, the following things—

- (a) tell the occupier the purpose of the entry;
- (b) tell the occupier the inspector is permitted under this Act to enter the place without the occupier’s consent.

**‘101 General powers**

‘The inspector may do any of the following at a place entered under this part—

- (a) examine or inspect, or film, photograph, videotape or otherwise record an image of, a document or other thing at the place;
- (b) take a sample of or from a thing at the place for analysis or testing;
- (c) copy a document at the place;
- (d) take into the place the equipment, materials or persons the inspector reasonably requires for exercising a power under this part;
- (e) take a necessary step to allow a power under paragraphs (a) to (d) to be exercised.

**‘102 Power to require reasonable help**

‘(1) The inspector may require (“**help requirement**”) a person at a place entered under this part to give the inspector reasonable help to exercise a power under this part, including, for example to produce a document or give information.

‘(2) When making a help requirement, the inspector must warn the person it is an offence to fail to comply with the requirement and the penalty for the offence.

**‘103 Failure to comply with help requirement**

‘(1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

‘(2) It is a reasonable excuse for an individual not to comply with a help requirement if complying with the requirement might tend to incriminate the person.

‘(3) However, subsection (2) does not apply if the requirement is to produce a document required to be held or kept by the person under this Act.

**‘104 Power to require information about contravention**

‘(1) This section applies if an inspector reasonably suspects—

- (a) this Act has been contravened; and
- (b) a person may be able to give information about the contravention.

‘(2) The inspector may require (“**information requirement**”) the person to give information in the person’s knowledge about the contravention in a stated reasonable time and in a stated reasonable way.

‘(3) When making an information requirement, the inspector must tell the person it is an offence to fail to comply with the requirement and the penalty for the offence.

**‘105 Failure to comply with information requirement**

‘(1) A person of whom an information requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(2) It is a reasonable excuse—

- (a) for an individual not to give information if giving the information might tend to incriminate the person; or
- (b) if the information sought by the requirement is not in fact relevant to the contravention for which it was made.

**‘106 False or misleading statements**

‘(1) A person must not state anything to an inspector that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

‘(2) Subsection (1) applies even if the statement was not made in response to, or in purported compliance with, an information requirement or another specific requirement under a specific power.

**‘107 Power to require production of documents**

‘(1) An inspector may require (“**document production requirement**”) a person to make available for inspection by an inspector, or produce to the

inspector for inspection, at a stated reasonable time and place, a document—

- (a) required to be held or kept by the person under this Act; or
- (b) in the person's possession and about a stated matter relating to this Act.

‘(2) The inspector may keep the document to copy it.

‘(3) The inspector must return the document to the person as soon as practicable after copying it.

### **‘108 Failure to comply with document production requirement**

‘(1) A person of whom a document production requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(2) It is a reasonable excuse for an individual not to comply with a document production requirement if complying with the requirement might tend to incriminate the person.

‘(3) However, subsection (2) does not apply if the document is required to be held or kept by the person under this Act.

### **‘109 False or misleading documents**

‘(1) A person must not give an inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

‘(2) Subsection (1) applies even if the document was not given in response to, or in purported compliance with, a document production, information or another specific requirement under another specific power.

### **‘110 Obstruction of inspectors**

‘A person must not obstruct an inspector in the exercise of a power under this part, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

**‘111 Requirement to report loss or theft of controlled substance**

‘(1) This section applies to a licensee who—

- (a) owns a cannabis plant or cannabis seed; or
- (b) has possession of a cannabis plant or cannabis seed for a purpose authorised under this part.

‘(2) If the cannabis plant or cannabis seed is lost or stolen, the person must report the loss or theft of the plant or seed to a police officer within 2 days after the person finds out about it.

Maximum penalty—

- (a) for a first offence—20 penalty units; or
- (b) for a second or later offence—40 penalty units.

***‘Division 13—Other provisions*****‘112 Responsibility for acts or omissions of representatives**

‘(1) Subsections (2) and (3) apply in a proceeding for an offence against this part.

‘(2) If it is relevant to prove a person’s state of mind about a particular act or omission, it is sufficient to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

‘(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

‘(4) In this section—

**“representative”** means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

“**state of mind**” of a person includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

### **‘113 Executive officers must ensure corporation complies with part**

‘(1) The executive officers of a corporation must ensure the corporation complies with this part.

‘(2) If a corporation commits an offence against a provision of this part, each of the corporation’s executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty prescribed for the contravention of the provision by an individual.

‘(3) Evidence that a corporation has been convicted of an offence against a provision of this part is evidence each of the corporation’s executive officers committed the offence of failing to ensure the corporation complies with the provision.

‘(4) However, it is a defence for an executive officer to prove—

- (b) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

### **‘114 Delegation**

‘The chief executive may delegate powers of the chief executive under this part to an officer of the department.

### **‘115 Review**

‘The chief executive must review the operation of section 61(5) within 2 years after the commencement of part 5B.’.

## 8 Amendment of s 57 (Evidentiary provisions)

Section 57—

*insert—*

‘(2) In a proceeding against a person who may produce cannabis under a licence or another authority under part 5B<sup>16</sup> for an offence against part 2<sup>17</sup> involving the production of unauthorised cannabis plants, it is a defence for the person to prove—

- (a) that the plants were grown from lawfully obtained cannabis seed; and
- (b) that although the person acted with reasonable diligence to prevent the contravention, the contravention was beyond the person’s control.

‘(3) In a proceeding against a person who may possess cannabis under a licence or another authority under part 5B for a charge of an offence against part 2 involving the possession of unauthorised cannabis plants, it is a defence for the person to prove—

- (a) that the plants were grown from lawfully obtained cannabis seed; and
- (b) that although the person acted with reasonable diligence to prevent the contravention, the contravention was beyond the person’s control.

‘(4) A certificate signed by the chief executive and stating any of the following is evidence of the matter stated—

- (a) a stated person was, on a stated day, the holder of a stated licence under part 5B;
- (b) a licence held by a stated person was, on a stated day, surrendered or cancelled under part 5B.

‘(5) In this section—

“**unauthorised cannabis plants**” means cannabis plants with a higher concentration of THC in their leaves and flowering heads than a person may possess under a licence or other authorisation under part 5B.’.

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16 Part 5B (Commercial production of industrial cannabis)

17 Part 2 (Drug trafficking)



**9 Amendment of s 57A (Evidence of prescribed substance by label)**

Section 57A(2)(c), '57B(4)'—

*omit, insert—*

'131(4)'.

**10 Amendment of s 57B (Evidence of prescribed substance—notice of challenge required)**

Section 57B(1), '57A'—

*omit, insert—*

'130'.

**11 Renumbering of ss 44–62**

Sections 44 to 62—

*renumber* as sections 116 to 135.

**12 Insertion of new s 136 and sch**

After section 135, as renumbered—

*insert—*

**'136 Transitional provision for regulation provisions in force under repealed part 5B**

'(1) Until the end of 18 December 2002, the relevant provisions of the regulation continue to have effect as if the repealed part 5B had not been repealed.

'(2) In this section—

**"amending Act"** means the *Drugs Misuse Amendment Act 2002*.

**"regulation"** means the *Drugs Misuse Regulation 1987*.

**"relevant provisions"**, of the regulation, means the provisions of the regulation that were in force immediately before the commencement of this section for the purposes of the repealed part 5B.

**"repealed part 5B"** means part 5B of this Act as repealed by section 7 of the amending Act.

**‘SCHEDULE****‘SERIOUS OFFENCE PROVISIONS UNDER THE  
CRIMINAL CODE**

section 46 (definition “serious offence”, paragraph (c))

1. Section 87 (Official corruption)
2. Section 121 (Official corruption not judicial but relating to offences)
3. Section 300 (Unlawful homicide)
4. Section 306 (Attempt to murder)
5. Section 349 (Rape)
6. Section 350 (Attempt to commit rape)
7. Section 354 (Kidnapping)
8. Section 354A (Kidnapping for ransom)
9. Section 415 (Demanding property, benefit or performance of services with threats)’.

**13 Other Acts amended**

The schedule amends the Acts it mentions.

## SCHEDULE

### OTHER ACTS AMENDED

section 13

#### CRIME AND MISCONDUCT ACT 2000

**1 Section 40(3), ‘section 46’—**

*omit, insert—*

‘section 119’.

#### CRIMINAL CODE

**1 Section 651(7), definition “summary offence”, paragraph (b)(ii), from ‘section’—**

*omit, insert—*

‘section 118<sup>18</sup> of that Act.’.

#### POLICE POWERS AND RESPONSIBILITIES ACT 2000

**1 Section 454(3), example, ‘section 47’—**

*omit, insert—*

‘section 120’.

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18 *Drugs Misuse Act 1986*, section 118 (Proceedings for offences)

