

DRUGS MISUSE AMENDMENT BILL 2002

EXPLANATORY NOTES

General Outline

Objectives of the Legislation

The primary objective of the Bill is to amend the *Drugs Misuse Act 1986* (the Act) to facilitate the commercial production of industrial cannabis sativa fibre and seed (also known as industrial hemp). This Bill will continue the process of industry development for the Queensland industrial hemp industry that commenced in 1998 with controlled field trials and plant breeding research.

Within prescribed limits, the Bill will allow for the growing, plant breeding and research of cannabis sativa for use as commercial fibre and seed products.

The Bill will also allow the processing and marketing of, and trade in, industrial cannabis sativa fibre and seed and their derivative products.

Reasons for the objectives and how they will be achieved

Early in 1998, the Act was amended to allow for controlled field trials and plant breeding research of low drug tetrahydrocannabinol (THC) cannabis sativa industrial hemp with maximum THC levels of 0.35% and 1% respectively for a period of three years for the purpose of assessing the potential for commercial fibre production. This trial period was subsequently extended for twelve months by the one extension permitted under section 43Y of the DM Act. This extended period is due to expire on 18 December 2002, midway through the 2002 growing season.

Industrial hemp fibre and seed products are experiencing an international increase in demand and have the potential to provide opportunities for economic development, jobs and environmental benefits to Queensland. Commercial groups in Queensland have made significant progress in identifying commercial prospects that are now available for uptake. Considerable investment has been undertaken in Queensland in the last four years.

The recent trials have had good results using plant breeding strains developed specifically for Queensland's tropical and subtropical conditions. These high yielding strains have the potential to place Queensland growers at a distinct competitive advantage in relation to other States and other temperate countries.

To allow this emerging industry to capitalise on these sound prospects for investment and research results, the industry needs to move from a research and development phase to full commercial production. The Bill will facilitate this shift to a commercialised industry, and will facilitate the securing of further investment required to develop industrial hemp fibre and seed products.

An inconsistency exists in the application of legislation relating to industrial hemp products generally. Under the current Queensland legislation it is illegal for people to be in possession of any products containing cannabis sativa, apart from those persons currently approved to participate in industrial hemp trials. Industrial hemp products cannot therefore be traded in Queensland, however a range of imported industrial hemp products such as clothing, paper, cosmetics and oil are traded throughout Queensland. The Bill will address this anomaly by exempting processed industrial hemp products from the provisions of the Act, with the exception of those products that could be smoked or administered or consumed.

The way in which policy objectives are to be achieved by the Bill

The policy objectives will be achieved through a range of core provisions in the Bill:

Research and grower licences

The Bill provides for licences for plant breeders and commercial growers of fibre and seed, each category of licence determined by permitted levels of THC. Data emerging from the Queensland trials indicated that there is a need for upward adjustment to the maximum THC levels for varieties suitable for the sub-tropical/tropical Queensland growing conditions, and this requirement is reflected in the levels proposed in the Bill. Licences will ensure that the Queensland Police Service will be able to differentiate clearly between approved participants in the commercial industrial hemp industry and illegal drug activities. Licences are as follows:

- (a) Category 1 researcher licences will provide sections 5 (Trafficking in dangerous drugs), 6 (Supplying dangerous drugs), 8 (Producing dangerous drugs), 8A (Publishing or possessing instructions for producing dangerous drugs) and 9 (Production of dangerous drugs) of the Act do not apply to approved commercial plant breeders of cannabis sativa who are introducing new strains, sourced from the wild, into their plant breeding programs. The authorisation will only apply to the extent that the licensee performs activities in accordance with the Act and for a purpose consistent with the conditions of the licence. Approved licence holders will be permitted to use research cannabis sativa with THC concentration of 3% or greater in their plant breeding programs.
- (b) Category 2 researcher licences will provide sections 5, 6, 8, 8A and 9 of the Act do not apply to approved commercial plant breeders. Under this category, licence holders will be permitted to use industrial cannabis sativa with THC levels of less than 3% concentration in their plant breeding programs.
- (c) Grower licences will provide sections 5, 6, 8, 8A and 9 of the Act do not apply to approved commercial growers of industrial cannabis sativa. Only certified seed that produces plants with a maximum THC concentration of 0.5% will be permitted to be purchased or sold for commercial plantings by licenced growers. However, because certified seed, as a result of environmental conditions, can sometimes produce plants with slight variations of THC levels, an upper tolerance of 1% THC concentration will be permitted.

Persons wishing to participate in this industry will be required to apply for three-year licences and will be scrutinised to ensure that they are suitable and eligible persons to participate in this industry. This scrutiny will include criminal history checks and antecedent reports. Applicants will be required to pay an application fee. The Bill makes provision for the suspension or cancellation of licences.

Provision has also been made for the renewal of licences upon application after the three-year period.

Monitoring and inspection by inspectors

To ensure that licensees operate in accordance with their licence provisions and do not unwittingly breach the Act, and to ensure that there is

a clear distinction between legal and illegal activities, a robust monitoring system will be put in place by the Department of Primary Industries (DPI), modelled on that used successfully during the trial period. Industrial hemp inspectors will be appointed to monitor and inspect the activities of licence holders to ensure that licence holders stay within the limits of their exemptions under the Act.

The Bill gives an inspector power of entry on consent of the licensee or entry on reasonable suspicion that an offence is being committed against the Act.

The Bill also gives an inspector the power to require a licensee to provide reasonable help in undertaking the inspector's role. Should reasonable help be denied, penalties under the Act will apply.

The Bill also gives an inspector the power to require production of documents by the licensee. Penalties apply under the Act should a licensee refuse to produce documents.

Processed industrial hemp fibre and seed products

The Bill will allow for research, processing, marketing and trade of processed industrial hemp fibre and seed products. To ensure that there is no confusion with illegal cannabis sativa products, the exception will be those products that could be smoked, administered or consumed. This provision will also make legal the trade in industrial hemp products that are currently being traded outside the provisions of the Act.

Ability of industry participants and potential industry participants to have access to information about how to produce Cannabis sativa plants and seed

People wishing to participate, or who are participating in any agricultural industry, need to conduct research on the characteristics of a crop and its agronomic requirements to enable them to make decisions perhaps about entering the industry or to grow the crop optimally. Other general researchers possibly located at universities or agricultural agencies also need to be able to access this information to enable them to provide advice to industrial hemp growers. This provision will provide protection from Section 8A of the Act for those people genuinely engaged in publishing or possessing instructions for producing cannabis sativa for the purposes of the industrial hemp industry.

Administrative cost to Government of implementation

There will be no significant additional costs to government. The administration of the Bill will be delegated to the Department of Primary Industries. Administrative costs associated with the issuing and oversight of licences, and inspection and technical services provided by DPI will be provided on a cost recovery basis. Initially there is not expected to be a large increase in resource requirements as production uptake is expected to be gradual, leaving time to review and adjust resource requirements, as circumstances require. Based on information provided by the Victorian government, which has an industrial hemp program in place, no significant increase in policing or police resources is expected.

There is no alternative to seeking full cost recovery on the provision of the licensing service, including compliance and monitoring.

Consistency with Fundamental Legislative Principles

While the provisions of the Bill are consistent generally with the standards required to be met under the *Legislative Standards Act 1992*, issues concerning conformity with fundamental legislative principles may be raised in relation to the following provisions of the Bill.

New section 48 (Authorisations for persons other than licensees) – sufficient regard to the institution of Parliament

New section 48 provides that a regulation may authorise a person to perform activities stated under a regulation for the time and on conditions stated in the regulation. The effect of such authorisation is to exempt a person from compliance with sections 5,6,8,8A and 9 of the Act. It may be considered that new section 48 does not have sufficient regard to the institution of Parliament, however, the regulation making power is limited and well defined and must be made for a purpose consistent with the purposes of new part 5B of the Act.

New sections 81 (What happens to cannabis plants and seed if licence suspended); 82 (What happens to cannabis plants if licence cancelled); 83 (What happens to cannabis seed if licence cancelled or renewal refused) – fair compensation.

New section 81 limits the activities of a licensee in circumstances where the chief executive has suspended a licence under new section 77 or 78 of the Act. During the period of suspension (not more than 28 days) the licensee may only continue to do anything reasonably necessary to help the plants continue to grow and harvest the plants and seed on the plants and

supply harvested cannabis seed to a person lawfully entitled to possess them. The licensee will not, for example, be able to cultivate or sell any new cannabis plants or seed. No compensation is payable by the State because of the suspension.

It may be considered that new section 81 infringes the fundamental legislative principle of fair compensation, however, it must be noted that in these circumstances the licensee can still continue to deal with the cannabis plants and seed in the licensee's possession on the suspension day. It is not unreasonable for no compensation to be payable during the suspension period. In the interests of maintaining the integrity of the licensing system it is reasonable that the chief executive be able to suspend licences where grounds exist for doing so, so as to enable the chief executive to undertake necessary investigation of those grounds which are clearly specified in new section 73.

New section 82 provides that if the chief executive cancels a licence under new section 77 or 79, and the licensee possesses cannabis plants that cannot be harvested, the chief executive may destroy the plants by, for example, ploughing them in or burning them. If the cannabis plants can be harvested the chief executive may harvest the plants and seed and sell the harvested material. No compensation is payable by the State because of the destruction of the cannabis plants and seed in these circumstances. Under new section 84, however, the chief executive may recover his costs as a debt payable to the State by the former licensee and pay any balance to the former licensee provided no forfeiture is made under the *Crimes (Confiscation) Act 1989* and provided there is no lien on the crop under the *Bills of Sale and Other Instruments Act 1955*. It is considered that this amounts to fair compensation in the circumstances as no one should profit from engaging in criminal activity.

It may be considered that new section 82 infringes the fundamental legislative principle of fair compensation where there has been compulsory acquisition of property, however, such a provision is not considered unreasonable in the interests of maintaining the integrity of the licensing system. Where cannabis plants can be harvested the interests of the former licensee are maintained by the payment of any balance of proceeds where no forfeiture is made under the *Crimes (Confiscation) Act 1989* and where there is no lien on the crop under the *Bills of Sale and Other Instruments Act 1955*.

New section 83 provides that if the chief executive refuses to renew a licence under new section 66 or cancels a licence under new section 77 or 79 and the licensee possesses cannabis seed, the chief executive may

destroy the seed or have it denatured or supply the seed to a category 1 or 2 researcher. No compensation is payable by the State because of the destruction of the seed.

It may be considered that new section 83 infringes the fundamental legislative principle of fair compensation where there has been compulsory acquisition of property, however, such a provision is not considered unreasonable in the interests of maintaining the integrity of the licencing system. Under new section 84 the chief executive may recover his costs as a debt payable to the State by the former licensee and pay any balance to the former licensee provided no forfeiture is made under the *Crimes (Confiscation) Act 1989* and provided there is no lien on the crop under the *Bills of Sale and Other Instruments Act 1955*. It is considered that this amounts to fair compensation in the circumstances as no one should profit from engaging in criminal activity.

New section 98 (Power of entry) – entry without warrant

New section 98 gives inspectors powers of entry to ensure that licensees operate in accordance with their licence provisions and do not unwittingly breach the Act and to ensure the clear distinction between legal and illegal activities. Inspectors are permitted to enter without warrant in limited circumstances where there is reasonable suspicion that any delay in entering the place will result in concealment or destruction of anything at the place that is:

- Evidence of an offence against the Act; or
- Being used to commit, continue or repeat, an offence.

The effect of the provision will be to preserve evidence in relation to any contravention of the Act and in the circumstances it is not considered that these limited powers of entry without warrant fail to pay sufficient regard to the rights and liberties of licensees who may be acting in contravention of the Act. These powers are considered necessary to maintain the integrity of the licensing system and confidence that those suspected of contravening the Act will not benefit from doing so by destroying evidence of that contravention.

In all other cases, entry is by consent only. Should an inspector not be granted entry by a licensee without reasonable excuse, the inspector would assume that the licensee is operating outside the provisions of their licence and report the matter to the chief executive or to the police.

New section 113 (Executive officers must ensure corporation complies with part) – onus of proof

New section 113 requires executive officers of a corporation to ensure that the corporation complies with part 5B of the Act. If a corporation commits an offence, an executive officer also commits the offence of failing to ensure that the corporation complied with a provision of part 5B of the Act, subject to the defences that the executive officer took all reasonable steps to ensure the corporation complied, or that the executive officer was not in a position to influence the conduct of the corporation. Concerns may be raised about this new section on the ground that it fails to pay sufficient regard to the rights and liberties of a person in that it effectively reverses the onus of proof. The clause is included because provisions that a corporation may contravene are serious infringements of the Act in relation to the misuse of drugs and it is appropriate that an executive officer, who is in a position to influence the conduct of the corporation, and who is responsible for a contravention, should be accountable. Further, placing the onus to prove the defence on the executive officer is justified because the facts that support the defence will usually be entirely within the defendant's knowledge and would be impossible for the prosecutor to prove in the negative.

CONSULTATION**Community**

The Industrial Hemp Advisory Committee (IHAC), comprising representatives from State Government Departments and industry, has been consulted on an ongoing basis. Industry representatives on the IHAC include Agforce Grains, Agratrans Research and Australian Hemp Resource and Manufacture. Agri-Fibre Industries has also been consulted.

Government

There has been consultation with the following government agencies during the preparation of the Bill—

- Department of Health
- Department of Primary Industries
- Queensland Police Service
- Department of Premier and Cabinet

- Queensland Treasury
- Department of State Development
- Office of the Director of Public Prosecutions

There is general support for the Bill.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 describes the short title of the Act as being the *Drugs Misuse Amendment Act 2002*.

Clause 2 provides that the Act is to commence on a date to be fixed by proclamation.

Clause 3 declares that the Act amends the *Drugs Misuse Act 1986*.

Clause 4 amends section 4 to add definitions for “smoke” and “THC”. THC is defined to mean tetrahydrocannabinol.

Clause 5 inserts new sections 4D and 4E.

New Section 4D excludes the application of sections 5, 6, 8 and 9¹ to manufactured products made from, or partly from, processed cannabis² harvested from industrial cannabis plants³ with a THC concentration of not more than 0.1% and which are in a form that stops them from being smoked or administered or consumed.

Processing of cannabis involves stripping the plants of their leaves and flowering heads, or in the case of seed, when the seed is treated in such a way that it is no longer able to grow plants.

1 Sections 5 (trafficking in dangerous drugs), 6 (supplying dangerous drugs), 8 (producing dangerous drugs), and 9 (possessing dangerous drugs).

2 See definition of “processed cannabis” in new section 46.

3 See definition of “industrial cannabis plants” in new section 46.

Persons who produce manufactured products from cannabis plants or seed with a THC concentration in excess of 0.1% will be subject to the criminal provisions of sections 5, 6, 8 and 9 of the Act.

Under the current legislation it is illegal for people to be in possession of any products containing cannabis sativa apart from those persons currently approved to participate in industrial hemp trials. Industrial hemp products cannot, therefore, be lawfully traded in Queensland. However, a range of imported industrial hemp products such as clothing, paper, cosmetics and oil are nevertheless readily available for sale throughout Queensland.

Section 4D will address this anomaly but to ensure that there is no confusion with illegal cannabis sativa products, the exception will be those products that could be smoked, administered or consumed.

The exception in relation to products that could be smoked, administered or consumed will enable effective policing of illegal activities by police officers.

New section 4E states that a note in the text of the Act is part of an Act.

Clause 6 renumbers section 8A (2) as section 8A (3) and inserts a new sub-section (2) that provides a defence to a charge of unlawfully publishing or possessing documents containing instructions about the way to produce a dangerous drug.⁴

The essential element of the defence is that the person must prove that the publication or possession of the document containing the instructions about the way to produce cannabis sativa was for a purpose authorised under part 5B of the Act, namely the commercial production of industrial cannabis.⁵

This subsection will enable the lawful dissemination and possession of material on how to grow and produce cannabis sativa for research and commercial purposes consistent with the purpose of part 5B of the Act.

People wishing to participate or participating in the industrial hemp industry will need to conduct research on the characteristics of a crop and its agronomical requirements to enable them to make decisions about entering the industry or how to grow the crop optimally. Other general researchers, possibly located at universities or agricultural agencies, also need to be able to access this information to enable them to provide advice to industrial hemp growers. This provision will provide protection from

4 See section 8A (1).

5 See new section 44 which sets out the purpose of pt 5B.

section 8A of the Act for those people genuinely engaged in publishing or possessing instructions for producing cannabis sativa for the purposes of the industrial hemp industry.

Clause 7 replaces existing Part 5B with a new Part 5B to reflect the move from a research and development phase to full commercial production of both industrial hemp fibre and seed.

PART 5B—HEADING

The heading is amended to indicate the purpose of part 5B- commercial production of industrial cannabis.

OBJECTS OF PT 5B

New section 44 sets out the objects of part 5B, that is, to facilitate the processing and marketing of, and trade in, industrial cannabis fibre and fibre products; and the processing and marketing of, and trade in, industrial cannabis seed and seed products, other than in or as food for human consumption.

Industrial cannabis fibre products are many and varied. Some examples include - insulation and linings for use in high quality motor-vehicles such as door trims, parcel shelves, boot linings, acoustic materials, upholstery padding; biodegradable plastics, fibreboards, non-woven geotextiles for use in soil stabilisation, re-seeding and erosion control, woven textiles with the potential for blends with other natural fibres such as cotton, wool and non-woven geotextiles.

Some examples of cannabis seed products are: oil paints, varnishes, printing inks, fuel, solvents and putty; soap, shampoo, bath gels, cosmetics; animal feed (after pressing).

The processing and marketing of, and trade in, industrial cannabis seed and seed products as food for human consumption is not permitted under this legislation.

New section 45 sets out the ways of achieving the part's objects. This is by enabling the commercial production of industrial cannabis fibre and seed, research into the use of industrial cannabis as a commercial fibre and seed crop and facilitation of plant breeding programs. Sub-section (2) also

sets out other ways that the part's object will be achieved. This includes research as to how cannabis seed may be denatured and how processed cannabis may be used.

New section 46 defines the terms used in the new sections of the Act.

New section 47 sets up the mechanism by which persons will be able to undertake legally the activities proposed under new part 5B. Without a licence, persons who undertake any activities involving the use of cannabis sativa will be acting in contravention of the Act.

Licenseses will be authorised to perform activities under the licence as stated in sections 50 to 52 of the Act. Only persons with a licence will be exempt from sections 5, 6, 8, 8A and 9 of the Act.⁶

The authorisation will only operate while the licensee performs permitted activities in accordance with the Act and conditions of licence and for a purpose consistent with the purposes of new part 5B, subject to new section 81 (2) of the Act.⁷ In such circumstances the licensee may, despite the suspension, continue to undertake certain activities permitted under the licence.

New Section 48 enables the making of a regulation to authorise persons other than licenseses to perform activities stated under regulation. The effect of the regulation is to exempt these persons from compliance with stated provisions of the Act.

This new section recognises that as part of the process of the commercial production of industrial hemp there will be persons, in addition to licensed researchers and growers, who will be handling cannabis plants and seeds. It would be administratively cumbersome and impractical to require all such persons to be licensed. Accordingly, these persons will be afforded protection from otherwise illegal activities under the Act on conditions specified in the regulation.

Such persons will be for example, carriers engaged or employed by licensed researchers and growers; persons employed by licensed researchers and growers to help with the planting, growing and/or harvesting of cannabis plants or seeds; or inspectors appointed under the

6 Sections 5 (Trafficking in dangerous drugs), 6 (Supplying dangerous drugs), 8 (Producing dangerous drugs), 8A (Publishing or possessing instructions for producing dangerous drugs), and 9 (Possessing dangerous drugs).

7 See new section 81 (What happens to cannabis plants and seed if licence suspended).

Act who, as part of their duties, may possess cannabis plants or seeds whilst, for example, undertaking random sampling under the Act.

Section 48 requires that a regulation can only be made for a purpose consistent with the purposes of Part 5B.

New section 49 sets out three categories of licences which may be issued under the Act. These are:

- Category 1 researcher licences;
- Category 2 researcher licences;
- Grower licences.

What category 1 researcher licences authorise

New section 50 will allow the holder of a category 1 researcher licence to possess, produce⁸ and supply⁹ research and industrial cannabis sativa with THC concentrations in the range of 0 – 3% or more. For the purposes of the Act research cannabis has been categorised into class A and class B each class representing different THC concentrations.¹⁰

The licence to produce is limited to plant breeding programs for developing new commercial strains of industrial cannabis. This licence will enable holders to introduce new strains of cannabis, with unknown THC concentrations sourced from the wild, into their plant breeding programs. The aim of these plant breeding programs will be to produce high yielding strains of cannabis sativa suitable to the tropical and sub-tropical conditions of Queensland.

In addition to the licence to produce, the holder of a category 1 researcher licence will be able to:

possess industrial cannabis plants and seed and class A and B research cannabis plants and seed;

supply class A and B research cannabis plants and seed to another category 1 researcher;

8 See definition of “produce” in section 4 (includes to prepare, manufacture, cultivate, package)

9 See definition of “supply” in section 4 (includes to give, distribute, sell, transport)

10 See new section 46 for definitions.

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

supply industrial cannabis plants or seed to a category 1 or 2 researcher or a grower or a person authorised under new section 48 to possess industrial cannabis plants or seed.

In recognition of the commercial potential of research into new strains of cannabis the holder of a category 1 researcher licence will be allowed to supply class A or class B research cannabis seed or industrial cannabis seed interstate and overseas to persons authorised to possess such seed. If wishing to supply seed to a person in another country the licensee must hold a licence under the *Customs Act 1901 (Cwlth)* authorising the export of cannabis. “State” has been defined to include an external territory.

The definitions for the following expressions recognise that seed does not contain THC so that a cannabis plant is invariably defined as a plant that contains THC in its leaves and flowering heads of different concentrations, whereas cannabis seeds are defined as those harvested from cannabis plants or seed that, if grown, will produce cannabis plants:

- “industrial cannabis plant”
- “industrial cannabis seed”
- “class A research cannabis plant”
- “class A research cannabis seed”
- “class B research cannabis plant”
- “class B research cannabis seed”¹¹

New section 51 will allow the holder of a category 2 researcher licence to possess, produce¹² and supply¹³ research and industrial cannabis sativa with THC concentrations of less than 3%.

The licence to produce is, as for the holder of a category 1 researcher licence, limited to plant breeding programs for developing new commercial strains of industrial cannabis.

11 See new section 46 for definitions.

12 See definition of “produce” in section 4 (includes to prepare, manufacture, cultivate, package)

13 See definition of “supply” in section 4 (includes to give, distribute, sell, transport)

In addition to the licence to produce, the holder of a category 2 researcher licence will be able to:

possess industrial cannabis plants and seed but class B only research cannabis plants and seed;

supply class B research cannabis plants or seed to a category 1 or 2 researcher; or a person authorised under an exemption under new section 48 to possess industrial cannabis plants or seed;

supply industrial cannabis plants or seed to a category 1 or 2 researcher or a grower or a person authorised under an exemption under new section 48 to possess industrial cannabis plants or seed; and

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.

As with the category 1 researcher licence, in recognition of the commercial potential of research into new strains of cannabis, the holder of a category 2 researcher licence will be allowed to supply class B research cannabis seed or industrial cannabis seed interstate and overseas to persons authorised to possess such seed. If wishing to supply seed to a person in another country the licensee must hold a licence under the *Customs Act 1901 (Cwlth)* authorising the export of cannabis. "State" has been defined to include an external territory.

The definitions for the following expressions recognise that seed does not contain THC so that a cannabis plant is invariably defined as a plant that contains THC in its leaves and flowering heads of different concentrations, whereas cannabis seeds are defined as those harvested from cannabis plants or seed that, if grown, will produce cannabis plants:

- "industrial cannabis plant"
- "industrial cannabis seed"
- "class B research cannabis plant"
- "class B research cannabis seed"¹⁴

New section 52 will allow the holder of a grower licence to possess, produce¹⁵ and supply¹⁶ industrial cannabis sativa with a THC concentration up to 1.0%.

14 See new section 46 for definitions.

15 See definition of "produce" in section 4 (includes to prepare, manufacture, cultivate, package)

The licence to produce is limited to industrial cannabis plants from certified cannabis seed that will produce cannabis plants with a THC concentration in their leaves and flowering heads of 0.5%.¹⁷ However, because certified seed, as a result of environmental conditions, can sometimes produce plants with slight variations of THC levels, growers will be able to possess industrial cannabis with an upper tolerance of 1% THC.

In addition to the licence to produce, the holder of a grower licence will be able to:

possess industrial cannabis plants and seed;

supply industrial cannabis seed to a category 1 or 2 researcher, a grower or a person authorised under an exemption under new section 48 to possess the seed;

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 being conducted by the researcher on land owned or occupied by the grower;

produce class A or class B research cannabis plants under the supervision of a category 1 or category 2 researcher, as part of a field trial the researcher is conducting on land owned or leased by the grower;

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;

supply processed cannabis to a person authorised under an exemption under new section 48 to possess processed cannabis.

As with the category 1 and 2 researcher licences, growers will be able to sell cannabis seed interstate and/or overseas to persons authorised to possess such seed. If wishing to supply seed to a person in another country the licensee must hold a licence under the *Customs Act 1901 (Cwlth)* authorising the export of cannabis. “State” has been defined to include an external territory.

16 See definition of “supply” in section 4 (includes to give, distribute, sell, transport)

17 See definition of “certified cannabis seed” in new section 46 (seed that will produce cannabis plants with a THC concentration in their leaves and flowering heads of 0.5%)

New section 53 sets out the steps involved for an applicant in obtaining a licence. It also provides that the chief executive is to decide an application after having had regard, amongst other things, to the person's suitability and the person's eligibility to hold a licence.

New section 54 details the requirements for a licence application, including use of the approved form, provision of information required by the chief executive and payment of the relevant fees. The licence applicant must also state the names and address its close associates and, if a corporation, its executive officers.

Both the terms 'close associates' and 'executive officers' are defined in section 46.

New section 55 requires an applicant to specify where in Queensland the applicant proposes to carry on activities under the licence or an address where a document can be served personally. A post office box is not acceptable as a business address.

New section 56 provides that the chief executive may require an applicant to give information or material the chief executive reasonably considers is needed for considering the applicant's licence application. The request must be made by written notice, stating a reasonable time within which the information or material must be supplied. An applicant who fails to supply the information or material within the stated time is to be taken to have withdrawn the licence application.

New section 57 sets out the eligibility requirements to be satisfied by persons who apply for a researcher licence.

A person must have the educational or other qualifications and experience to engage in plant breeding or other research involving the use of industrial or research cannabis.

For a corporation – a person employed by the corporation must have the educational or other qualifications and experience to engage in plant breeding or other research involving the use of industrial or research cannabis.

An individual who has been convicted of a serious offence within the preceding 10 years is not eligible to obtain a researcher licence.

New section 58 provides that an individual who has been convicted of a serious offence within the preceding 10 years or affected by bankruptcy action is not eligible to obtain a grower's licence. The term 'affected by bankruptcy action' is defined in section 46.

New section 59 sets out the matters that the chief executive must consider when deciding a corporation's suitability to hold a licence. A corporation is not a suitable person if an executive officer is affected by bankruptcy action, has been convicted of a serious offence in the preceding 10 years or is not a suitable person under section 60 (Chief executive must consider suitability of applicants and licensees). For all applicants, the person's character, business associates and whether the person has ever held a previous licence under this Act that was suspended or cancelled are relevant.

A corporation that is not a suitable person cannot hold a licence.

New section 60 sets out the matters that the chief executive must consider when deciding whether a person is a suitable person to hold a license. Considerations include

- whether the person is of good repute having regard to their character, honesty integrity,
- whether the person's associates are of good repute having regard to character, honesty and integrity,
- whether the person previously held a licence that was suspended or cancelled.

For individual considerations include their criminal history, whether the person has been convicted of an offence against the Act either in Queensland or elsewhere and whether the person is capable of satisfactorily performing the activities of a licensee.

For a corporation, the chief executive must consider also whether the corporation has been placed in receivership or liquidation, whether any executive officers have been convicted of an offence under the Act and whether each of the executive officers is a suitable person to hold a licence.

New Section 61 provides that, when the chief executive makes investigations about the suitability of an applicant, the chief executive may make an investigation about the applicant, or in the case of a renewal application, the licensee. If the applicant or licensee is a corporation, an investigation may be made about the corporation's executive officers. An investigation may also be made about the close associates of the applicant or licensee.

Sub-section 5 will require the applicant or licensee to consent to their fingerprints being taken to confirm their identity for the purposes of a criminal history check. Once identity is confirmed then the commissioner must destroy the fingerprints. Sub-section 9(a) makes it plain that

fingerprints are only to ensure that there is a correct and comprehensive criminal history available to the chief executive officer.

New section 62 prohibits an officer, employee or agent of the department from directly or indirectly disclosing a person's criminal history report or any information contained in the report.

The chief executive is required to destroy a criminal history report as soon as practicable after considering the person's suitability for a licence.

New section 63 provides that the chief executive may issue or refuse to issue a licence to an applicant.

A licence may be issued to an applicant only if the chief executive is satisfied of the applicant's suitability and eligibility for a licence. The chief executive must also be satisfied that the application was properly made. If the applicant intends performing activities under the licence in partnership or in conjunction with other persons, each of those other persons must be a suitable person for a licence. If the applicant is a corporation, each executive officer of the corporation must be a suitable person for a licence.

If the chief executive refuses to issue a licence to an applicant, within 14 days of the decision, the chief executive must give the applicant an information notice advising the applicant of the decision and reasons for the decision and the applicant's right to apply to the District Court for a review of the decision.

New section 64 gives power to the chief executive to issue a licence for not more than 3 years on conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the licence.

Without limiting those conditions, it is a condition of every licence that the holder must not contravene the Act.

A regulation may prescribe conditions a licensee must comply with (for example, this may be particular security precautions).

If the chief executive decides to issue a licence subject to a condition, within 14 of the decision, the chief executive must give the applicant an information notice advising the applicant of the decision and reasons for the decision and the applicant's right to apply to the District Court for a review of the decision.

New section 65 makes provision for renewal of a licence by application before the licence expires. The application must be made in the approved form, stating the names and addresses of the licensee's business associates.

It must be accompanied by the licence renewal fee and for an individual applicant, 2 recent colour photographs of the prescribed size.

Sub-section (3) and (4) replicate section 56 and requires the licensee to supply information as requested by the chief executive officer. Failure to supply the requested information will be deemed withdrawal of application.

New section 66 provides that the chief executive may renew or refuse to renew a licence.

A licence may be renewed only if the chief executive is satisfied that –

- the licensee is a suitable person for the licence. If the licensee carries on business in partnership or in conjunction with other persons, each of those other persons must be a suitable person for a licence. If the licensee is a corporation, each executive officer of the corporation must be a suitable person for a license;
- the application was properly made;
- the licensee meets the eligibility requirements.

If the chief executive refuses to renew a license, within 14 days of the decision, the chief executive must give the licensee an information notice advising the licensee of the decision and reasons for the decision and the licensee's right to apply to the District Court for a review of the decision.

New section 67 provides that if a licensee makes a renewal application under new section 66, the licensee's licence is taken to continue in force from the day that it would have expired, until the licensee's application is decided or until the application is withdrawn by the licensee or is taken to have been withdrawn under new section 65 (4).

New section 68 provides that if the application for renewal has been refused the licence must be returned to the chief executive within 14 days unless the person has a reasonable excuse.

New section 69 states that a license may not be transferred.

New section 70 provides that the chief executive may amend the conditions of a licence on the licensee's application, or on the chief executive's initiative.

An application by a licensee for amendment of conditions must be made in the approved form and be accompanied by the prescribed fee. Before making the amendment applied for, the chief executive must be satisfied that the licensee meets the eligibility requirements the chief executive specifies as relevant to the amendment.

Before the chief executive amends a condition on the chief executive's initiative, the chief executive is required to give written notice of the particulars of the proposed amendment to the licensee and to advise the licensee that the licensee may make written submissions about the proposed amendment to the chief executive before a stated day, not later than 14 days after the notice is given. The chief executive must have regard to any submissions made by the licensee before the stated day.

The requirement to give written notice to the licensee is not to apply if the amendment must be made urgently to ensure compliance with the Act.

If the chief executive decides to amend licence conditions, the chief executive must give written notice of the amendment to the licensee. An amendment takes effect on the day that written notice of the amendment is given to the licensee or, if a later date is stated in the notice, the later date.

If the chief executive refuses to make an amendment requested by a licensee, within 14 days of the decision, the chief executive must give the licensee an information notice advising the licensee of the decision and the reasons for the decision and the licensee's right to apply to the District Court for a review of the decision.

New section 71 provides for amendment of conditions on a licence. If the chief executive amends the conditions on a licence and requests the licensee to produce the licence for amendment, the licensee must produce the licence for amendment within a stated period of not less than 14 days unless the person has a reasonable excuse.

New section 72 allows a licensee to surrender the licensee's licence by giving written notice to the chief executive and returning the licence. The licence stops having effect on the day it is surrendered. Before the licensee surrenders the licence the licensee must destroy or otherwise lawfully dispose of all cannabis plants and seed the licensee possesses.

New section 73 sets out the grounds for suspending or cancelling a licence. Those grounds are if a person is no longer suitable to hold a licence or contravenes a provision of the Act or a condition of the licence. Also if the licence was issued on the basis of a materially false or misleading representation or declaration.

New section 74 provides that if the chief executive considers a ground exists to suspend or cancel a licence the chief executive must give the licensee a written notice stating the action the chief executive proposes taking, the grounds for the proposed action, an outline of the facts and circumstances forming the basis of the grounds, the proposed suspension

period for a suspension of a licence and an invitation to the licensee to show cause at least 21 days after giving the show cause notice.

Within the show cause period the licensee may make written representations to the chief executive about the proposed action.

New section 75 states that the chief executive must consider all written representations made by the licensee in the show cause period.

New section 76 provides that the chief executive must not take any further action about the show cause notice if, after considering the accepted representations by the licensee, the chief executive no longer believes a ground exists to suspend or cancel the licence. Immediately after making the decision the chief executive must give the licensee written notice that no further action will be taken about the show cause notice.

New section 77 provides that the chief executive may suspend the licence for no longer than a stated period or cancel the licence or suspend it for a period if the chief executive still believes a ground exists to suspend or cancel a licence or believes suspension or cancellation of the licence is warranted or if there are no accepted representations for the show cause notice. In such a case the chief executive must immediately give an information notice about the decision to the licensee. The chief executive's decision takes effect on the day the information notice is given to the licensee or if a later day is stated in the notice the later day.

New section 78 provides that the chief executive may suspend the licensee's licence if the chief executive considers, on reasonable grounds, that the licensee has contravened or is contravening the Act, or is likely or proposing to engage in conduct that would contravene the Act. The licence may be suspended for no more than 28 days on conditions. The chief executive must give the licensee an information notice in relation to the suspension within 3 days after suspending the licence.

New section 79 provides that a licensee's licence is cancelled on the happening of any of the following events –

- the licensee is convicted of a serious offence;
- if the licensee is an individual, the licensee is affected by bankruptcy;
- if the licensee is a corporation, the licensee has gone into liquidation.

New section 80 provides that 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.

New section 81 provides that if the chief executive suspends a licensee's licence under new section 77 or 78 the licensee may despite the suspension continue to possess the cannabis plants and seed in the person's possession on the day the licence is suspended.

In those circumstances the licensee may only continue to do anything reasonably necessary to help the plants continue to grow and harvest the plants and any seed on the plants and supply harvested cannabis seed to a person lawfully entitled to possess them.

No compensation is payable by the State because of the suspension.

New section 82 provides what happens to cannabis plants if a licence is cancelled. In such an event the chief executive has the power to deal with the plants and seed in the manner specified, for example, if the plants can not be harvested the chief executive may destroy them. If the plants can be harvested the chief executive may harvest them together with any seed. Provision is also made for the chief executive to deal with industrial cannabis seed and research cannabis.

In order to give effect to new section 82 the chief executive may enter and re-enter the place as often as necessary and bring onto the place reasonably necessary help, machinery and other equipment. For these purposes the chief executive is taken to be an inspector.

In order to be able to undertake the activities referred to in new section 82 the chief executive is taken to hold a licence of the same category as the cancelled licence for the place stated in that licence and the cannabis plants in the possession of the former licensee immediately before the cancellation are taken to be in the possession of the chief executive.

In respect of a category 1 or category 2 researcher licence if class A or class B research cannabis is growing as part of a field trial on land owned or leased by a grower as part of 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 possession of the chief executive.

No compensation is payable by the State because of the destruction of cannabis plants or seed under this new section.

New section 83 provides what happens to cannabis seed if a licence is cancelled or renewal is refused. In such an event the chief executive has the power to deal with industrial cannabis seed, class A research cannabis

seed and class B research cannabis seed in the manner specified, including destroy the seed.

In order to give effect to new section 83 the chief executive may enter and re-enter the place as often as necessary and bring onto the place reasonably necessary help, machinery and other equipment. For these purposes the chief executive is taken to be an inspector.

In order to be able to undertake the activities referred to in new section 83 the chief executive is taken to hold a licence of the same category as the cancelled licence for the place stated in that licence and the cannabis seed in the possession of the former licensee immediately before the cancellation are taken to be in the possession of the chief executive.

In respect of a category 1 or category 2 researcher licence if 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's growing as part of a field trial on land owned or leased by a grower as part of 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 possession of the chief executive.

No compensation is payable by the State because of the destruction of the seed.

New section 84 provides that the chief executive may recover costs incurred under new sections 82 or 83 as a debt payable to the State by the former licensee. Those costs may be recovered from the proceeds of the sale of harvested material or cannabis seed.

If the proceeds exceed costs the chief executive must pay any balance to the former licensee, however, if the proceeds are subject to an application for forfeiture of tainted property under the *Crimes (Confiscation) Act 1989*, no proceeds are payable to the former licensee unless no order for forfeiture is made under that Act.

Further, if the harvested material is subject to an unsatisfied lien on the crop under the *Bills of Sale and Other Instruments Act 1955* the chief executive must pay the proceeds in satisfaction of the lien and the former licensee will only be entitled to payment of the balance, if any.

New section 85 provides that a power of appeal to the District Court against a decision of the chief executive under this new part.

New section 86 provides the mechanism for starting an appeal.

New section 87 provides for a stay of the operation of the review decision to secure the effectiveness of the appeal. The stay may be subject to conditions, will operate for a period fixed by the court, but must not extend past the time when the court decides the appeal, and may be revoked or amended by the court. The appeal affects the decision, or carrying out of the decision, only if the decision is stayed.

New section 88 provides the procedures for the hearing of the appeal which is by way of rehearing.

New section 89 states the powers of the court on appeal to either confirm the original decision, set aside the original decision, amend the original decision, send the matter back to the chief executive and give directions the court considers appropriate or set aside the original decision and substitute it with the court's decision. Any amended or substituted decision is, for the Act (other than this new part) taken to be the chief executive's decision.

New section 90 provides that an appeal against a decision of the District Court may only be made on a point of law.

New section 91 provides for the appointment and qualifications of inspectors. The chief executive may appoint as an inspector a public service employee employed in the department or another person engaged by the chief executive for the purposes of this division, however, the chief executive may only appoint such a person if the chief executive is satisfied the person is qualified for appointment by having the necessary expertise or experience.

New section 92 specifies that an inspector holds office on the conditions stated in the inspector's instrument of appointment, a signed notice or regulation. The section also provides that the instrument of appointment, a signed notice or a regulation may limit the inspector's powers.

New section 93 requires the chief executive to provide each inspector with an identity card containing a recent photograph of the inspector and other relevant particulars. The purpose of the clause is to ensure inspectors can be easily identified.

New section 94 requires an inspector to produce or clearly display the inspector's identity card when exercising a power under the Act. However, provision is also made for the inspector to produce the card at the first reasonable opportunity where it is not practical in the first instance to do so.

New section 95 details the circumstances in which an inspector ceases to hold office.

New section 96 specifies the conditions and methods of resignation of an inspector.

New section 97 sets out the circumstances under which an identity card issued to an inspector must be returned to the chief executive. This is to ensure that a person does not represent that they are an inspector after ceasing to be one.

New section 98 sets out when an inspector may enter a place. Under this new section an inspector may enter a place if the occupier consents to entry.

An inspector also has power to enter a place where the inspector reasonably suspects delay in entering will result in the concealment or destruction of evidence of an offence or anything that is being used to commit, continue, or repeat, an offence.

If an inspector intends to enter a place to ask the occupier for consent to enter, the inspector may enter the land around premises to the extent that it is reasonable to contact the occupier or enter part of the place that the inspector reasonably considers that members of the public are allowed to enter.

New section 99 outlines the procedures an inspector must follow when seeking consent to enter a place.

New section 100 applies where an inspector is intending to enter a place other than with the consent of its occupier when the inspector reasonably suspects delay in entering will result in the concealment or destruction of evidence of an offence or anything that is being used to commit, continue, or repeat, an offence. In those circumstances the inspector must, if the occupier is present, before entering, make a reasonable attempt to –

- comply with new section 99 procedure for entry with consent;
- tell the person the purpose of the entry;
- tell the person the inspector is permitted to enter the place without the person's consent.

New section 101 specifies the powers available to an inspector who has entered a place for the purposes of ensuring compliance with the legislation:

- examine or inspect or film, photograph, videotape or record an image of a document or other thing;
- take a sample of or from a thing for analysis or testing;

- copy a document;
- take into the place equipment, materials or person reasonably required for exercising a power under the new part;
- take a necessary step to allow a power described in this new section to be exercised.

New section 102 empowers an inspector to require reasonable help from a person at the place being entered by the inspector (a “help requirement”), for example, by producing a document or giving information. When making a help requirement the inspector is under a duty to warn the person that it is an offence not to comply with the requirement without a reasonable excuse.

New section 103 provides that it is an offence for a person not to comply with a help requirement given by an inspector under new section 102 unless the person has a reasonable excuse. The new section provides that it will be a reasonable excuse for a person not complying with a help requirement if complying might tend to incriminate the person. However, this does not apply if the requirement is to produce a document required to be held or kept under the Act.

New section 104 empowers an inspector to require a person to provide information (an “information requirement”) in a reasonable time and way if the inspector reasonably suspects the Act has been contravened and that the person may be able to give information about the contravention. When making the information requirement the inspector is under a duty to tell the person that it is an offence not to comply with the requirement

New section 105 provides that it is an offence for a person not to comply with an information requirement unless the person has a reasonable excuse. The new section provides that it will be a reasonable excuse for a person not complying with an information requirement if complying might tend to incriminate the person. However, this does not apply if the information sought by the requirement is not relevant to the contravention for which it was made.

New section 106 provides that it is an offence to knowingly make any false or misleading statements to an inspector in a material matter. This applies even if the statement was not made in response to an information requirement or any other requirement under a specific power.

New section 107 empowers an inspector to require a person to make available for inspection by an inspector a document (a “document production requirement”) required to be held or kept by the person under

the Act or in the person's possession about a matter relating to the Act. The document is to be made available at a reasonable time and place. The inspector may keep and copy the document but must return it as soon as practicable.

New section 108 provides that it is an offence for a person not to comply with a document production requirement unless the person has a reasonable excuse. The new section provides that it will be a reasonable excuse for a person not complying with a document production requirement if complying might tend to incriminate the person. However, this does not apply if the document is required to be held or kept under the Act.

New section 109 provides that it is an offence for a person to give an inspector a document containing information that the person knows is false or misleading in a material particular. This applies even if the document was not given in response to or in purported compliance with a document production requirement or any other requirement under a specific power.

New section 110 provides that it is an offence to obstruct an inspector in the exercise of a power under this new part unless the person has a reasonable excuse.

New section 111 provides that it is an offence for a person who owns a cannabis plant or seed, or has possession of such a plant or seed for a purpose authorised under this new part, not to report that the plant or seed is lost or stolen to a police officer within 2 days after the person finds out about it.

New section 112 provides that 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. It will be a defence to any such claim if the person can prove that it would not have been possible to prevent the act or omission by the exercise of reasonable diligence. For the purposes of this new section "representative" and "state of mind" have been defined.

New section 113 provides that executive officers of a corporation must ensure the corporation complies with this part and each of the corporation's executive officers is taken to have committed a crime if the corporation commits an offence.

Evidence that a corporation has been convicted of an offence against a provision of the new part is evidence that each of the corporation's executive officers committed the offence. However, it will be a defence for

an executive office, in a position to influence the conduct of the corporation in relation to the offence, to prove that the officer exercised reasonable diligence to ensure the corporation complied with the provision or that the officer was not in a position to influence the conduct of the corporation in relation to the offence.

New section 114 gives the chief executive the power to delegate powers of the chief executive under the new part to an officer of the department.

New section 115 requires the chief executive officer to review the operation of section 61(5) within 2 years of the commencement of the new Part 5B. Section 61(5) refers to the requirement of the applicant or licensee submitting to having their fingerprint taken by a police officer.

Clause 8 inserts new sub-sections (2) and (3) in section 57 which provide a defence to a charge against part 2 of the Act where a licensee is in possession of, or produces, cannabis plants with a higher concentration of THC in their leaves and flowering heads than the person may possess under their licence or under an exemption under new part 5B. In those circumstances it is a defence for a person to prove that the plants were grown from lawfully obtained cannabis seed and that despite acting with reasonable diligence to prevent the contravention, the contravention was beyond the person's control.

These defences recognise that there may be circumstances beyond a person's control which result in the person being in possession of or producing cannabis plants with a higher concentration of THC in their leaves and flowering heads than the person may lawfully possess under the Act. Such circumstances may be due, for example, to environmental factors.

Clause 9 amends section 57A (Evidence of prescribed substance by label) by updating the reference to section numbers caused by the insertion of new Part 5B.

Clause 10 amends section 57B(1), so as to omit section 57A and insert renumbered section 130. Again, this renumbering is because of the insertion of the new Part 5B.

Clause 11 renumbers sections 44 to 62 as sections 116 to 135.

Clause 12 inserts a new schedule to the Act that sets out serious offence provisions under the Criminal Code as referred to in the definition of serious offence in section 46.

Clause 13 inserts a schedule to amend certain Acts. The amendments to the *Crime and Misconduct Act 2000*, the *Criminal Code* and the *Police*

Powers and Responsibilities Act 2000 are to correct references in those Acts following the re-numbering of the *Drugs Misuse Act 1986* to accommodate the insertion of the new Part 5B.