

# INDUSTRIAL HEMP BILL 2003

## EXPLANATORY MEMORANDUM

This Bill is intended to facilitate the development of an industry for the cultivation and processing of industrial hemp in WA. 'Industrial Hemp' is cannabis that contains levels of the psychotropic drug tetrahydrocannabinol (THC) of less than 0.35%. The drug variety of cannabis (commonly called marijuana), contains much higher levels of THC.

It is already the case that other states in Australia allow the commercial production of industrial hemp. Victoria amended its *Drugs, Poisons & Controlled Substances Act 1981* in 1997 to allow commercial industrial hemp cultivation. In Queensland, the *Drugs Misuse Act 1986* was amended in 2002 to permit the commercial production of industrial hemp.

There has been some debate as to the commercial viability of an industrial hemp industry in Western Australia. Hemp is produced by, amongst others, less developed countries with low labour costs and often government subsidies, which will put a WA industry under significant costs pressure. Yet the proponents of an industry here are confident of its viability, and the market will determine this question.

The Bill results from consultation between the Ministers and Departments of Agriculture, Police and Health. This was to ensure that a seamless and comprehensive licensing and supervisory scheme would regulate the new industry. Proponents of an Industrial Hemp industry were also a part of the consultative process.

Broadly, the Bill provides for a system of licensing for legal persons wishing to cultivate, harvest or process Industrial Hemp. Applications for licences will be scrutinised carefully, including background checks, and many conditions may be endorsed upon the licence.

To ensure full compliance with licence conditions and to address any other matters of concern, the Bill provides for the appointment of inspectors. In addition to inspectors appointed under the Bill, every police officer becomes an 'inspector' for the purposes of the Bill. All Inspectors have significant powers for conducting investigations and checking on compliance with licence conditions.

The Bill provides that the Registrar (the administrator of the licensing scheme) may cancel or suspend a licence if there has been a contravention of a condition of a licence. There are a number of other grounds upon which a Registrar may suspend, vary or cancel a licence.

Below is a clause by clause analysis of the contents of the Bill.

## **Part 1 – Preliminary**

**Clause 1:** Short title and citation.

**Clause 2:** Sets out that the proposed Act shall commence on a day fixed by proclamation.

**Clause 3:**

**Subclause 1:** Includes terms and definitions that are central to the operation of the proposed Act, such as:

“**industrial hemp**” means cannabis, the leaves and flowering heads of which do not contain more than 0.35% of tetrahydrocannabinol;

“**inspector**” means –

- (a) a person appointed under section 38(1); or
- (b) a police officer.

“**premises**” means land (whether built on or not), or a building or structure on land, and includes a part of premises;

**Subclause 2:** Provides that where a licence is granted to 2 or more persons, any reference in the proposed Act in the singular in relation to a licensee is to be taken to be referring to all persons the subject of the licence.

**Subclause 3:** Refers to offences in the Act that can be committed by a licence holder include a partnership to which a licence has been transferred, and in that case the partnership is to be treated as a person.

## **Part 2 – Licensing**

### **Division 1**

**Clause 4:** Prohibits the cultivation, harvesting or processing of industrial hemp (any breach can result in a fine of up to \$10 000) without a licence.

### **Division 2**

**Clause 5:**

**Subclause 1:** Requires that all applications for a licence to cultivate, harvest, process or do a combination of these activities, together with the transfer or renewal of a licence must be made to the Registrar.

**Subclause 2:** Applications must be made on an approved form accompanied by a prescribed fee and any information set out in regulations.

Subclause 3: The Registrar need not deal with any application that does not fulfil the requirements set down in Subclause 2 above.

**Clause 6:**

Subclause 1: Upon receipt of an application, the Registrar will carry out investigations necessary to assessing the application (those investigations are by the authority of other specified sections of the Act).

Subclause 2(a): The Registrar may refer an application to the Police Commissioner.

Subclause 2(b): Upon referral of an application, the Registrar may request the Police Commissioner to conduct inquiries and report back to the Registrar on relevant matters.

Subclause 3: Upon a referral under Subclause 2, the Police Commissioner must report back to the Registrar within 30 days.

Subclause 4: The Registrar may, in some cases, extend the period referred to in Subclause 3.

**Clause 7:** An individual may apply for a licence.

**Clause 8:**

Subclause 1: The Registrar may refuse to grant a licence pursuant to Clause 7 on the grounds set out in Subclause 3 below.

Subclause 2: The Registrar must grant a licence to an individual if the Registrar is satisfied that –

- (a) the applicant is at least 18 years old;
- (b) is of good character and repute;
- (c) is a fit and proper person;
- (d) has sufficient resources to carry on the activities the licence permits;
- (e) has qualifications as may be prescribed by regulation under this Act.

Subclause 3: The Registrar cannot grant a licence to an individual if –

- (a) the applicant has been found guilty in the last ten years of a serious drug offence or an external serious drug offence as defined in section 32A(3) of the *Misuse of Drugs Act 1981*.
- (b) the applicant has an association with a person who is not of good character or repute or who has been convicted of an offence as set out at (a) above; or
- (c) the applicant's proposal is deficient in terms of the suitability of the proposed manner of cultivation, harvesting or processing.

**Clause 9:** A partnership of 2 or more persons may apply for a licence.

**Clause 10:**

Subclause 1: In this Clause “relevant person” means a person who is a member of a partnership or who is involved in the conduct of a body corporate that is a member of a partnership.

Subclause 2: An application made under Clause 9 may be refused in accord with Subclause 4 (below).

Subclause 3: The Registrar must grant a licence if (a), each relevant person –

- (i) is at least 18 years old;
- (ii) is of good character and repute;
- (iii) is a fit and proper person;
- (iv) has qualifications as may be prescribed by regulation under this Act;

and (b), the persons in the partnership have sufficient resources to carry on the activities the licence permits.

Subclause 4: The Registrar must refuse to grant a licence if –

- (a) a relevant person has been found guilty in the last ten years of a serious drug offence or an external serious drug offence as defined in section 32A(3) of the *Misuse of Drugs Act 1981*.
- (b) a relevant person has an association with a person who is not of good character or repute or who has been convicted of an offence as set out at (a) above; or
- (c) the applicant’s proposal is deficient in terms of the suitability of the proposed manner of cultivation, harvesting or processing.

**Clause 11:** A body corporate may apply to the Registrar for a licence.

**Clause 12:**

Subclause 1: Throughout this clause, “relevant person” means an individual involved in the conduct of the body corporate.

Subclause 2: An application made under Clause 11 may be refused by the Registrar under subclause 4 (below).

Subclause 3: The Registrar must grant a licence if (a), each relevant person –

- (i) is at least 18 years old;
- (ii) is of good character and repute;
- (iii) is a fit and proper person;
- (iv) has qualifications as may be prescribed by regulation under this Act;

and (b), the body corporate has sufficient resources to carry on the activities the licence permits.

Subclause 4: The Registrar must refuse to grant a licence if –

- (a) a relevant person has been found guilty in the last ten years of a serious drug offence or an external serious drug offence as defined in section 32A(3) of the *Misuse of Drugs Act 1981*.

(b) a relevant person has an association with a person who is not of good character or repute or who has been convicted of an offence as set out at (a) above; or  
(c) the applicant's proposal is deficient in terms of the suitability of the proposed manner of cultivation, harvesting or processing

**Clause 13:** The registrar must provide written notice to any applicant who is refused a licence under this proposed Act.

**Clause 14:**

**Subclause 1:** If the Registrar approves an application for a licence, the licence issued is to be in an approved form.

**Subclause 2:** The licence issued must contain a description of premises where the authorised activity will be carried out.

**Clause 15:**

**Subclause 1:** A licence issued is to be in force for the period endorsed on the licence.

**Subclause 2:** The period mentioned in subclause 1 must not exceed 3 years.

**Clause 16:**

**Subclause 1:** A licensee can apply for renewal of a licence.

**Subclause 2:** Such an application for renewal must be made to the Registrar no later than 56 days before the due expiry date of the licence.

**Clause 17:**

**Subclause 1:** The Registrar may refuse to renew a licence on the basis of any matter in Clauses 8, 10 or 12, as applicable.

**Subclause 2:** A refusal to renew under subclause 1 must follow an investigation under Clause 6 and having given the licensee a chance to demonstrate why renewal should not be refused.

**Clause 18:**

**Subclause 1:** A licence issued, renewed or transferred by the Registrar is subject to conditions imposed by the regulations.

**Subclause 2:** The Registrar, whenever a licence is issued, renewed or transferred, may impose any other reasonable conditions on the licence and these conditions may be specified on the licence or in a written notice given to the licensee or transferee.

**Subclause 3:** Conditions imposed by regulations may include subjects such as:

- (a) the authorised premises, including security measures;
- (b) records and documents;
- (c) provision of information, records and documents to the Registrar about activities under the licence;
- (d) harvesting, processing and disposal of crops and crop residue;
- (e) inspection, supervision and surveillance by inspectors.

**Clause 19:**

Subclause 1: The Registrar can amend a licence by –

- (a) amending or cancelling a condition;
- (b) imposing a new condition;
- (c) altering description of authorised premises;
- (d) correcting mistakes or misdescriptions; and
- (e) extending the period of the licence, subject to Clause 15(2).

Subclause 2: Amendment of a licence may occur on application by the licensee or at the initiative of the Registrar.

Subclause 3: The Registrar must provide to a licensee notice in writing of any amendment.

**Clause 20:** An expired or cancelled licence has no validity and must be returned, as soon as possible to the Registrar. Penalty: \$1500.

**Clause 21:**

Subclause 1: A licence holder and another person may apply jointly to the Registrar for the transfer of the licence from the licence holder to the transferee.

Subclause 2: Clauses 8, 10 and 12 (as applicable) pertain to a transfer application.

Subclause 3: After considering the application, the results of inquiries and any investigations, the Registrar may transfer or refuse to transfer, the licence.

**Division 3:**

**Clause 22:**

Subclause 1: This Clause applies if one of the following occurs –

- (a) a person ceases to be a member of a partnership that is a licence holder;
- (b) a person ceases to be a person who is concerned in the conduct of a body corporate that is a member of a partnership that is a licence holder.
- (c) a person ceases to be a person who is concerned in the conduct of a body corporate that is a licence holder.

Subclause 2: The licensee must provide written notice to the Registrar within 14 days of such an occurrence, notifying the Registrar of the event. Penalty: \$2000.

**Clause 23:**

Subclause 1: This Clause applies if a partnership holds a licence and the partnership wishes to include a new member.

Subclause 2: The licensee can apply to the Registrar to have the licence amended to reflect the change.

Subclause 3: The application must be made at least 28 days before the new inclusion occurs.

Subclause 4: The Registrar may refuse an application if satisfied that if an application by the newly constituted partnership had have been made under Clause 9, that it consequently would have been refused.

Subclause 5: If the Registrar grants an application under this Clause, the Registrar must specify a date upon which the amendment takes effect.

**Clause 24:**

Subclause 1: This Clause applies if a partnership holds a licence and one of the members of the partnership is a body corporate that wishes to include a new person who will be concerned in the management of the body corporate.

Subclause 2: The licensee can apply to the Registrar to have the licence amended to reflect the change.

Subclause 3: The application must be made at least 28 days before the new inclusion occurs.

Subclause 4: The Registrar must grant an application unless satisfied that if an application by the newly constituted body corporate as a member of the partnership had have been made under Clause 9, that it consequently would have been refused.

**Clause 25:**

Subclause 1: This Clause applies if a body corporate holds a licence and wishes to include a new person who will be concerned in the management of the body corporate.

Subclause 2: The licensee can apply to the Registrar to have the licence amended to reflect the change.

Subclause 3: The application must be made at least 28 days before the new inclusion occurs.

Subclause 4: The Registrar must grant an application unless satisfied that if an application by the newly constituted body corporate had have been made under Clause 11, that it consequently would have been refused.

**Clause 26:**

Subclause 1: This Clause operates if an application under Clauses 23(4), 24(4), or 25(4) is refused.

Subclause 2: The licence is not valid 14 days after notification of the Registrar's decision, unless the licensee withdraw the application within that period, or the licensee makes a further application within that period to the Registrar, which is successful.

Subclause 3: The Registrar can extend the 14 day period set in subclause 2 by notice in writing to the applicant.

**Clause 27:**

Subclause 1: A partnership holding a licence commits an offence if a new member is included without an application having been made under Clause 23; or a new person concerned in the management of a body corporate that is a member of a partnership is included without an application under Clause 24. Penalty: \$2000.

Subclause 2: A licensee that is a body corporate commits an offence if a new person concerned in the management of a body corporate is included without an application being made under Clause 25. Penalty: \$2000

**Part 3 – Provisions applicable to licences**

**Clause 28:**

Subclause 1: In relation to an application to which this Clause applies, a person must not knowingly provide false or misleading information or information likely to deceive. Penalty: \$5000.

Subclause 2: This Clause applies to an application for a licence or renewal of a licence, as well as applications under Clauses 23, 24 or 25.

**Clause 29:**

Subclause 1: Contravention of a licence condition is an offence. Penalty: \$5000.

Subclause 2: For the avoidance of doubt, a person convicted of contravening a condition of a licence may be punished for the offence, notwithstanding that the condition may have been amended after the commission of the offence.

**Clause 30:**

Subclause 1:

The Registrar must keep a register containing all particulars prescribed for the Purposes of Part 2 of the proposed Act.

**Subclause 2:**

The Regulations will prescribe the form of the Register.

**Subclause 3:**

The Registrar may determine the form and manner of the Register, subject to the Regulations.

**Clause 31:** The Registrar must allow any person to inspect the Register, and to take copies or extracts from any part of it, upon payment of the prescribed fee.

**Clause 32:**

**Subclause 1:** The Registrar may issue to any person a statement certifying that –  
(a) that a person is or was a licence holder, or is not and has not, been a licensee;  
(b) that certain premises are or were authorised premises, or were not and have not been, authorised premises;  
(c) the conditions to which a licence is subject;  
(d) any other matter appearing in the register.

**Subclause 2:** The statement under subclause 1 may include any relevant period.

**Subclause 3:** In any court or proceeding, these statements are evidence of any matter appearing in them.

**Clause 33:**

**Subclause 1:** A licensee may surrender the licence by giving the Registrar notice in writing or returning the licence to the Registrar.

**Subclause 2:** If a licence is surrendered, the Registrar is to refund so much of the licence fee as is determined is appropriate.

**Clause 34:**

**Subclause 1:** The Registrar may issue a certified copy of a licence, on payment of a prescribed fee.

**Subclause 2:** A certified copy of a licence is evidence in courts and proceedings of the content of the licence.

**Subclause 3:** A document put forward as a certified copy of a licence is to be taken as such, unless otherwise proven.

**Clause 35:**

Subclause 1: An inspector may require a licensee to produce their licence.

Subclause 2: A request under subclause 1 may only be made at an authorised premises.

Subclause 3: Any licensee who does not produce a licence in accord with this Clause commits an offence, unless the licensee has a reasonable excuse. Penalty \$1500.

## **Part 4 - Appeals**

### **Clause 36**:

Subclause 1: This Clause applies where the Registrar decides to:

- (a) refuse to issue a licence;
- (b) refuse to renew a licence;
- (c) refuse to transfer a licence;
- (d) to suspend or cancel a licence;
- (e) to amend a licence.

Subclause 2: A person aggrieved by an adverse decision may appeal by giving notice to the Minister (within 30 days of notice of the decision).

Subclause 3: A person having a right to appeal may request a written statement from the Registrar setting out the reasons for the decision.

Subclause 4: A request under subclause 3 must be in writing.

Subclause 5: The Registrar must provide the statement of reasons within 14 days.

Subclause 6: The registrar's written statement must contain the reasons for the decision and any findings on questions fact, together with the evidentiary basis for such.

Subclause 7: The notice of appeal must set out the grounds of appeal together with any further representations the appellant wishes to make.

Subclause 8: The Minister may affirm, vary or reverse the Registrar's decision.

Subclause 9: The Minister's decision is final.

Subclause 10: The Minister is to notify the appellant within 7 days of this decision and the Minister's reasons for it.

Subclause 11: The Minister may order that the contents, or part thereof, of a Report under Clause 6 not be released, if the Minister decides the information is exempt matter under the *Freedom of Information Act 1992*. An application for such information to remain confidential may be made by the Registrar or the Police Commissioner.

Subclause 12: An application under subclause 11 may be made without notice to, or in the presence of, the aggrieved person.

Subclause 13: No information that is the subject of an order under subclause 11 may appear in the Minister's reasons for decision.

## **Part 5 – Enforcement**

### **Clause 37**:

Subclause 1: The Registrar may suspend or cancel a licence if:

- (a) the licensee has requested such;
- (b) the Registrar decides the licence has been contravened;
- (c) the Registrar is satisfied that the licensee has committed an offence against the *Misuse of Drugs Act 1981*;
- (d) the Registrar determines that grounds exist whereby the Registrar could refuse the issue of a licence under Clauses 8, 10 or 12.
- (e) the licensee has not paid a fee as required by this proposed Act.
- (f) information supplied in the application, renewal or transfer of a licence was false or misleading;
- (g) the licensee no longer carries out the authorised activity.

Subclause 2: The Registrar must give written notice of a suspension or cancellation.

Subclause 3: A licence can be suspended for a specified period or until the happening of a specified event.

Subclause 4: Under subclause 3, "specified" means as specified in a notice under subclause 2.

### **Clause 38**:

Subclause 1: The Minister may appoint a person as an "inspector" under this proposed Act.

Subclause 2: The Registrar is to issue an identity card to each inspector so appointed.

Subclause 3: The Minister can revoke a subclause 1 appointment at any time.

Subclause 4: An inspector appointed under subclause 1 must produce an identity card whenever requested to do so by a person who is about to be subject to any of the inspector's powers under the Act.

Subclause 5: In any court, production of an inspector's identity card is evidence of the appointment of the person identified on the card.

Subclause 6: A person who ceases to be an inspector must surrender their identity card to the Registrar as soon as possible. Penalty: \$500.

**Clause 39:**

Subclause 1: For the purposes of investigation, an inspector has power to, at any reasonable time –

- (a) enter and inspect any place (except residential premises) occupied by a licensee;
- (b) inspect or mark any plant in the place for identification;
- (c) require a person to produce documents that may be relevant to the investigation;
- (d) take copies of documents or remove them to take copies;
- (e) take for analysis specimens of any plant to determine: its THC level; its variety; or whether it has been cultivated in accord with the relevant licence;
- (f) submit any sample taken to an approved botanist or an approved analyst for examination.

Subclause 2: An inspector appointed under clause 38(1) may not exercise any of these powers unless their identity card can be produced when requested.

**Clause 40:** An approved analyst or botanist may analyse any specimen or sample taken under this Act.

**Clause 41:** If the Registrar or an inspector appointed under Clause 38(1) suspects that cultivation or possession of a plant is not authorised by this Act, they are to notify the Commissioner of Police.

**Clause 42:** An inspector is authorised to have cannabis in their possession, whilst carrying out their duties under this Act.

**Clause 43:** The powers of an inspector under this Act are additional to any powers conferred on the inspector by any other written law.

## **Part 6 - Miscellaneous**

**Clause 44:** In this Part, “departmental officer” means a public service officer employed by the department that principally assists the Minister with the administration of this proposed Act (currently the Department of Agriculture).

**Clause 45:** The Minister is to appoint a departmental officer as Registrar under this proposed Act, by notice in the Gazette.

**Clause 46:**

Subclause 1: The Registrar may delegate a power(s) under this proposed Act to a departmental officer.

Subclause 2: Such a delegation must be in writing.

Subclause 3: A departmental officer who is the subject of a delegation cannot further delegate that power.

Subclause 4: A departmental officer exercising a delegated power is to be taken to be doing so within the terms of the delegation unless otherwise shown.

Subclause 5: This Clause does not limit the capacity of the Registrar to perform a function through a departmental officer or agent.

**Clause 47**:

Subclause 1: The Commissioner of Police may delegate their duty under Clause 6 to a police officer of the rank of at least Superintendent.

Subclause 2: Such a delegation must be in writing by the Commissioner of Police.

Subclause 3: An officer who is the subject of a delegation cannot further delegate that power.

Subclause 4: An officer exercising a delegated power is to be taken to be doing so within the terms of the delegation unless otherwise shown.

Subclause 5: This Clause does not limit the capacity of the Commissioner of Police to perform a function through an officer or agent.

**Clause 48**:

Subclause 1: The Governor may make regulations prescribing all matters either required by this Act or necessary or convenient for giving effect to the Act.

Subclause 2: Without limiting subclause 1, regulations may be made that:

- (a) prescribe fees;
- (b) provide for imposition and recovery of fees in relation to activities of inspectors and analysis of specimens or samples of plants;
- (c) prescribe the amount of any fee relating to (b) above;
- (d) provide for establishment and keeping of a register of crops cultivated under licence, premises where industrial hemp or industrial hemp seed is stored or processed;
- (e) set out the procedure for packing or labelling samples taken under the Act;
- (f) set out the procedure to be followed in any analysis or examination under this Act and the procedure for the admissibility and receipt of evidence relating to analysis or examination.
- (g) prescribe the manner of conveyance of samples to an analyst or botanist;
- (h) provide for the circumstances in which a person can gain access to information on the register, on payment of the prescribed fee;
- (i) prescribe measures to be taken by a licensee to ensure the security of industrial hemp and seed.

Subclause 3: If a fee is prescribed pursuant to subclause 2(c) above, the fee is to be determined by reference to the reasonable costs of the service provided.

**Part 7 – Consequential amendments to the *Misuse of Drugs Act 1981***

**Clauses 49 to 53 (inclusive)**: These clauses operate to exempt industrial hemp from the *Misuse of Drugs Act 1981*, provided the industrial hemp is grown under licence and in full accord with the requirements of the proposed Act.

**Clause 54**: This inserts a new section in the *Misuse of Drugs Act 1981* which consists of defences to any charges relating to cannabis as a prohibited drug, where the substance involved is in fact industrial hemp and the accused is a licensee who is at all material times acting in accord with the conditions of their licence and requirements under the proposed Act.

**Part 8 - Consequential amendments to the *Poisons Act 1964***

**Clause 55**: Inserts a new provision in the *Poisons Act 1964* to the effect that that Act no longer applies to industrial hemp.

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