



Department of
**Primary Industries and
Regional Development**

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Western Australia.*

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Enquiries: M Carbon

Hon Dr Brian Walker MLC
Chair
Select Committee into Cannabis and Hemp
Legislative Council Committee Office
Parliament House
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Dear Dr Walker

INQUIRY INTO CANNABIS AND HEMP

Please find attached a submission from the Department of Primary Industries and Regional Development (DPIRD) to the Select Committee into Cannabis and Hemp.

The submission provides background to the regulation of cannabis and hemp, the role DPIRD plays in assisting the Minister for Agriculture and Food in administering the *Industrial Hemp Act 2004* and development activities in the industry.

I trust this information is of assistance to the Committee. Should you need further information, please contact Dr Mia Carbon, Executive Director Biosecurity, at DPIRD on (08) 9368 3420.

Yours sincerely

Ralph Addis
DIRECTOR GENERAL

6 January 2022

Att.

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Department of Primary Industries and Regional Development

Submission to the Select Committee into Cannabis and Hemp

1. Cannabis is a narcotic drug regulated internationally under the Single Convention on Narcotic Drugs (the Convention) which requires nation parties to limit use and possession of drugs to medicinal and scientific purposes. Australia is a party to the Convention.
2. The Convention requires parties to enact legislation to carry out its provisions.
3. Various national and state legislation give effect to Australia's obligations under the Convention.
4. The cultivation of any form of cannabis is illegal in Australia except under 'licence'.

National Regulation

5. The Convention does not apply to the cultivation of cannabis used 'exclusively for industrial purposes (fibre and seed) or horticultural purposes'.
6. Nationally, the *Narcotic Drugs Act 1967* (Cth) regulates narcotic drug manufacture and cannabis cultivation for medicinal and related scientific purposes.
7. The Narcotic Drugs Act was amended in 2016 to provide for the cultivation of cannabis for medicinal purposes; however, the cultivation of medicinal cannabis and access to products remains strictly controlled.
8. The *Therapeutic Goods Act 1989* (Cth) and Regulations and Orders set out the requirements for inclusion of therapeutic goods in the Australian Register of Therapeutic Goods. Decisions regarding the classification of drugs and poisons are set out in the Schedules of the Poisons Standard; these are then included in the relevant legislation of the States and Territories.
9. The Poisons Standard October 2021 lists cannabidiol (CBD), one of the two main active ingredients known as cannabinoids derived from cannabis, as a Schedule 4 prescription-only drug. Amendments introduced late 2020 allow some hemp products under Schedule 3 (available from pharmacists without prescription). These are: products with cannabidiol in oral, oromucosal and sublingual preparations included in the Australian Register of Therapeutic Goods when:
 - a) the cannabidiol is either plant derived or, when synthetic, only contains the (-)-CBD enantiomer; and
 - b) the cannabidiol comprises 98 per cent or more of the total cannabinoid content of the preparation; and
 - c) any cannabinoids, other than cannabidiol, must be only those naturally found in cannabis and comprise 2 per cent or less of the total cannabinoid content of the preparation and of which tetrahydrocannabinol (THC) can only comprise 1 per cent of the total cannabinoid content; and
 - d) the maximum recommended daily dose is 150 mg or less of d) cannabidiol; and

- e) packed in blister or strip packaging or in a container fitted with a child-resistant closure; and
- f) in packs containing not more than 30 days supply; and for persons aged 18 years and over.

There are currently no approved products on the Australian Register of Therapeutic Goods (ARTG) that meet the Schedule 3 criteria. Cannabis and tetrahydrocannabinol (THC), the other main cannabinoids are listed in Schedule 8, controlled drugs.

10. Commonwealth responsibilities for quarantine apply to cannabis. The *Customs (Prohibited Imports) Regulations 1956* (Cth) prohibits imports of Schedule 4 substances unless a licence is held to import that substance. It does not differentiate between cannabis and industrial hemp (generally defined as low THC cannabis).
11. In addition to controlling cannabis for illicit and medicinal use, the Commonwealth is responsible for food standards. Food Standards Australia and New Zealand regulates the use of products in food including the setting of limits for residues and contaminants in animal products.
12. Cannabis is classified as a non-traditional or novel food with restrictions on the parts of the plant able to be sold for human consumption. Non-viable low THC (less than 1 per cent THC) cannabis seeds or seed products may be used as food for sale or as an ingredient in food for sale.
13. Other parts of the cannabis plant may not be used for food. This extends to the use of low THC cannabis in stock feed as there is insufficient research to indicate the absence of contaminants following a low THC diet or supplements in livestock. Contaminants are defined as any biological or chemical agent, foreign matter or other substances that may compromise food safety or suitability under ANZ Food Standards Code 3.1.1.

The Industrial Hemp Act 2004 (WA)

14. In simple terms, cannabis is a prohibited plant in Western Australia under the *Misuse of Drugs Act 1981* (the MDA).
15. The *Industrial Hemp Act 2004* (the Act) provides for the licensing of persons and partnerships to cultivate, harvest or process industrial hemp.
16. Industrial hemp is defined in the Act as cannabis, the leaves, and flowering heads of which do not contain more than 1 per cent THC.
17. Essentially, the Act carves out an area in drug control legislation where industrial hemp may be cultivated, harvested and processed under licence and provides a defence under the MDA for a person in possession of cannabis under these circumstances.
18. It is an island of enabling legislation surrounded by a sea of restrictive legislation.

Background

19. When drafting the Act, the activities contemplated by the Bill included growing low THC cannabis for processing fibre into industrial products and seed production.
20. In considering the legislation in 2003, Parliament made clear its intent that any process involving industrial hemp was to be tightly regulated by licensing with guidelines and controls to monitor the industry strictly. The second reading speech to Parliament noted that the licensing system was essential to maintain industry integrity and instil public confidence that the legislation is not 'some back door to the cultivation of marijuana.'
21. However, it is recognised that attitudes evolve. In 2018, the legislation was amended to increase the level of permissible THC content from 0.35% to no more than 1%.

Administration

22. The Department of Primary Industries and Regional Development (DPIRD) assists the Minister for Agriculture and Food in administering the Act.
23. An officer of DPIRD is designated by the Minister to the role of Registrar to give effect to the Act.
24. The Registrar is responsible for:
 - receiving and considering licence applications;
 - carrying out investigations and inquiries in respect to a licence application;
 - the grant, refusal, renewal, suspension, or cancellation of licences;
 - applying conditions to licences;
 - maintaining a Register of licences;
 - determining certain fees and charges (inspection and examination for sampling and analytical purposes); and
 - notifying the Commissioner of Police of a suspicion that the cultivation or possession of a plant is not authorised under the Act.
25. The other significant function under the Act is that of an Inspector. This is a person appointed by the Minister or a police officer.
26. An inspector is responsible for:
 - investigating whether the Act or a licence is being contravened; and
 - notifying the Commissioner of Police of a suspicion that the cultivation or possession of a plant is not authorised under the Act.
27. A considerable amount of technical knowledge is required to undertake the inspection role.
28. The Act has not been reviewed since it was proclaimed.
29. The Industrial Hemp Regulations 2004, made under the Act, prescribe requirements in respect to the register of licences and associated fees and charges.

Licensing

30. The licence application process is designed to meet the legislative requirements and intent of the Act by ensuring that persons or partnerships engaged in the industry are fit and proper to participate in the industry, have the requisite skills, sufficient material, human and financial resources and have premises suitable for undertaking activities authorised under the licence.
31. The information sought as part of the application process is to determine capacity to conduct activities licensed under the Act and avoid undue financial or other pressure that may negatively influence compliance with the Act and encourage substitution or inclusion of illicit cannabis in low THC crops.
32. Applicants must also consider other State and Commonwealth legislation to ensure that activities proposed in an application to cultivate, harvest or process industrial hemp are correctly licensed. Relevant legislation includes the MDA, the *Medicines and Poisons Act 2014 (WA)*, the *Narcotic Drugs Act 1967 (Cth)* and the Poisons Standard.

Industrial Hemp Products and Industry Development

33. As identified above, THC and CBD are the two main active ingredients derived from cannabis that are believed to have therapeutic benefits including use in medicinal cannabis.
34. Nutraceuticals are products which, other than nutrition, are also used as medicine (for example, herbal products, dietary supplements, specific diets and processed foods).
35. Emerging market sectors include nutraceuticals, personal care and cosmetics, food and beverages, and medicinal products, expanding into areas containing cannabis extracts, terpenes and CBD oils are increasingly blurring the lines between industrial uses, natural therapies and medicinal uses (including therapeutic use).
36. Industrial hemp has been identified as a high-yielding, multi-purpose crop and a potential alternative summer forage for ruminants. DPIRD, the ChemCentre and Charles Sturt University, with funding from AgriFutures Australia, are undertaking a research project to investigate the residual THC in sheep fed a feedstock including percentages of industrial hemp. This research will inform FSANZ consideration of THC residues in animal products.
37. The Act does not allow for the processing of low THC hemp for the purposes of medicinal cannabis or cannabinoid products from the leaves and flowers of the hemp plant and any changes in WA legislation would need to be consistent with Federal law outlined at the beginning of the submission.
38. A number of industrial hemp growers and producers believe that there needs to be reform in reducing the restrictions on the use of low THC hemp for human food, nutraceuticals and stock feed. There is merit in considering the benefit of doing this and reviewing whether there is a case for seeing further changes to the Poison Act and the FANZ Standards.