

Western Australia

## **Industrial Hemp Act 2004**

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As at 12 Mar 2004

No. 1 of 2004

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# Industrial Hemp Act 2004

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**Defined Terms**







Western Australia

## Industrial Hemp Act 2004

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No. 1 of 2004

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An Act to —

- provide for the licensing of persons and partnerships to cultivate, harvest or process industrial hemp;
  - amend the *Misuse of Drugs Act 1981*; and
  - amend the *Poisons Act 1964*,
- and for related purposes.

[Assented to 12 March 2004]

The Parliament of Western Australia enacts as follows:



## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Industrial Hemp Act 2004*.

**2. Commencement**

This Act comes into operation on a day fixed by proclamation.

**3. Terms used in this Act**

(1) In this Act, unless the contrary intention appears —

“**application**” means an application made under section 5;

“**approved**” means approved by the Registrar;

“**approved analyst**” has the meaning given to that term in section 3(1) of the *Misuse of Drugs Act 1981*;

“**approved botanist**” has the meaning given to that term in section 3(1) of the *Misuse of Drugs Act 1981*;

“**authorised activity**”, in relation to a licence, means an activity authorised by the licence;

“**authorised premises**”, in relation to a licence, means the premises described in the licence under section 14;

“**cannabis**” means plant of the genus *Cannabis* (by whatever name designated) or part of that plant;

“**Commissioner**” means the Commissioner of Police appointed under the *Police Act 1892*;

“**Department**” means the department of the Public Service principally assisting the Minister in the administration of this Act;

“**external serious drug offence**” has the meaning given to that term in section 32A(3) of the *Misuse of Drugs Act 1981*;

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



**“industrial hemp seed”** means seed that is certified in an approved manner as —

- (a) having been produced from industrial hemp; or
- (b) producing, when cultivated, industrial hemp;

**“inspector”** means —

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

**“licence”** means a licence issued and in force under this Act;

**“licensee”** means the holder of a licence;

**“plant”** includes seed and any other part of a plant;

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

**“process”** means to treat by mechanical, chemical or other artificial means but does not include harvesting;

**“Registrar”** means the person who for the time being holds, or acts in, the position referred to in section 45;

**“serious drug offence”** has the meaning given to that term in section 32A(3) of the *Misuse of Drugs Act 1981*.

- (2) If a licence is granted to 2 or more persons under section 10, references in this Act to a licence holder or licensee are to those persons jointly, unless a contrary intention appears.
- (3) References in provisions of this Act that create offences to a licence holder or licensee include a partnership to which a licence has been issued or transferred and the provisions apply to a partnership as if the partnership were a person, but any offence against a provision of this Act that would otherwise be an offence by the partnership is to be taken to have been committed by each of the partners.



## **Part 2 — Licensing**

### **Division 1 — Licence required to cultivate, harvest or process industrial hemp**

#### **4. Licensing requirement**

A person must not —

- (a) cultivate industrial hemp;
- (b) harvest industrial hemp; or
- (c) process industrial hemp,

except under and in accordance with a licence.

Penalty: \$10 000.

### **Division 2 — Application for and grant of a licence or a renewal or transfer of a licence**

#### **5. Applications**

- (1) This section applies to all applications to the Registrar for —
  - (a) a licence authorising the person or partnership —
    - (i) to cultivate industrial hemp;
    - (ii) to harvest industrial hemp;
    - (iii) to process industrial hemp; or
    - (iv) to do one or more of those things;
  - (b) the renewal of a licence;
  - (c) the transfer of a licence;
  - (d) a licence to be amended under section 23; and
  - (e) approval of an inclusion under section 24 or 25.
- (2) An application is to be —
  - (a) made in an approved form;
  - (b) accompanied by the prescribed fee; and



(c) supported by such other information as may be prescribed by regulations.

(3) If an application does not comply with subsection (2) the Registrar may decline to deal with the application and advise the applicant accordingly.

**6. Investigations and inquiries relating to applications**

(1) Subject to section 5(3), after receiving an application the Registrar is to carry out the investigations that the Registrar considers necessary to determine the application in accordance with section 8, 10, 12, 17, 21, 23, 24 or 25, as the case requires.

(2) Without limiting subsection (1), the Registrar may —

(a) refer a copy of an application, together with any information provided under section 5(2)(c), to the Commissioner; and

(b) request the Commissioner to inquire into and report to the Registrar on matters relating to the application.

(3) The Commissioner or a person to whom the duty has been delegated under section 47 is to comply with a request under subsection (2) within 30 days of receiving the request.

(4) The Registrar may, in a particular case, extend the period referred to in subsection (3).

**7. Application for licence by individual**

An application for a licence may be made to the Registrar by an individual.

**8. Grant of licence to an individual**

(1) After considering the application and the results of any investigation or inquiry under section 6, an application made under section 7 may be refused by the Registrar in accordance with subsection (3).



- (2) Subject to subsection (1), the Registrar must grant a licence if the applicant satisfies him or her that the applicant —
- (a) has reached 18 years of age;
  - (b) is a person of good character and repute;
  - (c) is a fit and proper person to be involved in an activity to be authorised by the licence;
  - (d) has sufficient material, human and financial resources to carry on any activity to be authorised by the licence; and
  - (e) has such qualifications as may be prescribed by regulations.
- (3) The Registrar must refuse to grant a licence under this section if —
- (a) the applicant has been found guilty of an external serious drug offence or a serious drug offence during the period of 10 years ending on the day on which the application was made;
  - (b) the applicant has an association with a person who —
    - (i) is not of good character and repute; or
    - (ii) has been found guilty of an external serious drug offence or a serious drug offence during the period of 10 years ending on the day on which the application was made;
- or
- (c) the means by which, the manner in which or the premises at which the applicant proposes to cultivate, harvest or process industrial hemp are not suitable for the purpose of carrying out that activity.

## **9. Application for a licence by partnership**

An application for a licence may be made jointly to the Registrar by the 2 or more persons who together constitute a partnership.



**10. Grant of licence to a partnership**

- (1) In this section —  
    **“relevant person”** means an individual —
- (a) who is a member of the partnership; or
  - (b) who is concerned in the management or conduct of a body corporate that is a member of the partnership.
- (2) After considering the application and the results of any investigation or inquiry under section 6, an application made under section 9 may be refused by the Registrar in accordance with subsection (4).
- (3) Subject to subsection (2), the Registrar must grant a licence if the applicant satisfies him or her that —
- (a) each relevant person —
    - (i) has reached 18 years of age;
    - (ii) is a person of good character and repute;
    - (iii) is a fit and proper person to be concerned in the management or the conduct of an activity to be authorised by the licence; and
    - (iv) has such qualifications as may be prescribed by regulations;and
  - (b) the persons who constitute the partnership have sufficient material, human and financial resources to carry on any activity to be authorised by the licence.
- (4) The Registrar must refuse to grant a licence under this section if —
- (a) a relevant person has been found guilty of an external serious drug offence or a serious drug offence during the period of 10 years ending on the day on which the application was made;



- (b) a relevant person has an association with a person who —
  - (i) is not of good character and repute; or
  - (ii) has been found guilty of an external serious drug offence or a serious drug offence during the period of 10 years ending on the day on which the application was made;
- or
- (c) the means by which, the manner in which or the premises at which the applicant proposes to cultivate, harvest or process industrial hemp are not suitable for the purpose of carrying out that activity.

**11. Application for licence by a body corporate**

An application for a licence may be made to the Registrar by a body corporate.

**12. Grant of licence to a body corporate**

- (1) In this section —  
“**relevant person**” means an individual who is concerned in the management or conduct of the body corporate.
- (2) After considering the application and the results of any investigation or inquiry under section 6, an application made under section 11 may be refused by the Registrar in accordance with subsection (4).
- (3) Subject to subsection (2), the Registrar must grant a licence if the applicant satisfies him or her that —
  - (a) each relevant person —
    - (i) has reached 18 years of age;
    - (ii) is a person of good character and repute;



- (iii) is a fit and proper person to be concerned in the management or the conduct of an activity to be authorised by the licence; and
    - (iv) has such qualifications as may be prescribed by regulations;
  - and
  - (b) the body corporate has sufficient material, human and financial resources to carry on any activity to be authorised by the licence.
- (4) The Registrar must refuse to grant a licence under this section if —
- (a) a relevant person has been found guilty of an external serious drug offence or a serious drug offence during the period of 10 years ending on the day on which the application was made;
  - (b) a relevant person has an association with a person who —
    - (i) is not of good character and repute; or
    - (ii) has been found guilty of an external serious drug offence or a serious drug offence during the period of 10 years ending on the day on which the application was made;
- or
- (c) the means by which, the manner in which or the premises at which the applicant proposes to cultivate, harvest or process industrial hemp are not suitable for the purpose of carrying out that activity.

### **13. Notice of refusal of application**

The Registrar is to give an applicant written notice of any refusal of an application under this Act.



**14. Issue of licence**

- (1) If the Registrar decides to issue a licence, the Registrar is to issue to the applicant a licence in an approved form.
- (2) The licence is to describe the premises at or on which an authorised activity may be carried out.

**15. Duration of licence**

- (1) Subject to this Act, a licence continues in force for the period specified in the licence.
- (2) The period specified in a licence cannot exceed 3 years.

**16. Application for renewal of licence**

- (1) A licensee may apply to the Registrar for a renewal of the licence.
- (2) An application for renewal must be made not later than 56 days before the day on which the licence is due to expire.

**17. Grounds for refusing to renew a licence**

- (1) The Registrar may refuse to renew a licence if there is any ground on which the Registrar could refuse to grant the licence under section 8, 10 or 12.
- (2) The Registrar cannot refuse to renew a licence as mentioned in subsection (1) unless he or she has —
  - (a) conducted an investigation under section 6; and
  - (b) given the licensee an opportunity to show cause why the renewal should not be refused.

**18. Conditions**

- (1) A licence issued, renewed or transferred by the Registrar is subject to such conditions as may by regulations be prescribed from time to time.



- (2) The Registrar may on the issue, renewal or transfer of a licence make the licence subject to any other conditions that the Registrar reasonably requires and specifies in the licence or a written notice given to the licensee or transferee.
- (3) Without limiting subsections (1) and (2), the conditions prescribed by regulations may include conditions about —
  - (a) the authorised premises, including the implementation and maintenance of appropriate security measures at those premises;
  - (b) the keeping of records and other documents;
  - (c) the provision of information, records or other documents to the Registrar in respect of —
    - (i) the activities carried out under the licence; or
    - (ii) any other matter that is prescribed;
  - (d) the harvesting and disposal of crops and the processing and disposal of harvested material and crop residue; and
  - (e) the inspection, supervision and surveillance of plants, crops and harvested material by inspectors.

## **19. Amendment of licence**

- (1) The Registrar may amend a licence by —
    - (a) amending or cancelling a condition of the licence;
    - (b) imposing a new condition on the licence;
    - (c) changing the description of the authorised premises;
    - (d) correcting in the licence —
      - (i) a clerical mistake or unintentional error or omission; or
      - (ii) the misdescription of any person, activity or premises;
- and



- (e) subject to section 15(2), extending the period of time for which a licence is in force.
- (2) A licence may be amended on application by the licence holder or on the initiative of the Registrar.
- (3) The Registrar is to give the licence holder written notice of any amendment of the licence.

**20. Return of licence no longer in force**

If a licence —

- (a) has expired and has not been renewed; or
- (b) has been cancelled or ceases to have effect,

the person who has the licence must, as soon as practicable after the licence expired, was cancelled or ceased to have effect, return the licence to the Registrar.

Penalty: \$1 500.

**21. Transfer of licence**

- (1) A licence holder and another person (the “**transferee**”) may jointly apply to the Registrar for the transfer of the licence from the holder to the transferee.
- (2) Sections 8, 10 and 12 apply in relation to an application under subsection (1) as if references in those sections to —
  - (a) an application were references to an application under subsection (1);
  - (b) the grant or refusal of a licence were references to the transfer of or refusal to transfer a licence; and
  - (c) the applicant were references to the transferee.
- (3) After considering an application under subsection (1), the results of any investigation or inquiry under section 6, and the matters referred to in section 8, 10 or 12 (as applied by subsection (2)), the Registrar is to —



- (a) transfer the licence; or
- (b) refuse to transfer the licence.

### **Division 3 — Changes in partnership or body corporate**

#### **22. Loss of member etc., notice to be given to Registrar**

- (1) This section applies if, because of the death or resignation of the person or otherwise, one of the following events occurs —
  - (a) a person ceases to be a member of a partnership that holds a licence;
  - (b) a person ceases to be a person who is concerned in the management or conduct of a body corporate that is a member of a partnership that holds a licence;
  - (c) a person ceases to be a person who is concerned in the management or conduct of a body corporate that holds a licence.
- (2) The licensee concerned must, within 14 days after the event occurs, notify the Registrar in writing of the event.  
Penalty: \$2 000.

#### **23. New member in licensed partnership**

- (1) This section applies if —
  - (a) a licence is held by a partnership; and
  - (b) it is proposed to include a new member in the partnership, irrespective of whether an increase in the number of members is involved.
- (2) The licensee may apply to the Registrar for the licence to be amended by including the proposed new member of the partnership as one of the licensees.
- (3) The application must be made not less than 28 days before the inclusion is to occur.



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- (4) The Registrar may refuse to grant an application under subsection (2) only if he or she is satisfied that, if an application were made under section 9 by the persons who are proposed to be the holders of the licence as amended, a licence would not be granted to them.
- (5) Subject to subsection (4), the Registrar must —
  - (a) grant an application that is made under subsections (2) and (3); and
  - (b) specify a day on which the amendment is to take effect.

**24. New person in management of corporate member of licensed partnership**

- (1) This section applies if —
  - (a) a licence is held by a partnership;
  - (b) one of the members of the partnership is a body corporate; and
  - (c) it is proposed to include a new person in the persons who are concerned in the management or conduct of that body corporate, irrespective of whether an increase in the number of such persons is involved.
- (2) The licensee may apply to the Registrar for the licence to be amended by including a new person in the persons who are concerned in the management or conduct of that body corporate.
- (3) The application must be made not less than 28 days before the inclusion is to occur.
- (4) The Registrar must grant an application unless he or she is satisfied that a licence would not be granted if —
  - (a) an application for a licence were made under section 9;
  - (b) the body corporate were one of the applicants; and
  - (c) at the time of the application the persons concerned in the management or conduct of the body corporate were



the persons who would be so concerned if the proposed inclusion were approved.

**25. New person in management of licensed body corporate**

- (1) This section applies if —
  - (a) a licence is held by a body corporate; and
  - (b) it is proposed to include a new person in the persons who are concerned in the management or conduct of the body corporate, irrespective of whether an increase in the number of such persons is involved.
- (2) The licensee may apply to the Registrar for the licence to be amended by including a new person in the persons who are concerned in the management or conduct of the body corporate.
- (3) The application must be made not less than 28 days before the inclusion is to occur.
- (4) The Registrar must grant an application unless he or she is satisfied that a licence would not be granted if —
  - (a) an application for a licence were made under section 11; and
  - (b) at the time of that application the persons concerned in the management or conduct of the body corporate were the persons who would be so concerned if the proposed inclusion were approved.

**26. Licence ceases if changes not approved**

- (1) This section applies if the Registrar refuses to grant an application under section 23(4), 24(4) or 25(4).
- (2) The licence ceases to have effect 14 days after the licensee is notified of the refusal unless, within that period —
  - (a) the licensee notifies the Registrar in writing that the application to which the refusal relates is withdrawn; or



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- (b) the licensee makes a further application under section 23, 24 or 25, as the case may be, that is granted by the Registrar.
- (3) The Registrar may by notice in writing to the licensee extend the period referred to in subsection (2).

**27. Offence to make management changes without applying for approval**

- (1) If a licence is held by a partnership, the licensee commits an offence if —
  - (a) a new member is included in the partnership without an application being made under section 23; or
  - (b) a new person is included in the persons who are concerned in the management or conduct of a body corporate that is a member of the partnership without an application being made under section 24.

Penalty: \$2 000.

- (2) If a licence is held by a body corporate, the licensee commits an offence if a new person is included in the persons who are concerned in the management or conduct of the body corporate without an application being made under section 25.

Penalty: \$2 000.



## **Part 3 — Provisions applicable to licences**

### **28. False or misleading information**

- (1) A person must not in relation to an application to which this section applies give information orally or in writing that the person knows to be —

- (a) false or misleading in a material particular; or
- (b) likely to deceive in a material way.

Penalty: \$5 000.

- (2) This section applies to —

- (a) an application for a licence;
- (b) an application for the renewal of a licence; and
- (c) an application under section 21, 23, 24 or 25.

### **29. Contravention of conditions of a licence**

- (1) A licence holder who contravenes a condition of the licence commits an offence.

Penalty: \$5 000.

- (2) Despite section 11 of *The Criminal Code*, a person convicted of an offence under subsection (1) may be punished for the offence even if the condition contravened was amended or cancelled after the offence was committed.

### **30. Registers**

- (1) The Registrar must keep a register for the purposes of Part 2 recording such particulars and matters relating to licences as are prescribed.
- (2) The regulations may provide for the form and manner in which a register is to be kept, including for a register to be in the form of information stored on a computer.



- (3) Subject to the regulations, a register may be kept in a form and manner determined by the Registrar.

**31. Inspection of register**

The Registrar must allow any person, on payment of the prescribed fee —

- (a) to inspect a register; and
- (b) to take copies of, or extracts from, any part of it.

**32. Registrar may certify as to matters in the register**

- (1) The Registrar may, on the application of a person, issue to the person a written statement certifying any of the following —
  - (a) that a person specified in the statement is or was, or is not or was not, the holder of a licence;
  - (b) that premises specified in the statement are or were, or are not or were not, premises at which an authorised activity may be carried out;
  - (c) the conditions to which a licence is subject;
  - (d) any other matter appearing in the register.
- (2) A statement under subsection (1) may specify the day or days or period on or during which anything referred to in subsection (1) applied.
- (3) In all courts and proceedings a statement under this section is evidence of any matter that appears in it.

**33. Surrender of licence**

- (1) A licensee may surrender the licence by —
  - (a) giving the Registrar notice in writing to that effect; and
  - (b) returning the licence to him or her.
- (2) If a licence is surrendered, the Registrar is to refund to the former licensee so much (if any) of the fee last paid in respect of



the licence as the Registrar, on application made by the former licensee, determines to be appropriate.

**34. Certified copy of licence**

- (1) The Registrar may, on payment of the prescribed fee, issue a certified copy of a licence.
- (2) In all courts and proceedings a certified copy so issued is evidence of the contents of the licence.
- (3) A document that purports to be a certified copy of a licence issued by the Registrar is to be taken to be such a copy unless the contrary is proved.

**35. Production of licence**

- (1) An inspector may require a licensee to produce his or her licence to the inspector.
- (2) A request under subsection (1) may only be made at premises at or on which an authorised activity may be carried out.
- (3) Any licensee to whom a requirement under subsection (1) is addressed must comply with the requirement unless he or she has reasonable excuse for not doing so.

Penalty: \$1 500.



## **Part 4 — Appeals**

### **36. Appeals**

- (1) This section applies to a decision of the Registrar —
  - (a) to refuse to issue a licence;
  - (b) to refuse to renew a licence;
  - (c) to refuse to transfer a licence;
  - (d) to suspend or cancel a licence; or
  - (e) to amend a licence.
- (2) A person who is aggrieved by a decision to which this section applies may, within 30 days after receiving notice of the decision, appeal to the Minister against the decision by giving the Minister a notice of appeal in accordance with subsection (7).
- (3) A person who has a right under subsection (2) to appeal to the Minister against a decision may request the Registrar to provide the person with a written statement of the reasons for the decision.
- (4) A request under subsection (3) has to be made in writing.
- (5) The Registrar on receiving a request under subsection (3) is to comply with the request as soon as practicable, and in any case within the period of 14 days after the request is made.
- (6) Subject to subsection (11), the Registrar's written statement has to contain —
  - (a) the reasons for the decision; and
  - (b) any findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based.



- (7) The notice of appeal is to be in writing and set out the grounds of appeal and any representations that the appellant wishes to make in support of the appeal.
- (8) The Minister may determine the appeal by confirming, varying or reversing the decision of the Registrar.
- (9) The Minister's determination is final and the Registrar is to give effect to the determination.
- (10) The Minister is to cause notice of his or her determination, together with reasons for it, to be given to the appellant within 7 days after it is made.
- (11) The Minister may order that a report or the contents of or source of information in a report provided by the Commissioner to the Registrar under section 6 not be disclosed to the aggrieved person, the aggrieved person's representative or any other person if, on an application by the Registrar or the Commissioner, the Minister is satisfied that the disclosure might disclose exempt matter within the meaning given to that term in the Glossary at the end of the *Freedom of Information Act 1992*.
- (12) An application under subsection (11) may be made without notice to the aggrieved person and may be determined in the absence of the aggrieved person.
- (13) The reasons for the decision of the Minister on an appeal under this section must not disclose the content or source of information in a report that is the subject of an order made under subsection (11).



## **Part 5 — Enforcement**

### **37.        Suspension or cancellation of licence**

- (1) The Registrar may suspend or cancel a licence if —
  - (a) the licence holder has requested its suspension or cancellation;
  - (b) the Registrar is satisfied that there has been a contravention of a condition of the licence;
  - (c) the Registrar is satisfied that the licence holder has committed an offence against this Act or the *Misuse of Drugs Act 1981*;
  - (d) the Registrar is satisfied that there is any ground on which the Registrar could refuse to grant a licence under section 8, 10 or 12;
  - (e) the licensee has not paid a fee required to be paid under this Act;
  - (f) information contained in or provided in connection with —
    - (i) the application for the licence; or
    - (ii) any application for the transfer or renewal of the licence,was false or misleading in a material respect; or
  - (g) the licence holder no longer carries on the authorised activity or activities to which the licence relates.
- (2) The Registrar is to give the licence holder written notice of any suspension or cancellation of the licence.
- (3) A licence may be suspended for —
  - (a) a specified period; or
  - (b) until the happening of a specified event.
- (4) In subsection (3) —



**“specified”** means specified in the notice under subsection (2).

**38. Inspectors**

- (1) The Minister may, in writing, appoint a person as an inspector for the purposes of this Act.
- (2) The Registrar is to issue to each inspector appointed under subsection (1) an identity card in a form approved by the Registrar.
- (3) The Minister may revoke an appointment under subsection (1) at any time.
- (4) An inspector appointed under subsection (1) must produce his or her identity card whenever requested to do so by a person in respect of whom the inspector has exercised, or is about to exercise, a power under this Part.
- (5) Production of an identity card is evidence in any court of the appointment of the inspector to whom the identity card relates.
- (6) A person who ceases to be an inspector must, as soon as practicable after so ceasing, return his or her identity card to the Registrar.  
Penalty: \$500.

**39. General powers**

- (1) For the purposes of investigating whether this Act or a licence is being contravened, an inspector may, with such assistance as the inspector thinks necessary, at any reasonable time —
  - (a) enter and inspect any place, other than premises used as a residence, occupied by any person who is a licence holder;
  - (b) inspect, count, examine or mark for identification any plant in the place;
  - (c) require a person to produce any document that is or may be relevant to the investigation or contravention;



- (d) inspect any document produced, make copies of it or take extracts from it, and remove it for as long as is reasonably necessary to make copies or extracts;
  - (e) take or remove for analysis or examination samples of or from, or specimens of, any plant to determine —
    - (i) the tetrahydrocannabinol content of the plant;
    - (ii) the variety or cultivar and the genetic provenance of the plant; or
    - (iii) whether the plant has been cultivated in accordance with a licence or that its possession is in accordance with a licence;
- or
- (f) submit any sample or specimen taken or removed under paragraph (e) to an approved analyst or an approved botanist for analysis or examination.
- (2) An inspector appointed under section 38(1) may not exercise any powers under this Part if the inspector fails, on request, to produce his or her identity card for inspection by a person in respect of whom the inspector is about to exercise a power under this Part.

**40. Powers of approved analyst or botanist**

An approved analyst or botanist may for the purposes of this Act analyse or examine any sample or specimen taken or removed under this Act.

**41. Requirement to notify Commissioner**

If the Registrar or an inspector, other than a police officer, suspects that the cultivation or possession of a plant is not authorised under this Act, the Registrar or inspector is to notify the Commissioner of that suspicion.



**42. Inspector may possess cannabis for purposes of this Act**

An inspector is authorised to have cannabis in his or her possession in the exercise or performance of any power, function or duty conferred on the inspector by this Act.

**43. Inspector's powers additional to other powers**

The powers of an inspector under this Part are in addition to, and do not limit, any powers that the inspector has under any other written law.



## **Part 6 — Miscellaneous**

### **44. Term used in this Part**

In this Part, unless the contrary appears —

**“departmental officer”** means a public service officer (as defined in section 3(1) of the *Public Sector Management Act 1994*) in the department that principally assists the Minister with the administration of this Act.

### **45. Registrar**

The Minister, by notice in the *Gazette*, is to designate a departmental officer as the Registrar for the purposes of this Act.

### **46. Delegation by Registrar**

- (1) The Registrar may delegate to a departmental officer any power or duty of the Registrar under another provision of this Act.
- (2) The delegation must be in writing signed by the Registrar.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Registrar to perform a function through an officer or agent.

### **47. Delegation by the Commissioner**

- (1) The Commissioner may delegate to a police officer who has the rank of Superintendent or a higher rank the duty of the Commissioner under section 6 to inquire into and report to the Registrar on matters relating to applications.



- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom the duty is delegated under this section cannot delegate that duty.
- (4) A person performing the duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Commissioner to perform the duty through an officer or agent.

**48. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may be made that —
  - (a) prescribe fees for applications, renewals and transfers under this Act;
  - (b) provide for the imposition and recovery of fees and charges in respect of —
    - (i) the inspection, supervision, surveillance and sampling by inspectors of plants cultivated or possessed under a licence for the purposes of ensuring compliance with the conditions of the licence; and
    - (ii) the analysis or examination of samples or specimens of plants taken under this Act;
  - (c) prescribe the amount of any fee or charge referred to in paragraph (b) or authorise the determination of that amount by the Registrar;



- (d) provide for the establishment and maintenance of a register of —
    - (i) crops cultivated under a licence;
    - (ii) premises where industrial hemp is stored or processed; and
    - (iii) premises where industrial hemp seed is stored;
  - (e) provide for the procedure to be followed in and in relation to the taking, packaging and labelling of samples of plants taken under this Act;
  - (f) provide for the procedure to be followed in and in relation to —
    - (i) any analysis or examination under this Act; and
    - (ii) the admissibility and receipt of evidence relating to any thing obtained or received for an analysis or examination referred to in subparagraph (i);
  - (g) provide for the manner in which any thing is to be conveyed to and analysed or examined by an approved analyst, approved botanist or other expert;
  - (h) provide for the circumstances and manner in which a person may, on payment of the prescribed fee, be given information in the register; and
  - (i) prescribe measures to be taken by a licence holder to ensure the security of industrial hemp seed and crops of industrial hemp or harvested plants cultivated in accordance with a licence.
- (3) If the regulations authorise a determination of the kind referred to in subsection (2)(c) the amount is to be determined by reference to the reasonable costs of providing the service to which the fee or charge relates.



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

**49. The Act amended**

The amendments in this Part are to the *Misuse of Drugs Act 1981*\*.

[\* *Reprinted as at 11 January 2002.*

*For subsequent amendments see Act No. 9 of 2003.]*

**50. Section 3 amended**

Section 3(1) is amended by inserting the following definitions in the appropriate alphabetical positions —

“

**“industrial hemp”** has the meaning given to that term in section 3(1) of the *Industrial Hemp Act 2004*;

**“industrial hemp seed”** has the meaning given to that term in section 3(1) of the *Industrial Hemp Act 2004*;

**“processed industrial hemp”** means any product made from industrial hemp or industrial hemp seed that —

- (a) does not contain more than 0.35% of tetrahydrocannabinol;
- (b) does not contain viable whole cannabis seed; and
- (c) is not manufactured in a form to be inhaled;

”.

**51. Section 4 amended**

- (1) Section 4(1) is amended by deleting “The” and inserting instead —

“ Subject to subsection (4), the ”.



- (2) After section 4(3) the following subsection is inserted —

“

- (4) This Act does not apply to processed industrial hemp.

”.

**52. Section 6 amended**

Section 6(2)(a) is amended by inserting after “*Poisons Act 1964*” —

“ or the *Industrial Hemp Act 2004* ”.

**53. Section 7 amended**

Section 7(2) is amended by inserting after “*Poisons Act 1964*” —

“ or the *Industrial Hemp Act 2004* ”.

**54. Section 8A inserted**

After section 8 the following section is inserted in Part II —

“

**8A. Defences relating to industrial hemp or industrial hemp seed**

- (1) In proceedings against —

- (a) a person who may process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
- (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against section 5(1)(a)(i) involving the manufacture or preparation of a prohibited drug or prohibited plant for use, it is a defence for the person to prove that the prohibited drug or prohibited plant is industrial hemp or industrial hemp seed.



- (2) In proceedings against —
- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
  - (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against section 5(1)(a)(ii) involving the manufacture, preparation, sale, supply or use of a prohibited drug or prohibited plant, it is a defence for the person to prove that the prohibited drug or prohibited plant is industrial hemp or industrial hemp seed.

- (3) In proceedings against —
- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
  - (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against section 5(1)(c) involving being knowingly concerned in the management of any premises used for a purpose referred to in section 5(1)(a), it is a defence for the person to prove that the prohibited drug or prohibited plant is industrial hemp or industrial hemp seed.

- (4) In proceedings against —
- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
  - (b) an employee, agent or contractor of a person referred to in paragraph (a),



for an offence against section 6(1)(a), it is a defence for the person to prove that the prohibited drug is industrial hemp or industrial hemp seed.

- (5) In proceedings against —
- (a) a person who may process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
  - (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against section 6(1)(b) involving manufacturing or preparing a prohibited drug, it is a defence for the person to prove that the prohibited drug is industrial hemp or industrial hemp seed.

- (6) In proceedings against —
- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
  - (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against section 6(1)(c) involving selling or supplying, or offering to sell or supply a prohibited drug to another, it is a defence for the person to prove that the prohibited drug is industrial hemp or industrial hemp seed.

- (7) In proceedings against —
- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
  - (b) an employee, agent or contractor of a person referred to in paragraph (a),



for an offence against section 6(2) involving possession or use of a prohibited drug, it is a defence for the person to prove that the prohibited drug is industrial hemp or industrial hemp seed.

(8) In proceedings against —

- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
- (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against —

- (c) section 7(1)(a) involving possessing or cultivating a prohibited plant with intent to sell or supply the prohibited plant or any prohibited drug obtainable therefrom to another; or
- (d) section 7(1)(b) involving selling or supplying, or offering to sell or supply, a prohibited plant to another,

it is a defence for the person to prove that the prohibited plant is industrial hemp or industrial hemp seed.

(9) In proceedings against —

- (a) a person who may cultivate, harvest or process industrial hemp under a licence granted under the *Industrial Hemp Act 2004*; or
- (b) an employee, agent or contractor of a person referred to in paragraph (a),

for an offence against section 7(2) involving having in his or her possession or cultivating a prohibited plant, it is a defence for the person to prove that the prohibited plant is industrial hemp or industrial hemp seed.

”.



**Part 8 — Consequential amendment to the  
*Poisons Act 1964***

**55. The Act amended**

- (1) The amendment in this Part is to the *Poisons Act 1964*\*.

[\* Reprinted as at 22 January 1999.

*For subsequent amendments see Western Australian  
Legislation Information Tables for 2002, Table 1, p. 300 and  
Act No. 9 of 2003 and Gazette 10 October 2003 p. 4403-4  
and p. 4404-5.]*

- (2) After section 7 the following section is inserted in Part I —

“

**7A. Application: industrial hemp, industrial hemp seed  
and processed industrial hemp**

This Act does not apply to —

- (a) industrial hemp or industrial hemp seed as  
defined in section 3(1) of the *Industrial Hemp  
Act 2004*; or
- (b) processed industrial hemp as defined in  
section 3(1) of the *Misuse of Drugs Act 1981*.

”.

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**Defined Terms**

## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

Defined Term	Provision(s)
application.....	3(1)
approved .....	3(1)
approved analyst .....	3(1)
approved botanist .....	3(1)
authorised activity.....	3(1)
authorised premises.....	3(1)
cannabis .....	3(1)
Commissioner .....	3(1)
Department.....	3(1)
departmental officer .....	44
external serious drug offence .....	3(1)
industrial hemp .....	3(1), 50
industrial hemp seed .....	3(1), 50
inspector.....	3(1)
licence .....	3(1)
licensee .....	3(1)
plant .....	3(1)
premises .....	3(1)
process .....	3(1)
processed industrial hemp.....	50
Registrar.....	3(1)
relevant person.....	10(1), 12(1)
serious drug offence .....	3(1)
specified .....	37(4)
transferee.....	21(1)