

# Drugs, Poisons and Controlled Substances (Amendment) Bill

## EXPLANATORY MEMORANDUM

- Clause 1 amends the **Drugs, Poisons and Controlled Substances Act 1981** ("the Principal Act") to make provision for the issuing of authorities to grow and process low-THC cannabis for commercial and research purposes relating to non-therapeutic use and to exempt certain processed cannabis products from the operation of the Principal Act.
- Clause 2 except for sections 5 and 6, this Act comes into effect on the day it receives the Royal Assent. Sections 5 and 6 come into operation on a day or days to be proclaimed or, if not proclaimed sooner, on 30 November 1998.
- Clause 3 the **Drugs, Poisons and Controlled Substances Act 1981** is called the Principal Act.
- Clause 4 inserts after section 4 of the Principal Act a new section 4A to exempt from the operation of the Principal Act certain processed products made from cannabis or cannabis seeds and which do not pose a drug risk. The terms "cannabis" and "processed" are defined to clarify the nature of exempted products.
- Clause 5 inserts after Part IV of the Principal Act a new Part IVA to provide for authorities for low-THC cannabis.

### **Division 1 of new Part IVA—Authorities for low-THC cannabis**

Section 61 defines various terms used in Part IVA, including the Secretary to the Department of Natural Resources and Environment ("the Secretary"), who is granted powers to investigate and determine applications for authorities, and terms associated with determining whether an associate of an applicant is a suitable person to be involved in or associated with the cultivation, processing, sale or supply of low-THC cannabis. It also establishes that a member of the police force is an inspector for the purposes of Part IVA of the Principal Act.

Section 62 makes provision for a person to apply to the Secretary for an authority authorising the person to undertake specified activities related to cannabis seed which has been harvested from low-THC cannabis or to the cultivation or processing of low-THC cannabis. Provision is made for the

application to be made in writing and be accompanied by evidence to demonstrate that the applicant is a fit and proper person and intends to undertake bona fide research or commercial activity related to non-therapeutic use of cannabis. An applicant must also provide other information which the Secretary reasonably requires in order to determine the application.

Section 63 provides that the Secretary must carry out investigations to properly determine the application and may refer the application and supporting documentation to the Chief Commissioner of Police for investigation and report.

Section 64 provides that an applicant must not be issued with an authority unless the Secretary is satisfied that the applicant or any associate has within 10 years preceding the application not been found guilty of a serious offence, that the applicant and associates are suitable persons to be concerned in the authorised activities, and that the applicant's property or premises are suitable for the authorised activities in relation to location, facilities and proposed security arrangements. This section also sets out factors which the Secretary may consider in determining an application, including the character of the applicant, associates and other persons connected with the business of the applicant and the corporate and financial structure of the business of the applicant.

Section 65 provides that the Secretary must determine the application by issuing or refusing to issue an authority and must notify the applicant of the decision.

Section 66 provides that an authority is issued for a term of up to three years and relates only to the premises or site described in it. It also provides that the authority is subject to various terms of conditions, limitations and restrictions relating to the premises or site, the source of cannabis seed used for sowing, security and surveillance measures, the keeping of records, provision of information to the Secretary, notification to the Secretary of changes in ownership or management of the business of the applicant, the disposal of harvested material and crop residues and requirements for inspections, supervision and surveillance by inspectors.

Section 67 makes provision for applications for the renewal of an authority and for the Secretary, at the Secretary's discretion, to renew the authority for the same period as the previous authority.

Section 68 provides that an authority is not transferable to another person.

Section 69 provides that the Secretary may amend or impose new terms or conditions of authorities by notification in writing to the holder of the authority.

Section 69A provides the Secretary with the power to suspend or cancel an authority if requested by the holder or if the holder has not complied with the terms and conditions of the authority or the Act or regulations, is no longer a fit and proper person to hold an authority, obtained the authority through fraud, misrepresentation or concealment of facts or has ceased to carry on the authorised activities.

Section 69B makes provision for a person to apply to the Administrative Appeals Tribunal for a review of a decision of the Secretary to refuse to issue or renew an authority or to suspend, cancel or amend an authority.

Section 69C establishes an offence and penalty if the holder of an authority fails to comply with the terms and conditions of the authority.

Section 69D exempts activities authorised by an authority from Part 8 of the **Catchment and Land Protection Act 1994** under which cannabis is declared as a State prohibited weed.

## **Division 2 of new Part IVA—Inspection and enforcement**

Section 69E enables the Secretary to authorise any person holding a position under the **Public Sector Management Act 1992** or any other appropriately qualified person to be an inspector for the purposes of Part IVA. Provision is made for the Secretary to determine the terms and conditions of authorisation of inspectors and to revoke the authorisation at any time. Each authorised inspector must be issued with an identification certificate, which must be produced on demand in the course of performing functions under Part IVA. Police officers acting as inspectors must produce on demand written evidence of membership of the police force.

Section 69F sets out the general powers of inspectors. In particular, an inspector has the power at any reasonable time to enter and inspect any place other than a residence to inspect any plant, crop or product; to examine and copy such documents; to take samples of plants, crops or products and submit the samples to a laboratory or place approved by the Secretary for testing to determine the THC content and whether the plants, crops or products have been grown or processed in accordance with the authority.

Section 69G provides that an inspector, if satisfied on reasonable grounds that any plant or crop contravenes Part IVA or an authority, may order the harvest of the plant or crop and treatment of the harvested material. The inspector must provide to the holder of the authority written notification of such an order, stating the reasons for the order.

Section 69H provides that an inspector, if satisfied that any plant, crop or product contravenes Part IVA or an authority, may detain or seize the plant, crop or product and deal with them in accordance with section 69I.

Section 69I sets out procedures to be followed if an inspector detains or seizes plants, crops or products. Provision is made for written notice, stating the reasons for the detention or seizure, to be provided to the holder of the authority and for samples to be taken and sent for testing at a laboratory or place approved by the Secretary. Provision is made for an offence and penalty if a person removes detained or seized plants, crops or products without the written approval of an inspector. This section also sets out procedures to be followed when test results are obtained and provides powers for an inspector to arrange for the harvest, disposal or destruction of plants, crops or products if they prove to be in contravention of Part IVA or the authority.

Section 69J provides for the holder of an authority to appeal to the Secretary within 48 hours of receiving a written order by an inspector to destroy or dispose of plants, crops or products and for the Secretary to determine the appeal within three business days. Provision is also made that nothing in this section limits the power of a police officer to take legal proceedings.

Section 68K provides for offences and penalties if a person hinders or obstructs an inspector or fails to comply with a direction or order of an inspector.

Section 68L authorises inspectors to possess cannabis in the performance of functions and duties under Part IVA of the Act.

### **Division 3 of new Part IVA—Regulations under this Part**

Section 69M makes provision for the making of regulations for fees for the purposes of Part IVA and to authorise and require inspectors to impose fees and charges in relation to a range of inspection, sampling, testing, supervision and surveillance services in connection with Part IVA.

Clause 6 makes minor amendments to the Principal Act as a consequence of the new Part IVA.