

**Legislative Council—No 45**

As introduced and read a first time, 29 July 2015

South Australia

**Controlled Substances (Poppy Cultivation)  
Amendment Bill 2015**

A BILL FOR

An Act to amend the *Controlled Substances Act 1984*.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

5 This Act may be cited as the *Controlled Substances (Poppy Cultivation) Amendment Act 2015*.

#### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

#### 3—Amendment provisions

10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Controlled Substances Act 1984*

### 4—Insertion of Part 4A

After section 30 insert:

## Part 4A—Licences to cultivate alkaloid poppies and process poppy straw

### Division 1—Preliminary

#### 30A—Interpretation

In this Part—

***alkaloid poppy*** means a plant or any part of a plant whether fresh or dried of—

- (a) *Papaver bracteatum* Lindley; or
- (b) *Papaver somniferum* L.;

***alkaloid poppy register*** means the register established under section 30ZZG;

***associate*** has the same meaning given in section 30B;

***Chief Executive*** means the Chief Executive of the Department that is, under the Minister, responsible for the administration of the *Agricultural and Veterinary Chemicals (South Australia) Act 1994*;

***Commonwealth licence to export*** means a licence to export narcotic substances which relates to the export of poppy straw under the *Customs Act 1901* of the Commonwealth;

***Commonwealth licence to manufacture*** means a licence to manufacture narcotic drugs which relates to the manufacturing of opiates from alkaloid poppies under the *Narcotic Drugs Act 1967* of the Commonwealth;

***criminal intelligence*** means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety;

***detention or seizure receipt*** means a receipt given in accordance with section 30ZC or section 30ZI;

***disqualified person*** means—

- (a) a person who is under the age of 17 years unless the person is an apprentice or trainee within the meaning of the *Training and Skills Development Act 2008*; or

(b) a person against whom a finding of guilt in respect of a serious offence was made by a court (whether in or outside South Australia) in the 10 years preceding the date an application is made under this Part; or

5 (c) a person against whom a finding of guilt for an offence under this Act or an offence under a corresponding law of another jurisdiction was made by a court (whether in or outside South Australia) in the 5 years preceding the date an application is made under this Part; or

10 (d) a person who belongs to a prescribed class of persons;

*employee*, in relation to a licensed grower or a licensed processor, includes a person who is—

(a) employed under a contract of employment; or

(b) employed under a training contract; or

15 (c) engaged under any other contract to perform a specified task authorised under a poppy cultivation licence or a poppy processing licence;

20 *employee identification certificate* means a certificate issued to an employee by a licensed grower under section 30J or by a licensed processor under section 30T;

*harvest and destruction order* means an order made under section 30ZM(3);

*inspector* means—

(a) a person authorised under section 30Z; and

25 (b) an inspector under Part IVB of the *Drugs, Poisons and Controlled Substances Act 1981* of Victoria; and

(c) a police officer;

*inspector identification certificate* means a certificate issued to an inspector under section 30ZA;

30 *licence holder* means—

(a) a licensed grower; or

(b) a licensed processor;

*licensed grower* means the holder of a poppy cultivation licence;

*licensed processor* means the holder of a poppy processing licence;

35 *poppy cultivation licence* means a licence issued under section 30F(2);

*poppy processing licence* means a licence issued under section 30P(2);

40 *poppy straw* means the upper parts of an alkaloid poppy, including the stem and capsule, harvested after mowing;

**process**, in relation to poppy straw, means—

- (a) to prepare or treat poppy straw in any manner other than refinement, concentration, extraction or reaction unless the refinement, concentration, extraction or reaction is for chemical analysis for non-therapeutic use; or
- (b) to store poppy straw;

**risk management plan** means a plan that forms part of a poppy cultivation licence or a poppy processing licence;

**seized material** means any alkaloid poppies, poppy straw or material derived from alkaloid poppies or poppy straw seized by an inspector under section 30ZH;

**serious offence** means—

- (a) an indictable offence involving dishonesty, fraud or assault; or
- (b) an indictable offence involving possession, or cultivation of, or trafficking in, a drug of dependence; or
- (c) any other indictable offence under this Act; or
- (d) an indictable offence under the law of another jurisdiction involving—
  - (i) dishonesty, fraud or assault; or
  - (ii) possession, or cultivation of, or trafficking in, a drug of dependence;

**specified premises** means premises to which a licence under this Part applies;

**Tribunal** means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

### 30B—Meaning of *associate*

- (1) For the purposes of this Part, a person who is of or above the age of 18 years is an **associate** of an applicant for a poppy cultivation licence or a poppy processing licence or a licence holder if the person—

- (a) holds any relevant financial interest, or is entitled to exercise any relevant power (whether in right of the person or on behalf of any other person) in the business of the applicant or the licence holder (being the business to which the application or licence relates), and by virtue of that interest or power, is able to exercise a significant influence over or with respect to the management or operation of the business; or

(b) holds any relevant position (whether in right of the person or on behalf of any other person) in the business of the applicant or the licence holder (being the business to which the application or licence relates); or

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(c) is a relative of the applicant or the licence holder; or

(d) is in a position to exercise control or significant influence over the conduct of the applicant or the licence holder.

(2) In subsection (1)—

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**domestic partner** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

**relative** means a person who is—

(a) a spouse or domestic partner; or

(b) a parent; or

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(c) a step-parent; or

(d) a sibling or step-sibling; or

(e) a child, step-child or adopted child;

**relevant financial interest** in relation to a business means—

(a) any share in the capital of the business; or

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(b) any entitlement to receive any income derived from the business;

**relevant position** in relation to the business of an applicant or a licence holder means—

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(a) the position of director, partner, trustee, manager or other executive position or secretary, however that position is designated; and

(b) any other person determined by the Chief Executive to be associated or connected with the ownership, administration or management of the operations or business of the applicant;

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**relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

(a) to participate in any directorial, managerial or executive decision; or

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(b) to elect or appoint any person to any relevant position;

**spouse**—a person is the spouse of another if they are legally married.

**30C—Matters to be considered—fit and proper person**

(1) For the purpose of preventing criminal activity in the cultivation of alkaloid poppies and the processing of poppy straw, the Chief Executive must not issue a licence under this Part to an applicant unless the Chief Executive is satisfied that—

(a) neither the applicant nor any associate of the applicant has been found guilty in respect of a serious offence (whether in or outside South Australia) during the 10 years preceding the date of making the application under this Part; and

(b) the applicant and each associate of the applicant is a suitable person to be concerned in or associated with the cultivation of alkaloid poppies or the processing of poppy straw, as the case requires; and

(c) the applicant's property or premises will be suitable for the cultivation of alkaloid poppies or the processing of poppy straw, as the case requires, in relation to location, facilities and proposed security arrangements; and

(d) the applicant meets the prescribed requirements (if any).

(2) For the purpose of preventing criminal activity in the cultivation of alkaloid poppies and the processing of poppy straw, the Chief Executive must not—

(a) renew a poppy cultivation licence of a licensed grower unless the Chief Executive is satisfied that—

(i) neither the licensed grower nor any associate of the licensed grower has been found guilty in respect of a serious offence (whether in or outside South Australia) during the 3 years preceding the date of making the application for renewal under this Part; and

(ii) the licensed grower and each associate of the licensed grower is a suitable person to be concerned in or associated with the cultivation of alkaloid poppies; and

(iii) the licensed grower's property or premises are suitable for the cultivation of alkaloid poppies, in relation to location, facilities and proposed security arrangements; and

(iv) the licensed grower meets the prescribed requirements (if any); or

(b) renew a poppy processing licence of a licensed processor unless the Chief Executive is satisfied that—



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- (i) neither the licensed processor nor any associate of the licensed processor has been found guilty in respect of a serious offence (whether in or outside South Australia) during the 12 months preceding the date of making the application for renewal under this Part; and
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- (ii) the licensed processor and each associate of the licensed processor is a suitable person to be concerned in or associated with the processing of poppy straw; and
- (iii) the licensed processor's property or premises are suitable for the processing of poppy straw in relation to location, facilities and proposed security arrangements; and
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- (iv) the licensed processor meets the prescribed requirements (if any).
- (3) Without limiting subsection (1) or (2), the Chief Executive may consider whether—
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- (a) the applicant, the licensed grower or the licensed processor and each associate of the applicant, the licensed grower or the licensed processor is of good repute, having regard to character, honesty and integrity; and
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- (b) the applicant, the licensed grower or the licensed processor or any associate of the applicant, the licensed grower or the licensed processor has a history of non-compliance with the Act; and
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- (c) in the case of an application for a licence, the applicant or any associate of the applicant has within the 10 years preceding the date of making the application been found guilty by a court (whether in or outside South Australia) of any offence; and
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- (d) in the case of an application for the renewal of a poppy cultivation licence, the licensed grower or any associate of the licensed grower has within the 3 years preceding the date of making the application for renewal been found guilty by a court (whether in or outside South Australia) of any offence; and
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- (e) in the case of an application for the renewal of a poppy processing licence, the licensed processor or any associate of the licensed processor has within the 12 months preceding the date of making the application for renewal been found guilty by a court (whether in or outside South Australia) of any offence; and

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- (f) in the case of an applicant, a licensed grower or a licensed processor that is not a natural person, the applicant, the licensed grower or the licensed processor has a satisfactory ownership, trust or corporate structure; and
- (g) the applicant, the licensed grower or the licensed processor is of sound and stable financial background; and
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- (h) the financial circumstances of the applicant, the licensed grower or the licensed processor may significantly limit the person's capacity to meet the person's obligations in conducting activities under the licence in compliance with the terms and conditions applying to the relevant licence.

## **Division 2—Poppy cultivation licence**

### **30D—Application for poppy cultivation licence**

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- (1) A person may apply for a poppy cultivation licence which authorises a person for commercial purposes relating to therapeutic use—
- (a) to cultivate or possess alkaloid poppies; and
- (b) to sell or supply poppy straw to a licensed processor at premises specified in the licence.
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- (2) A person may apply for a poppy cultivation licence for research purposes relating to non-therapeutic use—
- (a) to cultivate or possess alkaloid poppies; and
- (b) to conduct measurements, analyses and extractions, including extraction of alkaloids from alkaloid poppies for chemical analyses at specified premises; and
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- (c) to supply alkaloid poppies or poppy straw to a licensed processor.
- (3) An application under subsection (1) or (2) must—
- (a) be in writing; and
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- (b) be accompanied by a copy of the proposed risk management plan; and
- (c) be accompanied by the relevant prescribed application fee (if any); and
- (d) be accompanied by any other prescribed particulars.

(4) An application under subsection (1) or (2) must contain or be accompanied by evidence to the satisfaction of the Chief Executive that the applicant is a fit and proper person to be given a licence and—

5 (a) in the case of an application under subsection (1), intends to undertake a bona fide commercial activity relating to the therapeutic use of alkaloid poppies under the licence and includes evidence of the commercial activity to be carried out; or

10 (b) in the case of an application under subsection (2), intends to undertake a research activity relating to the non therapeutic use of alkaloid poppies under the licence and includes evidence that the research activity would be conducted by a person with appropriate scientific training using an appropriate methodology.

15 (5) An application under subsection (1) or (2) must contain any other information about the applicant or the application which the Chief Executive reasonably requires to assist in assessing the application.

### **30E—Chief Executive must investigate application**

20 (1) On receiving an application under section 30D the Chief Executive—

(a) must carry out all investigations and inquiries that the Chief Executive considers necessary to determine the application; and

25 (b) may conduct an inspection of the premises that are to be specified in the relevant licence; and

30 (c) may require that an applicant or any associate of the applicant submit to the Chief Executive a recent police record check of the applicant or any associate of the applicant.

(2) The Chief Executive must provide a copy of an application made under section 30D and any accompanying documents to the Commissioner of Police.

(3) The Commissioner of Police must—

35 (a) inquire into and report to the Chief Executive on any matters concerning the application that he or she believes are appropriate or reasonably necessary; and

40 (b) inquire into and report to the Chief Executive on any matters concerning the application that the Chief Executive requests; and

(c) within 28 days of receiving the application from the Chief Executive, notify the Chief Executive in writing of the Commissioner of Police's decision to support or oppose the issuing of a licence and provide the reasons for the decision.

- (4) If the Chief Executive is notified under subsection (3)(c) that the Commissioner of Police opposes the issuing of a poppy cultivation licence, the Chief Executive must not issue the licence.

### **30F—Determining an application**

- 5 (1) After considering an application and any investigation under section 30E, the Chief Executive must determine the application within 60 days of receiving the application.
- (2) The Chief Executive may issue a poppy cultivation licence to an applicant under section 30D(1) or (2).
- 10 (3) The Chief Executive may refuse to issue a poppy cultivation licence to an applicant under section 30D(1) or (2).
- (4) The Chief Executive must—
- (a) notify the applicant in writing of the decision under subsection (2); and
- 15 (b) if the Chief Executive refuses an application under subsection (3), provide reasons for the decision.

### **30G—Terms and conditions of a poppy cultivation licence**

- 20 (1) A poppy cultivation licence is issued for the term, not exceeding 3 years, specified in the licence unless it is sooner suspended or cancelled.
- (2) A poppy cultivation licence relates only to the specified premises described in it.
- (3) A poppy cultivation licence is subject to the condition that the licensed grower must only employ persons that are suitable to carry out activities under the licence.
- 25 (4) A poppy cultivation licence is subject to the condition that a licensed grower must comply with the risk management plan under the licence.
- (5) A poppy cultivation licence is subject to the prescribed terms, conditions, limitations and restrictions (if any).
- 30 (6) A poppy cultivation licence is subject to the terms, conditions, limitations and restrictions specified in it including, but not limited to, terms, conditions, limitations and restrictions relating to the following:
- 35 (a) the species, subspecies or varieties of alkaloid poppy to be cultivated;
- (b) the specified premises at which activities authorised under the licence may be carried out;
- 40 (c) the implementation and maintenance of satisfactory security and surveillance measures to restrict access of unauthorised persons to crops and harvested material;
- (d) the keeping of records and other documents;

- (e) the provision of information, records or other documents to the Chief Executive relating to—
- (i) the activities carried out under the licence; or
  - (ii) a change in the position of director, manager, secretary or other executive position, however designated, or the structure of the business to which the licence relates; or
  - (iii) any other matter that the Chief Executive reasonably requires in relation to the licence or the licensed activity;
- (f) the disposal of harvested material and crop residue;
- (g) the inspection, sampling, supervision and surveillance of seed of alkaloid poppies, alkaloid poppies and poppy straw by an inspector;
- (h) the destruction of alkaloid poppies, poppy straw and any material derived from alkaloid poppies.

(7) A poppy cultivation licence issued under section 30D(1) is subject to the condition that unless otherwise with the approval of the Chief Executive, the licensed grower whilst carrying out an activity under the licence must have a contract with a licensed processor for the processing of alkaloid poppies cultivated under the licence that is registered in the alkaloid poppy register.

### **30H—Poppy cultivation licence is not transferable**

A poppy cultivation licence is not transferable to another person.

### **30I—Employee of licensed grower authorised to undertake activities under licence**

- (1) For the purposes of this Act, an employee of a licensed grower who holds a poppy cultivation licence for commercial purposes relating to therapeutic use, is authorised to carry out any activity under the licence involving the cultivation or possession of alkaloid poppies or the sale or supply of poppy straw to a licensed processor required of the employee in the course of his or her employment.
- (2) For the purposes of this Act, an employee of a licensed grower who holds a poppy cultivation licence for research purposes relating to non-therapeutic use, is authorised to carry out any activity under the licence, including the following, that is required of the employee in the course of his or her employment:
- (a) to cultivate or possess alkaloid poppies;
  - (b) to conduct measurements, analyses and extractions including extraction of alkaloids from alkaloid poppies for chemical analyses at specified premises;
  - (c) to supply alkaloid poppies or poppy straw to a licensed processor.

- (3) An employee must only undertake an activity authorised under subsection (1) or (2) in relation to his or her employment.

**30J—Employee identification certificate issued by licensed grower**

- (1) The licensed grower must issue an employee identification certificate to each employee employed to carry out activities in the business conducted by a licensed grower under a poppy cultivation licence.
- (2) The employee identification certificate must contain the following information:
- (a) the employee's name;
  - (b) a clear photograph of the employee;
  - (c) the employee's date of birth;
  - (d) the expiry date of the employee identification certificate;
  - (e) the poppy cultivation licence under which the employee is authorised to carry out activities required of the employee in the course of his or her employment;
  - (f) the prescribed information (if any).

**30K—Application for renewal of licence**

- (1) A licensed grower may apply to the Chief Executive for the renewal of a poppy cultivation licence.
- (2) A renewal application must be made to the Chief Executive at least 2 months before the poppy cultivation licence is due to expire.
- (3) A renewal application must—
- (a) be in writing; and
  - (b) be accompanied by any information relevant to whether or not the licensed grower is a fit and proper person; and
  - (c) be accompanied by the current risk management plan under the poppy cultivation licence; and
  - (d) be accompanied by the relevant prescribed renewal fee (if any); and
  - (e) be accompanied by any other information the Chief Executive reasonably requires to assess the application; and
  - (f) contain any prescribed particulars.
- (4) A poppy cultivation licence may be renewed more than once.

**30L—Chief Executive must investigate renewal application**

- (1) On receipt of a renewal application under section 30K the Chief Executive—
- (a) must carry out any investigation or inquiry necessary to determine the renewal application; and

(b) may conduct an inspection of the specified premises of the poppy cultivation licence; and

(c) may require that an applicant or any associate of the applicant submit to the Chief Executive a recent police record check of the applicant or any associate of the applicant.

(2) The Chief Executive must provide a copy of a renewal application made under section 30K and any accompanying documents to the Commissioner of Police.

(3) The Commissioner of Police must—

(a) inquire into and report to the Chief Executive on any matters concerning the application that the Commissioner of Police believes are appropriate or reasonably necessary; and

(b) inquire into and report to the Chief Executive on any matters concerning the renewal application that the Chief Executive requests; and

(c) within 28 days of receiving the application from the Chief Executive notify the Chief Executive in writing of the Commissioner of Police's decision to support or oppose the renewal of a licence and provide the reasons for the decision.

(4) If the Chief Executive is notified under subsection (3)(c) that the Commissioner of Police opposes the renewal of a poppy cultivation licence, the Chief Executive must not renew the relevant licence.

### **30M—Determining a renewal application**

(1) After considering a renewal application and any investigation under section 30L, the Chief Executive must determine the renewal application within 60 days of receiving it.

(2) The Chief Executive may renew a poppy cultivation licence for a period not exceeding 3 years.

(3) The Chief Executive may refuse to renew a poppy cultivation licence of a licensed grower.

(4) A renewed poppy cultivation licence expires on the date specified by the Chief Executive, unless the licence is cancelled or suspended prior to the expiry.

(5) The Chief Executive must—

(a) notify the applicant in writing of the decision under subsection (2); and

(b) if the Chief Executive refuses to renew the poppy cultivation licence under subsection (3), provide reasons for the decision.

### **Division 3—Poppy processing licence**

#### **30N—Application for poppy processing licence**

- 5 (1) A person may apply to the Chief Executive for a poppy processing licence which authorises a person for commercial purposes relating to therapeutic use—
- (a) to receive poppy straw from a licensed grower or from a licensed processor or a person authorised to possess and supply alkaloid poppies in another jurisdiction; and
- 10 (b) to process and possess poppy straw at premises specified in the licence; and
- (c) to transport, sell or supply poppy straw to a person who possesses a Commonwealth licence to manufacture; and
- (d) to transport, sell or supply poppy straw if the applicant possesses a Commonwealth licence to export; and
- 15 (e) to transport, sell or supply poppy straw to a person who possesses a Commonwealth licence to export.
- (2) A person may apply to the Chief Executive for a poppy processing licence which authorises a person for research purposes relating to non-therapeutic use—
- 20 (a) to receive or process poppy straw at premises specified in the licence; and
- (b) to possess, transport, sell or supply poppy straw to a licensed processor.
- (3) An application under subsection (1) or (2) must—
- 25 (a) be in writing; and
- (b) be accompanied by a copy of the proposed risk management plan; and
- (c) be accompanied by the relevant prescribed application fee (if any); and
- 30 (d) be accompanied by any other prescribed particulars; and
- (e) in the case of an application under subsection (1), be accompanied by a copy of a Commonwealth licence to manufacture or a Commonwealth licence to export, as the case requires.
- 35 (4) An application under subsection (1) or (2) must contain or be accompanied by evidence to the satisfaction of the Chief Executive that the applicant is a fit and proper person to be issued a licence and—
- 40 (a) in the case of an application under subsection (1), intends to undertake a bona fide commercial activity relating to the therapeutic use of poppy straw including evidence of the commercial activity to be carried out; or



(b) in the case of an application under subsection (2), intends to undertake a research activity relating to the non-therapeutic use of poppy straw under the licence including evidence that the research activity would be conducted by a person with appropriate scientific training using appropriate methodology.

(5) An application under subsection (1) or (2) must contain any other information about the applicant or the application which the Chief Executive reasonably requires to assist in assessing the application.

### **30O—Chief Executive must investigate application**

(1) On receiving an application under section 30N, the Chief Executive—

(a) must carry out all investigations and inquiries that the Chief Executive considers necessary to determine the application; and

(b) may conduct an inspection of the premises that are to be specified in the relevant licence; and

(c) may require that an applicant or any associate of the applicant submit to the Chief Executive a recent police record check of the applicant or any associate of the applicant.

(2) The Chief Executive must provide a copy of an application made under section 30N and any accompanying documents to the Commissioner of Police.

(3) The Commissioner of Police must—

(a) inquire into and report to the Chief Executive on any matters concerning the application that the Commissioner of Police believes are appropriate or reasonably necessary; and

(b) inquire into and report to the Chief Executive on any matters concerning the application that the Chief Executive requests; and

(c) within 28 days of receiving the application from the Chief Executive, notify the Chief Executive in writing of the Commissioner of Police's decision to support or oppose the issuing of a licence and provide the reasons for the decision.

(4) If the Chief Executive is notified under subsection (3)(c) that the Commissioner of Police opposes the issuing of a poppy processing licence, the Chief Executive must not issue the licence.

### **30P—Determining an application**

(1) After considering an application and any investigation under section 30O, the Chief Executive must determine the application within 60 days of receiving the application.

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- (2) The Chief Executive may issue a poppy processing licence to an applicant under section 30N(1) or (2).
  - (3) The Chief Executive may refuse to issue a poppy processing licence to an applicant under section 30N(1) or (2).
  - (4) The Chief Executive must—
    - (a) notify the applicant in writing of the decision under subsection (2); and
    - (b) if the Chief Executive refuses an application under subsection (3), provide reasons for the decision.

10 **30Q—Terms and conditions of a poppy processing licence**

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- (1) A poppy processing licence is issued for the term, not exceeding 12 months, specified in the licence unless it is sooner suspended or cancelled.
  - (2) A poppy processing licence relates only to the premises specified in it.
  - (3) A poppy processing licence must specify the maximum quantity of alkaloid poppies that may be processed by a licensed processor.
  - (4) A poppy processing licence is subject to the condition that a licensed processor must comply with the risk management plan under the licence.
  - (5) A poppy processing licence is subject to the condition that the licensed processor must only employ persons that are suitable to carry out activities under the licence.
  - (6) A poppy processing licence is subject to the prescribed terms, conditions, limitations and restrictions (if any).
  - (7) A poppy processing licence is subject to the terms, conditions, limitations and restrictions that are specified in it including, but not limited to, terms, conditions, limitations and restrictions relating to the following:
    - 20
    - 30 (a) the specified premises at which the activities authorised by the licence may be carried out;
    - (b) the implementation and maintenance of satisfactory security and surveillance measures to restrict access of unauthorised persons to poppy straw;
    - 35 (c) the keeping of records and other documents;
    - (d) the provision of information, records or other documents to the Chief Executive relating to—
      - (i) the activities carried out under the licence; or
      - 40 (ii) a change in the position of director, manager, secretary or other executive position, however designated, or the structure of the business to which the licence relates; or

(iii) any other matter that the Chief Executive reasonably requires in relation to the licence or the licensed activity;

(e) the disposal of poppy straw;

(f) the inspection, supervision and surveillance of poppy straw by an inspector.

(8) A poppy processing licence referred to in section 30N(1) is subject to the condition that the licensed processor must hold a current Commonwealth licence to manufacture or a current Commonwealth licence to export whilst undertaking an activity authorised by the licence.

### **30R—Poppy processing licence is not transferable**

A poppy processing licence is not transferable to another person.

### **30S—Employee of licensed processor authorised to undertake activities under licence**

(1) For the purposes of this Act, an employee of a licensed processor who holds a poppy processing licence for commercial purposes relating to therapeutic use, is authorised to carry out any of the following activities under the licence that is required of the employee in the course of his or her employment:

(a) to receive poppy straw from a licensed grower or a person authorised to possess alkaloid poppies in another jurisdiction;

(b) to process and possess poppy straw at specified premises;

(c) to transport, sell or supply poppy straw to a person who possesses a Commonwealth licence to manufacture;

(d) to export poppy straw if the applicant possesses a Commonwealth licence to export.

(2) For the purposes of this Act, an employee of a licensed processor who holds a poppy processing licence for research purposes relating to non-therapeutic use, is authorised to carry out any activity under the licence involving the processing, possession, transportation of poppy straw or the sale or supply of poppy straw to a licensed processor that is required of the employee in the course of his or her employment.

(3) An employee must only undertake an activity authorised under subsection (1) or (2) in relation to his or her employment.

**30T—Employee identification certificate issued by licensed processor**

- 5
- (1) The licensed processor must issue an employee identification certificate to each employee employed to carry out activities in the business conducted by a licensed processor under a poppy processing licence.
- (2) The employee identification certificate must contain the following information:
- 10
- (a) the employee's name;
  - (b) a clear photograph of the employee;
  - (c) the employee's date of birth;
  - (d) the expiry date of the employee identification certificate;
  - (e) the poppy processing licence under which the employee is authorised to carry out activities required of the employee in the course of his or her employment;
  - 15
  - (f) the prescribed information (if any).

**30U—Application for renewal of licence**

- 20
- (1) A licensed processor may apply to the Chief Executive for the renewal of a poppy processing licence.
- (2) A renewal application must be made to the Chief Executive at least 2 months before the poppy processing licence is due to expire.
- (3) A renewal application must—
- 25
- (a) be in writing; and
  - (b) be accompanied by any information relevant to whether or not the licensed processor is a fit and proper person; and
  - (c) be accompanied by the current risk management plan under the poppy processing licence; and
  - (d) be accompanied by a copy of the licensed processor's current Commonwealth licence to manufacture or current Commonwealth licence to export; and
  - 30
  - (e) be accompanied by the relevant prescribed renewal fee (if any); and
  - (f) be accompanied by any other information the Chief Executive reasonably requires to assess the application; and
  - 35
  - (g) contain any prescribed particulars.
- (4) A poppy processing licence may be renewed more than once.

### **30V—Chief Executive must investigate renewal application**

- (1) On receipt of a renewal application under section 30U, the Chief Executive—
- (a) must carry out any investigation or inquiry necessary to determine the renewal application; and
  - (b) may conduct an inspection of the specified premises of the poppy processing licence; and
  - (c) may require that an applicant or any associate of the applicant submit to the Chief Executive a recent police record check of the applicant or any associate of the applicant.
- (2) The Chief Executive must provide a copy of a renewal application made under section 30U and any accompanying documents to the Commissioner of Police.
- (3) The Commissioner of Police must—
- (a) inquire into and report to the Chief Executive on any matters concerning the application that the Commissioner of Police believes are appropriate or reasonably necessary; and
  - (b) inquire into and report to the Chief Executive on any matters concerning the renewal application that the Chief Executive requests; and
  - (c) within 28 days of receiving the application from the Chief Executive, notify the Chief Executive in writing of the Commissioner of Police's decision to support or oppose the renewal of a licence and provide the reasons for the decision.
- (4) If the Chief Executive is notified under subsection (3)(c) that the Commissioner of Police opposes the renewal of a poppy processing licence, the Chief Executive must not renew the licence.

### **30W—Determining a renewal application**

- (1) After considering a renewal application and any investigation under section 30V, the Chief Executive must determine the renewal application within 60 days of receiving it.
- (2) The Chief Executive may renew a poppy processing licence for a period not exceeding 12 months.
- (3) The Chief Executive may refuse to renew a poppy processing licence of a licensed processor.
- (4) A renewed poppy processing licence expires on the date specified by the Chief Executive unless the licence is cancelled or suspended prior to the expiry.

- (5) The Chief Executive must—
- (a) notify the applicant in writing of the decision under subsection (2); and
  - (b) if the Chief Executive refuses to renew the poppy processing licence under subsection (3), provide reasons for the decision.

#### **Division 4—General provisions applying to a poppy cultivation licence or poppy processing licence**

##### **30X—Amendment of licences**

- (1) The Chief Executive may—
- (a) amend an existing term, condition, limitation or restriction to which a poppy cultivation licence or poppy processing licence is subject; or
  - (b) impose a new term, condition, limitation or restriction on the poppy cultivation licence or the poppy processing licence.
- (2) The Chief Executive may exercise a power under subsection (1)—
- (a) on the application of the licensed grower or the licensed processor; or
  - (b) in the Chief Executive's discretion.
- (3) The Chief Executive must determine an application made under subsection (2)(a) within 28 days of receiving the application.
- (4) The Chief Executive must notify the licensed grower or the licensed processor, in writing within 7 business days, if an amendment to a licence is made under subsection (1)(a) or (b).
- (5) An application by a licensed grower or a licensed processor made under subsection (2)(a) must—
- (a) be in writing; and
  - (b) be accompanied by the relevant prescribed fee (if any); and
  - (c) be accompanied by any prescribed particulars.

##### **30Y—Suspension or cancellation of licences**

- (1) The Chief Executive, by notice in writing to the licensed grower or the licensed processor, may suspend or cancel the relevant licence if—
- (a) the licensed grower or the licensed processor requests suspension or cancellation; or
  - (b) the licensed grower or the licensed processor has not complied with the terms, conditions, limitations or restrictions of the licence; or

- 5
- (c) the licensed grower or the licensed processor has failed to comply with this Part or the regulations applying under this Part; or
- (d) the Chief Executive is satisfied that the licensed grower or the licensed processor or any associate of the licensed grower or the licensed processor is no longer a fit and proper person to be concerned with or associated with, as the case requires—
- 10
- (i) the cultivation of alkaloid poppies; or
- (ii) the processing of poppy straw; or
- (e) the Chief Executive is satisfied that the specified premises—
- 15
- (i) of the licensed grower are no longer suitable for the cultivation of alkaloid poppies; or
- (ii) of the licensed processor are no longer suitable for the processing of poppy straw; or
- (f) the Chief Executive is satisfied that the licensed grower or the licensed processor obtained the relevant licence by fraud, misrepresentation or concealment of facts; or
- 20
- (g) the Commissioner of Police requests suspension or cancellation on the basis of criminal intelligence concerning the licensed grower or the licensed processor; or
- (h) the licensed grower or the licensed processor ceases to carry on the research or commercial activity to which the relevant licence relates.
- 25
- (2) If a poppy cultivation licence or a poppy processing licence is suspended or cancelled under subsection (1) the Chief Executive must—
- (a) notify the Commissioner of Police regarding the suspension or cancellation; and
- 30
- (b) in the case of a poppy cultivation licence, notify a licensed processor who has a registered contract with the licensed grower within 7 business days of the suspension or cancellation taking effect; or
- 35
- (c) in the case of a poppy processing licence, notify the licensed grower who has a contract registered in the alkaloid poppy register with the licensed processor within 7 business days of the suspension or cancellation taking effect.
- 40
- (3) A poppy cultivation licence or a poppy processing licence ceases to have effect on the suspension or cancellation of the licence under this section.

## **Division 5—Inspection and enforcement**

### **30Z—Inspectors under this Part**

- 5
- (1) The Chief Executive, by instrument in writing, may authorise persons to be inspectors for the purposes of all or any specified provisions of this Part.
  - (2) The Chief Executive may determine the terms and conditions of authorisation of any inspector.
  - 10 (3) The terms and conditions of authorisation of an inspector may contain general directions as to how the inspector's powers may be exercised.
  - (4) The Chief Executive, in writing, may vary or revoke the authorisation of an inspector at any time.

### **30ZA—Identification certificate**

- 15
- (1) The Chief Executive must issue an identification certificate to each inspector (other than an inspector who is a police officer) which sets out the provisions of this Part for which the inspector is authorised to be an inspector.
  - 20 (2) In the course of performing his or her functions under this Part, an inspector must produce his or her identification certificate to any person who requests its production.
  - (3) In this Part, a reference to an identification certificate in relation to an inspector who is a police officer is a reference to written evidence of the fact that he or she is a police officer.

### **30ZB—General powers of inspector**

- 25
- (1) For the purposes of determining compliance with this Part or a licence issued under this Part, an inspector, with any assistance he or she thinks necessary, at any reasonable time may do all or any of the following:
    - 30 (a) enter and inspect any place, other than premises used as a residence, occupied by any person who is the licensed grower or the licensed processor;
    - (b) inspect, count, examine or mark for identification any alkaloid poppy or poppy straw in the place;
    - 35 (c) intercept, inspect and examine any vehicle or machine which an inspector reasonably believes is being used for the harvest of alkaloid poppies and transport of poppy straw;
    - (d) require a person to produce any document that the inspector reasonably requires for ascertaining whether this Part or a poppy cultivation licence or a poppy processing licence is being complied with—
      - 40 (i) to examine the document; and
      - (ii) to make copies of it or take extracts from it; and



- (iii) to remove the document for as long as is reasonably necessary to make copies or take extracts;
- (e) take or remove for examination samples of or from, or specimens of, soil, any alkaloid poppy or poppy straw or any other plant or crop to determine—
- (i) whether the alkaloid poppy or poppy straw has been cultivated or processed in accordance with the relevant licence; or
- (ii) that its possession is in accordance with the relevant licence;
- (f) submit any sample or specimen taken in accordance with this Part to a laboratory or place approved by the Chief Executive for examination and testing.

- (2) An inspector must not exercise any powers under this Part if the inspector fails to produce his or her identification certificate for inspection on request by the occupier of the place or the person in charge or apparent control of the place.

### **30ZC—Procedure on seizing a document, thing or taking a sample**

- (1) Subject to section 30ZI, if an inspector seizes a document or thing or takes a sample of, or from, a thing at the premises occupied by the licensed grower or the licensed processor, the inspector must give a detention or seizure receipt for the document or thing or sample to the licensed grower or the licensed processor from whom it was taken.
- (2) If an inspector is unable to give a detention or seizure receipt to the relevant licensed grower or licensed processor in respect of a document or thing or sample seized, the inspector must—
- (a) leave the detention or seizure receipt with, or post it to, the licensed grower or the licensed processor that occupies the premises from which the document or thing or sample was seized; and
- (b) if a document is seized, leave a copy of the document, if practicable, with, or post it to, the licensed grower or the licensed processor that occupies the premises from which the document was seized.
- (3) A detention or seizure receipt must—
- (a) identify the seized document, thing or sample taken; and
- (b) state the name of the inspector who seized the document, thing or took the sample; and
- (c) state the reason why the document or thing was seized or the sample was taken.

- (4) If an inspector proposes to take a sample under section 30ZB(1)(e) the inspector must—
- (a) divide the sample into 3 parts; and
  - (b) give 1 part to the licensed grower or the licensed processor, as the case requires, and retain 1 part for examination and 1 part untouched for future comparison.

### **30ZD—Power to use electronic equipment at premises**

- (1) This section applies if—
- (a) while acting under section 30ZB, an inspector finds a thing at the premises that is or includes a disk, tape or other device for the storage of information; and
  - (b) there is at the premises equipment that may be used with the disk, tape or other storage device; and
  - (c) the inspector believes, on reasonable grounds, that information stored in the disk, tape or other storage device may be relevant to determine whether this Part has been contravened.
- (2) An inspector may operate or may require the licensed grower or the licensed processor or an employee of the licensed grower or the licensed processor to operate the equipment to access the information.
- (3) An inspector may require the licensed grower or the licensed processor or an employee of the licensed grower or the licensed processor to provide the inspector with any password, encryption key or other information required to operate the equipment to access the information.

### **30ZE—Power to copy information on electronic storage devices**

If an inspector finds that a disk, tape or other storage device at the premises contains information that the inspector believes, on reasonable grounds, stores information that is relevant to determine whether this Part has been complied with, the inspector may—

- (a) put the information in a documentary form and seize the documents so produced; or
- (b) copy the information to another disk, tape or other storage device and remove that disk, tape or storage device from the premises.

### **30ZF—Inspector must not damage equipment**

An inspector must not operate equipment for a purpose set out in section 30ZD or section 30ZE unless the inspector believes, on reasonable grounds, that the operation can be carried out without damage to the equipment.

**30ZG—Inspector may possess alkaloid poppies or poppy straw**

For the purposes of this Act, an inspector is authorised to have alkaloid poppies or poppy straw in his or her possession in the exercise or performance of any power, function or duty conferred on him or her by this Part or the regulations made under this Part.

**30ZH—Inspector has power to detain or seize alkaloid poppies or poppy straw**

An inspector may detain or seize any alkaloid poppies, poppy straw or material derived from alkaloid poppies or poppy straw and deal with it in accordance with section 30ZI if the inspector believes on reasonable grounds that—

- (a) in the case of a poppy cultivation licence, the licensed grower has contravened this Part or the poppy cultivation licence; or
- (b) in the case of a poppy processing licence, the licensed processor has contravened this Part or the poppy processing licence; or
- (c) the relevant licence has been suspended or cancelled under this Part.

**30ZI—Procedure on detaining or seizing alkaloid poppies or poppy straw**

- (1) If an inspector detains or seizes any seized material under section 30ZH, the inspector must immediately—
  - (a) make a written record of the detention or seizure; and
  - (b) give a detention or seizure receipt to the licensed grower or the licensed processor, as the case requires, that—
    - (i) identifies the seized material taken; and
    - (ii) states the name of the inspector who detained or seized the seized material; and
    - (iii) states the reasons for the detention or seizure; and
  - (c) in the case of an inspector who is not a police officer, send a copy of the detention or seizure receipt to the Chief Executive; and
  - (d) in the case of an inspector who is a police officer, send a copy of the detention or seizure receipt to the Commissioner of Police and the Chief Executive.
- (2) If an inspector detains or seizes any seized material under section 30ZH, the inspector, with any assistance necessary, may take or send the seized material to a place approved by the Chief Executive for it to be examined, tested or stored.

- (3) This section does not limit or prevent the exercise of any power by a police officer to commence a proceeding in respect of compliance with this Part in relation to any seized material

**30ZJ—Chief Executive has power to dispose or deal with seized alkaloid poppies or poppy straw**

- (1) This section applies if—
- (a) the Chief Executive is satisfied on reasonable grounds that this Part has been contravened; and
  - (b) the relevant licensed grower or licensed processor has surrendered the seized material to the Chief Executive and agreed that the Chief Executive may deal with the seized material.

- (2) In dealing with seized material to which this section applies, the Chief Executive may do any of the following:

- (a) dispose of the seized material;
- (b) direct the licensed grower or the licensed processor (as the case requires) to dispose of the seized material;
- (c) harvest and deal with the seized material as appropriate;
- (d) harvest and destroy the seized material;
- (e) enter into an agreement with the licensed grower or the licensed processor (as the case requires), or any other person, to deal with the seized material as required in all of the circumstances;
- (f) anything reasonably necessary to ensure the security of the seized material.

**30ZK—Retention and return of seized alkaloid poppies or poppy straw**

- (1) If an inspector seizes any seized material under section 30ZH, subject to section 30ZJ, the Chief Executive with any assistance necessary must—
- (a) take reasonable steps to release or return the seized material to the licensed grower or the licensed processor from whom it was seized or its lawful owner if the reason for its detention or seizure no longer exists; or
  - (b) retain any seized material that is required for evidence in a legal proceeding in a place approved by the Chief Executive.

(2) If the seized material has not been returned to the licensed grower or the licensed processor from whom it was seized or its lawful owner within 3 months after it was seized, the Chief Executive must take reasonable steps to return it to that licensed grower or licensed processor or lawful owner (as the case requires) unless—

(a) proceedings for the purpose for which the seized material was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or

(b) the Magistrates Court makes an order under section 30ZL extending the period during which the seized material may be retained.

### **30ZL—Magistrates Court may extend 3 month period**

(1) The Chief Executive may apply to the Magistrates Court for an extension (not exceeding 3 months) of the period during which the seized material may be retained—

(a) within 3 months after the seized material is seized under section 30ZH; or

(b) if an extension has been granted under this section, before the end of the period of the extension.

(2) The Magistrates Court may make an order extending the period that the seized material is to be retained if satisfied that—

(a) the making of the order is in the interests of justice; and

(b) the total period of retention does not exceed 12 months; and

(c) retention of the seized material is necessary for the purposes of an investigation into whether a contravention of this Part has occurred.

(3) At least 7 days prior to the hearing of an application under subsection (1), the Chief Executive must give notice of the application to the licensed grower or the licensed processor, as the case requires, from whom the alkaloid poppies, poppy straw or material derived from alkaloid poppies or poppy straw were seized or its lawful owner described in the application.

### **30ZM—Forfeiture, harvest and destruction of alkaloid poppies or poppy straw**

(1) The Chief Executive may apply to the Magistrates Court for a harvest and destruction order if the Chief Executive—

(a) is satisfied on reasonable grounds that a licensed grower or a licensed processor has contravened this Part; and

(b) has cancelled the relevant licence.

(2) The Magistrates Court may make an order that the seized material of the licensed grower or the licensed processor, as the case requires, be forfeited to the Crown and be dealt with in accordance with a harvest and destruction order made under subsection (3) if satisfied that—

- 5
- (a) the relevant seized material poses a risk to public health and safety; and
  - (b) in all the circumstances it is appropriate to make a harvest and destruction order in regards to the relevant seized material.

10 (3) The Magistrates Court may make any of the following harvest and destruction orders (as the case requires):

- (a) an order that the relevant seized material be harvested;
- (b) an order that the relevant seized material be destroyed;
- (c) an order that the relevant seized material be harvested and destroyed.

15 (4) The Magistrates Court may—

- (a) give any direction necessary to enable the Chief Executive to carry out the harvest and destruction order; and
- (b) authorise the Chief Executive to give any appropriate direction to harvest or destroy the seized material (as the case requires) to which the order relates.

### **30ZN—Recovery of costs**

25 If the Chief Executive incurs any costs in carrying out a harvest and destruction order the Chief Executive may recover those costs in any court of competent jurisdiction as a debt due to the Crown.

### **30ZO—Inspector may access ratepayer information**

30 (1) For the purposes of exercising a power under this Part, an inspector may require a person having custody of any records relating to ratepayers (within the meaning of the *Local Government Act 1999*) to provide the inspector with—

- (a) the name and address or other contact details of a ratepayer—
  - (i) who is a licensed grower or a licensed processor; or
  - (ii) who is an applicant for a poppy cultivation licence or a poppy processing licence; or
- (b) the address or description of any land in respect of which the ratepayer is liable to pay rates and charges under the *Local Government Act 1999* if the ratepayer—
  - (i) is a licensed grower or a licensed processor; or
  - (ii) is an applicant for a licence under this Part.

- (2) An inspector may make a record of any information provided to the inspector under subsection (1).
- (3) An inspector must not be charged a fee for anything done, or required to be done, by the inspector under this section.

5                   **30ZP—Protection against self-incrimination**

It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Part, if the giving of the information or the doing of that thing would tend to incriminate the person.

10                   **30ZQ—Power to issue expiation notices**

An inspector may give an expiation notice (under the *Expiation of Offences Act 1996*) to a person who the inspector has reason to believe has committed a prescribed offence.

15                   **30ZR—Expiation fee**

The regulations may prescribe the expiation fees for prescribed offences referred to in section 30ZQ.

**Division 6—Offences**

**30ZS—Offence to fail to report the amendment or cancellation of a contract**

20                   A licensed grower who holds a poppy cultivation licence under section 30D(1) must report to the Chief Executive within 3 business days any amendment to a contract registered in the alkaloid poppy register that does 1 or more of the following:

- 25                   (a) amends the duration of the contract;
- (b) amends the maximum quantity of alkaloid poppies that may be cultivated under the contract;
- (c) amends the date the contract expires;
- (d) cancels the contract.

Maximum penalty: \$15 000.

30                   **30ZT—Offence to fail to report amendment or cancellation**

35                   A licensed processor must inform the Chief Executive within 10 business days if a Commonwealth licence to manufacture or a Commonwealth licence to export required for the current poppy processing licence held by the licensed processor is amended or cancelled.

Maximum penalty: \$15 000.

**30ZU—Offence to fail to report on any change of details of the licensed grower or the licensed processor**

(1) A licensed grower or a licensed processor must report any specified information referred to in subsection (2) in respect of a poppy cultivation licence or a poppy processing licence to the Chief Executive within 7 business days.

Maximum penalty: \$15 000.

(2) For the purposes of subsection (1), specified information is—

- (a) any change to the details of the licensed grower or the licensed processor that appears on the poppy cultivation licence or the poppy processing licence; or
- (b) any associate other than those provided to the Chief Executive in the application for a poppy cultivation licence or a poppy processing licence; or
- (c) the signing of a personal insolvency agreement or any declaration of bankruptcy that applies to the licence grower or the licence processor; or
- (d) any offence that the licensed grower or the licensed processor has been found guilty of by a court in South Australia or elsewhere, after the date of the application for the poppy cultivation licence or the poppy processing licence (as the case requires) was sent to the Chief Executive; or
- (e) any serious offence that an associate of the licensed grower or the licensed processor has been found guilty of by a court in South Australia or elsewhere, after the date of the application for the poppy cultivation licence or the poppy processing licence (as the case requires) was sent to the Chief Executive; or
- (f) any information that the name of an associate of a licensed grower or a licensed processor provided to the Chief Executive by the licensed grower or the licensed processor, in a successful application under this Part, has been changed; or
- (g) the entering by a licensed grower or a licensed processor that is not a natural person into voluntary administration, liquidation or receivership.

**30ZV—Offence to fail to surrender licence on suspension or cancellation**

Within 14 days of the suspension or cancellation of a poppy cultivation licence or a poppy processing licence under section 30Y, a person must surrender to the Chief Executive—

- (a) the relevant licence; and



(b) any related document issued to the person.

Maximum penalty: \$5 000.

### **30ZW—Offence to contravene a licence**

5 (1) A licensed grower must not contravene a prescribed minor term, condition, limitation or restriction to which the poppy cultivation licence is subject.

Maximum penalty: \$5 000.

10 (2) A licensed grower must not contravene the terms, conditions, limitations or restrictions to which the poppy cultivation licence is subject which is not a prescribed minor term, condition, limitation or restriction.

Maximum penalty: \$15 000 or imprisonment for 12 months, or both.

15 (3) A licensed processor must not contravene a prescribed minor term, condition, limitation or restriction to which the poppy processing licence is subject.

Maximum penalty: \$5 000.

20 (4) A licensed processor must not contravene the terms, conditions, limitations or restrictions to which the poppy processing licence is subject which is not a prescribed minor term, condition, limitation or restriction.

Maximum penalty: \$15 000 or imprisonment for 12 months, or both.

### **30ZX—Offence to fail to prohibit access to premises**

25 (1) A licensed grower must not permit any other person to enter the area of land where alkaloid poppies are being cultivated unless that other person is—

(a) an employee of the licensed grower who is employed to undertake an activity authorised under the poppy cultivation licence; or

(b) a licensed processor; or

30 (c) a party to a contract registered in the alkaloid poppy register with the relevant licensed grower or an employee of the relevant licensed processor.

Maximum penalty: \$15 000.

35 (2) A licensed processor must not permit any other person to enter the specified premises unless that other person is an employee of the licensed processor who is employed—

(a) to carry out an activity in the business conducted by a licensed processor under the poppy processing licence; or

40 (b) to undertake an activity authorised under the poppy processing licence.

Maximum penalty: \$15 000.

(3) A licensed grower must not permit any other person to enter the area of land where alkaloid poppies are being cultivated unless that other person is accompanied at all times—

(a) by the licensed grower; or

(b) by an employee of the licensed grower who is employed to undertake an activity authorised under the poppy cultivation licence; or

(c) by an inspector.

Maximum penalty: \$15 000.

(4) A licensed processor must not permit any other person to enter the specified premises unless the other person is accompanied at all times—

(a) by the licensed processor; or

(b) by an employee of the licensed processor who is employed to undertake an activity authorised under the poppy processing licence; or

(c) by an inspector.

Maximum penalty: \$15 000.

**30ZY—Offence to fail to carry and produce identification certificate**

(1) An employee of a licensed grower or a licensed processor who has been issued with an employee identification certificate must carry the certificate with him or her during the performance of any activity authorised under the relevant licence.

Maximum penalty: \$10 000.

(2) An employee of a licensed grower or a licensed processor must produce his or her employee identification certificate on the request of an inspector.

Maximum penalty: \$10 000.

**30ZZ—Offence to employ disqualified persons under licence**

(1) A licensed grower must not employ a disqualified person in the business conducted under the poppy cultivation licence.

Maximum penalty: \$10 000.

(2) A licensed processor must not employ a disqualified person in the business conducted under the poppy processing licence.

Maximum penalty: \$10 000.

**30ZZA—Offence for disqualified person to be employed by licensed grower or licensed processor**

- 5 (1) A disqualified person must not accept employment to carry out activities in the business conducted by a licensed grower under a poppy cultivation licence.

Maximum penalty: \$10 000.

- (2) A disqualified person must not accept employment to carry out activities in the business conducted by a licensed processor under a poppy processing licence.

10 Maximum penalty: \$10 000.

**30ZZB—Employee must comply with terms and conditions of licence**

- 15 (1) A licensed grower must take reasonable steps to prevent an employee of the licensed grower contravening the terms, conditions, limitations or restrictions of the poppy cultivation licence and the applicable requirements of this Part in carrying out an activity authorised by the licence.

Maximum penalty: \$10 000.

- 20 (2) A licensed processor must take reasonable steps to prevent an employee of the licensed processor contravening the terms, conditions, limitations or restrictions of the licence and the applicable requirements of this Part in carrying out an activity authorised by the licence.

Maximum penalty: \$10 000.

- 25 (3) A licensed grower must take reasonable steps to provide each employee of the licensed grower carrying out an activity authorised under the poppy cultivation licence with sufficient and appropriate information, instruction, training and supervision to be able to carry out that activity in accordance with the licence.

30 Maximum penalty: \$10 000.

- 35 (4) A licensed processor must take reasonable steps to provide each employee of the licensed processor carrying out an activity authorised under the poppy processing licence with sufficient and appropriate information, instruction, training and supervision to be able to carry out that activity in accordance with the licence.

Maximum penalty: \$10 000.

- 40 (5) An employee must cooperate with the licensed grower in relation to any direction given, or action taken, by the licensed grower or by any person authorised by the licensed grower, in order to comply with subsection (1) or (3).

Maximum penalty: \$10 000.

- (6) An employee must cooperate with the licensed processor in relation to any direction given, or action taken, by the licensed processor or by any person authorised by the licensed processor, in order to comply with subsection (2) or (4).

Maximum penalty: \$10 000.

**30ZZC—Criminal liability of licensed grower or licensed processor—failure to exercise due diligence**

- (1) If an employee of a licensed grower or a licensed processor commits an offence against this Part, the relevant licensed grower or licensed processor also commits an offence against this Part, if the licensed grower or the licensed processor failed to exercise due diligence to prevent the commission of the offence by the employee.
- (2) A licensed grower or a licensed processor referred to in subsection (1) is liable to a penalty not exceeding the maximum penalty that applies to the offence against this Part committed by the employee.
- (3) In determining whether a licensed grower or a licensed processor failed to exercise due diligence, a court may have regard to—
- (a) whether or not the licensed grower or the licensed processor permitted or authorised the act or omission of the employee in the course of his or her employment that constituted the offence against this Part; and
  - (b) what steps the licensed grower or the licensed processor took, or could reasonably have taken, to prevent the commission of the offence by the employee.
- (4) Without limiting any other defence available to a licensed grower or a licensed processor, the relevant licensed grower or licensed processor may rely on a defence that would be available to the employee of the licensed grower or the licensed processor if (as the case requires)—
- (a) the employee were charged with the offence with which the licensed grower or the licensed processor is charged; and
  - (b) in doing so, the licensed grower or the licensed processor bears the same burden of proof that the employee would bear.
- (5) A licensed grower or a licensed processor may commit an offence against this Part whether or not the employee of the licensed grower or the licensed processor, as the case requires, has been prosecuted for, or found guilty of, an offence against this Part.

**30ZZD—Offence to fail to provide an identification certificate for employees**

- 5 (1) A licensed grower must issue to each employee authorised in respect of the poppy cultivation licence an employee identification certificate that contains the information required under section 30J(2).

Maximum penalty: \$10 000.

- 10 (2) A licensed processor must issue to each employee authorised in respect of the poppy processing licence an employee identification certificate that contains the information required under section 30T(2).

Maximum penalty: \$10 000.

**30ZZE—Offence to hinder or obstruct inspector**

- 15 (1) A person must not, without reasonable excuse, hinder or obstruct an inspector in the exercise of a power under this Part.

Maximum penalty: \$15 000.

- (2) A person must not, without reasonable excuse, fail to comply with any direction, requirement or order of an inspector under this Part.

Maximum penalty: \$15 000.

**30ZZF—Offence to remove detained or seized alkaloid poppies or poppy straw**

20 A person must not, while a detention or seizure notice remains in effect, remove the whole or any part of an alkaloid poppy, poppy straw or material derived from an alkaloid poppy or poppy straw to which the notice relates, without the authorisation of the Chief Executive or an inspector.

25 Maximum penalty: \$15 000.

**Division 7—Division 7—Alkaloid Poppy Register**

**30ZZG—Alkaloid poppy register**

- 30 (1) The Chief Executive must establish and maintain the alkaloid poppy register.

- (2) The alkaloid poppy register is to contain the following information in respect of each registrable contract:

(a) the name of each party to the contract;

(b) the location of the specified premises;

35 (c) the date the contract was entered into by the parties;

(d) any other relevant information provided by an applicant or licensed grower or licensed processor to an inspector or the Chief Executive;

- (e) the details of the relevant poppy cultivation licence or poppy processing licence;
- (f) any relevant information collected or received by an inspector to determine the compliance of a licensed grower or a licensed processor with this Part;
- (g) any other prescribed information.

**30ZZH—Request to register a contract**

- (1) The Chief Executive, if requested to do so by a licensed grower, may register a contract between the licensed grower and a licensed processor in the alkaloid poppy register if the contract—
  - (a) is a valid contract; and
  - (b) includes details of the specified premises and area of land where it is proposed to cultivate alkaloid poppies; and
  - (c) specifies the period of the contract; and
  - (d) includes any other prescribed particulars (if any).
- (2) If a licensed grower makes a request under subsection (1), the Chief Executive must, within 7 days—
  - (a) register the contract; or
  - (b) refuse to register the contract.
- (3) On making a decision under subsection (2) the Chief Executive must—
  - (a) notify the licensed grower and the licensed processor who are the parties to the contract of that decision; and
  - (b) provide reasons for the decision if the decision was a refusal under subsection (2)(b).

**30ZZI—Access to the alkaloid poppy register restricted**

- (1) The Chief Executive must ensure that the alkaloid poppy register, or any part of the alkaloid poppy register, is only accessed by a prescribed person, or class of prescribed person, who is authorised to do so by the Chief Executive.
- (2) The Chief Executive must ensure that personal information in the alkaloid poppy register is only disclosed in accordance with this Act.

**30ZZJ—Person with access to alkaloid poppy register not to disclose personal information from it**

- (1) Unless a disclosure is authorised under this section, a person authorised to have access to the alkaloid poppy register or any part of the alkaloid poppy register must not disclose to any person the following information in the alkaloid poppy register:
  - (a) any personal information;
  - (b) the location of specified premises;

(c) commercial in confidence information.

Maximum penalty: \$15 000 or imprisonment for 12 months, or both.

5 (2) The Chief Executive or a person authorised to have access to the alkaloid poppy register or any part of the alkaloid poppy register may disclose personal information in the alkaloid poppy register to a Department or public statutory authority—

(a) for the purpose of law enforcement; or

(b) as required by or under any Act or law; or

10 (c) if the Chief Executive or a person authorised to have access to the alkaloid poppy register believes on reasonable grounds that to do so is necessary to enable the proper administration of the Act.

### **30ZZK—Delegation**

15 (1) The Chief Executive may, by instrument in writing, delegate a power or function under this Part—

(a) to a particular person; or

(b) to the person for the time being performing particular duties or holding or acting in a specified position.

20 (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation—

(a) may be absolute or conditional; and

(b) does not derogate from the power of the delegator to act personally in a matter; and

25 (c) is revocable at will.

## **Division 8—Review**

### **30ZZL—Review by Tribunal**

30 (1) A person may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for review of a decision of the Chief Executive—

(a) to refuse to issue a poppy cultivation licence or a poppy processing licence to that person; or

(b) to refuse to renew a poppy cultivation licence or a poppy processing licence held by that person; or

35 (c) to refuse to register a contract between a licensed grower and a licensed processor in the alkaloid poppy register; or

(d) to suspend, cancel or amend a poppy cultivation licence or a poppy processing licence held by that person.

- 5
- (2) Subject to subsection (3), an application for review must be made within 1 month of the making of the relevant decision of the Chief Executive.
- (3) If the reasons of the Chief Executive are not given in writing at the time of making the decision and the person (within 1 month of the making of the decision) requires the Chief Executive to state the reasons in writing, the time for commencing proceedings before the Tribunal runs from the time at which the person receives the written statement of those reasons.

10 **Division 9—Miscellaneous**

**30ZZM—Criminal intelligence**

- 15 (1) Information that is classified by the Commissioner of Police as criminal intelligence for the purposes of this Part may not be disclosed to any person other than the Chief Executive, the Minister, the Tribunal, a court or a person to whom the Commissioner of Police authorises its disclosure.
- (2) If the Commissioner of Police—
- 20 (a) opposes the issuing or renewal of a poppy cultivation licence or a poppy processing licence; or
- (b) requests the suspension or cancellation of a poppy cultivation licence or a poppy processing licence,
- on the basis of information that is classified by the Commissioner of Police as criminal intelligence, the Chief Executive is not (despite any other provision of this Part) required to provide any grounds or reasons for a decision to refuse to issue or renew the licence or to suspend or cancel the licence (as the case may be) other than that the decision was made in the public interest.
- 25 (3) In any proceedings under this Part, the Tribunal or a court—
- 30 (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
- 35 (b) may take evidence consisting of or relating to information so classified by the Commissioner of Police by way of affidavit of a police officer of or above the rank of superintendent.
- (4) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Part except to a Deputy Commissioner or Assistant Commissioner of Police.
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### 30ZZN—Regulations

- (1) Without limiting section 63, the Governor may make regulations for or with respect to the following:
- (a) the cultivation of alkaloid poppies;
  - 5 (b) the processing of poppy straw;
  - (c) classes of persons that are disqualified persons;
  - (d) prescribing fees or levies to recover any compliance or administrative costs;
  - 10 (e) prescribing terms, conditions, limitations and restrictions to which licences issued under this Part will be subject;
  - (f) particulars to be included in any application for the issue, renewal or amendment of a poppy cultivation licence or a poppy processing licence;
  - 15 (g) restricting, limiting or prohibiting premises, vehicles or machines used or intended to be used in connection with the cultivation and destruction of alkaloid poppies or the processing or destruction of poppy straw;
  - (h) limiting or prohibiting transport of poppy straw, including in relation to specific geographical areas or regions in South Australia;
  - 20 (i) the distance required to separate alkaloid poppies and poppy straw at a specified premises from any other place;
  - (j) matters to be considered by the Chief Executive in relation to the suitability of specified premises for the cultivation of alkaloid poppies or processing of poppy straw;
  - 25 (k) fencing of specified premises and standard of fencing required to separate alkaloid poppies and poppy straw from a public place or any other premises;
  - (l) requirements of signage at specified premises and information to be displayed at a specified premises, or on equipment or vehicles used for or in connection with the growing or harvesting of alkaloid poppies or the processing of poppy straw;
  - 30 (m) the manner in which searches, detentions and seizures under this Part are to be carried out;
  - 35 (n) records to be kept in relation to alkaloid poppy cultivation or poppy straw processing;
  - (o) prescribing a penalty of not more than \$15 000 for any contravention of or failure to comply with the regulations made under this Part.
  - 40
- (2) Regulations made for the purposes of this Part may—
- (a) be of general or limited application;

- 5
- (b) differ according to differences in time, place or circumstances;
- (c) apply to different classes of person and licences;
- (d) provide for different fees for different activities or classes of activity or different cases or classes of cases;
- 10
- (e) provide for waiver or reduction of fees;
- (f) in the case of applications for the issue or renewal of licences, specify fees that reflect the cost of administration of, and the provision of, inspection services in connection with this Part;
- (g) confer powers or discretions or impose duties on the Chief Executive or an inspector;
- 15
- (h) exempt specified persons or things or classes of person or classes of thing from complying with all or any of the regulations—
- (i) whether unconditionally or on specified conditions; and
- (ii) either wholly or to such an extent as is specified; and
- 20
- (iii) leave any matter to be required to be undertaken in a manner approved by the Chief Executive.

### **5—Amendment of section 31—Application of Part**

Section 31(1)(ag)—delete paragraph (ag) and substitute:

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- (ag) the cultivation or sale of a plant, the manufacture, sale, supply, administration or possession of a substance or the sale, supply or possession of equipment by a person who is acting in accordance with a licence or permit issued under this Act; or

### **6—Insertion of section 49**

Before section 50 insert:

30

#### **49—Application of Part**

This Part does not apply in relation to Part 4A.

**Note—**

See Part 4A Division 5

### **7—Amendment of section 55—Licences, authorities and permits**

35

Section 55—after subsection (8) insert:

- (9) This section does not apply in relation to a licence under Part 4A.

**8—Amendment of section 63—Regulations**

Section 63(2)—delete "section 33LA" and substitute:

Part 4A or section 33LA