

**Legislative Council—No 179**

As introduced and read a first time, 30 November 2016

South Australia

**Industrial Hemp Bill 2016**

A BILL FOR

An Act to authorise and regulate the cultivation of industrial hemp; to make a related amendment to the *Controlled Substances Act 1984*; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Industrial Hemp Act 2016*.

### **2—Commencement**

5 This Act will come into operation 3 months after it is assented to by the Governor.

### **3—Interpretation**

In this Act—

*ACC* means the Australian Crime Commission established under the *Australian Crime Commission Act 2002* of the Commonwealth;

10 *certified hemp seed* means seed certified, in accordance with the regulations, as seed that will typically produce hemp plants with a concentration of THC in the leaves and flowering heads of not more than 0.5%;

15 *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*;

*cultivate* means—

- (a) plant a seed, seedling or cutting of the plant or transplant the plant; or
- (b) nurture, tend or grow the plant; or
- 20 (c) harvest the plant (including pick any part of the plant or separate any resin or other substance from the plant); or
- (d) dry the harvested plant or part of the plant; or
- (e) take part in the process of cultivation of the plant;

*drug of dependence* means a poison within the meaning of the *Controlled Substances Act 1984* declared by the regulations under that Act to be a drug of dependence;

25 *drug related offence* means—

- (a) an indictable offence involving possession, or cultivation of, or trafficking in, a drug of dependence; or
- (b) an indictable offence under the *Controlled Substances Act 1984*; or
- (c) an indictable offence under the law of another jurisdiction involving
- 30 possession, or cultivation of, or trafficking in, a drug of dependence; or
- (d) an offence of a kind prescribed by the regulations;

*hemp* means a plant, or any part (including the seed) of a plant, of the genus *cannabis*;

*industrial hemp* means hemp that—

- (a) has been grown from certified hemp seed; and

- (b) has a concentration of THC in the leaves and flowering heads of not more than 1%,

and includes the seed of such a plant and any product derived from any such plant;

**industrial hemp licence**—see section 6(1);

5 **inspector** means a person appointed as an inspector under section 13;

**licence** means a licence under this Act;

**premises** means any land, building, structure, vehicle, vessel or aircraft;

**sell** means sell by wholesale or retail and includes the following:

- (a) agree to sell;
- 10 (b) offer or expose for sale;
- (c) keep, or possess, for sale;
- (d) deal in, barter or exchange;
- (e) send, forward, deliver or receive for sale;
- 15 (f) authorise, direct, cause or permit the doing of any matter in paragraphs (a) to (e);

**special licence**—see section 6(2);

**supply** includes the following:

- (a) deliver, sell, trade, give or distribute, whether for valuable consideration or not;
- 20 (b) offer or agree to supply;
- (c) cause or permit to supply;
- (d) hold in possession for the purpose of supply;
- (e) produce or pack for the purpose of supply;

**THC** means tetrahydrocannabinol;

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

#### **4—Criminal intelligence**

- 30 (1) Information that is classified by the Commissioner of Police as criminal intelligence for the purposes of this Act 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—
- (a) opposes the issuing or renewal of a licence; or
- (b) requests the suspension or cancellation of a 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 Act) 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.

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- (3) In any proceedings under this Act, the Tribunal or a court—
- (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
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- (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.
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- (4) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.

## 5—Provisions of Act not unlawful

Nothing in any other Act or law affects the provisions of this Act or renders unlawful anything done in accordance with this Act.

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## Part 2—Licences

### 6—Application for licence

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- (1) A person may apply to the Chief Executive for an industrial hemp licence which authorises a person to possess, cultivate or supply industrial hemp for 1 or more of the following purposes specified in the licence:
- (a) commercial production;
- (b) use in a manufacturing process;
- (c) food production;
- (d) scientific research, instruction, analysis or study;
- 30
- (e) any other purpose approved by the Chief Executive.
- (2) A person may apply to the Chief Executive for a special licence which authorises a person to possess, cultivate or supply hemp, that is not industrial hemp, for the purpose of scientific research, instruction, analysis or study.
- (3) An application under subsection (1) or (2) must—
- 35
- (a) be in a form approved by the Chief Executive; and
- (b) be accompanied by the prescribed fee; and
- (c) contain information and be accompanied by such other records as the Chief Executive may require to determine the application.

## 7—Chief Executive must investigate application

(1) On receiving an application under section 6, the Chief Executive may carry out such investigations and inquiries as the Chief Executive considers necessary to determine the application.

5 (2) The Chief Executive may, by notice in writing, require an applicant to—

(a) provide information, and produce such documents, as are relevant to the investigation of the application as specified in the notice; and

10 (b) provide the Chief Executive with such authorities and consents as the Chief Executive directs to enable the Chief Executive to obtain financial or other confidential information concerning the applicant from other persons; and

(c) submit to the Chief Executive a criminal history report (such as a National Police Certificate) relating to the applicant provided by South Australia Police or the ACC or an ACC accredited agency or broker,

15 and, if a requirement made under this section is not complied with, the Chief Executive may refuse to determine the application.

(3) The Chief Executive must provide a copy of each application under section 6 and any accompanying information and documents to the Commissioner of Police.

(4) The Commissioner of Police must—

20 (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

25 (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 the licence and provide the reasons for the decision.

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

30 (6) Before determining an application for a special licence under section 6(2), the Chief Executive must consult with the Minister responsible for the administration of the *Controlled Substances Act 1984*.

## 8—Suitability of applicant

35 (1) The Chief Executive must not grant a licence to an applicant unless satisfied that the applicant is a fit and proper person to be involved in the possession, cultivation or supply of hemp or industrial hemp.

(2) The Chief Executive may refuse to grant a licence to a person—

(a) if the person has been found guilty of a drug related offence; or

40 (b) if the person has been found guilty of an offence that, in the opinion of the Chief Executive, makes the person unsuitable to be involved in the possession, cultivation or supply of hemp or industrial hemp under a licence; or

- (c) on any other grounds that the Chief Executive considers appropriate.
- (3) The regulations may make further provision for the circumstances in which the Chief Executive may refuse, or is required to refuse, to grant a licence to a person.

### **9—Determination of licence application**

- 5 (1) After considering an application and carrying out an investigation under section 7, the Chief Executive must determine the application by—
- (a) granting the application and issuing an industrial hemp licence or a special licence to the applicant; or
  - (b) refusing the application.
- 10 (2) The Chief Executive must—
- (a) notify the applicant in writing of the decision under subsection (1); and
  - (b) if the Chief Executive refuses an application under subsection (1)(b), provide reasons for the decision.

### **10—Terms, conditions and renewal of licence**

- 15 (1) A licence continues in force for a period of 5 years from the day on which it was granted or renewed, or such shorter period as may be specified in the licence, and may be renewed in accordance with the regulations.
- (2) The Chief Executive may at any time—
- (a) impose a term or condition on a licence; and
  - 20 (b) by notice in writing to the holder of a licence, vary or revoke a term or condition of a licence.
- (3) A licence is subject to—
- (a) the terms and conditions imposed by this Act or prescribed by the regulations; and
  - 25 (b) such terms and conditions as may be imposed by the Chief Executive, at the time the licence is granted or renewed, or at any later time.
- (4) A term or condition imposed by the Chief Executive after the licence is granted or renewed takes effect—
- (a) when notice in writing of the term or condition is given to the holder of the licence; or
  - 30 (b) at such later date as may be specified in the notice.

### **11—Suspension or cancellation of licence**

- (1) The Chief Executive may, by notice in writing served on the holder of a licence, suspend or cancel an industrial hemp licence or a special licence—
- 35 (a) if satisfied that the person has breached a term or condition of the licence; or
- (b) if satisfied that the person is no longer a fit and proper person to hold the licence; or
  - (c) for any other prescribed reason.

(2) Before suspending or cancelling a licence under subsection (1), the Chief Executive must—

(a) notify the holder of the licence that they may, within 30 days before the licence is to be suspended or cancelled, show cause why the licence should not be suspended or cancelled; and

(b) consider any submission under paragraph (a).

(3) The suspension or cancellation of a licence takes effect from the day specified in the notice, or in the case of a suspension, for the period specified in the notice.

(4) The holder of a licence may surrender hemp, industrial hemp or other material cultivated under this Act to the Chief Executive on suspension or cancellation of a licence, and the surrendered material must be dealt with in accordance with the regulations.

## **12—Review by Tribunal**

(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 made under this Act.

(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.

## **Part 3—Inspectors**

### **13—Inspectors**

(1) The Chief Executive may, by instrument in writing, authorise persons to be inspectors for the purposes of this Act.

(2) The Chief Executive may determine the terms and conditions of authorisation of any inspector.

(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.

### **14—General powers of inspector**

(1) For the purposes of determining compliance with this Act, or a licence issued under this Act, an inspector, with any assistance the inspector thinks necessary, at any reasonable time may do all or any of the following:

(a) enter and inspect any premises, other than premises used as a residence, if the inspector believes on reasonable grounds that hemp is being kept, cultivated or supplied at those premises contrary to this Act;

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- (b) intercept, inspect and examine any equipment which an inspector reasonably believes is being used in relation to the possession, cultivation or supply of hemp or industrial hemp;
- (c) require a person to produce any document that the inspector reasonably requires for ascertaining whether the Act or a licence is being complied with—
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- (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;
- (d) take or remove for examination samples of or from, or specimens of, soil, hemp, or any other plant or crop to determine—
- 15
- (i) whether hemp has been cultivated in accordance with the licence; or
- (ii) the concentration of THC in the hemp; or
- (iii) that its possession is in accordance with the licence;
- (e) 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.
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- (2) If an inspector seizes a document or thing or takes a sample of, or from, a thing under this section, the inspector must do so in accordance with any requirements prescribed by the regulations.

### **15—Inspector has power to seize material**

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- (1) An inspector may seize hemp, industrial hemp or material cultivated under this Act if—
- (a) the inspector believes on reasonable grounds that the holder of the licence has contravened a provision of the Act; or
- (b) the material is required for evidence in a legal proceeding; or
- (c) a licence is suspended or cancelled.
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- (2) If an inspector seizes any material under this section, the seized material must be dealt with in accordance with the regulations.
- (3) Without limiting the generality of subsection (2), regulations made under this section may provide for the following:
- 35
- (a) the circumstances in which seized material may be destroyed or otherwise disposed of;
- (b) the recovery by the Chief Executive of any costs incurred in dealing with seized material.

## Part 4—Offences

### 16—False or misleading statements

A person must not, in giving any information under this Act—

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

Maximum penalty: \$5 000.

### 17—Offence to fail to comply with a requirement

A person must not, without lawful excuse, refuse or fail to comply with a requirement made of the person under this Act.

Maximum penalty: \$15 000.

### 18—Interference with inspectors

A person must not obstruct, hinder, threaten or attempt to influence an inspector in the exercise of a power under this Act.

Maximum penalty: \$15 000.

### 19—Offence to impersonate inspector

A person must not impersonate an inspector.

Maximum penalty: \$15 000.

### 20—Offence not to comply with licence

The holder of a licence—

- (a) must not possess, cultivate or supply hemp or industrial hemp otherwise than for the purpose for which the licence is granted; and
- (b) must comply with the terms and conditions of the licence.

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

## Part 5—Miscellaneous

### 21—Delegation

- (1) The Minister or the Chief Executive may, by instrument in writing, delegate a power or function under this Act (other than this power of delegation)—

- (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.

- (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
- (c) is revocable at will.

## 22—Immunity from personal liability

5 The Chief Executive, a person acting under the direction of the Chief Executive, or an inspector are not in any way liable in respect of any act done or omitted in good faith in respect of anything done by them in the exercise or performance of any power, function or duty conferred or imposed on them by this Act.

## 23—Protection against self-incrimination

10 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 Act if the giving of the information or the doing of that thing would tend to incriminate the person.

## 24—Regulations

- 15 (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - 20 (a) prescribe fees or charges in respect of any matter under this Act and provide for the payment, recovery, reduction or waiver of fees or charges (including fees payable under another provision of this Act); and
  - (b) be of general, limited or varied application according to any specified factor to which the regulation is expressed to apply; and
  - (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the Chief Executive.

## 25 Schedule 1—Related amendment

### Part 1—Preliminary

#### 1—Amendment provision

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

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

#### 2—Amendment of section 31—Application of Part

Section 31(1)—after paragraph (ag) insert:

- 35 (ah) the cultivation, possession, sale or supply of a plant, or the sale, supply or possession of a substance by a person who is acting in accordance with the *Industrial Hemp Act 2016*; or