

Legislative Council—No 177

As introduced and read a first time, 17 November 2021

South Australia

Cannabis Legalisation Bill 2021

A BILL FOR

An Act to legalise cannabis and cannabis products, to regulate the sale, supply and advertising of cannabis and cannabis products, to make related amendments to the *Controlled Substances Act 1984*, and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Interpretation
- 3 Application of Act
- 4 Legalisation of cannabis

Part 2—Cannabis Licensing Agency

- 5 South Australian Cannabis Agency
- 6 Objects of Agency
- 7 Functions of Agency
- 8 Staff
- 9 Expert advisory panel
- 10 Agency to report on cannabis spent conviction scheme
- 11 Delegation
- 12 Criminal intelligence

Part 3—Licenses

Division 1—Requirement for licence

- 13 Classes of licence

Division 2—Cannabis production licence

- 14 Cannabis production licence
- 15 Conditions of cannabis production licence

Division 3—Cannabis distribution licence

- 16 Cannabis distribution licence
- 17 Conditions of cannabis distribution licence

Division 4—Conditions of licence

- 18 General conditions of cannabis licence
- 19 Supply and purchase of cannabis under licence
- 20 Products must have Agency endorsement
- 21 Packaging, labelling and storing cannabis or cannabis product
- 22 Inventory tracking system
- 23 Production and sale outside of State

Division 5—Application and grant of licence

- 24 Application for licence
- 25 Persons employed or engaged by holder of cannabis licence
- 26 Multiple licences
- 27 Minors not to hold licence etc
- 28 Fees
- 29 Grounds for finding a person is not suitable to hold a licence
- 30 Grant, refusal or renewal of licence

Division 6—Suspension and cancellation of licence

- 31 Grounds for suspension or cancellation of licence

- 32 Suspension of licence
- 33 Cancellation of licence
- 34 Suspension or cancellation may be subject to conditions
- 35 Suspension or cancellation of licence on application by holder of licence
- 36 Licences not transferrable

Part 4—Advertising and promotion of cannabis and cannabis products

- 37 Certain advertising prohibited
- 38 Cannabis and cannabis product promotions involving prizes or gifts
- 39 Free samples
- 40 Prohibition of sponsorships

Part 5—Investigations

- 41 Appointment of authorised officers
- 42 Identification of authorised officers
- 43 Power to require information or records or attendance for examination
- 44 Powers of authorised officers
- 45 Offence to hinder etc authorised officers
- 46 Powers in relation to seized products

Part 6—Offences

Division 1—Offences relating to licence

- 47 Offence of being unlicensed
- 48 Restrictions on place of consumption
- 49 Use of unlicensed premises as place for consumption of cannabis or cannabis products
- 50 Unlawful use of Agency endorsement

Division 2—Offences relating to minors

- 51 Sale of cannabis and cannabis products and cannabis accessories to minors
- 52 Purchasing cannabis, cannabis products and cannabis accessories on behalf of minors

Part 7—Miscellaneous

- 53 Agency may declare banned cannabis products
- 54 Review
- 55 Service
- 56 Regulations and fee notice

Schedule 1—Related amendments

Part 1—Amendment of *Controlled Substances Act 1984*

- 1 Amendment of section 4—Interpretation
 - 2 Amendment of section 31—Application of Part
 - 3 Amendment of section 32—Trafficking
 - 4 Amendment of section 33B—Cultivation of controlled plants for sale
 - 5 Amendment of section 33C—Sale of controlled plants
 - 6 Amendment of section 33I—Supply or administration of controlled drug
 - 7 Amendment of section 33K—Cultivation of controlled plants
 - 8 Amendment of section 33L—Possession or consumption of controlled drug etc
 - 9 Repeal of section 45A
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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 *Cannabis Legalisation Act 2021*.

2—Interpretation

5 In this Act, unless the contrary intention appears—

Agency means the South Australian Cannabis Licensing Agency established by section 5;

10 **Agency endorsement** means a symbol, an image or words, determined by the Agency and notified in the Gazette, that may be used on cannabis or cannabis products to indicate the cannabis or cannabis product has been produced, distributed and supplied under this Act;

authorised officer—see section 41;

body corporate includes a company within the meaning of the *Corporations Act 2001* of the Commonwealth;

15 **cannabis** means a plant, or any part (including the seed) of a plant, of the genus *cannabis*, and includes cannabis oil and cannabis resin;

cannabis accessory means equipment for use in connection with the smoking, consumption or administration of cannabis, but does not include a container in which cannabis or a cannabis product is sold;

20 **cannabis licence** means—

- (a) a cannabis production licence; or
- (b) a cannabis distribution licence;

cannabis oil means a substance that contains chemicals of any 1 or more of the following classes:

- 25
- (a) cannabinoids;
 - (b) tetrahydrocannabinols;
 - (c) alkyl homologues of tetrahydrocannabinols,

30 where the amount of soluble material in any quantity of the substance, when dissolved in the solvent known as hexane, constitutes more than 85% of the weight of that quantity of substance;

cannabis product means any thing containing, or produced using, cannabis;

cannabis resin means a substance that contains chemicals of any 1 or more of the following classes:

- 35
- (a) cannabinoids;
 - (b) tetrahydrocannabinols;
 - (c) alkyl homologues of tetrahydrocannabinols,

where the amount of soluble material in any quantity of the substance, when dissolved in the solvent known as hexane, constitutes more than 15% but not more than 85% of the weight of that quantity of substance;

consume in relation to cannabis, includes smoking, ingesting or inhaling cannabis, and any other means of introducing cannabis into any part of the body of a person;

cultivate in relation to a cannabis plant, means—

- (a) plant a seed, seedling or cutting of the plant or transplant the plant; or
- (b) nurture, tend or grow the plant; or
- (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;
- (e) take part in the process of cultivation of the plant;

director of a body corporate means a member of the board or committee of management of the body corporate;

licence means a licence granted under this Act;

minor means a person under the age of 18 years;

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

public place has the same meaning as in the *Summary Offences Act 1953*;

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

sell means sell, barter or exchange, offer or agree to sell, barter or exchange or expose for sale, barter or exchange;

supply means provide or distribute or offer to provide or distribute;

THC means tetrahydrocannabinol.

3—Application of Act

This Act does not apply to industrial hemp within the meaning of the *Industrial Hemp Act 2017*.

4—Legalisation of cannabis

Despite any other Act or law, it is not a criminal offence to do any of the following in accordance with this Act:

- (a) cultivate, supply or take any part in cultivating or supplying, cannabis, a cannabis product or a cannabis accessory;
- (b) manufacture or produce, or take any part in manufacturing or producing, cannabis, a cannabis product or a cannabis accessory;
- (c) possess cannabis, a cannabis product or a cannabis accessory.

Part 2—Cannabis Licensing Agency

5—South Australian Cannabis Agency

- (1) The South Australian Cannabis Licensing Agency is established.
- (2) The Agency is—
 - (a) a body corporate with perpetual succession and a common seal; and
 - (b) capable of suing and being sued in its corporate name; and
 - (c) has all the powers of a natural person that are capable of being exercised by a body corporate; and
 - (d) has the functions assigned or conferred by or under this Act.

6—Objects of Agency

The objects of the Agency are—

- (a) to administer the licensing scheme under this Act; and
- (b) to facilitate a legal cannabis industry; and
- (c) to prevent and minimise the harms associated with cannabis use; and
- (d) to reduce the demand for illicit cannabis; and
- (e) to ensure that the cultivation, processing and distribution of cannabis occurs safely; and
- (f) to implement and enforce the quality control of cannabis.

7—Functions of Agency

The Agency has the following functions:

- (a) to issue and ensure compliance with the conditions of licences issued under this Act;
- (b) to establish minimum and best practice standards for the cultivation, processing and handling of cannabis and cannabis products;
- (c) to establish a framework for testing the quality, strength and safety of cannabis and cannabis products;
- (d) to establish and maintain an inventory tracking system for cannabis and cannabis products—
 - (i) produced under a cannabis production licence; or
 - (ii) distributed under a cannabis distribution licence;
- (e) to sell cannabis and cannabis products (other than cannabis to which this Act does not apply) to the holder of a cannabis production licence;
- (f) to purchase cannabis and cannabis products (other than cannabis to which this Act does not apply) from the holder of a cannabis production licence;

- (g) to establish grades and classes of cannabis and cannabis products and price grades and classes of cannabis or cannabis products of a specified grade or class;
- 5 (h) to encourage persons in the business of the supply or sale of cannabis or cannabis products to minimise safety risks associated with cannabis and cannabis products;
- (i) to provide advice, information, community education and assistance in relation to matters connected with cannabis safety, harm minimisation, or other matters of interest to consumers of cannabis;
- 10 (j) to ensure the cultivation and processing of cannabis and cannabis products does not cause physical, social or environmental harm;
- (k) to prevent the over commercialisation or monopolisation of the cannabis market;
- (l) to carry out research necessary to perform the Agency's functions;
- 15 (m) to perform any other functions assigned to the Agency under this or any other Act.

8—Staff

The Agency's staff consists of Public Service employees assigned by the Minister to assist the Agency in the performance of its functions.

9—Expert advisory panel

- (1) The Agency must establish an expert advisory panel to assist the Agency in performing the Agency's functions under this Act.
- (2) Without limiting subsection (1), the expert advisory panel may—
 - 25 (a) develop strategies to prevent the over commercialisation of the cannabis industry, or domination by large-scale business in the cannabis industry; and
 - (b) review and set THC concentration limits to be included as part of the cannabis licensing scheme; and
 - (c) review the effectiveness of this Act; and
 - (d) develop and promote strategies for reducing the harm caused by cannabis, cannabis products and cannabis consumption; and
 - 30 (e) provide expert advice to the Agency.
- (3) An expert advisory panel established by the Agency—
 - (a) must include such members as the Agency thinks appropriate so as to be representative of the cannabis industry and consumers of cannabis; and
 - 35 (b) may, but need not, include a member of the Agency.
- (4) The procedure for calling meetings of an expert advisory panel and for the conduct of business at those meetings is to be decided—
 - (a) by the Agency; or
 - (b) subject to a decision of the Agency—by the panel.

10—Agency to report on cannabis spent conviction scheme

- 5 (1) The Agency must, within 12 months of the commencement of this Act, investigate and make recommendations in relation to establishing a scheme that allows for persons who have been convicted of an offence involving cannabis to have their conviction spent, and cause a written report of the investigation and recommendations to be prepared and submitted to the Minister.
- (2) Without limiting subsection (1), the Agency may investigate and make recommendations in relation to the following:
- 10 (a) the types of convictions for an offence that may be suitable to become spent;
 - (b) the circumstances in which it may not be appropriate for a conviction for an offence to become spent;
 - (c) the way in which a person may make an application to have their conviction spent;
 - (d) the appropriate body for making an order that a conviction is spent;
 - 15 (e) a process for review of a decision to make an order that a conviction be spent;
 - (f) other matters the Agency considers appropriate.

11—Delegation

- 20 (1) The Agency may, by instrument in writing, delegate a power or function of the Agency 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 delegation—
- 25 (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) may, if the instrument of delegation so provides, be further delegated; and
 - (d) is revocable at will.

12—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 Agency, the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure.
- (2) If the Agency—
- 35 (a) refuses an application in relation to a licence under this Act; and
 - (b) the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence,

the Agency is not required to provide any grounds or reasons for the decision other than that to grant the application would be contrary to the public interest, or that it would be contrary to the public interest if the person were to be or continue to be licensed.

- 5 (3) In any proceedings under this Act, the Agency 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
 - 10 (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.
- 15 (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.

Part 3—Licenses

Division 1—Requirement for licence

13—Classes of licence

- 20 There are to be 2 classes of licence—
- (a) a *cannabis production licence*; and
 - (b) a *cannabis distribution licence*.

Division 2—Cannabis production licence

14—Cannabis production licence

- 25 The Agency may grant a *cannabis production licence* which authorises the holder of the licence to carry out 1 or more of the following activities:
- (a) the following activities done for the purposes of supplying and growing stock for cultivation in accordance with the terms and conditions of the licence (a *nursery activity*):
 - 30 (i) importing cannabis seeds of a type—
 - (A) determined by the Agency by notice in the Gazette; or
 - (B) specified in a condition of the licence;
 - (ii) cultivating cannabis;
 - (iii) supplying cannabis seeds and growing stock supplied by the Agency;
 - 35 (iv) carrying out research and testing incidental to the cultivation of cannabis;
 - (v) the packaging and labelling of growing stock and cannabis seeds for supply to the Agency;

- (vi) the receipt of samples of cannabis from a person who holds a cannabis production licence authorised to carry out a research activity;
- 5 (b) the following activities done for the purposes of the cultivation of cannabis for supply (a ***cultivation activity***):
- (i) the purchase of growing stock or cannabis seeds supplied by the Agency;
- (ii) cultivating cannabis;
- 10 (iii) research and testing incidental to the cultivation of cannabis;
- (iv) the receipt of samples of cannabis from a person who holds a cannabis production licence authorised to carry out a research activity;
- (c) the following activities done for the purposes of small scale cultivation of cannabis for supply (a ***micro-cultivation activity***):
- 15 (i) purchasing or receiving growing stock or cannabis seeds from the Agency;
- (ii) cultivating cannabis up to the maximum amount authorised by the licence;
- 20 (iii) carrying out research and testing incidental to the cultivation of cannabis;
- (iv) supplying cannabis to the Agency;
- (v) receiving samples of cannabis from a person who holds a cannabis production licence authorised to carry out a research activity;
- 25 (d) the following activities done for the purposes of processing, packaging and labelling of cannabis for supply (a ***processing activity***):
- (i) purchasing or receiving growing stock, cannabis seeds or cannabis from the Agency;
- (ii) carrying out research and testing incidental to the processing of cannabis and cannabis products;
- 30 (iii) producing cannabis and cannabis products;
- (iv) packaging and labelling cannabis and cannabis products;
- (v) supplying packaged and labelled cannabis to the Agency;
- (vi) receiving samples of cannabis from a person who holds a cannabis production licence authorised to carry out a research activity;
- 35 (e) the following activities done for the purposes of distribution of processed cannabis and cannabis products for supply (a ***wholesale and distribution activity***):
- (i) purchasing or receiving packaged and labelled cannabis and cannabis products from the Agency;
- 40 (ii) supplying packaged and labelled cannabis and cannabis products to the Agency;

- (f) the following activities done for the purposes of research and development of cannabis and cannabis products (a *research activity*):
- (i) purchasing or receiving growing stock or cannabis seeds from the Agency;
 - (ii) cultivating cannabis;
 - (iii) producing cannabis and cannabis products;
 - (iv) testing of samples of cannabis and cannabis products;
 - (v) supplying samples of cannabis (including growing stock) and cannabis products to the Agency and other persons who hold a cannabis production licence;
- (g) obtaining cannabis and cannabis products from a person for the purpose of safe and secure destruction of cannabis and cannabis products in a manner determined by the Agency and notified in the Gazette (a *destruction activity*);
- (h) the supply of cannabis or a cannabis product to a person who holds a cannabis production licence authorised to carry out a destruction activity;
- (i) the destruction of cannabis or a cannabis product authorised to be kept by the licence in a manner determined by the Agency and notified in the Gazette;
- (j) storage and transportation of cannabis and cannabis products as reasonably necessary for a purpose authorised under the licence.

15—Conditions of cannabis production licence

The Agency may impose the following conditions on a cannabis production licence:

- (a) only cannabis and cannabis products of a type specified in the licence may be cultivated;
- (b) cannabis may only be cultivated on premises specified in the licence;
- (c) the cannabis to which the licence relates must not be stored, prepared or treated except on premises specified in the licence;
- (d) reasonable steps must be taken to remove or treat residue of products derived from cannabis after harvesting or moving cannabis products, and as otherwise reasonably required, to avoid seeding or cultivation of cannabis not authorised under the licence;
- (e) the quantity of cannabis or cannabis produced or received must not exceed the quantity specified in the licence;
- (f) if the licence authorises the conduct of research—a person with appropriate scientific qualifications and experience, as determined by the Agency, must be responsible for the conduct of the research;
- (g) any other conditions the Agency thinks fit.

Division 3—Cannabis distribution licence

16—Cannabis distribution licence

The Agency may grant a *cannabis distribution licence* which authorises the holder of the licence to carry out 1 or more of the following activities:

- 5 (a) the following activities done for the purposes of sale of processed cannabis and cannabis products to the public (a *retail activity*):
- (i) the purchase of packaged and labelled cannabis and cannabis products from the Agency;
- (ii) the sale of cannabis products to the public;
- 10 (iii) the sale of growing stock or cannabis seeds to the public;
- (iv) the supply of cannabis to a person who holds a cannabis production licence authorising cannabis to be kept by the licence in a manner determined by the Agency and notified in the Gazette;
- 15 (b) the following activities done for the purposes of sale of growing stock and cannabis seeds to the public (a *nursery retail activity*):
- (i) the purchase of growing stock or cannabis seeds from the Agency;
- (ii) the sale of growing stock or cannabis seeds to the public;
- 20 (c) the following activities done in connection with the consumption of cannabis in a public place (a *cannabis premises activity*):
- (i) the consumption of cannabis and cannabis products (including cannabis and cannabis products not produced by the licensee) by members of the public on premises specified in the licence (*cannabis consumption premises*);
- 25 (ii) supplying cannabis to a person who holds a cannabis production licence authorised to carry out a destruction activity;
- (iii) destroying cannabis authorised to be kept by the licence in a manner determined by the Agency and notified in the Gazette.

17—Conditions of cannabis distribution licence

The Agency may impose the following conditions on a cannabis distribution licence:

- 30 (a) cannabis and cannabis products may only be stored or sold on premises specified in the licence;
- (b) the premises must not be within 200 m of a school or a children's services centre, both within the meaning of the *Education and Children's Services Act 2019*;
- 35 (c) the quantity of cannabis and cannabis products stored on the premises must not exceed the quantity specified in the licence;
- (d) cannabis or cannabis products that are unsuitable or unsafe for consumption must not be sold or supplied;

- (e) the holder of a licence must not allow a person to consume cannabis or cannabis products on premises unless the holder of the licence is authorised to carry out a cannabis premises activity on the premises to which the licence relates;
- 5 (f) the licence must be displayed on premises where cannabis is sold, or cannabis consumption premises, in a way that—
 - (i) is attached to the inside of the premises; and
 - (ii) is easily readable by persons entering the premises by the main entrance to the premises; and
 - 10 (iii) lists the conditions to which the licence is subject;
- (g) any other conditions the Agency thinks fit.

Division 4—Conditions of licence

18—General conditions of cannabis licence

A cannabis licence is subject to the following conditions:

- 15 (a) the holder of a licence must issue to a person employed or engaged in activities under the licence an identification card that identifies the licence and displays the person's name and date of birth and a recent photograph of the person;
- 20 (b) the holder of a licence must ensure that an identification card of a person employed or engaged in activities under the licence is carried with them at all times during which the person is employed or engaged in activities under the licence;
- (c) the holder of a licence must ensure that a person employed or engaged in activities under the licence is of or above the age of 18 years;
- 25 (d) the holder of a licence must prepare and implement a risk management plan approved by the Agency for the activities authorised by the licence that complies with the requirements specified by the Agency in the licence;
- (e) the holder of a licence and any person employed or engaged by the holder of the licence must complete the training required by the Agency;
- 30 (f) the theft, loss or apparent unauthorised interference with cannabis or cannabis products to which the licence relates must be reported by the holder of the licence immediately to a police officer and to the Agency;
- (g) the holder of a licence must immediately inform the Agency by written notice if—
 - 35 (i) a prescribed licence or authorisation held by them that regulates activities involving cannabis or cannabis products, medicines, poisons, or therapeutic goods is suspended, cancelled or amended; or
 - (ii) proceedings are commenced in which the prescribed licence or authorisation may be suspended, cancelled or amended;
- 40 (h) the holder of a licence must inform the Agency by written notice within 7 days of—

(i) a change of name, address or contact details previously notified to the Agency; or

(ii) in the case of a body corporate—

(A) a person ceasing to be or commencing as a director of the body corporate; or

(B) a change of name, address or contact details of a director previously notified to the Agency;

(i) the holder of a licence must ensure that reasonable steps are taken to prevent a minor from entering or remaining in an area where there is cannabis or a cannabis product;

(j) the holder of a licence must not handle cannabis or cannabis products intended for consumption in a way that will render, or is likely to render, the cannabis or cannabis products unsafe for consumption;

(k) any other conditions specified by the Agency in the licence which may, without limitation, include conditions relating to—

(i) surveillance and security measures that must be complied with; and

(ii) matters relating to the preparation or treatment of cannabis or cannabis products; and

(iii) records that must be kept; and

(iv) returns that must be provided to the Agency.

19—Supply and purchase of cannabis under licence

(1) It is a condition of a cannabis production licence that cannabis and cannabis products may only be supplied to the Agency.

(2) Subsection (1) does not apply to a cannabis production licence that authorises the carrying out of a research activity if the cannabis supplied is a sample of cannabis that is supplied to the holder of another cannabis production licence.

(3) It is a condition of a cannabis distribution licence that the holder of the licence may only purchase cannabis or cannabis products from the Agency.

20—Products must have Agency endorsement

(1) If the Agency supplies cannabis or a cannabis product to a person who holds a cannabis distribution licence authorised to carry out a retail activity or a nursery retail activity, the Agency may, if satisfied that the cannabis or cannabis product has been prepared in accordance with the conditions and requirements of a cannabis production licence, cause the Agency endorsement to be applied to the cannabis or cannabis product.

(2) The Agency may—

(a) apply the Agency's endorsement to cannabis or cannabis products supplied to the Agency; or

- (b) require the holder of a cannabis production licence authorised to carry out a nursery activity, a processing activity or a wholesale and distribution activity, by condition of a licence, to apply the Agency's endorsement to the cannabis or cannabis products.
- 5 (3) If the Agency is not satisfied that the Agency's endorsement has been applied to cannabis or a cannabis product in accordance with the conditions of a licence, the Agency may—
- (a) return the product to the holder of the cannabis production licence, subject to such conditions as may be imposed by the Agency; or
- 10 (b) supply the cannabis or cannabis product to a person who holds a cannabis production licence authorised to carry out a destruction activity; or
- (c) destroy the cannabis or a cannabis product authorised to be kept by the licence in a manner determined by the Agency and notified in the Gazette.

21—Packaging, labelling and storing cannabis or cannabis product

- 15 (1) It is a condition of a cannabis distribution licence that cannabis or a cannabis product supplied under the licence must be labelled, stored and packaged in a way that includes—
- (a) the Agency's endorsement; and
- (b) the recommended storage conditions; and
- 20 (c) the strain of cannabis plants that the cannabis or cannabis products is derived from; and
- (d) a statement in a form determined by the Agency by notice in the Gazette—
- (i) specifying how much THC and cannabidiol the cannabis or cannabis products contains; and
- 25 (ii) warning that children and pregnant women should not consume cannabis or a cannabis product;
- (e) if packaged—
- (i) if a container is used—a statement that the container contains cannabis or a cannabis product; and
- 30 (ii) the date the cannabis or cannabis product was packaged; and
- (f) other than in the case of a cannabis plant, either—
- (i) an expiry date; or
- (ii) a statement that no expiry date has been determined; and
- (g) the name of the holder of the cannabis licence who cultivated or produced the cannabis or cannabis product.
- 35 (2) Without limiting subsection (1)—
- (a) a container in which a cannabis plant, other than cannabis seed, is packaged or stored must include information about the number of cannabis plants in the container; and

- (b) a container in which cannabis seed is packaged must include the estimated number of seeds in the container and the weight of those seeds.

22—Inventory tracking system

- (1) The Agency must maintain a system (*the inventory tracking system*) to be accessed and used by the holder of a licence and the Agency to enable the tracking of cannabis and cannabis products produced and distributed under a cannabis licence.
- (2) It is a condition of a cannabis licence that the holder of the licence must—
 - (a) enter information into the inventory tracking system, in a manner and form required by the Agency—
 - (i) each time the holder of the licence receives cannabis or a cannabis product; and
 - (ii) each time the holder of the licence supplies cannabis or a cannabis product to the Agency; and
 - (b) comply with any other requirements in relation to the operation of the inventory tracking system required by notice in writing by the Agency.

23—Production and sale outside of State

- (1) Nothing in this Part limits the Agency from receiving cannabis or a cannabis product from a person who holds a licence or similar authorisation issued outside of the State, if the Agency is satisfied that the cannabis or cannabis product meets the same standards as cannabis or a cannabis product produced under a cannabis production licence.
- (2) Nothing in this Part limits the holder of a cannabis licence from supplying cannabis or cannabis products outside the State if authorised to do so by a condition of the licence.

Division 5—Application and grant of licence

24—Application for licence

- (1) An application for a licence—
 - (a) must be made in the form approved by the Agency; and
 - (b) must be accompanied by the fee specified in section 28; and
 - (c) if the application is for a cannabis production licence or a cannabis distribution licence—must be accompanied by a risk management plan submitted for the approval of the Agency for the activities authorised by the licence that complies with requirements specified by the Agency.
- (2) The Agency may require an applicant to provide further information as may be reasonably required to decide an application.
- (3) The Agency must, as far as reasonably practicable, decide an application within 2 months after receipt of the application, not including any period during which the Agency is waiting for further information from the applicant.

25—Persons employed or engaged by holder of cannabis licence

Authorisation under a cannabis licence extends to all persons employed or engaged by the holder of the licence to carry out the activities authorised by the licence while acting within the scope of the person's employment or engagement.

26—Multiple licences

The Agency must not grant or renew a cannabis production licence or a cannabis distribution licence if it would result in the person holding both licences at the same time.

27—Minors not to hold licence etc

10 A minor cannot—

- (a) hold a licence under this Act; or
- (b) occupy a position of Agency in a trust or corporate entity that holds a licence under this Act.

28—Fees

- 15 (1) Before a cannabis licence is granted or renewed, the applicant must pay to the Agency an application fee of \$550.
- (2) The holder of a cannabis production licence must pay to the Agency an annual fee of \$550 (other than in a year in which an application fee is paid).
- 20 (3) The Agency may cancel or suspend a licence for failure to pay the fee relevant for the licence specified in this section in the time required by the Agency.

29—Grounds for finding a person is not suitable to hold a licence

A person is not a suitable person to hold a licence if—

- (a) the Agency is satisfied that the person is not a fit and proper person to hold the licence; or
- 25 (b) the person does not have the capacity, or has not made or proposed to make appropriate arrangements, to satisfy the requirements of the Act applicable to the activities proposed to be authorised by the licence; or
- (c) the person has breached a condition of a licence on more than 1 occasion; or
- 30 (d) the person has not paid the fees payable to the Agency as required by this Part; or
- (e) the person has been convicted of a prescribed offence (not being an offence that relates to the possession, cultivation or sale of cannabis).

30—Grant, refusal or renewal of licence

- (1) The Agency may, on application by a person, grant, refuse or renew a licence.
- 35 (2) Subject to this Act, a licence remains in force for the period specified in the licence at the time the licence is granted or renewed which must not exceed—
 - (a) in the case of a cannabis production licence—5 years; and
 - (b) in the case of a cannabis distribution licence—1 year.

- (3) The Agency may refuse an application—
- (a) if the application does not comply with a requirement under this Act; or
 - (b) if the applicant is not a suitable person to hold the licence; or
 - (c) on a ground specified in subsection (5).

- 5 (4) A licence may be amended—
- (a) on application by the holder of the licence; or
 - (b) on the Agency's own initiative; or
 - (c) on renewal of the licence,

on a ground specified in subsection (5).

- 10 (5) The Agency may refuse an application under this section, or amend a licence on 1 or any of the following grounds:

- 15 (a) premises, or part of premises proposed to be used under the licence, or under the licence as proposed to be amended, are not suitable for the purpose in terms of location, facilities or security arrangements;
- (b) the arrangements required as a condition of the licence, or the licence as proposed to be amended, have not been met to the satisfaction of the Agency;
- 20 (c) taking the conditions of the licence into account, the risk of cannabis or cannabis products being diverted for unlawful purposes and the risk of environmental harm or harm to humans arising from the activities authorised by the licence, if the application is granted, will not, to the satisfaction of the Agency, be reduced to an acceptable level;
- 25 (d) in the case of a cannabis licence—the risk management plan proposed to be implemented under the licence, or under the licence as proposed to be amended, is not suitable, to the satisfaction of the Agency, for the activities to be authorised under the licence.

- (6) The Agency must give the applicant written notice of a decision to grant or refuse a licence.

- 30 (7) If the Agency fails to give an applicant notice of a decision to grant or refuse the application within 2 months after receipt of the application, the Agency is taken to have refused to grant the application.

Division 6—Suspension and cancellation of licence

31—Grounds for suspension or cancellation of licence

Each of the following constitutes grounds for suspending or cancelling a licence:

- 35 (a) the holder of the licence is not a suitable person to carry out the activities authorised by the licence;
- (b) the holder of the licence has breached a condition of a licence on more than 1 occasion;
- (c) the licence was granted in error;
- (d) the licence was obtained improperly;

- (e) the holder of the licence has ceased to carry on the activities authorised by the licence;
- (f) an event has occurred or circumstances have become known that, if an application were now to be made by the holder of the licence for the licence, the licence would not be granted or it would not be granted on the same conditions;
- (g) an emergency situation has arisen that warrants the suspension, cancellation or amendment of the licence—
- (i) to keep cannabis and cannabis products secure and ensure that the cannabis and cannabis products are not diverted for unlawful purposes; or
 - (ii) to minimise the risk of environmental harm or harm to humans arising from the activities under the licence.

32—Suspension of licence

- (1) If the Agency is satisfied that there are grounds for the suspension of a licence, the Agency may, by written notice given to the holder of a licence, suspend the licence.
- (2) A notice of suspension must specify—
- (a) the date or time from which the suspension takes effect; and
 - (b) the period of the suspension; and
 - (c) the grounds for the suspension.
- (3) Before suspending a licence under this section, the Agency must, unless satisfied that urgent action is required, allow the holder of the licence at least 28 days to make submissions to the Agency about the proposed suspension.
- (4) The Agency must give notice of the suspension of the licence to the Commissioner of Police.

33—Cancellation of licence

- (1) If the Agency is satisfied there are grounds for the cancellation of a licence, the Agency may, by written notice given to the holder of a licence, cancel the licence.
- (2) Notice of the cancellation must specify—
- (a) the date or time from which the cancellation takes effect; and
 - (b) the grounds for the cancellation.
- (3) If the Agency cancels a licence, the Agency may also disqualify the holder of the cancelled licence, or if the holder of the cancelled licence is a body corporate, a director of the body corporate, from obtaining a licence or a specified type of licence under this Act.

34—Suspension or cancellation may be subject to conditions

- (1) A licence may be suspended or cancelled unconditionally or subject to conditions determined by the Agency.

(2) A condition of the licence imposed under this section may, without limitation, include requiring the holder of a licence or a person who formerly held a licence to—

(a) restrict or prohibit the activities otherwise authorised by the licence; or

(b) take specified action or refrain from taking specified action, including, without limitation, a requirement—

(i) to carry out or provide cannabis to a specified person or the Agency for a destruction activity; or

(ii) to store or transport cannabis or material derived from cannabis; or

(iii) to allow an arrangement to be put in place for another person to do an activity authorised or formerly authorised under the licence; or

(c) keep cannabis and cannabis products secure and ensure the cannabis or cannabis products are not used for unlawful purposes; or

(d) minimise the risk of environmental harm arising from activities carried out under the licence.

(3) The Agency may require the holder of a licence, or a person who formerly held a licence, to—

(a) clean up residue of products derived from cannabis; or

(b) treat premises or a place, or anything at the premises or place, formerly used under the licence in a specified way; or

(c) allow an arrangement to be put in place for another person to undertake an action; or

(d) in the case of the holder of a cannabis licence or a person who formerly held a cannabis licence—provide information or prepare a report on specified matters.

(4) A condition under this section may be made on or in anticipation of the expiry or cancellation of a licence, or within a period determined by the Agency, after the expiry, suspension or cancellation of a licence.

(5) A person who fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty:

(a) in the case of a natural person—\$5 000;

(b) in the case of a body corporate—\$10 000.

35—Suspension or cancellation of licence on application by holder of licence

The Agency may, on application by the holder of a licence, approve the suspension or cancellation of the licence.

36—Licences not transferrable

A licence is not transferrable.

Part 4—Advertising and promotion of cannabis and cannabis products

37—Certain advertising prohibited

- 5 (1) A person must not, for a direct or indirect benefit, publicly display a cannabis advertisement.

Maximum penalty:

- (a) in the case of a natural person—
- (i) for a first offence—\$2 500;
 - (ii) for a second or subsequent offence—\$10 000;
- 10 (b) in the case of a body corporate—
- (i) for a first offence—\$5 000;
 - (ii) for a second or subsequent offence—\$15 000.

- (2) A person must not—

- 15 (a) distribute to the public any thing that constitutes or contains a cannabis advertisement; or
- (b) if the object constitutes or contains a cannabis advertisement—sell, hire or supply, for a direct or indirect benefit, the thing to a person, other than a person, or the employee of a person, who is the holder of a cannabis licence under this Act.

20 Maximum penalty:

- (a) in the case of a natural person—
- (i) for a first offence—\$2 500;
 - (ii) for a second or subsequent offence—\$10 000;
- (b) in the case of a body corporate—
- 25 (i) for a first offence—\$5 000;
- (ii) for a second or subsequent offence—\$15 000.

- (3) This section does not apply—

- 30 (a) to a person who holds a cannabis distribution licence if the cannabis advertisement is for the purpose of promoting the retail activity, nursery retail activity or cannabis premises activity authorised by the licence; and
- (b) if the advertisement does not relate to a particular type of cannabis or cannabis product—to an advertisement about the price of cannabis or a cannabis product.

- (4) In this section—

35 ***cannabis advertisement*** means any writing, or a still or moving picture, sign, symbol or other visual image or message or audible message, or a combination of 2 or more of them, that gives publicity to, or otherwise promotes or is intended to—

- (a) promote the purchase or use of cannabis or a cannabis product; or

- (b) promote the trademark or brand name, or part of a trademark or brand name, of the cannabis or a cannabis product; or
- (c) notify the availability of cannabis, or a cannabis product; or
- (d) promote the sale of cannabis or a cannabis product; or
- (e) promote the consumption of cannabis,

but does not include the display of a licence required as a condition of a cannabis distribution licence under Part 3.

38—Cannabis and cannabis product promotions involving prizes or gifts

(1) A person must not, in connection with the sale of cannabis or a cannabis product, or for the purpose of promoting the sale of cannabis or a cannabis product, supply to a person—

- (a) a prize, gift or other benefit; or
- (b) a stamp, coupon, token, voucher, ticket or other thing by virtue of which any person may become entitled to, or may qualify for, a prize, gift or other benefit, whether that entitlement or qualification is absolute or conditional.

Maximum penalty:

- (a) in the case of a natural person—
 - (i) for a first offence—\$2 500;
 - (ii) for a second or subsequent offence—\$10 000;
- (b) in the case of a body corporate—
 - (i) for a first offence—\$5 000;
 - (ii) for a second or subsequent offence—\$15 000.

(2) Subsection (1) applies whether or not the person supplied with the benefit or thing is a purchaser of cannabis or a cannabis product.

(3) Subsection (1) does not apply to the supply of a benefit or thing to a person who is, or is the employee of, the holder of a cannabis licence.

(4) A person must not, in connection with the sale of cannabis or a cannabis product, or for the purpose of promoting the sale of cannabis or a cannabis product, conduct a scheme to promote the sale of cannabis or a cannabis product or to promote cannabis for use generally in the State.

Maximum penalty:

- (a) in the case of a natural person—
 - (i) for a first offence—\$2 500;
 - (ii) for a second or subsequent offence—\$10 000;
- (b) in the case of a body corporate—
 - (i) for a first offence—\$5 000;
 - (ii) for a second or subsequent offence—\$15 000.

- (5) It is a defence in proceedings for an offence under this section to prove the benefit or thing supplied was only incidentally connected with the purchase of cannabis or a cannabis product an equal opportunity to receive that benefit or thing and to buy products other than cannabis or a cannabis product was afforded generally to persons who purchased products, whether or not they were cannabis products.
- (6) It is not a defence in proceedings for an offence under this section to prove the benefit or thing concerned was of negligible or no value.

39—Free samples

A person must not, for the purpose of inducing or promoting the sale of cannabis or a cannabis product, offer or give to a member of the public a free sample of cannabis or a cannabis product.

Maximum penalty:

- (a) in the case of a natural person—
 - (i) for a first offence—\$2 500;
 - (ii) for a second or subsequent offence—\$10 000;
- (b) in the case of a body corporate—
 - (i) for a first offence—\$5 000;
 - (ii) for a second or subsequent offence—\$15 000.

40—Prohibition of sponsorships

- (1) A person must not promote or publicise, or agree to promote or publicise—
- (a) a cannabis product or a trademark or brand name, or part of a trademark or brand name, of a cannabis product; or
 - (b) the name or interests of a manufacturer or distributor of a cannabis product in association directly or indirectly with that product,
- under a contract, or an arrangement (whether or not legally binding), under which a sponsorship is provided, or to be provided, by another person.

Maximum penalty: \$10 000.

- (2) A person must not provide, or agree to provide, a sponsorship under a contract or arrangement of a kind referred to in subsection (1).

Maximum penalty: \$10 000.

Part 5—Investigations

41—Appointment of authorised officers

- (1) The Minister may appoint persons to be authorised officers for the purposes of this Act.
- (2) An appointment may be made subject to conditions specified in the instrument of appointment.
- (3) The Minister, may at any time, revoke an appointment or vary, revoke or add a condition of an appointment.

- (4) All police officers are authorised officers for the purposes of this Act.

42—Identification of authorised officers

- (1) An authorised officer (other than a police officer) must be issued with an identity card—
- 5 (a) containing the person's name and a photograph of the person; and
- (b) stating that the person is an authorised officer for the purposes of this Act.
- (2) If the powers of an authorised officer have been limited by conditions under this Part, the identity card issued to the authorised officer must contain a statement of the limitation on the officer's powers.
- 10 (3) An authorised officer (other than a police officer) must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this Act, produce their identity card for the inspection of the person.

43—Power to require information or records or attendance for examination

- (1) The Minister may, for a purpose related to the administration or enforcement of this Act, by written notice given to a person, require the person—
- 15 (a) to provide to the Minister (either orally or in writing) information that is described in the notice; or
- (b) to attend and give evidence before the Minister or an authorised officer; or
- (c) to produce to the Minister a record in the person's custody or control that is described in the notice.
- 20 (2) The Minister may require that evidence be given under this section on oath.
- (3) A person must not, without reasonable excuse, refuse or fail—
- (a) to comply with the requirements of a notice under this section within the period specified in the notice or any further period allowed by the Minister; or
- 25 (b) to comply with any other requirement of the Minister as to the giving of evidence or the manner in which information or evidence is to be provided or given under this section.

Maximum penalty: \$20 000.

44—Powers of authorised officers

- (1) Subject to this Part, an authorised officer may—
- 30 (a) enter a place or remain in a place and inspect any part of or thing in or at that place as reasonably required in connection with the administration or enforcement of this Act; and
- (b) where necessary, break into any place, using only such force as is reasonably necessary for the purpose; and
- 35 (c) require any person in the place to—
- (i) produce any equipment or other records, items, or any books, papers or documents, that are in the person's custody or control; and
- (ii) answer any questions put by the authorised officer; and

- (iii) facilitate the examination by an authorised officer of any systems, procedures or equipment used for conducting operations authorised under a gambling Act; and
- 5 (d) enter or, where necessary, break into any vehicle or vessel, using only such force as is reasonably necessary for the purpose and search the vehicle or vessel; and
- (e) inspect any documents produced to the inspector and retain them for so long as is reasonably necessary for the purpose of copying or taking extracts from them; and
- 10 (f) require a person who the inspector reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters; and
- 15 (g) if the authorised officer suspects on reasonable grounds that an offence has been committed, seize and retain anything that the inspector believes—
- (i) affords evidence of the offence; or
- (ii) has been used in connection with the commission of the offence; and
- (h) give such directions as are reasonably necessary for, or as are incidental to, the effective exercise of the authorised officer's powers under this Part.
- 20 (2) An authorised officer may only exercise powers under subsection (1)(b) or (d) on the authority of a warrant issued by a magistrate.
- (3) A magistrate cannot issue a warrant under subsection (2) unless satisfied, on information given on oath—
- 25 (a) that there are reasonable grounds for suspecting that an offence has been, is being or is about to be committed; and
- (b) that the warrant is reasonably required in the circumstances.
- (4) An authorised officer may, in exercising powers under this Part, be accompanied by such assistants as are reasonably necessary for the purpose.

45—Offence to hinder etc authorised officers

- 30 A person who—
- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or
- (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- 35 (c) refuses or fails to comply with a requirement or direction of an authorised officer under this Part; or
- (d) when required by an authorised officer under this Part to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- 40 (e) falsely represents, by words or conduct, that they are an authorised officer,

is guilty of an offence.

Maximum penalty: \$20 000.

46—Powers in relation to seized products

If cannabis or cannabis products are seized under this Part, the following provisions apply:

- 5
- (a) the Minister may, if satisfied that it is necessary to do so to avoid loss due to the deterioration of the products, determine that the products are forfeited to the Crown;
 - 10 (b) apart from paragraph (a), the products will be forfeited to the Crown if a court convicts a person of an offence against this Act in relation to the products, unless the court determines that the circumstances of the offence were trifling;
 - 15 (c) subject to this section, the owner of the products will be entitled to recover the products or, if the products have been forfeited by determination of the Minister or have deteriorated, will be entitled to be paid compensation by the Crown in respect of the products—
 - (i) if a prosecution for an offence against this Act in relation to the products has been commenced but—
 - 20 (A) the defendant is acquitted; or
 - (B) the prosecution is withdrawn or lapses; or
 - (C) the court hearing the proceedings determines that the circumstances of the offence were trifling; or
 - (ii) if—
 - 25 (A) a prosecution for an offence against this Act in relation to the products has not been commenced within 3 months of the date of seizure; and
 - (B) the District Court determines, on application by the owner, that the justice of the case requires that the products be returned or that compensation be paid;
 - 30 (d) at the end of the period of 3 years from the date of seizure—
 - (i) if the products have not been forfeited or returned to the owner, they are forfeited to the Crown; and
 - (ii) in any case, the owner will not have any right to recover the products or be paid compensation in respect of the products (other than a right that has already arisen or been determined under paragraph (c));
 - 35 (e) any products forfeited under this section may be disposed of in such manner as the Minister may direct;

- 5 (f) any compensation payable under this section in respect of the products will be in an amount equal to the consideration paid by the owner of the products when they purchased them or, where the owner is the manufacturer of the products, their value (determined by reference to the price that would have been obtained from their sale by the owner in the ordinary course of business) as at the date of seizure;
- (g) the owner of the products has no right to recover the products or be paid compensation in respect of the products apart from under this section.

Part 6—Offences

10 Division 1—Offences relating to licence

47—Offence of being unlicensed

- (1) Subject to subsection (2), a person must not undertake, or take part in, the following activities except as authorised by a licence granted under this Act:

- 15 (a) a nursery activity;
- (b) a cultivation activity;
- (c) a micro-cultivation activity;
- (d) a processing activity;
- (e) a wholesale and distribution activity;
- (f) a retail activity;
- 20 (g) a cannabis premises activity;
- (h) a nursery retail activity;
- (i) a research activity;
- (j) a destruction activity.

Maximum penalty:

- 25 (a) in the case of a natural person—\$10 000;
- (b) in the case of a body corporate—\$20 000.

- (2) Subsection (1) does not apply to a person who undertakes, or takes part in, a cultivation activity or a micro-cultivation activity who—

- 30 (a) purchases growing stock or cannabis seeds supplied by the Agency; and
- (b) cultivates not more than—
- (i) 6 cannabis plants; or
- (ii) a greater number of plants as permitted by determination of the Agency on application by a person under subsection (3),

at premises at which the person usually resides; and

- 35 (c) takes reasonable steps to ensure that the cannabis plant is cultivated in an area that is not publicly accessible; and

(d) does not sell or supply cannabis or cannabis products to a person other than the Agency.

(3) For the purposes of subsection (2)(b)(ii), the Agency may, on application by a person on compassionate grounds, authorise the cultivation of the number of cannabis plants specified in the notice.

(4) An authorisation under subsection (3)—

(a) must be made by notice in writing to the person; and

(b) may be subject to such conditions as the Agency thinks fit and specified in the notice

(5) An application for a determination under subsection (3) must be made in the manner and form, and contain such information, determined by the Agency.

48—Restrictions on place of consumption

A person must not consume cannabis in a public place, or in a vehicle that is in a public place, other than as authorised under this Act.

Maximum penalty: \$1 750.

49—Use of unlicensed premises as place for consumption of cannabis or cannabis products

A person who is the occupier, or has or takes part in the care, management or control of unlicensed premises commits an offence if that person allows those premises to be kept or used as a place where unreasonable public access is allowed for the consumption of cannabis or cannabis products.

Maximum penalty: \$20 000.

50—Unlawful use of Agency endorsement

A person must not use the Agency endorsement unless authorised to do so under this Act.

Maximum penalty: \$1 750.

Division 2—Offences relating to minors

51—Sale of cannabis and cannabis products and cannabis accessories to minors

(1) A person must not sell or supply cannabis, a cannabis product or a cannabis accessory to a minor.

Maximum penalty:

(a) in the case of a natural person—

(i) for a first offence—\$20 000;

(ii) for a second or subsequent offence—\$40 000;

(b) in the case of a body corporate—\$50 000.

- (2) It is a defence to a charge of an offence against subsection (1) to prove that—
- (a) the defendant required the minor to produce evidence of age of a kind prescribed by regulation; and
 - (b) the minor made a false statement, or produced false evidence, in response to that requirement; and
 - (c) in consequence the person who served or assisted the minor reasonably assumed that the minor was of or above the age of 18 years.

52—Purchasing cannabis, cannabis products and cannabis accessories on behalf of minors

- (1) A person of or above the age of 18 years must not purchase cannabis, a cannabis product or a cannabis accessory on behalf of a minor.

Maximum penalty: \$20 000.

- (2) It is a defence to a charge of an offence against subsection (1) to prove that—
- (a) the defendant required the minor to produce evidence of age of a kind prescribed by regulation; and
 - (b) the minor made a false statement, or produced false evidence, in response to that requirement; and
 - (c) in consequence the person who served or assisted the minor reasonably assumed that the minor was of or above the age of 18 years.

Part 7—Miscellaneous

53—Agency may declare banned cannabis products

- (1) The Agency may, by notice in the Gazette, declare a specified cannabis product to be a banned cannabis product, if the Agency considers the product to be inappropriate.
- (2) Without limiting subsection (1), the Agency may consider a cannabis product to be inappropriate on any of the following grounds:
- (a) the name of the product, or the product's design or packaging, is likely to be attractive to minors;
 - (b) the product is likely, for another reason, to have special appeal to minors;
 - (c) the product is likely to be confused with confectionary;
 - (d) it is in the public interest to declare the product to be a banned cannabis product.
- (3) A person must not advertise or supply a cannabis product that has been declared to be a banned cannabis product.

Maximum penalty: \$1 750.

54—Review

- (1) A person who is dissatisfied with a decision of the Agency under this Act—
- (a) to grant, renew or amend a licence or a condition of a licence; or

(b) to refuse approval of a suspension or cancellation of a licence on the application of the holder of the licence; or

(c) to impose a condition on a licence,

may apply to SACAT under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the decision.

(2) An application for review must be made within 1 month after the person receives notice of the Agency's decision.

55—Service

A notice or document required to be given or sent to a person under this Act may—

(a) be given to the person personally; or

(b) be posted in an envelope addressed to the person—

(i) at the person's last known address; or

(ii) at any address for service provided by the person; or

(c) be left for the person with someone apparently over the age of 16 years at any address for service provided by the person; or

(d) be transmitted by email to an email address provided by the person (in which case the notice or document will be taken to have been given or sent at the time of transmission).

56—Regulations and fee notice

(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.

Schedule 1—Related amendments

Part 1—Amendment of *Controlled Substances Act 1984*

1—Amendment of section 4—Interpretation

Section 4(1), definition of *controlled plant*—delete "cannabis plant or a cutting of a cannabis plant (provided that the cutting has been planted or otherwise placed in a growing medium) or any other"

2—Amendment of section 31—Application of Part

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

(aj) the cultivation, processing, 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 *Cannabis Legalisation Act 2021*; or

3—Amendment of section 32—Trafficking

Section 32(4)—delete subsection (4)

4—Amendment of section 33B—Cultivation of controlled plants for sale

Section 33B(4)—delete subsection (4)

5—Amendment of section 33C—Sale of controlled plants

Section 33C(4)—delete subsection (4)

5 **6—Amendment of section 33I—Supply or administration of controlled drug**

Section 33I(2)—delete subsection (2)

7—Amendment of section 33K—Cultivation of controlled plants

(1) Section 33K(1)(ab), (b) and (c) (inclusive)—delete paragraphs (ab), (b) and (c)

(2) Section 33K(2) and (3)—delete subsections (2) and (3)

10 **8—Amendment of section 33L—Possession or consumption of controlled drug
etc**

Section 33L(2)—delete subsection (2)

9—Repeal of section 45A

Section 45A—delete the section