



New South Wales

# Poppy Industry Bill 2016

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to create a legislative framework for the establishment in New South Wales of an industry of cultivating alkaloid poppies and supplying material derived from alkaloid poppies for the manufacture or production of therapeutic goods and for scientific research, analysis, education and training, with appropriate safeguards for keeping alkaloid poppies or material derived from alkaloid poppies secure.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** sets out the object of the proposed Act. It explains that the legislative framework involves:

- (a) establishing a scheme of licences and permits to authorise activities relating to alkaloid poppies or material derived from alkaloid poppies, and
- (b) ensuring that the authorised activities are limited to activities supporting the manufacture or production of therapeutic goods, whether in or outside Australia, or scientific research, analysis, education or training, and

- (c) regulating the authorised activities in a manner designed to keep alkaloid poppies and certain material derived from alkaloid poppies secure and ensure that they are not diverted for unlawful purposes and to minimise the risk of environmental harm or harm to humans arising from the activities.

**Clause 4** defines certain words and expressions used in the proposed Act.

**Clause 5** establishes the test to be applied by the Secretary to assess whether a person is a fit and proper person to hold a poppy licence or poppy permit. The test extends to close associates of the person, as defined in the clause. Under the scheme a person who lives in the same household is to be treated as a close associate.

## Part 2 Licences and permits

**Clause 6** makes it an offence to undertake various activities except as authorised by a poppy licence or poppy permit. These activities are as follows:

- (a) cultivating or harvesting alkaloid poppies,
- (b) conducting scientific research, analysis, education or training using alkaloid poppies or alkaloid poppy material,
- (c) receiving alkaloid poppies or alkaloid poppy material,
- (d) preparing or treating alkaloid poppy material,
- (e) storing alkaloid poppies or alkaloid poppy material,
- (f) supplying alkaloid poppies or alkaloid poppy material,
- (g) transporting alkaloid poppies or alkaloid poppy material.

One of the species of poppy that is a prohibited plant under the *Drug Misuse and Trafficking Act 1985*, *Papaver orientale*, cannot be the subject of a poppy licence and so remains prohibited from cultivation. The legislative scheme relates to 2 species of poppies: *Papaver bracteatum* and *Papaver somniferum*, although the scope of the scheme can be altered by regulation.

Alkaloid poppy material includes poppy straw—the upper parts of alkaloid poppies (including the stems and capsules) that are harvested. The harvested material remains poppy straw however it is prepared or treated. The definition of **alkaloid poppy material** allows the regulations to declare any other thing derived from alkaloid poppies to also be alkaloid poppy material so that the application of the scheme can be expanded in the future should scientific research, technological advances or other events make that desirable.

**Clause 7** sets out the types of licences and permits that may be granted under the scheme. These comprise a cultivation licence, a processing licence and a poppy permit.

A cultivation licence is for cultivating and harvesting alkaloid poppies. The material harvested may be used for conducting scientific research, analysis, education or training, for supply to the holder of a processing licence or interstate processing licence or for the purposes of some other licence held by the person. The terms of the licence may limit the scope of the authorisation.

A processing licence is for receiving alkaloid poppies or alkaloid poppy material in New South Wales, whether the poppies have been cultivated and the material harvested under a cultivation licence in New South Wales or obtained from a source outside New South Wales. The poppies or material received may be used for conducting scientific research, analysis, education or training, for supply to the holder of a poppy licence, interstate poppy licence or manufacturing, export or research licence or for the purposes of some other licence held by the person. The terms of the licence may limit the scope of the authorisation.

The terminology “cultivation licence” and “processing licence” is used for consistency with the terminology used in other jurisdictions with a corresponding legislative scheme.

The usual situation contemplated is where the holder of a processing licence arranges for a person to cultivate and harvest alkaloid poppies under a cultivation licence for use by the holder of the processing licence under a manufacturing, export or research licence held by the person. The

legislative scheme, however, has to allow for and deal with various other situations, including, for example, where surplus material is supplied to another licence holder.

A poppy permit may be granted to authorise the transport of alkaloid poppies or alkaloid poppy material in NSW where transport is not authorised by a poppy licence. The regulations can establish other circumstances in which a poppy permit may be granted.

The clause also recognises that sampling or scientific research or analysis under a poppy licence may lead to the manufacture or production of a prohibited drug and makes it clear that, apart from such a circumstance, a licence or permit does not authorise the manufacture, production or supply of a prohibited drug.

**Clause 8** sets out the conditions of a cultivation licence. The land on which the alkaloid poppies will be cultivated must be approved and specified in the conditions, along with the land or premises used to store, prepare or treat alkaloid poppy material.

**Clause 9** sets out the conditions of a processing licence. The premises used to store, prepare or treat alkaloid poppy material must be approved and specified in the conditions.

**Clause 10** sets out the conditions of a poppy permit that authorises the transport of alkaloid poppies or alkaloid poppy material.

**Clause 11** sets out general conditions of poppy licences and poppy permits and empowers the regulations and the Secretary to impose further conditions.

Licence and permit conditions are directed towards keeping alkaloid poppies and alkaloid poppy material secure and minimising the risk of diversion for unlawful purposes and to minimising the risk of environmental harm or harm to humans arising from the activities.

**Clause 12** makes it an offence to contravene a licence or permit condition.

**Clause 13** specifies that a cultivation licence may be granted or renewed for a period of up to 3 years and a processing licence for a period of up to 1 year. It also provides that a poppy permit may be granted for a period of up to 1 year.

**Clause 14** requires a licence fee and annual fee to be paid for a cultivation licence and a licence fee to be paid for a processing licence. These fees are in addition to application fees which are payable for both licences and permits under clause 18.

**Clause 15** enables a licence or permit to be amended on application of the holder or, in the case of a licence, on the initiative of the Secretary on renewal.

**Clause 16** provides that licences and permits are not transferable.

**Clause 17** provides for surrender of a licence or permit with the approval of the Secretary.

**Clause 18** governs the making of an application under the Part for the grant, renewal or amendment of a licence or permit or for an approval to surrender a licence or permit.

**Clause 19** enables the Secretary to refuse to grant, renew or amend a licence or permit unless the applicant satisfies the Secretary of various specified matters. These include a requirement that the applicant must be a fit and proper person. In determining whether a person is a fit and proper person to hold a licence or permit, the Secretary may consider the character, reputation and financial background of the applicant and the applicant's close associates, as referred to in clause 5. In determining an application, the Secretary may also take into account Australia's obligations under the *Single Convention on Narcotic Drugs 1961*.

**Clause 20** empowers the Secretary to cause the operations of the holder of a licence or permit to be audited for the purposes of assessing compliance with the legislative scheme or obtaining information reasonably required for the administration of the legislative scheme. The regulations may provide for recovery of the cost of an audit from the holder.

**Clause 21** sets out circumstances in which the Secretary may suspend, cancel or amend a licence or permit, essentially for wrong doing on the part of the holder or to avoid a hiatus in arrangements relating to alkaloid poppies or alkaloid poppy material, but also if an emergency situation arises.

**Clause 22** establishes a scheme under which the Secretary may impose an order on a former holder of a licence, on the expiry, surrender or cancellation of the licence or within a period after

such an event as specified in the regulations. The order enables the Secretary to require the person to take specified action or to refrain from taking specified action for the purposes of:

- (a) keeping alkaloid poppies and alkaloid poppy material secure and ensuring that they are not diverted for unlawful purposes, or
- (b) minimising the risk of environmental harm or harm to humans arising from the former activities under the licence.

**Clause 23** requires applications for the grant or renewal of a poppy licence to be referred to the Commissioner of Police and empowers the Secretary to refer to the Commissioner of Police an application for a poppy permit or other matters that may give rise to suspension, cancellation or amendment of a poppy licence or poppy permit. The Commissioner's view on refusal of an application for the grant or renewal of a poppy licence or poppy permit for reasons that would, if disclosed, involve criminal intelligence prevails.

**Clause 24** provides for review by the Civil and Administrative Tribunal of decisions of the Secretary under the legislative scheme.

**Clause 25** is designed to ensure that criminal intelligence need not be disclosed in reasons or proceedings.

### **Part 3 Authorised officers**

**Clause 26** provides for the appointment of authorised officers. All police officers are also authorised officers.

**Clause 27** provides for appointed authorised officers to be issued with identity cards which must be displayed to a person before powers are exercised in relation to the person.

**Clause 28** sets out the powers of authorised officers. It is appropriate for the powers to be quite extensive because of the risk of alkaloid poppies and alkaloid poppy material being used for unlawful purposes. The usual approach of requiring a warrant to search residential premises is limited to a building, caravan, or other structure or vehicle, used only for residential purposes, and so a warrant is not required in relation to a yard, carport, garage, shed or the like.

**Clause 29** deals with how a search warrant may be obtained by an authorised officer in an appropriate case.

**Clause 30** creates an offence of hindering or obstructing an authorised officer and other related offences.

### **Part 4 Other offences and proceedings**

**Clause 31** establishes an offence against clause 6 as an executive liability offence for directors and managers of corporations. An executive liability offence is an offence where the onus is on the prosecution to prove that the director or manager knows or ought reasonably to know that the offence (or an offence of the same type) would be or is being committed and fails to take all reasonable steps to prevent or stop the commission of that offence.

**Clause 32** provides that for other offences committed by a corporation, the onus is on the prosecution to prove that the director or manager aids, abets, counsels or procures the commission of the corporate offence, or induces, whether by threats or promises or otherwise, the commission of the corporate offence, or conspires with others to effect the commission of the corporate offence, or is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

**Clause 33** provides that the state of mind of an officer, employee or agent of a corporation is imputed to the corporation for the purposes of offences.

**Clause 34** provides for ancillary offences.

**Clause 35** makes it an offence to make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided, or records kept, under the legislative scheme.

**Clause 36** imposes a penalty for any continuing offence against the legislative scheme.

**Clause 37** enables penalty notices to be issued for offences of a kind specified in the regulations.

**Clause 38** enables proceedings for offences to be dealt with summarily before the Local Court or by the Supreme Court in its summary jurisdiction and provides for a prosecution period of 2 years.

**Clause 39** provides for evidentiary certificates on certain matters to be submitted in proceedings.

## **Part 5 Miscellaneous**

**Clause 40** provides that a person cannot refuse to answer a question or provide information by relying on the privilege against self incrimination, but that the answer or information cannot be used against the person in criminal proceedings if the person objects on the ground of the privilege or was not warned that the person could so object.

**Clause 41** provides that the Crown is bound by the legislative scheme.

**Clause 42** enables the Secretary to delegate functions and powers under the legislative scheme.

**Clause 43** provides for methods of service of documents under the legislative scheme.

**Clause 44** makes it an offence for information obtained in the administration of the legislative scheme to be disclosed except in specified circumstances. This is particularly important in this legislative scheme to ensure that documents such as risk management plans do not enter the public arena.

**Clause 45** enables the Secretary to enter into information sharing arrangements with the police or other agencies, including in another Australian jurisdiction.

**Clause 46** makes it clear that nothing in the legislative scheme affects alkaloid poppy seeds being used for a purpose other than cultivation.

**Clause 47** enables the Governor to make regulations for the purposes of the legislative scheme.

**Clause 48** provides for the review of the legislative scheme in 5 years.

## **Schedule 1 Amendment of Acts**

**Schedule 1** amends the Acts specified in the Schedule. The *Drug Misuse and Trafficking Act 1985* and the *Poisons and Therapeutic Goods Act 1966* are amended so that the offences under those Acts do not apply to an activity authorised by a poppy licence or poppy permit.