

TASMANIA

INDUSTRIAL HEMP AMENDMENT BILL 2023

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INDUSTRIAL HEMP AMENDMENT BILL 2023

*(Brought in by the Minister for Primary Industries and Water,
the Honourable Joanne Lesley Palmer)*

A BILL FOR

**An Act to amend the *Industrial Hemp Act 2015* and the
*Industrial Hemp Regulations 2016***

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Industrial Hemp
Amendment Act 2023*.

2. Commencement

This Act commences on the day on which this
Act receives the Royal Assent.

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PART 2 – INDUSTRIAL HEMP ACT 2015 AMENDED

3. Principal Act

In this Part, the *Industrial Hemp Act 2015** is referred to as the Principal Act.

4. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *drug-related offence*:

fit and proper, in relation to a person –
see section 4A;

- (b) by omitting the definition of *inspector* and substituting the following definition:

inspector means –

- (a) a person appointed to hold the office of inspector under section 22; or
- (b) a police officer;
- (c) by inserting “research” after “special” in the definition of *licence*;
- (d) by inserting the following definition after the definition of *regulations*:

*No. 42 of 2015

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responsible officer, in relation to a licence, means the person who is appointed as the responsible officer in relation to the licence under section 21A;

- (e) by omitting the definition of *special licence* and substituting the following definition:

special research licence means a special research licence issued in accordance with section 14;

5. Section 4A inserted

After section 4 of the Principal Act, the following section is inserted in Part 1:

4A. Meaning of *fit and proper*

- (1) The Secretary may take into account the following matters when determining, for the purposes of this Act, if a natural person is a fit and proper person:
- (a) any conviction of the person for an indictable offence;
 - (b) any civil penalty (however described) imposed upon the person under a law of the Commonwealth, a State or a Territory;
 - (c) any revocation or suspension of a licence or permit (however

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described) held by the person under a law of the Commonwealth, a State, a Territory or another country, being a law relating to the prohibition or regulation of drugs;

(d) the capacity of the person to comply with conditions of the licence;

(e) the person's history of compliance with this Act.

(2) The Secretary may take into account the following matters when determining, for the purposes of this Act, if a body corporate is a fit and proper person:

(a) any conviction of the body corporate for an offence against a law of the Commonwealth, a State or a Territory;

(b) any civil penalty (however described) imposed upon the body corporate under a law of the Commonwealth, a State or a Territory;

(c) if there is such a conviction or imposition of a civil penalty upon the body corporate –

(i) whether the offence concerned was committed, or the conduct

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to which the civil penalty relates occurred, at a time when any person who is presently a director or officer of the body corporate was such a director or officer; and

(ii) whether the offence concerned was committed, or the conduct to which the civil penalty relates occurred, at a time when any shareholder of the body corporate who is presently in a position to influence the management of the body corporate was such a shareholder;

(d) any revocation or suspension of a licence or permit (however described) held by the body corporate under a law of the Commonwealth, a State, a Territory or another country, being a law relating to the prohibition or regulation of drugs;

(e) whether a person who is, or is to be, the responsible officer in relation to the licence is a fit and proper person;

(f) whether –

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- (i) each director of the body corporate is a fit and proper person; or
- (ii) more than 10% of the body corporate is owned by a person who is not a fit and proper person;
- (g) the capacity of the body corporate to meet the conditions of the licence;
- (h) the body corporate’s history of compliance with this Act.

6. Section 7 amended (Application for licence)

Section 7(1) of the Principal Act is amended by inserting “research” after “special”.

7. Section 8 amended (Investigation of application)

Section 8 of the Principal Act is amended by inserting after subsection (1) the following subsections:

- (1A) Without limiting the generality of subsection (1), the Secretary may forward a copy of an application for a licence to the Commissioner of Police.
- (1B) The Commissioner of Police must inquire into, and report to the Secretary on, any matter concerning the application for a licence that the Secretary requests.

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8. Section 11 amended (Secretary must consult Minister)

Section 11 of the Principal Act is amended as follows:

- (a) by inserting “research” after “special”;
- (b) by inserting “or with a person appointed by that Minister for that purpose” after “*Poisons Act 1971*”.

9. Section 12 amended (Determination of licence application)

Section 12(1)(a) of the Principal Act is amended by inserting “research” after “special”.

10. Section 13 amended (Industrial hemp licence)

Section 13 of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

- (ca) horticultural use;

11. Section 14 amended (Special research licence)

Section 14 of the Principal Act is amended by inserting “research” after “special”.

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12. Section 18 amended (Suspension or cancellation of licence)

Section 18(1) of the Principal Act is amended by inserting “research” after “special”.

13. Sections 21A, 21B and 21C inserted

After section 21 of the Principal Act, the following sections are inserted in Part 2:

21A. Responsible officers

- (1) The holder of a licence who is not a natural person is to appoint a natural person as the responsible officer in relation to the licence.
- (2) If the holder of a licence fails to appoint a responsible officer under subsection (1), the person responsible for the direction and management of the business of the holder of the licence is taken to have been appointed as the responsible officer in relation to the licence.
- (3) The holder of a licence is to ensure that a responsible officer appointed under subsection (1) has sufficient authority to perform the responsibilities of a responsible officer under this Act.
- (4) If the holder of a licence appoints a person as a responsible officer in relation to that licence under subsection (1), the

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holder of the licence must, as soon as practicable after making the appointment, notify that person, in writing, of the appointment.

Penalty: Fine not exceeding 20 penalty units.

21B. Responsibilities of responsible officer

(1) In this section –

responsibilities includes the duties imposed on the holder of a licence under this Act and any conditions or restrictions specified in the licence.

(2) A responsible officer in relation to a licence must perform the responsibilities of the holder of the licence.

Penalty: Fine not exceeding 100 penalty units.

(3) A responsible officer in relation to a licence is not to be taken to have failed to perform any responsibility of the holder of the licence, if –

(a) it was not reasonably practicable for the responsible officer to perform that responsibility; or

(b) the failure to perform the responsibility was due to causes over which the responsible officer

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had no control and against the happening of which it was not reasonably practicable for the responsible officer to make provision; or

(c) the responsible officer exercised due diligence to prevent the failure to perform the responsibility; or

(d) the responsible officer was unaware that he or she had been appointed, or was taken to have been appointed, as the responsible officer.

(4) Nothing in this section relieves the holder of a licence of the requirement to perform the licence holder's responsibilities under this Act.

(5) A responsible officer may be proceeded against and convicted of having failed to perform the responsibilities of the holder of the licence under this Act whether or not the holder of the licence has been proceeded against or has been convicted of having failed to perform the responsibilities.

21C. Obstruction of responsible officer

A person having authority or control over the responsible officer in relation to a licence must not exercise that authority or control in any way to obstruct the

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responsible officer in the performance of the responsible officer's responsibilities under this Act.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) a natural person, a fine not exceeding 100 penalty units.

14. Section 22 amended (Inspectors)

Section 22(4) of the Principal Act is amended by inserting “appointed under this section” after “inspector”.

15. Section 23 amended (Powers of inspectors)

Section 23(1)(c) of the Principal Act is amended by omitting “test” and substituting “test, or cause to be tested,”.

16. Section 24 amended (Hemp to be tested)

Section 24(1) of the Principal Act is amended by omitting “test” and substituting “test, or cause to be tested,”.

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17. Section 24A inserted

After section 24 of the Principal Act, the following section is inserted in Part 3:

24A. Actions where hemp THC concentration over 1%

(1) If an inspector tests hemp, or causes hemp to be tested, under section 24 and that hemp has a concentration of THC in the leaves and flowering heads of more than 1%, the Secretary is to –

(a) direct the holder of the licence under which the hemp was cultivated to destroy the hemp or part of the hemp; or

(b) in a case where the Secretary is satisfied that the crop was grown in good faith, give any other direction or such authorisation, in relation to the possession or supply of the hemp or part of the hemp, as the Secretary thinks fit.

(2) The holder of a licence must comply with a direction given to the licence holder by the Secretary under subsection (1).

Penalty: Fine not exceeding 100 penalty units.

(3) If the holder of a licence does not comply with a direction of the Secretary under subsection (1) –

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- (a) the hemp is forfeited to the Crown and the Secretary may cause the hemp to be destroyed; and
- (b) the holder of the licence must pay to the Crown the reasonable costs of that destruction.

18. Section 25 amended (Search warrants)

Section 25 of the Principal Act is amended by omitting subsection (4).

19. Section 35A inserted

After section 35 of the Principal Act, the following section is inserted in Part 5:

35A. Authorisation of possession and supply of hemp

- (1) The Commissioner of Police may authorise a police officer, State Service officer or State Service employee to possess and supply industrial hemp or hemp for education and training or other purposes, and upon such terms and conditions, as are specified in the authorisation.
- (2) Despite any other Act or law of this jurisdiction, a person authorised under subsection (1) who engages in conduct that, but for this section, would constitute an offence is not criminally responsible

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in relation to the conduct if the person engages in the conduct under and in accordance with an authorisation under this section.

20. Section 37 amended (Regulations)

Section 37 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Without limiting subregulation (1), the regulations may prescribe the types of activities that may, or may not, be carried out under an industrial hemp licence or a special research licence.

21. Section 37A inserted

After section 37 of the Principal Act, the following section is inserted in Part 5:

37A. Transitional provisions consequent on enactment of *Industrial Hemp Amendment Act 2023*

- (1) In this section –

amending Act means the *Industrial Hemp Amendment Act 2023*;

commencement day means the day on which the amendment Act commences.

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- (2) A special licence that was in force under this Act immediately before commencement day is taken, on and after the commencement day, to be a special research licence, subject to the conditions specified in the licence immediately before the commencement day.
- (3) An application for the grant or the renewal of a special licence that was made under this Act that is not determined before the commencement day is taken, on and after the commencement day, to be an application for a special research licence under this Act.

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**PART 3 – INDUSTRIAL HEMP REGULATIONS 2016
AMENDED**

22. Principal Regulations

In this Part, the *Industrial Hemp Regulations 2016** are referred to as the Principal Regulations.

23. Regulation 6 rescinded

Regulation 6 of the Principal Regulations is rescinded.

24. Regulation 7A inserted

After regulation 7 of the Principal Regulations, the following regulation is inserted:

7A. Determining application for special research licence

The Secretary must not grant a special research licence to an applicant unless the Secretary is satisfied that the applicant has demonstrated the following:

- (a) that the research to be conducted under the licence will use a scientifically valid research method and approach;

*S.R. 2016, No. 9

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- (b) the potential benefits of the research to the industrial hemp industry;
- (c) that appropriate safety and security measures will be put in place to ensure that the hemp is secured against theft, loss or unauthorised interference.

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Part 4 – Miscellaneous

PART 4 – MISCELLANEOUS

25. Consequential amendments of regulations do not prevent subsequent amendment

The amendment by this Act of a provision of any regulations does not prevent that or any other provision of those regulations from being amended or rescinded by a subsequent regulation.

26. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.