Industrial Hemp Act 2015 Review

Consultation Summary Report

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Introduction

The production of industrial hemp in Tasmania is regulated under the *Industrial Hemp Act* 2015 ('the Act'.) The Act allows research, cultivation, supply and production of industrial hemp under a licensing scheme administered by the Department of Natural Resources and Environment Tasmania (NRE Tas.) The Act enables industrial hemp crops to be easily differentiated from medicinal and illegal cannabis crops.

Industrial hemp is an emerging industry and since the Act came into effect over five years ago there have been a number of developments that need to be taken into account, including the approval of hemp seed as food and a medicinal cannabis licencing scheme administered by the Australian Government. To ensure that the regulatory environment is contemporary and proportionate to the needs of this growing industry, NRE Tas has commenced a review of the Act and supporting regulations and policy ('the Review'.)

The Tasmanian Government supports regulation that is proportionate, consistent, transparent and targeted. As outlined in the *Competitiveness of Tasmanian Agriculture for 2050 White Paper* there is an initiative to "work with the hemp industry to explore options to support future growth and streamline regulation."

The review of the Act focuses on three broad areas:

1. Update existing definitions to clarify the scope of regulation, considering ongoing changes in the industry.
2. Clarify the interaction of the Act with other legislation.
3. Assess the Act to ensure that the level of regulation remains proportionate to the risk.

It is also noted that not all opportunities to streamline and improve the regulatory framework for industrial hemp may require legislative amendments. For example policy and guidelines for industry may also support efficient industry regulation and will be considered as part of this process.

Explicitly excluded from consideration was cannabis production for medicinal or recreational uses. Medicinal cannabis is controlled by the Australian Government through the Office of Drug Control (ODC) which can authorise production and supply of cannabis products for the purposes of curing or alleviating the symptoms of disease, ailment or injury. Production, supply and possession of cannabis for recreational or personal use is illegal.

Consultation

Targeted consultation commenced in December 2021 with key stakeholder groups who were identified as having the potential to be operationally impacted by the Review.

Stakeholders were provided with a call-for-submissions paper seeking suggestions and comments on any aspect of the Act. To encourage responses, the paper provided points which highlighted aspects of the Act under review as prompts for discussion. These points were:

1. Opportunities to reduce regulatory burden through streamlining processes and current regulatory requirements (for example the application licencing process).
2. Suggestions for updating existing or including new definitions in the Act to clarify the scope of regulation.

3. Where there are gaps in the regulation or licencing application process for certain activities.
4. Inconsistencies or clarification required relating to interaction with other legislation.
5. Any areas of the Act which are working well and do not require amendment.

The initial phase of targeted consultation closed in February 2022.

Consultation Feedback Report

This Consultation Feedback Report summarises the comments, suggestions and ideas outlined in the submissions received. Some of the suggestions and responses contained in this Report were made and/or supported by multiple submissions, others were made in a single submission. Where similarly themed comments are common to a number of submissions, the comments are summarised and presented here within the topic area deemed most relevant for the reader.

This Report is a summary of the feedback provided. It does not seek to support any particular idea or proposal, nor does it aim to show any preference for specific ideas or set future Tasmanian Government policy.

Next Steps

An Inter-Agency Steering Committee supported by a Working Group made up of relevant Tasmanian Government Agencies will provide policy options for the Tasmanian Government to respond to the issues raised through the targeted consultation and other matters relevant to the review.

AgriGrowth Tasmania in the Department of Natural Resources and Environment will be undertaking further engagement with stakeholders during the first half of 2023 which may include a consultation process for a proposed amendment Bill.

Subject to these processes it is intended that any legislative amendments are presented to the Tasmanian Parliament before the end of 2023.

KEY THEMES

The following key themes have emerged during the first stage of consultation:

- Support for whole-of-plant use for industrial hemp.
- Any changes to related legislation will need to ensure that enforcement of anti-drug laws remains efficient.
- The Act and related legislation should not limit the products of or uses for industrial hemp.
- Strong stakeholder support to retain the current threshold which defines industrial hemp as having a THC percentage not exceeding 1%.
- All relevant Acts need to clearly differentiate between industrial hemp (low-THC cannabis) and recreational and/or medicinal marijuana (high-THC cannabis).
- Support was expressed for a more efficient testing regime, with some submissions supporting a permitted list of registered industrial hemp varieties - known to be low in THC - which do not require testing.
- Criteria and processes for determining whether an applicant is a 'fit and proper' person need to be codified and transparent.
- Licence application forms and processes should be on-line rather than paper-based.
- Greater clarity is needed regarding which activities, processes and people involved in the industrial hemp sector require licensing.

Opportunities to reduce regulatory burden through streamlining processes and current regulatory requirements (for example the application licencing process.)

Respondents suggested a variety of changes and new measures to reduce the financial and time imposts of compliance. These were proposed by a cross-section of stakeholders: producers, researchers and regulatory agencies, and covered both legislative and procedural matters.

A number of submissions raised the regulatory burden of the testing regime to determine that THC levels are compliant with the Act as an issue. Several respondents pointed to a Canadian model based on a permitted list of known low-THC cultivars which it was felt would enable less onerous testing requirements without compromising quality assurance. Different testing regimes were proposed depending on whether the plants were being used for production or research, and the timing of testing for THC levels was seen as a critical issue for some producers.

Some submissions suggested greater clarity and development of agreed protocols around aspects of assessment. One asked the question: *"How does the Department determine whether an applicant is a 'fit and proper person' to be licensed under the Act"?*

Movement away from paper-based procedures to online provision of information, interaction and lodgement was requested.

Summary of feedback:

- The testing regime should be less onerous.
- Consider an approved list maintained by NRE Tas of registered PBR[1] industrial hemp varieties that are known to be low in THC. Listed varieties would not need to be subject to the testing regime currently imposed.
- Varieties used in research should not need to be tested.
- The timing of THC testing is critical for many farmers some of whom also may want to crop before flowering. Procedures should accommodate growers' timing requirements.
- Licence applications will be quicker and simpler with an on-line portal to complete and submit forms.
- Determining whether an applicant for an industrial hemp licence is a 'fit and proper person' should be similar to the process used in the *Liquor Licence Act 1990* and a protocol be agreed between agencies on information sharing and information security.

[1] Plant Breeder's Rights

Suggestions for updating existing or including new definitions in the Act to clarify the scope of regulation.

Submissions focussed on the need for clear definitions across legislation which distinguished industrial hemp from high-THC plants used in medicine or recreation. Submissions outlined this as important because it delineated the industrial hemp sector from those other fields of cannabis-related activity and, if adopted, would remove industrial hemp from the regulations or prohibitions applying to high-THC plants.

> "*The Industrial Hemp Industry has been stifled for over one hundred years by the confusion around the meaning of the word 'cannabis'. Hemp and cannabis are both terms used to describe a plant in the genus Cannabis. However, 'industrial hemp' is a plant with very low levels of the psychoactive substance tetrahydrocannabinol...*" **Tasmanian Hemp Association**

This same point was emphasised again by a number of stakeholders later in their submissions when addressing the issue of how the *Industrial Hemp Act* 2015 interacted with other legislation.

A smaller number of respondents made technical or specific suggestions on definitional changes relating to THC measurement, the powers of inspectors and clarity around licencing requirements.

Summary of feedback:

- Clearer definitions are needed in all relevant Acts including the *Poisons Act 1971* and the *Misuse of Drugs Act 2001* to ensure a distinction is made between industrial hemp and high-THC cannabis.
- Clarity is sought on whether farm hands, contractors or research technicians and assistants (for example) need a licence for tasks such as applying fertiliser or collecting seeds; and whether transporting seeds from farm and processing facilities was exempt from licensing.
- The definition of Inspector under the Act should be changed so that police officers of the rank of inspector or above are automatically considered Inspectors under the Act.
- 'Commercial production' should be better defined.
- THC is defined as meaning delta-9-tretrahydrocannabinol (d9-THC) which the plant generally does not produce itself. The predominant form is delta-9-cannabanollic acid (THCA). It is more accurate if the interpretation of THC is amended to 'total THC' so that both the acidic (THCA) and neutral (d9-THC) forms are measured and combined.

Gaps in the regulation or licencing application process for certain activities.

A main theme from respondents was that the uses to which industrial hemp are put should not be limited by the Act or its application, or by related legislation.

The removal of the current licence condition preventing the extraction and use in manufacture of most industrial hemp extracts was put forward for consideration by industry. It was accepted that medicinal cannabis or products formulated as therapeutic are regulated by the Commonwealth through the ODC and/or the Therapeutic Goods Administration (TGA). Nevertheless, there are many other non-medicinal uses for biomass extracts from industrial hemp which could be effectively utilised. These were stated as functional food/nutritional supplements (similar to olive leaf extract, eucalyptus oil etc), skincare ingredients (similar to fucoidan, tea tree oil etc), bio-insecticides (similar to pyrethrum) and use in anti-microbial textiles.

> "…*enable Tasmanian farmers to utilise the whole low-THC industrial hemp plant to sell all fractions - from the seed, flower, or stalk – to be manufactured in the state and exported into global markets....*"
> **Tasmanian Hemp Association**

The latest change in the United Nations to the 1961 Single Convention on Narcotic Drugs resulting in non-THC compounds no longer being scheduled as a narcotic drug was cited as a further reason to treat low-THC industrial hemp biomass oil just like other essential oils (unless it is to be used as a therapeutic and therefore subject to the relevant TGA regulations such as clinical trials.)

Other concerns were to ensure that industrial hemp was able to be applied to uses ranging from mulch to stock feed.

Summary of feedback:

- The clause in issued licences stating that the licensee '*must not extract cannabinoids or cannabis oil under this license. Oil may be extracted from industrial hemp seed.*' should be removed.
- Production and sale of hemp mulch (containing non-viable seeds which cannot give rise to new plants) should be enabled.
- Use of vegetative part of hemp (leaves, stems) as stock feed is absent from the Act but should be permitted.
- Feeding hemp seeds and seed products to animals should be permitted.
- Consider adopting guidelines for security of hemp cultivation.

Inconsistencies or clarification required relating to interaction with other legislation.

Responses contained a strong emphasis on the constraints on the industrial hemp industry of both the *Misuse of Drugs Act* 2001 and the *Poisons Act* 1971. Submission put forward that it was the intersection of these Acts with the *Industrial Hemp Act* 2015 which provided the legal basis for denying whole-of-plant use of industrial hemp.

The broad inclusion of *cannabis sativa* in these Acts regardless of THC levels was seen as outdated and misplaced. It was also seen as inconsistent with regulatory practice: the listing in the Poison Act of Indian hemp as a poison conflicted with Food Standards Australia New Zealand (FSANZ) making low-THC hemp food legal for human consumption in Australia in 2017.

Some stakeholders suggested that Cannabis be removed from the *Poisons Act* 1971 altogether and that the *Misuse of Drugs Act* 2001 distinguish between low- and high-THC hemp. Another responder agreed that these Acts impacted the sector and required more consultation and research to resolve.

> *"Clarifying that the cannabis sativa referred to in Misuse of Drugs Act 2001 is high THC cannabis (>1%) would exclude industrial hemp varieties from that Act. This would allow Tasmanian growers to sell all parts of the plant, increasing their national competitive advantage, reduce wastage and increase profitability."*
> **Tasmanian Institute of Agriculture**

Summary of feedback:

- A number of submissions proposed the removal of cannabis from the *Poisons Act* 1971, or at least the removal of industrial hemp from it.
- A number of submissions proposed that a legal distinction be created between industrial hemp and high-THC hemp varieties, e.g. by amending references to cannabis in the *Misuse of Drugs Act* 2001 to 'high-THC cannabis'.
- Clarification was sought to ensure that the *Misuse of Drugs Act* 2001 which prohibits possessing and supplying hemp does not apply to Inspectors exercising their legislated powers.

Areas of the Act which are working well and do not require amendment, and other matters.

Summary of feedback:

- Most definitions in the current Act are very clear.
- Consider establishing an Industrial Hemp Advisory Group comprising representatives of the hemp sector, researchers, regulators and relevant agencies to help resolve hurdles and maximise the industry's potential.
- The current cap of 1% THC in the leaves and flowering tips of the hemp plant works well and should not be reduced.

Appendix 1

List of submissions received in response to Call-for-Submissions to the Review of the Industrial Hemp Act 2015:

- Department of State Growth
- Tasmanian Institute of Agriculture
- Commonwealth Scientific and Industrial Research Organisation
- Department of Health
- Office of Drug Control
- Tasmanian Hemp Association
- Analytical Services Tasmania
- Australian Industrial Hemp Alliance
- Department of Police, Fire and Emergency Management
- Tasmanian Farmers and Graziers Association
- AgriFutures Australia

Tasmanian Government

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