

# Hemp Industry Regulation 2008

## Regulatory Impact Statement

August 2008



**NSW DEPARTMENT OF  
PRIMARY INDUSTRIES**

## **Hemp Industry Regulation 2008 Regulatory Impact Statement**

© State of New South Wales through NSW Department of Primary Industries (2008)

NSW Department of Primary Industries  
161 Kite Street, Orange  
Locked Bag 21, Orange NSW 2800  
[www.dpi.nsw.gov.au](http://www.dpi.nsw.gov.au)

Additional copies of this document are available online at  
<http://www.dpi.nsw.gov.au/regulation-review> or by telephoning (02) 6938 1976

### **Information sources**

In the preparation of this regulatory impact statement information was sourced from officers of the NSW Department of Primary Industries.

### **Disclaimer**

While every reasonable effort has been made to ensure this document is correct at the time of printing, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

## TABLE OF CONTENTS

<b>Executive Summary .....</b>	<b>4</b>
<b>Part 1: Outline of the Regulatory Proposal.....</b>	<b>6</b>
1. Introduction .....	6
<i>Subordinate Legislation Act 1989 requirements.....</i>	<i>6</i>
<i>Better Regulation Principles .....</i>	<i>7</i>
2. Exhibition of RIS and submission process .....	7
<i>How to make a submission.....</i>	<i>7</i>
<i>What will happen with submissions?.....</i>	<i>8</i>
3. Title of Proposed Statutory Rule and Authority .....	8
4. Name of Proponent and Responsible Minister.....	8
5. Legislative Background.....	8
6. Need for Government Action .....	10
7. Objective of Government Action .....	10
8. Summary of the Proposed Regulation .....	10
<b>Part 2: Options .....</b>	<b>13</b>
9. Consideration of Options .....	13
<i>Option 1: No Regulation .....</i>	<i>13</i>
<i>Option 2: Reduced Regulation .....</i>	<i>14</i>
<i>Option 3: Proposed Regulation .....</i>	<i>14</i>
<b>Part 3: Cost-Benefit Analysis.....</b>	<b>16</b>
10. Costs and Benefits of Options.....	16
<i>Methodology.....</i>	<i>16</i>
<i>Machinery clauses.....</i>	<i>16</i>
<i>Option 1: No Regulation .....</i>	<i>17</i>
<i>Option 2: Reduced Regulation .....</i>	<i>20</i>
<i>Option 3: Proposed Regulation .....</i>	<i>22</i>
<i>Summary .....</i>	<i>24</i>
<i>Implementation and compliance.....</i>	<i>25</i>
11. Consultation .....	26
<i>Consultation during development of proposed Regulation.....</i>	<i>26</i>
<i>Consultation program on proposed Regulation and RIS.....</i>	<i>26</i>
12. Preferred Option.....	27
13. Evaluation and Review.....	27
Appendix A: Costings .....	28
1. <i>Types of costs .....</i>	<i>28</i>
2. <i>Annual application fees or annual licensing fees.....</i>	<i>29</i>
3. <i>Inefficiency and administrative uncertainty.....</i>	<i>30</i>
4. <i>Maintaining records and providing annual reports.....</i>	<i>31</i>
5. <i>Summary of overall annual costs for each regulatory option.....</i>	<i>32</i>
Appendix B: Consultation program.....	33

## Executive Summary

The *Hemp Industry Act 2008* (“the Act”) was passed by Parliament on 25 June 2008 and will commence once this Regulation has been finalised.

Industrial hemp is the same plant species as marijuana (*Cannabis sativa*), and is difficult to distinguish visually from the illicit variety. Importantly though, the level of tetrahydrocannabinol (THC), the psychoactive component in marijuana, is considerably lower in industrial hemp, which is referred to in the Act as “low-THC hemp”. Until the passing of the Act, the cultivation of low-THC hemp was prohibited under the *Drug Misuse and Trafficking Act 1985* (“the DMTA”) in the same way as marijuana.

The main objective of the Act is to provide for the supply and cultivation of low-THC hemp without compromising the effectiveness of existing drug law enforcement strategies or increasing the law enforcement burden on the NSW Police Force.

The Act provides for the operation of a licensing scheme, empowers an inspectorate, establishes enforcement and compliance processes and provides for the sharing of licensing and compliance information with NSW Police and other Australian law enforcement authorities.

The NSW Government is proposing to make a new regulation, to be called the Hemp Industry Regulation 2008 (“the proposed Regulation”), to assist in the administration and operation of the Act. The proposed Regulation prescribes provisions relating to:

- applications for licences and for renewal and transfer of licences
- additional grounds for the refusal or revocation of licences
- record-keeping and reporting requirements
- licence fees
- licence conditions
- penalty notice offences.

Rather than rely solely on the discretion available to the Director-General in the Act, the proposed Regulation seeks to provide the low-THC hemp industry with greater transparency and administrative certainty by prescribing some of the administrative requirements associated with licences to cultivate and supply low-THC hemp.

The costs and benefits of the proposed provisions have been assessed and compared with alternative options by which the objectives may be achieved, including the option of making no regulation, and making a regulation which contains only those provisions which are essential to the operation of the licensing scheme.

Overall the proposed statutory rule is the most effective means of achieving the objectives of the Act and provides the highest net benefits to the community. Removing the regulatory barrier to the development of a low-THC hemp industry will bring NSW into line with other jurisdictions in Australia (Queensland, Victoria, the ACT, Tasmania and Western Australia) where the commercial production of low-THC hemp is already legal. It will also create economic opportunities for NSW primary industries and the manufacturing sector, and will promote competition.

The proposed Regulation was developed in consultation with government agencies including the Attorney-General's Department, the NSW Police Force, the Ministry of Police, the Department of Health, and the NSW Department of Primary Industries (NSW DPI).

The proposed Regulation removes a significant impediment to the cultivation and marketing of low-THC hemp in NSW while ensuring that drug law enforcement in NSW remains effective. It is therefore recommended that the proposed statutory rule be made.

# Part 1: Outline of the Regulatory Proposal

## 1. Introduction

### ***Subordinate Legislation Act 1989* requirements**

Under the *Subordinate Legislation Act 1989*, a Regulatory Impact Statement (RIS) must be prepared before a statutory rule such as a regulation is made.

When a new regulation is believed to be required, the responsible agency must review the draft regulation and consider its social and economic impacts, and whether the regulation is necessary. The purpose of this review is to ensure that the regulation provides a net benefit to the community, and that any regulatory burden imposed on industry is justified. This review will assist the agency to make a decision about whether the regulation should be made.

Under the *Subordinate Legislation Act 1989*, the RIS must include:

- a statement of the objective(s) sought to be achieved by the proposed Regulation, and the reasons for these objectives
- consideration of whether these objectives are reasonable and appropriate; accord with the objectives, principles, spirit and intent of the enabling Act; and are consistent with the objectives of other Acts, statutory rules and stated government policies
- alternative options (both regulatory and non-regulatory) by which those objectives can be achieved, either wholly or in part
- an evaluation of the costs and benefits of the proposed Regulation, including the costs and benefits relating to resource allocation, administration and compliance
- an assessment of the costs and benefits of each alternative option to the making of the proposed Regulation, including the costs and benefits relating to resource allocation, administration and compliance
- an assessment as to which of the alternative options involves the greatest net benefit or least net cost to the community
- a statement of the consultation program to be undertaken.

This RIS sets out the analysis of the impact of the proposed Regulation. The preparation of the RIS involved identifying and assessing the relevant costs and benefits of each part of the proposed Regulation other than those parts that deal with matters of a machinery nature.

## Better Regulation Principles

In accordance with the Better Regulation Office's *Guide to Better Regulation* (April 2008), this RIS also addresses the seven better regulation principles. These are:

- Principle 1: The need for government action should be established
- Principle 2: The objective of government action should be clear
- Principle 3: The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
- Principle 4: Government action should be effective and proportional
- Principle 5: Consultation with business and the community should inform regulatory development
- Principle 6: The simplification, repeal, reform or consolidation of existing regulation should be considered
- Principle 7: Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

## 2. Exhibition of RIS and submission process

The RIS provides interested stakeholders, including industry and members of the wider community, with an opportunity for direct input into the regulatory development process.

Public notice of the exhibition of this RIS will appear in the NSW Government Gazette and in the following media:

- the *Sydney Morning Herald*; and
- *The Land*.

In accordance with Government requirements, the proposed Regulation and RIS will be available for comment for a period of four weeks.

The proposed Regulation and RIS are accessible at: <http://www.dpi.nsw.gov.au/regulation-review>

Additional copies may be obtained by telephoning: (02) 6938 1976.

### How to make a submission

Interested parties are invited to submit written comments on the proposed Regulation and/or the RIS to the NSW Department of Primary Industries (NSW DPI) in any of the following ways:

Attn: Ms Beverley Zurbo  
Leader Quality Management  
Agriculture, Biosecurity and Mine Safety  
NSW Department of Primary Industries

Post

Wagga Wagga Agricultural Institute  
PMB Pine Gully Rd  
Wagga Wagga NSW 2650

Facsimile

(02) 6938 1995

Email

[beverley.zurbo@dpi.nsw.gov.au](mailto:beverley.zurbo@dpi.nsw.gov.au)

**The closing date for submissions is Friday 19 September 2008 at 5:00pm.**

**What will happen with submissions?**

NSW DPI will review all submissions received by the closing date and, based on this review, the proposed Regulation may be amended as necessary. The RIS will be updated to reflect any changes made to the Regulation, and will be made available on the Department's website.

A copy of all submissions will be provided to the Legislation Review Committee of the NSW Parliament with the final version of the Hemp Industry Regulation 2008.

**3. Title of Proposed Statutory Rule and Authority**

The proposed Regulation is the Hemp Industry Regulation 2008 under the *Hemp Industry Act 2008*.

**4. Name of Proponent and Responsible Minister**

The Minister for Primary Industries is the Minister responsible for making the Hemp Industry Regulation 2008.

**5. Legislative Background**

Industrial hemp is the same plant species as marijuana (*Cannabis sativa*) and is difficult to distinguish visually from the illicit variety. Importantly though, the level of tetrahydrocannabinol (THC), the psychoactive component in marijuana, is considerably lower in industrial hemp. Marijuana has a THC level of between four and 24 percent, whereas industrial hemp has a THC

level of up to one per cent. A THC concentration of one percent or less renders hemp plants unusable for the illicit drug trade as this concentration has no psycho-active effect on humans.

Industrial hemp is referred to in the Act and the proposed Regulation as “low-THC hemp”.

Until the passing of the *Hemp Industry Act 2008* (“the Act”), the cultivation of low-THC hemp was prohibited under the *Drug Misuse and Trafficking Act 1985* (“the DMTA”), in the same way as marijuana. The DMTA allowed the cultivation of hemp only for scientific and research purposes under an authority issued by the Director-General of the Department of Health.

Public interest in the commercial production of low-THC hemp has grown considerably in the past decade. Low-THC hemp is perceived as more environmentally-friendly than other fibre crops, like cotton, as it potentially requires less water, fertiliser and chemical inputs. There is also interest in the wide range of products that can be made from this crop, which include textiles and building products from the stem fibre; and food products, paint and bio-diesel from the seed oil.

The commercial production of low-THC hemp has been legal in Tasmania since 1991; in Victoria since 1998; in Queensland since 2002; and in Western Australia and the ACT since 2004. Commercial-scale production is currently taking place in Tasmania, Queensland and Western Australia.

In response to market interest in the commercial production of low-THC hemp, an inter-agency committee comprised of representatives from the Attorney-General’s Department, the Department of Health, the NSW Police Force, the Ministry for Police and NSW DPI was formed in 2007 to consider the issues regarding commercial production of low-THC hemp. The committee recommended that commercial production be allowed subject to the operation of a licensing scheme.

The Act was passed by Parliament on 25 June 2008 and received assent on 1 July 2008. The majority of the *Hemp Industry Act 2008* (“the Act”) will be commenced by proclamation. It is proposed for this to occur at the same time as the proposed Regulation commences.

The main objective of the Act is to provide for and regulate the commercial cultivation and supply of low-THC hemp. The Act aims to facilitate the low-THC hemp industry, without compromising the effectiveness of existing drug enforcement strategies of the NSW Police.

Specifically the Act:

- identifies low-THC hemp as a plant of the Cannabis genus with a THC content in its leaves and flowers of less than 1% and includes the seed and any product derived from the plant such as the stem fibre and seed oil
- provides for a licensing scheme to authorise a person to cultivate or supply low-THC hemp
- provides investigation and enforcement powers
- provides for arrangements with other relevant agencies such as the NSW Police Force and other Australian Commonwealth and State law enforcement authorities for the supply of information
- provides for approved fees, delegations, offences by corporations and penalty notice provisions
- provides for regulations to be made that prescribe requirements including the information and particulars that should accompany an application for a licence, the circumstances in which the Director-General of NSW DPI may refuse, or is required to refuse, to grant a licence, conditions

## **6. Need for Government Action**

The former prohibition on the possession and cultivation of all types of hemp under the DMTA was a barrier to the development of a low-THC hemp industry in NSW. The prohibition was also anti-competitive because it restricted the ability of NSW producers to participate in the low-THC hemp market alongside their counterparts in other States.

Simply removing the prohibition on the commercial cultivation and supply of low-THC hemp is not an option. An unregulated environment would provide real opportunities for criminal elements to use low-THC hemp production as a cover for criminal activity associated with marijuana. This could compromise the effectiveness of existing drug control strategies and increase the law enforcement burden on the NSW Police Force.

A regulatory scheme is required in order to allow development of a sustainable low-THC hemp industry in NSW and create opportunities for innovation amongst both producers and consumers of low-THC hemp, without compromising law enforcement activities related to illicit drugs.

## **7. Objective of Government Action**

The Act establishes the fundamental elements of the licensing scheme for the commercial production of low-THC hemp in NSW. The aim of the proposed Regulation is to support this licensing scheme so that the development of a low-THC hemp industry in NSW occurs at least cost to industry, consumers and government, and without compromising existing drug law enforcement.

The proposed Regulation provides much of the detail of the licensing scheme, including:

- the necessary contents of licence applications, and applications for renewal and transfer of licences
- additional grounds for refusal and revocation of licences
- licence conditions
- record-keeping and annual reporting requirements
- licence fees
- penalty notice offences.

## **8. Summary of the Proposed Regulation**

The proposed Regulation was developed in consultation with several government agencies including the Attorney-General's Department, the NSW Police Force, the Ministry of Police, the Department of Health and NSW DPI.

The following provisions are prescribed by the proposed Regulation to assist with the administration of the Act.

Clause 3 of the proposed Regulation sets out **definitions** of certain terms.

Clause 4 of the proposed Regulation provides additional administrative certainty for applicants by specifying the **information and particulars** to be provided by an applicant for a licence for the purposes of s. 7(2)(c) of the Act. Clause 4 specifies the information required for all applications, as well as the information required for applications for the specific purposes of commercial production, manufacturing, cultivation or supply for scientific research, instruction, analysis or study.

Clause 5 of the proposed Regulation provides for a simpler process for **renewal of a licence** under s. 13(3) of the Act, where the details in the original licence application remain substantially unchanged. A basic renewal will require less information and fewer particulars than a new application and may attract a lower fee.

Clause 6 of the proposed Regulation provides additional grounds in which the Director-General **may refuse to grant a licence** to a person for the purposes of s. 9(6) of the Act. The additional grounds include consideration of the applicants' demonstrated intentions, their qualifications, past licensing history under the Act or a corresponding law, and the age of the applicant and relevant close associates.

Clause 7 of the proposed Regulation provides for a simpler process for the **transfer of a licence** under s. 14(2) of the Act, where the material particulars of the licence remain substantially unchanged. A basic transfer will require less information and fewer particulars than a new application and may attract a lower fee.

Clause 8 of the proposed Regulation provides additional clarity to ss. 15(1) and 16(1)(b) of the Act by specifying some **circumstances in which the Director-General may suspend or revoke a licence**, respectively.

Clause 9 of the proposed Regulation clarifies some of the **conditions that will apply to licences** for the purposes of s. 12(1)(a) of the Act. The proposed Regulation specifies conditions including advising the licensing authority if they become aware of any unlawful activity, changes to the licence particulars, cooperating with inspectors, providing THC analysis results, the use of appropriate seed and the payment of fees. Prescribing the conditions of licence in the Regulation (rather than relying solely on the discretion available to the Director-General to set conditions under s. 12(1)(b) of the Act) provides greater clarity and certainty to licensees about their responsibilities. It should be noted that the Director-General can also specify any additional conditions to be imposed on a particular licence or type of licence.

Clause 10 of the proposed Regulation specifies the **records that a holder of a licence** is required to make in a register of information, for the purposes of s. 46(2)(a) of the Act.

Clause 11 of the proposed Regulation provides for **annual reporting** by licensees to the Director-General, for the purposes of s. 46(2)(a) of the Act. Licensees will be required to provide details of actual activities undertaken under the licence in the previous 12-month period. These activities may vary from year to year, and will not necessarily be fixed at the time the original licence application is made. These variables can include whether a crop was grown at all that year; the source and variety of seed or plants; the specific area within an approved property where the crop was grown

that year; the date seed was sown and the quantity; the date of harvest and the quantity of material harvested; the name of persons to whom the harvested material was supplied to and the date of supply.

Clause 12 of the proposed Regulation provides for the charging of an **annual fee** for the purposes of s.46(2)(b) of the Act. The purpose of prescribing annual licence fees is to recover the annual costs associated with the administration of the licensing scheme, including the maintenance of records and electronic data associated with a licence, and the review of annual reports submitted by licensees. The proposed annual licensing fee is \$200.

Clause 13 of the proposed Regulation specifies **corresponding laws** for the purposes of s. 3(1) of the Act. The proposed Regulation identifies the laws of other Australian jurisdictions under which a licence or authorisation may be granted to cultivate, possess or sell low-THC hemp, and the laws under which a 'drug-related offence' can be committed. The objective of this clause of the proposed Regulation is twofold. The first is to ensure that authorities issued for the cultivation and supply of low-THC hemp by other Australian jurisdictions are recognised in NSW. This will remove any regulatory barriers to the interstate trade in hemp material and avoid any unnecessary administrative duplication between jurisdictions. The second objective is to ensure a licence is not granted to a person who has been convicted of a drug-related offence in another Australian jurisdiction. Information concerning whether an applicant has/had a licence to cultivate or supply low-THC hemp in another jurisdiction, and their conduct while operating under that authority, may be relevant to the Director-General in determining a licence application.

Clause 14 of the proposed Regulation prescribes the Department of Health as a **relevant agency for supply of information arrangements** for the purposes of s. 37 of the Act. For the purposes of assisting with the administration of the Act, the Director-General may enter into arrangements with a relevant agency for the supply of information held by the agency. The Department of Health holds some critical information regarding the issuing of low-THC hemp authorities for the purposes of scientific research, instruction, analysis or study under s. 23 of the DMTA.

Clause 15 of the proposed Regulation specifies the **maximum amount of any application fee (including renewal and transfer fees)** which may be charged for the purposes of the Act. Under the Act, application, renewal and transfer fees are approved by the Director-General. Section 39(1) of the Act then provides that the amount of a fee approved by the Director-General must not exceed the maximum (if any) prescribed in respect of any such fee by the regulations.

If a maximum fee is prescribed, the Director-General then has the discretion of approving different fees that reflect the administrative costs of processing different types of applications, as long as none of these fees exceed the maximum prescribed fee. It is proposed to set the maximum fee for applications (other than certain transfer and renewal applications) at \$1000 and to set a maximum fee for renewals and transfers at \$500. It should be noted that this lower maximum fee for renewal and transfers only applies to those renewals and transfers where there is no material change to the licence information already held by the Department.

Clause 16 of the proposed Regulation specifies **penalty notice offences** and the amount payable for those offences for the purposes of s. 45(6) of the Act, which seeks to provide an alternative enforcement option for offences under the Act.

## Part 2: Options

### 9. Consideration of Options

The alternative options by which the objectives outlined above can be achieved include:

- Option 1: Commencing the Act with no regulation
- Option 2: Commencing the Act with a reduced regulation
- Option 3: Commencing the Act with the proposed Regulation.

#### Option 1: No Regulation

Commencing the Act without a regulation is an option. The Act itself sets out the licensing scheme and investigation and enforcement powers in some detail (rather than leaving all details of the scheme and investigation and enforcement to be set out in the regulations). It provides for:

- granting of licences to cultivate or supply low-THC hemp [s. 5]
- licence application and investigation procedures [ss. 7-10]
- some licence conditions [s. 12]
- renewal, transfer, suspension and revocation of licences [ss. 13-16]
- establishment of an inspectorate [ss. 18-20]
- powers to require information or records and give directions [ss. 21-23]; enter and search premises [ss. 25-30]; and question persons [ss. 31-32]
- offences [ss. 6, 33, 43-44]
- information-sharing arrangements between agencies [s. 37].

The Act also provides the Director-General with significant discretionary powers which could be exercised to further provide for the operation of the licensing scheme. The Director-General's powers include:

- approving licence application forms [s. 7(2)(a)] and specifying the information required to support various applications including transfers and renewals [s. 7(d)]
- approving fees to accompany an application for a licence, including fees for transfers and renewals [s. 7(2)(b)]
- requiring additional information and documents from licence applicants and close associates [s. 8(3)]
- imposing licence conditions [s.12(1)(b)].

If the Act were commenced without a regulation, the following provisions (which the Director-General has no discretionary power to impose) would not be prescribed:

- the **corresponding laws** of other Australian jurisdictions for the purposes of s. 3(1) of the Act (machinery clause only)
- the **relevant agency** for the supply to the Director-General of any information held by the agency for the purposes of s. 37(3)(g) of the Act (machinery clause only)

- the **maximum amount of any application fee** which may be charged for the purposes of s. 39(1) of the Act
- the **records that a holder of a licence** is required to keep for the purposes of ss. 46(2)(a)
- the **charging of annual licence fees and other fees** associated with the administration of the licensing scheme, for the purposes of ss. 46(2)(b)
- **penalty notice offences** and the amount payable for those offences for the purposes of s. 45(6) of the Act.

## Option 2: Reduced Regulation

The Act could be accompanied by a reduced regulation, containing only provisions which are considered essential for the efficient administration of the Act and which cannot be delivered through the discretionary powers of the Director-General outlined in the previous option.

The reduced regulation would prescribe the following provisions only:

- the **corresponding laws** of other Australian jurisdictions for the purposes of s. 3(1) of the Act
- the **relevant agency** for the supply to the Director-General of any information held by the agency for the purposes of s. 37(3)(g) of the Act
- the **maximum amount of any application fee** which may be charged for the purposes of s. 39(1) of the Act
- the **records that a holder of a licence** is required to keep for the purposes of ss. 46(2)(a).
- the **charging of annual licence fees and other fees** associated with the administration of the licensing scheme, for the purposes of s. 46(2)(b)
- **penalty notice offences** and the amount payable for those offences for the purposes of s. 45(6) of the Act.

## Option 3: Proposed Regulation

The proposed Regulation includes the provisions listed under Option 2, which are considered essential for the efficient administration of the Act, as well as the following additional provisions which would provide greater administrative certainty and transparency for the low-THC hemp industry:

- the **information and particulars** to be provided by an applicant for a licence to ensure licences are only granted to suitable person/s in the appropriate circumstances for the purposes of s. 7(2)(c) of the Act

- the circumstances in which the Director-General **may refuse, or is required to refuse, to grant a licence** to a person for the purposes of s. 9(6) of the Act
- the **conditions of licences** for the purposes of s.12(1)(a) of the Act
- further provisions with respect to the **renewal of a licence** for the purposes of s. 13(3) of the Act
- further provisions with respect to the **transfer of a licence** for the purposes of s. 14(2) of the Act
- additional grounds for **revocation of a licence** for the purposes of s.16(1)(b) of the Act.

## Part 3: Cost-Benefit Analysis

### 10. Costs and Benefits of Options

#### Methodology

The methodology adopted for analysing the options and the impact of the proposed Regulation is based on the procedure set out in Schedules 1 and 2 of the *Subordinate Legislation Act 1989*, as well as the following guidelines:

- New South Wales Treasury, *NSW Government Guidelines for Economic Appraisal* (July 2007)
- Better Regulation Office, *Guide to Better Regulation* (April 2008)
- Better Regulation Office, *Measuring the Costs of Regulation* (June 2008).

This RIS assesses the impacts of the proposed Regulation against alternative options that have been considered. Such impacts may include direct or indirect costs or benefits and tangible and intangible impacts. Both quantitative and qualitative analysis is used.

It is important to note that this assessment looks at the cost and benefits generated by the proposed Regulation, not the Act. The major regulatory and compliance costs associated with licence applications, transfers and renewals arise from the Act rather than the proposed Regulation.

In considering the impact of the various options, it is also critical to consider that the size of the regulated community covered by the Act is small and the creation of a low-THC hemp industry in NSW is unlikely to have a significant economic impact on the broader community. A similar licence scheme for low-THC hemp in Queensland has between 40 and 50 licensees.

#### ***Machinery clauses***

The following provisions of the proposed Regulation are machinery clauses:

- clause 3 of the proposed Regulation, which sets out definitions of certain terms in the Regulation.
- clause 13 of the proposed Regulation, which specifies corresponding laws for the purposes of s. 3(1) of the Act.
- clause 14 of the proposed Regulation, which prescribes the Department of Health as a relevant agency for supply of information arrangements for the purposes of s. 37 of the Act.

It is not considered necessary to discuss these provisions in detail, but comment on the above provisions may nevertheless be included in submissions and will be duly considered.

## Option 1: No Regulation

### Option 1 - Costs

#### Costs for businesses

- *Increased regulatory charges due to inability to charge annual licence fee:* Under this option, there would be no provision to charge an annual licence fee. Under the Act, the Director-General may still approve fees to accompany licence applications [s.7(2)(b)]. However, that application fee could only cover the cost of assessing and determining the application – not the full costs of administering and maintaining the licence (including the maintenance of records and electronic data associated with a licence, and the review of annual reports submitted by licensees).

Annual fees are a key feature of most licensing schemes operating in NSW. This is because the Government is required to implement a policy of full cost recovery. It is not appropriate for Government and the community to subsidise an individual's entry into the low-THC hemp market. Therefore the annual licence administration and maintenance costs would need to be recovered by providing for one-year licences (rather than five-year licences as envisaged under s. 11 of the Act) and recovering the full cost of administering licences through annual renewals. This would require the annual application fee (renewal fee) to be set at a level high enough to cover all the administration costs involved in the assessment and determination of the licence, including consideration of the activities of the licence-holder over the past 12 months.

This approach is generally not favoured because annual renewals would increase the administrative burden on both the applicant and government, resulting in higher costs and therefore higher fees. As shown in Table 2 (Appendix A), the cost recovery method required in the circumstance where no Regulation is made (Option 1) results in regulatory charges 62% higher over five-years than Options 2 and 3 (both of which provide for annual licensing fees). On this basis, the total cost to the low-THC hemp production industry has been estimated to range from \$131,250 for Option 1 down to \$81,250 for Options 2 or 3.

Therefore not making a regulation which facilitates five-year licences by specifying an annual licence fee will lead to higher direct costs for industry.

- *Increased costs of court proceedings due to lack of penalty notice offences:* The inability to use penalty notice offences would mean that all breaches of the Act or Regulation would have to be prosecuted in court. This will increase costs for industry because of additional resources and opportunity costs associated with court proceedings.
- *Increased compliance/indirect costs due to administrative inefficiencies and uncertainty:* Under this option, record-keeping and reporting requirements would not be prescribed in the Regulation. This may represent a cost saving to industry since complying with record-keeping and reporting requirements imposes costs on industry. However, it is likely to result in increased administrative inefficiencies in the licensing scheme.

Similarly, there would also be costs for industry associated with not including the provisions concerning the information and particulars to be contained in an application for a licence; the circumstances in which the Director-General may refuse to grant a licence; the conditions of

licence; and the maximum application fee. Although these provisions can be determined by the Director-General, not prescribing them would result in less transparency and administrative certainty. Lack of administrative certainty may result in inefficient resource allocation decisions by potential applicants and hence unspecified but higher costs for industry (refer Appendix A).

### **Costs for Government**

- *Increased administrative burden due to lack of annual licence fee:* As described above, failure to prescribe an annual licence fee would result in the need for annual licence applications (renewals) to cover the full costs of the licensing scheme. This would increase the administrative burden on Government.
- *Decreased effectiveness of compliance operations due to lack of prescription of record-keeping and reporting requirements:* As noted above, licence-holder records are important for the efficient operation of the licensing scheme. Without good records, the effectiveness and efficiency of the Government's compliance operations will be reduced leading to higher costs for Government.
- *Increased costs of court proceedings due to lack of penalty notice offences:* The inability to use penalty notice offences would mean that all breaches of the Act or Regulation would have to be prosecuted in court. This will increase costs for Government, as well as industry, because of additional resources and opportunity costs associated with court proceedings.
- *Increased compliance/indirect costs due to administrative inefficiencies and uncertainty:* the costs outlined above for industry will also apply to some extent to Government.
- *Increased burden on drug law enforcement:* All of the above costs are likely to make the licensing scheme less effective and therefore increase the burden on drug law enforcement in NSW.

### **Costs for consumers**

The costs to consumers which are anticipated to arise through lack of a regulation would occur via the increased costs for industry outlined above, which could be expected to be passed onto consumers; and through delays in low-THC hemp products coming on the market due to administrative inefficiencies in the licensing scheme slowing productivity.

### **Costs for community & the environment**

The primary cost to the community which is anticipated to arise through lack of a regulation is reduced confidence in, and potentially decreased effectiveness of, drug law enforcement in NSW. The community must be reassured that allowing commercial production of low-THC hemp will not encourage the growth of marijuana crops, and a strong licensing scheme – that is, the Act supported by a regulation - is likely to be the best means of reassurance.

## **Option 1 - Benefits**

### **Benefits for businesses**

- *Avoidance of annual licence fee:* There is a financial benefit for industry if the Act is commenced without a regulation, namely not having to pay an annual licence fee or any other fees (other than a possible initial application fee) associated with the administration of the Act. However, any benefit to the industry of no annual licence fee will be more than offset by the higher costs of annual licences and higher application fees (Appendix A, Table 2).
- *Avoidance of fines due to lack of penalty notice offences:* The inability to use penalty notice offences would mean that industry could avoid fines. However, this would have the consequence that all breaches of the Act or regulation would have to be prosecuted in court, thus increasing costs for industry.
- *Reduced record-keeping and reporting requirements:* Complying with record-keeping and reporting requirements imposes costs on industry. However, it is expected that in the case of the low-THC hemp industry, these costs will be very low – an estimated \$120 per annum for each licensee (Appendix A – Part 4). And, as noted above, failure to prescribe record-keeping and reporting requirements is likely to result in increased administrative inefficiencies in the licensing scheme.

### **Benefits for Government**

- *Avoiding costs of making a regulation:* The principal beneficiary of the option of not making a regulation option is Government, by avoiding the costs involved in preparing a regulation. However, the cost of making a regulation is considered minimal, and preparation of a regulation is considered part of the core business of government.

### **Benefits for consumers**

- There are no expected benefits to consumers which are anticipated to arise through lack of a regulation.

### **Benefits for community & the environment**

- There are no expected benefits for the community or the environment which are anticipated to arise through lack of a regulation.

## Option 2: Reduced Regulation

### Option 2 - Costs

#### Costs for businesses

- *Annual licence fee:* Under this option, an annual licensing fee would be prescribed in the Regulation. While this represents a direct cost to industry, it should be recognised that this is the most efficient way of recovering the costs of the licensing scheme (refer Appendix A, Table 2).
- *Maintaining records and providing annual reports:* In prescribing the keeping of records and the submission of annual reports, this option imposes additional compliance costs on licensees. These costs have been estimated at \$120 per annum for each licensee or \$600 over a 5 year licence period. The overall cost to the industry will be in the order of \$6000 per annum (refer Appendix A – Part4)

In fact, on an industry-wide basis, the calculated incremental cost imposed by the record keeping requirements in the proposed regulation is likely to be a significant overestimate. This is because other operational areas within NSW DPI estimate that 30% to 40% of producers already make records of on-farm activities.

- *Penalty notices:* The provision of penalty notices in this regulation (as well as under Option 3, the proposed Regulation) will result in costs to industry associated with having to pay penalties. As a general rule, more penalties for breaches of the Act will be imposed if penalty infringement notices are available than if all matters need to be taken through the courts. However, these penalties are generally lower and less costly to finalise for both government and the regulated community than those resulting from court proceedings.
- *Administrative uncertainty:* This option does not include any provisions where the Director-General has discretion under the Act to impose specific requirements. As a result, industry does not have the same level of transparency and administrative certainty that comes from prescribing the full range of likely requirements in a regulation. To the extent that this lack of administrative certainty affects efficient resource allocation decisions by applicants and licensee, the lack of a comprehensive set of prescribed requirements can result in unspecified but higher costs for industry.

#### Costs for Government

- *Making regulation:* As noted above, there will be costs for the Government associated with making the regulation. These costs are considered minimal and core business for government.
- *Assessing and managing records and reports:* The cost to Government of assessing and managing the reports submitted by licensees will be recovered through the annual licensing fee provided for in this option. However, this additional cost to industry will be offset by greater efficiencies in compliance and investigation activities that flow from good records.

## **Costs for consumers**

- No major costs to consumers are anticipated to arise through making of this reduced regulation.

## **Costs for community & the environment**

- The reduced regulation is not expected to lead to any significant costs for the community or the environment.

## ***Option 2 - Benefits***

### **Benefits for businesses**

- *Efficient cost recovery mechanism for licensees via annual licence fee:* As noted above, the annual licensing fee prescribed in this regulation represents the most efficient way of recovering the costs of the licensing scheme.
- *Availability of penalty infringement notices:* The New South Wales Law Reform Commission identified the advantages of infringement notice schemes in this way:

Infringement notices can prevent minor cases reaching court and save time and money both for the offender and the criminal justice system. The avoidance of a conviction results in reduced stigma. The system can be automated, is highly efficient and raises significant revenue. The penalty payable is considerably less than the maximum available were the matter to be dealt with in court.<sup>1</sup>

There is ample evidence that the overwhelming majority of persons receiving penalty infringement notices opt to pay the amount set out in them. This is because the offender knows in advance what the penalty is and the infringement penalty is fixed at a monetary level lower than the normal statutory maximum fine for the offence. In addition, payment of the fixed penalty results in the offender acquiring neither a conviction nor a record. Prescribing certain offences under the Act as penalty notice offences does not preclude the option of prosecution if that is considered a more appropriate response to the offence.

### **Benefits for Government**

- *Full cost recovery via annual licence fee:* Under this option, an annual licensing fee would be prescribed in the regulation, which will enable the Government to recover the full costs of administering and maintaining licences and avoid the extra administrative costs of annual renewals.
- *Improved enforcement through access to better records:* Licence-holder records are important for the efficient operation of the licensing scheme. They enable licensees to confirm their activities against the conditions of their licence and assist inspectors performing compliance or

---

<sup>1</sup> New South Wales Law Reform Commission, *Sentencing*, Discussion Paper 33 (1996), New South Wales Law Reform Commission, Sydney, para 10.20.

enforcement operations under the Act. By providing for better record-keeping, this option is expected to lead to greater efficiency in compliance investigations and hence improved enforcement of the licensing scheme. A significant benefit would be cost savings; in assessing the benefits of good pesticide use record keeping, DECC has estimated that good record-keeping could reduce the cost of investigations by between 30% and 50%.<sup>2</sup>

- *More efficient enforcement and reduced costs through penalty infringement notices:* These are useful tools which assist Government to enforce regulation by avoiding the costs of court proceedings where appropriate (refer above).

### **Benefits for consumers**

- The reduced regulation provides the fundamental elements required for an appropriate licensing regime. As a result, it could be expected that industry will be more efficient and therefore the costs of products to consumers will be reduced.

### **Benefits for community & the environment**

- Because the reduced regulation provides the fundamental elements required for an appropriate licensing regime, it is expected that this option would promote a reasonable level of community confidence in the continued effective operation of drug law enforcement in NSW

## **Option 3: Proposed Regulation**

### ***Option 3 - Costs***

#### **Costs for businesses**

- *Annual licence fee:* Refer Option 2.
- *Increased costs of maintaining records and providing annual reports:* Refer Option 2.
- *Penalty notices:* Refer Option 2.

#### **Costs for Government**

- *Making (and amending) regulation:* As for Option 2, there will be costs for the government associated with making the proposed Regulation. These costs are considered minimal and core business for government.

---

<sup>2</sup> Environment Protection Authority, January 2001, Regulatory Impact Statement – Proposed Pesticides Amendment (Records) Regulation 2000, p.22, ISBN 0 7313 27640

An expanded regulation does increase the risk of more frequent amendments to maintain the currency of the regulation and of imposing greater administrative costs for Government. The actual costs will depend on the extent to which the proposed Regulation is likely to require amendment within the five-year life of a regulation under the *Subordinate Legislation Act 1989*.

- *Assessing and managing records and reports:* As for Option 2 above, the cost to Government of assessing and managing the reports submitted by licensees will be recovered through the annual licensing fee provided for in this option. However, this additional cost to industry will be offset by greater efficiencies in compliance and investigation activities that flow from good records.

### **Costs for consumers**

- No major costs to consumers are anticipated to arise through making of the proposed Regulation.

### **Costs for community & the environment**

- The proposed Regulation is not expected to lead to any significant costs for the community or the environment.

### ***Option 3 - Benefits***

#### **Benefits for businesses**

- *Clear requirements for licence applicants:* By prescribing the required information and particulars in the regulation, industry will have a clear understanding of the requirements for licence applications. They will also be aware of the major circumstances under which an application may be refused. The aim here is to provide greater administrative certainty and transparency for potential licence applicants. This should improve the quality and completeness of information submitted in applications and enables more efficient assessment of applications.
- *Improved certainty through prescribing conditions of licence:* Prescribing key licence conditions in the regulation would provide certainty regarding the conditions to be complied with for industry, enabling improved resource allocation decisions by industry.

The efficiencies and reduced costs that these provisions bring to the regulatory scheme are passed on to industry through decreased fees and charges. These benefits are reflected in the costings provided in Table 3 (Appendix A), where Option 3 generates savings of between 15% and 43% compared to Options 2 and 1 respectively.

#### **Benefits for Government**

- *Improved enforcement through prescribing conditions of licence:* Benefits will flow to government through prescribing the conditions of licence provisions. There will be certainty regarding the conditions that must be enforced by government. Any failure to comply with the conditions will be a breach of the licence and an inspector can direct the licensee to take action

- *Full cost recovery via annual licence fee:* As for Option 2.
- *Availability of penalty infringement notices:* As for Option 2.
- *Improved enforcement through access to better records:* As for Option 2.

### **Benefits for consumers**

- The proposed Regulation may benefit consumers by providing for an effective and efficient licensing scheme, which will expedite the development of a low-THC hemp industry in NSW and hence the availability of locally-produced hemp products in the market, as well as lower-cost products.

### **Benefits for community & the environment**

- The primary benefit to the community which is anticipated to arise through the proposed Regulation is continued confidence in, and the continued effectiveness of, drug law enforcement in NSW. Provisions which improve the administrative clarity and transparency of the Act have significant benefits for the wider community. Improved awareness of the restrictions imposed by the Act and proposed Regulation helps maintain community confidence in the integrity of the regulatory scheme and its ability to manage any illicit flow on effects from the cultivation and supply of low-THC hemp.

### **Summary**

The overall regulatory cost of Option 3 is about 17% less than Option 2 and about 29% less than Option 1 (Appendix A -Table 3). This is mostly the result of more efficient cost recovery mechanisms and reduced burdens from administrative inefficiencies.

Options 2 and 3 are still less costly than Option 1, even if the inefficiency and uncertainty penalties are not applied to Options 1 and 2.

Commencement of the Act without a regulation results in a sub-optimal allocation of costs and benefits across government, industry and the community. The principal outcomes from this option are that Government loses the ability to: recover the annual cost of administering a licence through an annual fee on the licensee; prescribe record keeping and reporting requirements; and utilise penalty infringement notices as an enforcement tool. Commencement of the Act with a reduced regulation, containing only provisions which are considered essential for the efficient administration of the Act and which cannot be delivered through other means, addresses the major deficiencies of Option 1.

In general terms, the benefits of the proposed Regulation are the same as those associated with the Option 2 reduced regulation. Prescribing the additional provisions in the proposed Regulation will generate benefits in terms of greater administrative certainty and transparency of the licensing scheme; more efficient enforcement activity; and improved resource allocation decisions by low-THC hemp industry.

The proposed Regulation provides what is considered an optimal balance between those provisions that are essential to the efficient administration of the Act, and those that improve the transparency and administrative certainty of the Act for the benefit of the low-THC hemp industry.

## **Implementation and compliance**

The effective operation of the licensing scheme is essential for the Act to meet its primary objective of ensuring that the supply and cultivation of low-THC hemp does not compromise NSW drug law enforcement strategy. A compliance and enforcement framework will operate at an agency level to support the Act and Regulation. Some of the elements of this framework, described below, are not prescribed in the Act or Regulation.

NSW DPI will operate a centralised licensing scheme that will receive and process licence applications; maintain information on licensees; assess annual reports and audit reports provided by licence holders.

The licensing process will generate intelligence and set priorities for a risk-based investigation and enforcement process delivered mainly by the Compliance Operations Unit within NSW DPI. The NSW Police Force and other authorised officers may also be involved in these activities.

Breaches of licence conditions and other offences under the Act will be dealt with through the issue of Penalty Infringement Notices where available or through prosecution where warranted by the nature and seriousness of the offence.

Any intelligence suggesting a breach of the DMTA or other related illegal activities will be promptly referred to the NSW Police Force for investigation.

Although not provided for in the proposed Regulation, licence holders involved in the cultivation of low-THC hemp will be expected to undergo an annual third party compliance audit against the conditions of their licence and to submit a copy of the audit report as part of their annual report to the Director-General. These audits will be organised and paid for by licence holders and will include appropriate sampling and analysis of the THC level of any low-THC hemp grown under the authority of a licence.

Independent third party auditors will be trained and accredited by NSW DPI to carry out these audits.

The licensing, enforcement and audit activities will be complemented by advisory activities designed to increase awareness of the low-THC hemp licensing scheme and promote compliance. This will be achieved through a comprehensive communication strategy involving published material, online information and a phone enquiry service.

The operation of the low-THC hemp licensing scheme is based on user-pays principles with licence holders paying the reasonable administrative costs of participating in the scheme. Licence holders will also need to meet the costs of any third party audits of their activities where required, as well as the costs of sampling and analysis of their low-THC hemp crop to verify the concentration of THC.

## **11. Consultation**

### **Consultation during development of proposed Regulation**

The Act was developed in consultation with representatives of NSW Health, the NSW Police Force, the Ministry for Police, and the Attorney-General's Department. The proposed Regulation has also been developed in consultation with representatives from these agencies, via an inter-agency steering committee.

As identified above, the main objective of the Act is to provide for the commercial cultivation and supply of low-THC hemp, without compromising the effectiveness of existing drug enforcement strategies of the NSW Police Force.

Consultation with the NSW Police Force and the Ministry for Police was therefore critical to the development of the Act and the proposed Regulation. In particular, consultation occurred with the police agencies to ensure that the new regulatory scheme is appropriately integrated with the DMTA, and that the proposed Regulation contains adequate mechanisms for:

- the sharing of licensing and compliance information
- assessing the suitability of licence applicants (via criminal history record checks)
- inspection (s. 20 of the Act provides that police officers may exercise the functions of inspectors).

The Act removes the power of the Director-General of the Department of Health to issue authorities in relation to research trials of low-THC hemp under s. 23(4) of the DMTA and transfers this function to the Director-General of the Department of Primary Industries. Consultation with NSW Health identified the need for ongoing information-sharing between the two agencies to ensure that relevant information regarding authorities issued under the former scheme is made available to the administrators of the new scheme.

### **Consultation program on proposed Regulation and RIS**

The proposed statutory rule and the RIS will be sent directly to a range of organisations, both industry and government for comment. See Appendix B for the list of organisations.

In addition, the general public will be able to make submissions on the proposed Regulation and RIS.

## **12. Preferred Option**

The proposed Regulation is the most effective and efficient means of supporting the administration of the Act by helping to facilitate the commercial production of low-THC hemp without compromising drug law enforcement in NSW. The proposed Regulation is consistent with existing Government policies, balancing the need for effective drug law enforcement and industry development with the priority of red tape reduction. It is consistent with community expectation and the intention of Parliament and does not impose an unnecessary regulatory burden on the community.

The proposed Regulation includes various provisions which are considered essential for the effective and efficient administration and operation of the Act, including provisions relating to renewal, transfer, suspension and revocation of licences; information-sharing with relevant agencies; the maximum amount of approved fees; record-keeping requirements; the charging of annual licence fees and other fees associated with the administration of the licensing scheme; and penalty notice offences.

The proposed Regulation also includes some additional provisions which provide greater administrative certainty and transparency for the low-THC hemp industry, including the information and particulars that must be provided with a licence application; the circumstances in which the Director-General may refuse, or is required to refuse, to grant a licence; and the conditions of licences.

The proposed Regulation seeks to ensure that the statutory framework is efficient and effective. The costs and benefits of the proposed Regulation are such that, when considered against the alternative options, this option is expected to provide the highest net benefit to the community. The preferred option is therefore to make the proposed Regulation.

## **13. Evaluation and Review**

Section 50 of the Act provides that, after five years of operation of the Act, the Minister is to review the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. A report on the outcome of the review is required to be tabled in Parliament.

The regulation, once made, will also be subject to periodic review under the requirements of the *Subordinate Legislation Act 1989*, which provides that statutory rules may be subject to repeal five years after they are made.

## Appendix A: Costings

### 1. Types of costs

The major items generating costs across the three regulatory options under consideration can be summarised as follows.

- A. Provisions that impose direct costs:
  - annual licence fee (clause 12)
  - penalty notice offences (clause 16).
  
- B. Provisions that impose compliance costs if included or excluded from the proposed Regulation:
  - maintaining records and providing annual reports (clause 10)
  - additional grounds for suspension and revocation (clause 8)
  - provision of annual reports (clause 11).
  
- C. Provisions that impose indirect costs if excluded from the proposed Regulation (requirements that can be imposed via the Director-General's discretion under the Act but which reduce administrative uncertainty if included in the proposed Regulation):
  - information and particulars required to accompany licence applications (clause 4)
  - conditions to which most licences will be subject (clause 9)
  - maximum fee that can be charged for any type of application (clause 14)
  - reduced administrative processes and charges for licence transfers and renewals (clauses 7 & 5)
  - additional grounds on which the Director-General may refuse an application (clause 6).

These costs have been apportioned to the various regulatory options in Table 1.

**Table 1 Overview of types of costs arising from each regulatory option**

	<b>A. DIRECT COSTS (REGULATORY CHARGES)</b>	<b>B. COMPLIANCE COSTS</b>	<b>C. INDIRECT / MARKET COSTS</b>
<b>Option 1, No regulation</b>		<u>Administrative inefficiencies</u> caused by no specification of: <ul style="list-style-type: none"> <li>- annual licence fee</li> <li>- additional grounds for suspension and revocation</li> </ul>	<u>Administrative uncertainty</u> caused by no specification of: <ul style="list-style-type: none"> <li>- information &amp; particulars</li> <li>- maximum fee</li> <li>- reduced process for licence transfer &amp; renewal</li> <li>- additional grounds for refusal</li> <li>- common licence conditions</li> </ul>
<b>Option 2, Reduced regulation</b>	Annual licence fee  Penalty notice offences	Maintaining records & providing annual report  <u>Administrative inefficiencies</u> caused by no specification of: <ul style="list-style-type: none"> <li>- additional grounds for suspension and revocation</li> </ul>	<u>Administrative uncertainty</u> caused by no specification of: <ul style="list-style-type: none"> <li>- information &amp; particulars</li> <li>- reduced process for licence transfer &amp; renewal</li> <li>- additional grounds for refusal</li> <li>- common licence conditions</li> </ul>
<b>Option 3, Proposed regulation</b>	Annual licence fee  Penalty notice offences	Maintaining records & providing annual report	

## 2. Annual application fees or annual licensing fees

The cost recovery mechanism incorporated into Options 2 and 3 involves a combination of an initial licence application fee and an annual licensing fee. However, If the annual licensing fee is not provided for (Option 1), the full costs of administering and maintaining the licence, including the maintenance of records and electronic data associated with a licence, and the review of annual reports submitted by licence holders, needs to be recovered through the application fee.

To achieve this under Option 1, the licence would need to be renewed annually with an annual application fee (renewal fee) set at a level high enough to cover all the administration costs involved in the assessment and determination of the licence, including consideration of the activities of the licence holder over the past 12 months.

Table 2 provides a comparison of the likely regulatory costs imposed by the two approaches to cost recovery outlined above. The following assumptions have been made in preparing the relative costings:

- Cost of processing a new licence = \$575
- Annual cost of administering licence and processing annual reports = \$200
- Cost of processing an annual renewal where all material particulars remain the same = \$200
- Licence costs have been considered over a five-year period as suggested by s.11 of the Act
- In the absence of any regulation the Director-General is obliged to carry out a police criminal history record check each time he assesses an application of renewal
- The regulated community constitutes no more than 50 licence holders

- The cost of a NSW Police Force criminal history check is estimated at \$50.

**Table 2 - Cost comparison - annual renewals versus annual licensing fees**

<b>OPTION 1 COSTS</b>	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Initial Application Fee	\$575	*	*	*	*	\$575
Annual administration cost	\$200	\$200	\$200	\$200	\$200	\$1000
Annual Renewal Fee	*	\$200	\$200	\$200	\$200	\$800
Police Criminal History Check	\$50	\$50	\$50	\$50	\$50	\$250
Total	\$825	\$450	\$450	\$450	\$450	\$2625

<b>OPTION 2 &amp; 3 COSTS</b>	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Initial Application Fee	\$575	*	*	*	*	\$575
Annual Licensing Fee	\$200	\$200	\$200	\$200	\$200	\$1000
Police Criminal History Check	\$50	*	*	*	*	\$50
Total	\$825	\$200	\$200	\$200	\$200	\$1625

The total estimated charges for 50 licence holders over five years is \$131,250 (\$2625x50) for Option 1, down to \$81,250 (\$1625x50) for Options 2 or 3.

### 3. Inefficiency and administrative uncertainty

In not providing for those provisions that are considered essential to the efficient administration of the Act, Option 1 creates inefficiencies in administering the licensing scheme which must be overcome by implementing more administratively complex processes or by industry having to make decisions on the basis of imperfect information.

It is difficult to estimate the direct cost of these inefficiencies or their impact on the competitiveness of NSW producers. However, because of the small size of the hemp market in NSW the impact of these inefficiencies on the economy of NSW is likely to be minor. Nevertheless, in order to illustrate the relative quantitative impact of this inefficiency, an assumption has been made that these administrative inefficiencies are likely to increase costs within the scheme by at least 10% and that this will be reflected in higher regulatory charges. This inefficiency penalty has been incorporated into the estimate of overall costs in Table 3.

The concept of administrative uncertainty was introduced to account for the negative impacts on potential licence holders because of uncertainty regarding the flow-on cost arising from discretionary impositions by the Director-General. Although these provisions can be determined by the Director-General, not prescribing them would result in less transparency and administrative certainty.

To the extent that a lack of administrative certainty affects efficient resource allocation decisions by potential licence holders, the lack of a regulation is likely to result in additional, unquantifiable costs for industry. In order to illustrate the relative quantitative impact of this administrative uncertainty, an assumption has been made that this uncertainty is likely to increase costs within the scheme by at least 10% and that this will be reflected in higher regulatory charges. This uncertainty penalty has been incorporated into the estimate of overall costs in Table 3.

#### 4. Maintaining records and providing annual reports

In prescribing the keeping of records and the submission of annual reports, Options 2 and 3 impose additional compliance costs on licence holders. The very limited technical information available on the growing of low-THC hemp in NSW presents a challenge in terms of identifying the real costs of crop management activities such as record keeping.

However, considerable work was done in 2000 by the NSW Department of Environment and Climate Change (DECC) in estimating the costs of making records of pesticide use as part of the introduction of the *Pesticides Amendment (Records) Regulation 2000*<sup>3</sup>. The cost estimates produced in that case are useful in estimating those which would apply in the case of low-THC hemp.

DECC estimated that growers spend approximately ten minutes in making a substantial record of a spray application activity. Following a comparison of pesticide record making requirements and those proposed for low-THC hemp, we have concluded that making a record of an activity relating to low-THC hemp should take approximately the same time. In order to maintain complete records as proposed in Options 2 & 3, a licence holder will need to make at least five record entries in the season covering: the sourcing of seed or plants; sowing or planting; destroying seed or plants; the harvesting of low-THC hemp; and the supply of harvested low-THC hemp.

The opportunity cost of time for record-keeping can be estimated by the number of records that need to be made each year (five x 50 licence holders), the unit time required, and the value attributed to that time. The calculations are as follows:

5 record events x @10 minutes x 50 licence holders = 2500 minutes or about 42 hours. Using the default hourly wage rate for NSW of \$47/hour the total record keeping cost for the industry 42 x \$47 = \$1,974 or about \$40 p.a. for each licence holder.

The proposed Regulation also requires a licence holder to submit an annual report of activities to the Director-General. While the content of the annual report is not specified in the regulation, the most likely requirement is that the annual report will consist of a summary of the records made during the year. If we assume that the cost of preparing the annual report is no more than double the cost of making the record in the first place, then the likely annual cost will be:

42 x \$47 x 2 = \$3,948 for the regulated community or \$80 for each licence holder.

---

<sup>3</sup> Environment Protection Authority, January 2001, Regulatory Impact Statement – Proposed Pesticides Amendment (Records) Regulation 2000, ISBN 0 7313 27640

The total annual cost of the record keeping and reporting provision proposed in the regulation is the sum of the individual costs involved in making the records and preparing the annual report. This equates to:

\$120 (\$40 + \$80) for each licence holder p.a. or \$600 over the 5 year licence period. The overall cost to the industry will be in the order of \$5922 (\$1974 + \$3,948).

## 5. Summary of overall annual costs for each regulatory option

The costs estimated for each element above have been inserted into Table 3 to provide the overall estimate of costs for each option.

**Table 3 Summary of overall annual costs for each regulatory option**

	<b>DIRECT COSTS (Regulatory Charges + inefficiency cost)</b>	<b>COMPLIANCE COSTS (reports, record keeping)</b>	<b>INDIRECT COSTS (Uncertainty cost)</b>	<b>Total</b>
<b>Option 1</b>	\$2,625 + 10%	-	+10%	\$3,150
<b>Option 2</b>	\$1625 + 10%	\$600	+10%	\$2,670
<b>Option 3</b>	\$1625	\$600	*	\$2,225

## Appendix B: Consultation program

The consultation period for the proposed Regulation and RIS will be from **22 August 2008 to 19 September 2008**. This will be advertised in the *Sydney Morning Herald* and *The Land* newspapers and the Government Gazette. The draft Regulation and RIS will also be available on the NSW DPI website at <http://www.dpi.nsw.gov.au/regulation-review>.

A copy of the draft Regulation and RIS will be forwarded to:

### Industry

NSW Farmers' Association  
Demand Farming Australia Pty Ltd  
Ecofibre Industries Limited  
Agri Fibre Industries Pty Ltd  
Crop Tech  
Pat Calabria  
Ecotechnology Australia  
Northern Rivers Hemp Association  
Australian Industrial Hemp Advisory Body Inc  
Fibre Laboratory (UK) Limited  
Greenway & Banks Realty Pty Ltd

### Government

NSW Police Force  
Ministry of Police  
Attorney-General's Department  
Department of Health  
Better Regulation Office  
Department of Environment and Climate Change  
Department of State and Regional Development  
AusIndustry (within Commonwealth Department of Innovation, Industry, Science and Research)

### Tertiary Institutions

Southern Cross University  
Charles Sturt University  
University of Technology Sydney  
University of NSW  
Macquarie University

### Health and anti-drug groups

National Cannabis Prevention and Information Centre (UNSW)

Notice will be provided to all other individuals and organisations who have contacted NSW DPI and indicated an interest.