

Update on Regulatory Impact Statement for Hemp Industry Regulation 2008

October 2008



**NSW DEPARTMENT OF
PRIMARY INDUSTRIES**

Update on Regulatory Impact Statement for Hemp Industry Regulation 2008

© 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

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

1. Overview.....	4
2. Consultation process.....	4
3. Overview of submissions.....	5
4. Changes made to Hemp Industry Regulation 2008 as a result of submissions.....	9
5. Other changes made to Hemp Industry Regulation 2008.....	10

1. Overview

This document provides an overview of the public consultation process undertaken in relation to the proposed Hemp Industry Regulation 2008 (‘the draft Regulation’) and the Regulatory Impact Statement (‘RIS’).

It also outlines the submissions received during the public consultation process and changes made to the draft Regulation as a result of these submissions.

Finally, this document sets out some additional changes made to the draft Regulation since its publication for public consultation purposes.

2. Consultation process

The draft Regulation and the RIS were released for public consultation on Friday 22 August. Notice of the public consultation process was provided in the Government Gazette on 22 August; advertisements appeared in the *Sydney Morning Herald* and the *Daily Telegraph* on 20 August, and *The Land* on 21 August. The public consultation period closed on Friday 19 September.

A copy of the draft Regulation and the RIS were provided to those stakeholders identified in the RIS.

NSW Department of Primary Industries (NSW DPI) representatives consulted directly with the following stakeholders as part of the public consultation process:

- Demand Farming Australia Pty Ltd
- Northern Rivers Hemp Association
- Southern Cross University
- Ecofibre Industries Ltd
- Agri Fibre Industries Pty Ltd
- Ecotechnology Australia Pty Ltd
- Morrowby Futures

An inter-agency steering committee, comprising representatives from the Department of Health, the NSW Police Force, the Ministry for Police, the Attorney-General’s Department as well as NSW DPI, also considered the draft Regulation.

3. Overview of submissions

NSW DPI received nine submissions on the draft Regulation and RIS. The table below sets out the main issues raised in each of the submissions and the proposals for change to the draft Regulation contained in the submissions. It also sets out NSW DPI's response to these proposals, indicating whether or not change to the draft Regulation was required as a result. Some of the proposals relate to the *Hemp Industry Act 2008* ('the Act').

Regulation	Issue	Response
Licence conditions - possession and movement of plant material (r. 9)	Possession and removal of plant material in relation to scientific purposes or analysis	The draft Regulation was amended to provide that a licensee is exempt from the requirement in r. 9(1)(h)(a) in respect of any low-THC hemp taken from the property on which it was cultivated for scientific purposes or analysis.
Register of information - records required to be included (r.10)	Recording plant numbers.	Intention of the provision is to deal with live plants. No change to draft Regulation required.
Annual licence fee (r. 12)	Payment of licence fee for more than one year even for a suspended licence.	It is unlikely that a licence would remain suspended for more than one production year. It would either be revoked or restored. No change to draft Regulation required.
Information & particulars to be included in licence applications (r. 4)	Clarification of circumstances in which a manufacturer requires a licence to process hemp.	Under the Act, a licence is not required for a manufacturer to process low-THC hemp, only for a person to cultivate or supply low-THC hemp for use in a manufacturing process (s. 5). No change to draft Regulation required.
Licence conditions - seed supply requirements (r. 9)	Requirement for supplier of seed (for sowing purposes) to supply a THC analysis certificate, declaration of cultivar and origin.	The regulatory scheme is designed so that the obligation is on the licence holder to obtain appropriate guarantees from the seed supplier. Growing plants with THC levels beyond the range

Regulation	Issue	Response
		permitted in the legislation is an offence under the <i>Drug Misuse and Trafficking Act 1985</i> . Audit and compliance processes are established under the <i>Hemp Industry Act 2008</i> and the proposed Regulation to identify such contraventions of the legislation. No change to draft Regulation required.
Annual licence fee (r. 12)	Concerns about charging licence fees, given lack of bulk seed supply and the infancy of the industry, and the amount of the fee relative to the operation.	Licence application fees have been calculated to cover the costs of administration and issue of licences. All other States involved in hemp production have similar charges in place. The cost to Government of administering the scheme is the same irrespective of the size of the activity. No change to draft Regulation required.
Research licences - licensing requirements	Whether small research trials on different sites will be covered under a single research licence.	Guidelines will clarify that small research trials on different sites will be covered under a single research licence. No change to draft Regulation required.
Transfer of research trial licence to commercial licence	Clarification of the transition from the existing system to the new system.	As the trial program was administered under NSW Health, all licence holders under that scheme will be required to submit a new licence application. No change to draft Regulation required.
Growing of hemp for food	Legislative scheme should facilitate growing of hemp for food as well as fibre.	Use of hemp in food is prohibited in Australia. No change to draft Regulation required.
Refusal of licences (r. 6)	Licences should not be declined unless the applicant has been found guilty of a serious, fraudulent or indictable drug-related offence. Minor or non-indictable offences committed more than 5 years ago should not be considered reason to refuse an application.	The Director-General has sufficient flexibility to deal with minor or non-indictable offences. No change to draft Regulation required.
Definition of close associate (s. 4 of Act)	Act should not seek to exclude consultants, advisors, engineering experts, planting, harvesting and post-harvest handlers, casual visitors or family and friends	The definition of 'close associate' relates to persons who could exert a financial or controlling influence over the licence holder, which would not include most of the persons identified in the submission.

Regulation	Issue	Response
	under the 'close associate' definition.	The draft Regulation was amended to require a licence holder to maintain a record of any person employed or otherwise involved in assisting the licensee in carrying out any activities in relation to the cultivation or supply of low-THC hemp. A criminal history check will not be necessary for these contact persons; it will be up to the employer/licence holder to satisfy him or her self of the integrity of these people.
Licence types	There should be two types of licence - one for growers, another for breeders/seed suppliers.	It is not considered necessary to have different types of licences for growers and breeders/seed suppliers. No change to draft Regulation required.
Suitability of licence applicant (s. 9 of Act)	Professional and personal references should be required to be submitted and checked on an annual basis.	<p>The licence application requires that proof of qualifications or experience be submitted for a licence for the purpose of scientific research, instruction, analysis or study, where qualifications and experience are relevant.</p> <p>In addition, licence-holders are required to notify the Director-General of any material change to the information provided in relation to the licence [r. 9(i)], and if the applicant or close associate is convicted of any drug related offence [r. 9(l)]. No change to draft Regulation required.</p>
Suitability of licence applicant (s. 9 of Act)	Applicants involved in businesses currently being investigated by ACCC, ATO, etc, should be excluded from holding a licence.	The scheme is designed to determine whether applicants are of good character etc. Business regulation is not a relevant consideration. No change to draft Regulation required.
Additional accreditation	Harvesters, transporters, manufacturers and processors should be accredited.	All relevant activities are currently covered under a licence to cultivate or supply and present little risk as the hemp canes are no longer living plants. No change to draft Regulation required.
THC testing	Protocols addressing procedures and timing of sampling for THC testing must be introduced	Procedures are being developed for taking samples for THC testing. No change to draft Regulation required.

Regulation	Issue	Response
Suitability of licence applicant (s. 9 of Act)	A person prosecuted for a breach of the regulations in NSW should be prohibited from growing industrial hemp in NSW.	The Act gives the Director-General a discretion to refuse to grant a licence in this circumstance [s. 9(5)]. No change to draft Regulation required.
Licence cancellation (s. 16 of Act)	Other States should be advised if a licence is cancelled in NSW.	Exchange of information between the NSW Government and other State and Territory Governments will be facilitated pursuant to s. 37 of the Act. No change to draft Regulation required.
Information & particulars to be included in licence applications (r. 4)	Regulation 4(1)(e) of the Regulation should be amended to include any criminal offence for which the applicant, or any close associate of the applicant, has been convicted. Currently the Regulation only requests the applicant provides details of any drug-related offence on a licence application.	The Regulation only requests details of any drug-related offence for which the applicant, or any close associate of the applicant, has been convicted (r. 4(1)(e)). However, the Act gives the Director-General the discretion to refuse to grant a licence to a person if they or a close associate has been found guilty of an offence that, in the opinion of the Director-General, makes them unsuitable to be concerned in or associated with the cultivation or supply of low-THC hemp under a licence (s.9(5)(a)). Such offences would be revealed by the criminal record check. No change to draft Regulation required.
Additional grounds for refusing to grant a licence (r. 6)	Include 'significant intelligence concerning drug or organised criminal activity' as an additional ground for refusing to grant a licence.	The Act gives the Director-General a discretion to refuse to grant a licence on the basis of intelligence of this type [s. 9(5)(b)]. No change to draft Regulation required.

4. Changes made to Hemp Industry Regulation 2008 as a result of submissions

Two changes have been made to the draft Regulation as a result of these submissions.

1) Licence conditions - possession and movement of plant material:

Regulation 9(1)(h) of the draft Regulation stated that 'a licensee must ensure that all low-THC hemp cultivated under the licence is, before leaving the property on which it was cultivated, substantially stripped of its leaves'. One of the submissions correctly suggested that licensees should be able to retain or move whole plants for the purposes of testing and analysis.

The Regulation was therefore amended to provide that a licensee is exempt from the requirement of removing leaf material in respect of any low-THC hemp taken from the property on which it was cultivated for scientific purposes or analysis, and in such other circumstances that the Director-General considers appropriate [refer to r. 9(2)].

2) Definition of 'close associate':

The Act provides a definition of 'close associate' for the purposes of the Act. This definition effectively limits 'close associates' to persons who could exert a financial or controlling influence over the licence holder. One of the submissions stated that consultants, advisors, engineering experts, planting, harvesting and post-harvest handlers, casual visitors or family and friends should not be considered close associates.

It was concluded that none of the above categories of person would be considered close associates for the purpose of the Act, but this prompted consideration of a related issue – the status of persons employed or otherwise involved in assisting the licensee to carry out activities in relation to the cultivation or supply of hemp under the licence. An employee of the licensee, for example, will not be regarded as a close associate under the Act, but will have access to the crop. The Regulation was therefore amended to require a licence holder to maintain a record of:

- the name and address of any person employed or otherwise involved in assisting the licensee in carrying out any activities in relation to the cultivation or supply of low-THC hemp, and
- details of a proof of identity document for that person (for example, details of the person's driver licence or passport) [refer to r. 10(1)(a)].

5. Other changes made to Hemp Industry Regulation 2008

As well as the two changes described above, following the public consultation process it was identified that some additional changes were required to the draft Regulation. The major changes are outlined below.

Information and particulars to be included in licence applications (r.4)

Licence to supply low-THC hemp for commercial production & licence to cultivate low-THC hemp for use in a manufacturing process

Two further licence categories for which the information and particulars for licence applications are specified, have been added to the draft Regulation. These are: a licence to supply low-THC hemp for commercial production [r. 4(3)], and a licence to cultivate low-THC hemp for use in a manufacturing process [r. 4(4)].

This is to address the fact that the Act provides for licences to cultivate or supply low-THC hemp for commercial production; for use in any manufacturing process; for scientific research, instruction, analysis or study (and for any other purpose prescribed by the regulations). That is, there are six possible primary licence types. Previously the draft Regulation only referred to four of these licence types.

General requirements

The following information requirements which are requested on the licence application form have now been added to the draft Regulation:

- date of birth [refer to r. 4(1)(a)];
- details of any refusal to grant a corresponding authority to the applicant or any close associate of the applicant [refer to r. 4(1)(f)];
- details of any suspension or cancellation of a corresponding authority held by the applicant or any close associate of the applicant [refer to r. 4(1)(g)].

Licence to supply low-THC hemp for use in a manufacturing process

Regulation 4(5)(a) requires the licence applicant to include a description of the location of the manufacturing facilities in an application for a licence of this type, while r. 4(5)(b) requires the licence applicant to include a description of the processes to which the low-THC hemp will be subject. These sub-clauses have been amended to add, 'if known'.

Previously the draft Regulation contained a sub-clause requiring the licence applicant, where that applicant does not own the manufacturing facilities, to include the name and address of the owner of the facilities and evidence of

the owner's consent to the use of the facilities for the processing of low-THC hemp. This requirement has been removed.

Licence to cultivate low-THC hemp for scientific purposes

The following information requirements which are requested on the licence application form have now been added to the draft Regulation:

- description of location of the property on which the low-THC hemp is to be cultivated [r. 4(6)(a)];
- a plan of the property that shows the areas where the low-THC hemp is to be cultivated or stored [r. 4(6)(b)];
- any property identification code for the property [r. 4(6)(c)];
- if the applicant does not own the property – the name and address of the owner of the property and evidence of the owner's consent to the use of the property to cultivate low-THC hemp for commercial production [r. 4(6)(d)].

Licence to supply low-THC hemp for scientific purposes

The information requirements which are requested on the licence application form have now been amended to instead require:

- if known – a description of the location of the property that is to be used for the proposed research, instruction, analysis or study [r. 4 (7)(a)];
- if known – a description of the proposed research, instruction, analysis or study [r. 4(7)(b)];
- the estimated quantity of low-THC hemp to be supplied annually [r. 4(7)(c)].

Application for transfer of licence (r. 7)

The following information requirements which are requested on the licence application form have now been added to the draft Regulation:

- date of birth of transferee [r. 7(2)(c)];
- date of birth of any close associate of the transferee [r. 7(2)(d)];
- details of drug related offence for which the transferee, or any close associate of the transferee, has been convicted [r. 7(2)(e)];
- details of any refusal to grant a corresponding authority to the transferee or any close associate of the transferee [r. 7(2)(f)];
- details of any suspension or cancellation of a corresponding authority held by the transferee or any close associate of the transferee [r. 7(2)(g)].

Register (r. 10)

Regulation 10(1) states that the licensee must keep a register containing certain information. Regulation 10(1)(f) has been amended to refer to the *disposal* as well as the destruction of any seeds or plants under the licence. It

has also been amended to require the licensee to record the manner in which the seeds or plants are disposed or destroyed [refer r. 10(1)(f)(v)].