

Guidelines for Preparing a Low-THC Hemp Licence Application

Hemp Industry Act 2008 (NSW)

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Please note

These guidelines are provided to assist persons applying for a licence to cultivate and/or supply low-THC hemp under the *NSW Hemp Industry Act 2008 (Act)* and *NSW Hemp Industry Regulation 2016 (Regulation)*. Every attempt has been made to accurately explain the scope of information that needs to be provided in the licence application form. Nevertheless, it remains the Applicant's responsibility to ensure that they understand their obligations under this legislation and that all information provided is true and accurate.

The Act provides for penalties of up to 100 penalty units (as defined in Section 17 of the *Crimes (Sentencing Procedure) Act 1999* – \$110 per unit at the time of writing) or 2-years imprisonment or both where a person makes a false or misleading statement or omits important information from their application.

Introduction

A person or entity must hold a current licence under the Act before they may lawfully cultivate or supply low-THC hemp in NSW.

A licence can only be issued to a person who is considered suitable to be concerned in, or associated with, the cultivation or supply of low-THC hemp. In particular, the person must be of good repute, having regard to the person's character, honesty and integrity. These requirements also apply to Close Associates (as defined) of the person or company making the application.

The personal details of the licence Applicants and Close Associates will be referred to the NSW Police for a criminal record check. This is an essential requirement to verify whether an Applicant or Close Associate has a history of drug-related or other offences that may impact the outcome of the application.

Applicants should note that the application form identifies the minimum information required by the Regulation. It is in the interests of the Applicant to provide as much information as necessary to clearly explain their proposed activities.

It is recommended that Applicants familiarise themselves with the Act and Regulation, and the Department of Primary Industries and Regional Development (Department) publications *Hemp Industry New South Wales Licence Manual* and *Frequently Ask Questions - Growing low-THC hemp in New South Wales*. These documents can be accessed at

<https://www.dpi.nsw.gov.au/agriculture/broadacre-crops/nsw-hemp-industry>

Definition

Low-THC hemp means any plant of the genus *Cannabis*, by whatever name that plant may be called, that has a concentration of THC in its leaves and flowering heads of no more than 1%, and includes the seed of any such plant and any product (such as oil, fibre or resin) derived from any such plant.

Duration of licence

A licence is valid for a period of five years.

Part 1 Type of application

The application form can be used to apply for a new licence or to transfer a licence. If applying to transfer, the existing licence will be cancelled and any personnel and locations included in the application form will be transferred to the new licence. The existing licensee is required to complete the "Consent of present licensee to transfer licence" section. All sections of the application form must be fully completed with the required attachments regardless of the type of application.

Part 2 Business structure

A licence can be held by an individual, partnership, company or association.

The licence holder name is dictated by the type of business structure. For example:

- for an individual, the licence holder name is the individual's name (SMITH John)
- for a partnership, all Applicants are the licence holders (SMITH John & SMITH Jane)

- for a company or association, the licence holder name is the company name (Smith Enterprises Pty Ltd)
- a licence cannot be held in the name of a trust, however, it can be held by any of the listed business structure types 'as trustee for' a trust (e.g. SMITH John as trustee for the Smith Family Trust).

Enter the ABN, ACN and trading name for the business, if applicable.

If the application is in the name of a company or association, provide the company or association name and contact details and attach either an ASIC Company Extract listing the directors or a Certificate of Incorporation listing the principal contacts.

Part 3 Applicant and Close Associate details

The Secretary is required to investigate all applications and will consider the circumstances of each application on a case-by-case basis. The Secretary is required to conduct a criminal record check of all Applicants and Close Associates to determine whether they are suitable persons to be involved in the cultivation and/or supply of low-THC hemp. The details requested in Part 3 of the application are required to assist the Secretary in this investigation.

Personal and contact details

- Identify whether the person is an Applicant or Close Associate:
 - Where the business structure is an individual, partnership or person acting as a trustee, each individual, partner and trustee is required to be an Applicant
 - Where the business structure is a corporate entity (e.g. company or association), there will be no Applicant listed in this section as the corporate entity is the Applicant. Each director or principal contact of that entity is required to be a Close Associate
- You may apply for additional Close Associates that have a relevant position, role or power in relation to the business (see the "Definition of a Close Associate" section below for more information)
- Record each person's role within this business (e.g. Director, Manager, Property Owner)
- Provide a copy of each Applicant and Close Associate's photo identification (preferably driver's licence). This helps establish identity and ensures that the Applicants and Close Associates are over the age of 18 years. Licences cannot be issued to a person under 18 years of age
- For each Applicant and Close Associate, identify their skills and experience relevant for the cultivation and/or supply of low-THC hemp
- Each Applicant and Close Associate is required to read the Statutory Declaration at the end of the application form, then tick, sign and date the agreement at the end of their personal details section.

Key contact

Nominate one of the listed Applicants or Close Associates to be the key contact for correspondence. This person's contact details will be the main contact details on the account.

Definition of a Close Associate

Close Associates are defined in Clause 4 of the Act as follows:

- (1) For the purposes of this Act, a person is a **Close Associate** of an Applicant for, or the holder of, a licence if the person:
 - a. holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the licence Applicant or holder, and by virtue of that interest or power is or will be able (in the opinion of the Secretary) to exercise a significant influence over or with respect to the conduct of that business, or
 - b. holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the licence Applicant or holder.
- (2) In this section:

relevant financial interest in relation to a business means:

 - a. any share in the capital of the business, or
 - b. any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.

relevant position means the position of director, manager or secretary or any executive position, however designated, if it is an executive position.

relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

 - a. to participate in any directorial managerial or executive decision, or
 - b. to elect or appoint any person to any relevant position.

The following guidelines are provided to assist in determining who should be listed in the application as a Close Associate.

The following persons are Close Associates:

- a spouse, de facto partner or other family member who is in partnership for business or taxation purposes
- directors, principal contacts, executive managers and co-owners of a company or other business entity
- a person making land available to an Applicant or licensee on a share-farming basis.

The following persons are not generally Close Associates:

- children under the age of 18 who reside with the Applicant or Close Associate
- employees who hold no relevant financial interest, position or power in the company
- shareholders in a publicly listed company
- a person leasing land to a licensee.

Farm workers, consultants or contractors are not Close Associates if they hold no financial interest or power in the business of the Applicant or licensee.

Where the cultivation of low-THC hemp is intended on property not owned by the Applicant and the owner of the property lives and/or works on the property, the owner may or may not be considered a Close Associate depending upon meeting criteria defined above.

Part 4 Licensing history

Applicants must disclose whether they or a Close Associate have held a licence to cultivate or supply low-THC hemp anywhere in Australia, and whether they have had a low-THC hemp licence refused, suspended or cancelled anywhere in Australia.

Part 5 Criminal background

Applicants must disclose whether they or a Close Associate have ever been convicted of a drug-related offence anywhere in Australia and provide details of the conviction.

The Department will organise for a National Criminal Record Check to be conducted for each Applicant and Close Associate. Following submission of the application, each Applicant and Close Associate will receive a link emailed from no-reply@police.nsw.gov.au to conduct the check. This link expires seven (7) days after receipt and the email may appear in the spam or junk folder. The completion of a National Criminal Record Check is an essential requirement to verify whether an Applicant or Close Associate has a history of drug-related offences.

An application for a licence to cultivate and/or supply low-THC hemp **must be refused** if an Applicant or Close Associate has been found guilty of a drug-related offence (as defined below) in any state or territory.

Drug-related offence means an indictable offence under the *Drug Misuse and Trafficking Act 1985* or under a corresponding law.

Applicants and Close Associates who have been found guilty of a drug-related offence within 10 years prior to making the application should acquaint themselves with the provisions of the *Criminal Records Act 1991*.

Where the offence was set aside or pardoned, full details should be provided with the application form so that the Applicant's or Close Associate's eligibility for a licence can be determined by the Secretary.

Part 6 Proposed activity

A detailed description of the proposed activity relating to the cultivation and/or supply of low-THC hemp is required to assist in determining the legitimate nature of the proposed activities and provides a basis for any subsequent audits or inspections.

A low-THC hemp licence can authorise more than one activity, such as cultivation and supply of low-THC hemp for both commercial production and use in a manufacturing process. The following category descriptions are provided to assist in the application

cultivate includes grow, harvest or produce

supply includes sell and distribute, and also includes agreeing to supply, or offering to supply, or

keeping or having in possession for supply, or sending, forwarding, delivering or receiving for supply, or authorising, directing, causing, suffering, permitting or attempting any of those acts or things.

On the application form, you are required to tick all relevant activities (Table 1).

Table 1. Permitted activities and examples

Activity	Examples	
	Cultivate	Supply
Commercial production Commercial production refers to resource production or extraction at a scale and efficiency sufficient for sale in the market, aimed at generating revenue and profit.	• Cultivation of hemp from which commercial amounts of viable seed will be harvested. • Cultivation to establish optimal variants for specific growing conditions to support production on a commercial scale.	• Supply of viable hemp seed or seedlings to licensed low-THC hemp cultivators. • Supply of plant material to a third party for on-sale to a manufacturer.
Use in a manufacturing process A manufacturing process means any process that converts raw material (e.g. low-THC hemp plants) into a product (e.g. fibre, processed seed, oil, resin or subsequent product).	• Cultivation of hemp that will be used to produce fibre for building materials, animal bedding and garden mulch. • Cultivation of hemp that will be used to produce seed for food products, cosmetics and animal feed.	• Supply of hemp fibre for the manufacture of building materials. • Supply of hemp seed for the manufacture of food products.
Scientific purposes Scientific purposes refers to rigorous scientific research, instruction, analysis or study. It is usually conducted within a research facility and associated with a researcher with tertiary qualifications. The research may be conducted by the licence holder or a third party.	• Cultivation of hemp to conduct your own research into its potential for energy production. • Cultivation of hemp that will be supplied to a research facility.	• Supply of hemp to a university for research into genomic sequencing of hemp variants. • Supply of resin to a laboratory for use in clinical trials.

Additional documents for ‘Cultivate for scientific purposes’

If you intend to cultivate for scientific purposes and conduct your own research under your own licence, you will be required to submit:

- A comprehensive research proposal, including background, purpose, aims/objectives, methodology, analytical techniques, method of disposal/destruction of hemp material and

implications of the research.

- Evidence of relevant qualifications and experience of the person/s conducting the scientific research (Note: the researcher/s is/are required to be either an Applicant or Close Associate).

Information regarding intended activity

You will be required to provide detail regarding your intended activity, including:

- potential source of seed
- intended seed varieties
- proposed crop types
- proposed method of cultivation
- products you intend to produce
- proposed manufacturing processes
- products you intend to supply or sell
- your intended target market.

All questions must be completed with sufficient detail to enable the Secretary to make a determination as to whether your intended business activity relates to a valid commercial, industrial or scientific purpose.

If your intended activity includes medicinal or therapeutic products, provide a copy of your authorisation to produce such products from the Office of Drug Control (ODC) and/or Therapeutic Goods Administration (TGA) and property plan/s showing distinct ODC, TGA and Department cultivation, storage and/or processing areas.

Part 7 Location details

Copy the 'Location Details' page of the application form if you are applying for multiple locations.

- Enter the property details in full. List all Lot and DP numbers in the following format: Lot/DP - 1/100000
- Enter the maximum potential area of cultivation proposed for the duration of the licence period (5 years). Variations to area can be made throughout the licence period.
- If all owners of the property are not listed as either an Applicant or Close Associate on the application form, consent to use the property is required. Consent must be signed by all property owners not listed as an Applicant or Close Associate under the licence or licence application. If the property owner is a company, all directors must sign the consent and the ASIC Company Extract listing the directors must be submitted alongside the consent.
- Proof of property ownership is required. The property owner may email this directly to bfs.admin@dpird.nsw.gov.au
- Provide a map showing the location of the property within the broader area.
- Provide a property plan showing any cultivation, storage and processing areas within the property. You may provide a Google Earth satellite map or detailed, well-drawn hand map. The following features should be visible (see Appendix 1):

- the property
- fence lines
- roads
- buildings and residences
- an outline of areas intended for hemp cultivation
- storage and processing facilities/areas
- GPS coordinates.

Where possible, low-THC hemp crops should be positioned close to a residence on the property or located so that any unauthorised access is more likely to be detected. An internal paddock is recommended. Low-THC hemp crops should **NOT** be positioned alongside a public road, unless the crop will be screened by trees or shrubs.

Part 8 Fee schedule

All fees include GST (Table 2).

Table 2. Fee schedule

Fee type	Amount
New licence application fee (5-year licence)	\$572.00
National Criminal Record Check fee per person	\$37.00
Transfer licence application fee (5-year licence)	\$451.00
Annual fee (four annual fees to be paid on the licence start anniversary date)	\$200.00

Application fees

Payment of the application and National Criminal Record Check fees is required at the time of submission of the application. The application will not be processed until the correct payment is received (Table 3). The fees represent the actual administrative processing costs.

Annual licence fee

An annual licence fee of \$200 is to be paid in each subsequent year for the duration of the 5-year licence period. The timing of the annual licence fee payment will coincide with the anniversary of the licence start date. Payment of the annual licence fee is a condition of the licence. Non-payment of the annual licence fee is an offence under Section 6 of the Act. Licensees will be invoiced separately for the annual licence fee.

Table 3. Example total fee payable over the 5-year term of a licence.

Fee type	Amount
New licence application fee	\$572.00
National Criminal Record Check fee (x 1)	\$37.00
Annual fees (x 4)	\$800.00
Total fee	\$1,409.00

Submission, processing timeframes and application outcomes

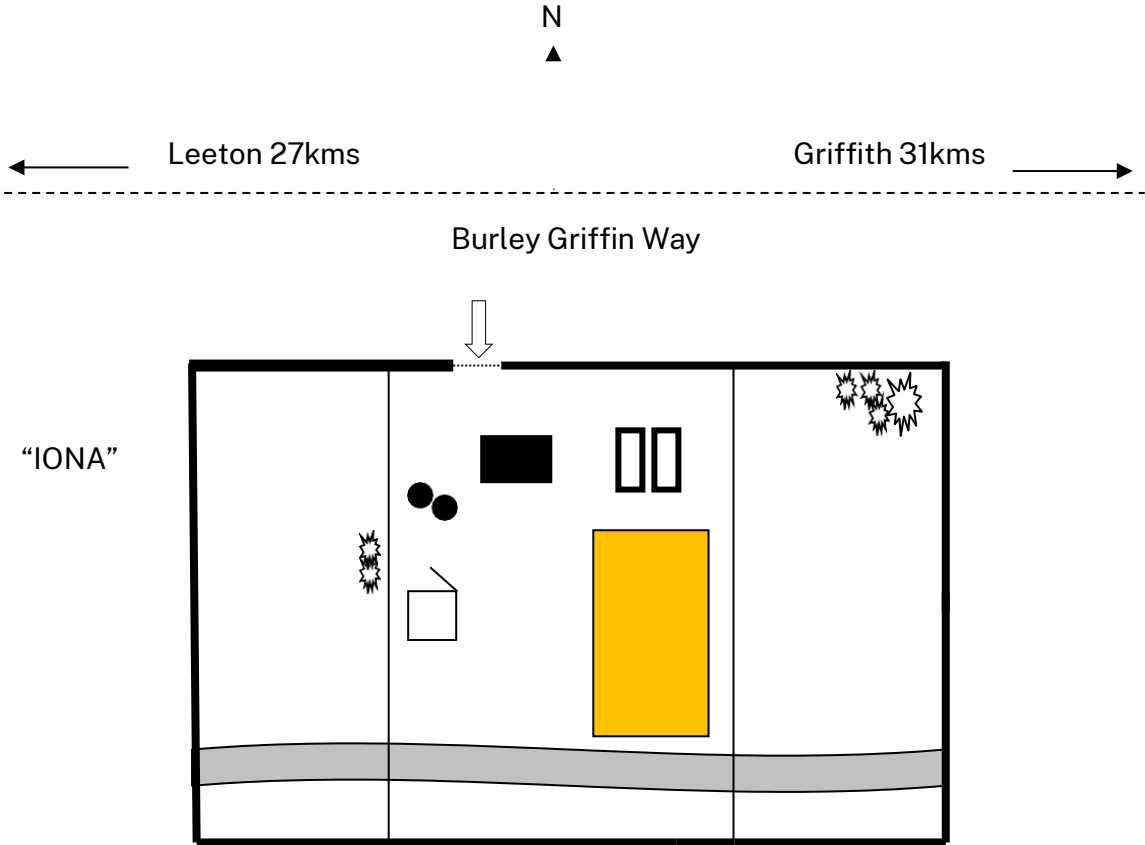
Applicants will be notified when the application is received.

Applicants will have 14 days from the date of the initial assessment by the Licensing Officer to provide all required information and documentation, and to complete the criminal record check organised by the Department. Failure to submit a fully completed application within 14 days of the initial assessment will result in the application being rejected and re-application will be required.

Applications should be submitted at least four months prior to the intended commencement date. Application processing timeframes vary due to time taken to secure all required information and documentation, time taken to achieve an acceptable audit and the complexity of the application.

When processing is complete, the Applicant will be notified in writing as to whether the licence has been granted or refused.

Appendix 1. Example property plan



Mapping Symbols

Boundary fence		Main access roads	
Individual trees		Internal fence lines	
Irrigation channels		Silo	
House		Sheds/storage	
Glass houses		Entrance	
Proposed site of crop			

Directions/Instructions

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