



New South Wales

Poppy Industry Regulation 2024

under the

Poppy Industry Act 2016

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Poppy Industry Act 2016*.

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Minister for Agriculture

Explanatory note

The object of this regulation is to repeal and remake, with some changes, the *Poppy Industry Regulation 2016*, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

The regulation prescribes matters relating to the following under the *Poppy Industry Act 2016* (***the Act***)—

- (a) the definitions of ***alkaloid poppy***, ***interstate poppy licence*** and ***interstate processing licence***,
- (b) the test for determining whether a person is a fit and proper person to hold a poppy licence or poppy permit,
- (c) the checks and requirements for persons employed or engaged in activities under a poppy licence or poppy permit,
- (d) the requirements for identification cards for persons employed or engaged in activities under a poppy licence,
- (e) conditions of poppy licences,
- (f) the deadline for an application to renew a poppy licence,
- (g) the date for payment of an annual fee for a cultivation licence,
- (h) the period within which certain orders may be made following expiry, surrender or cancellation of a poppy licence,
- (i) arrangements following the death of the holder of a poppy licence or poppy permit,
- (j) penalty notice offences and penalties,
- (k) the fees and costs of an audit under the Act.

This regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely—

- (a) matters of a machinery nature, and
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

Sections 9(2) and 14 are made under the Act, section 47(3)(b), which is a Henry VIII provision that affects the application of the Act.

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Part 1 Preliminary

1 Name of regulation

This regulation is the *Poppy Industry Regulation 2024*.

2 Commencement

This regulation commences on 1 July 2024.

Note— This regulation repeals and replaces the *Poppy Industry Regulation 2016*, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definition

In this regulation—

the Act means the *Poppy Industry Act 2016*.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this regulation.

4 Definition of “alkaloid poppy”—the Act, s 4

For the Act, section 4(1), definition of *alkaloid poppy*, paragraph (a), the following classes are specified—

- (a) the species *Papaver bracteatum*,
- (b) the species *Papaver somniferum*,
- (c) a hybrid of either species.

5 Definition of “interstate poppy licence”—the Act, s 4

For the Act, section 4(1), definition of *interstate poppy licence*, each of the following licences are declared to correspond to a poppy licence—

- (a) a poppy licence within the meaning of the *Poppy Regulation Act* of the Northern Territory,
- (b) a poppy cultivation licence, or a poppy processing licence, within the meaning of the *Controlled Substances Act 1984* of South Australia, Part 4A,
- (c) a poppy grower’s licence, or a poppy research licence, within the meaning of the *Poisons Act 1971* of Tasmania,
- (d) a licence under the *Poisons Act 1971* of Tasmania, section 16(1)(a),
- (e) a poppy cultivation licence, or a poppy processing licence, within the meaning of the *Drugs, Poisons and Controlled Substances Act 1981* of Victoria, Part IVB.

6 Definition of “interstate processing licence”—the Act, s 4

For the Act, section 4(1), definition of *interstate processing licence*, each of the following licences are declared to correspond to a processing licence—

- (a) a poppy licence, within the meaning of the *Poppy Regulation Act* of the Northern Territory, that authorises the processing of poppy material,
- (b) a poppy processing licence within the meaning of the *Controlled Substances Act 1984* of South Australia, Part 4A,
- (c) a licence under the *Poisons Act 1971* of Tasmania, section 16(1)(a),
- (d) a poppy processing licence within the meaning of the *Drugs, Poisons and Controlled Substances Act 1981* of Victoria, Part IVB.

Part 2 Licence and permit requirements

7 Fit and proper persons—the Act, s 5

- (1) For the Act, section 5(5)(c)(iv), the *Hemp Industry Act 2008* and regulations made under that Act are specified.
- (2) For the Act, section 5(5)(e), the following matters are specified—
 - (a) whether an authority held by the person under a law of the Commonwealth or a State or Territory dealing with a prohibited drug or prohibited plant has been suspended, cancelled, revoked or withdrawn, or
 - (b) whether the person has been disqualified from obtaining such an authority.

8 Checks and requirements for persons employed or engaged—the Act, s 11

For the Act, section 11(a), the following checks and criteria are specified—

- (a) the person is—
 - (i) at least 17 years old, or
 - (ii) an apprentice or trainee within the meaning of the *Apprenticeship and Traineeship Act 2001*,
- (b) the person is not, and has not been within the last 5 years, an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth,
- (c) the person has provided at least 1 satisfactory character reference to the licence or permit holder,
- (d) a criminal record check of the person has been conducted within the last 12 months,
- (e) the person has not, within the last 10 years, been convicted of any of the following offences, whether committed under the law of New South Wales or the law of another jurisdiction—
 - (i) an offence involving theft, dishonesty, fraud or violence that would, if committed in New South Wales, be an indictable offence,
 - (ii) an offence involving alkaloid poppies, alkaloid poppy material, prohibited plants, prohibited drugs, medicines, poisons or therapeutic goods that would, if committed in New South Wales, be an indictable offence,
 - (iii) an offence that would, if committed in New South Wales, be punishable under a law of New South Wales by imprisonment for life, imprisonment for a term of 5 years or more, or a fine of \$500,000 or more,
 - (iv) an offence committed under a law of the Commonwealth punishable by imprisonment for life, imprisonment for a term of 5 years or more, or a fine of \$500,000 or more,
- (f) the person has not, within the last 5 years, been convicted of any of the following offences—
 - (i) an offence against the *Narcotic Drugs Act 1967* of the Commonwealth or regulations under that Act,
 - (ii) an offence against the *Drug Misuse and Trafficking Act 1985* or regulations under that Act, or against a corresponding law of another jurisdiction,

- (iii) an offence against the *Poisons and Therapeutic Goods Act 1966* or regulations under that Act, or against a corresponding law of another jurisdiction,
- (iv) an offence against the *Medicines, Poisons and Therapeutic Goods Act 2022* or regulations under that Act, or against a corresponding law of another jurisdiction,
Note— At the time this regulation was made, the *Medicines, Poisons and Therapeutic Goods Act 2022* had not commenced.
- (v) an offence, whether committed against a law of New South Wales or a law of another jurisdiction, involving theft that would, if committed in New South Wales, be punishable under a law of New South Wales by imprisonment for 3 months or more.

9 Identification cards—the Act, ss 11 and 47(3)(b)

- (1) For the Act, section 11(b)(i), an identification card—
 - (a) must not expire more than 5 years after it is issued, and
 - (b) must display—
 - (i) the date on which it was issued, and
 - (ii) the date on which it will expire.
- (2) The Act, section 11(b) does not apply to a person employed or engaged in activities under a poppy permit.

10 Further conditions of poppy licence—the Act, s 11

- (1) For the Act, section 11(g), the licence holder must give the Secretary written notice of the following, no more than 7 days after the event occurs—
 - (a) a person is employed or engaged in activities under the licence,
 - (b) a person ceases to be employed or engaged in activities under the licence.
- (2) A notice specified in subclause (1)(a) must include—
 - (a) the person’s full name, date of birth and residential address, and
 - (b) a description of the duties for which the person is employed or engaged under the licence.
- (3) A notice specified in subclause (1)(b) must include the person’s full name.

11 Deadline for application for renewal of poppy licence—the Act, s 13

For the Act, section 13(5), the required period ends 3 months before the date of expiry of the licence.

12 Annual fee for cultivation licence—the Act, s 14

For the Act, section 14(2)—

- (a) the annual fee is specified in Schedule 2, and
- (b) the holder of a cultivation licence must pay the annual fee to the Secretary on or before the date of the anniversary of the grant of the licence.

13 Period within which order on expiry, surrender or cancellation of licence may be made—the Act, s 22

For the Act, section 22(3), the period of 12 months after the expiry, surrender or cancellation of the licence is fixed.

Part 3 Exemptions from specified provisions of the Act

14 Death of licence or permit holder—the Act, s 47

- (1) For the Act, section 47(3)(b), if the holder of a poppy licence or poppy permit dies, the personal representative of the deceased licence or permit holder is exempt from a requirement to hold the licence or permit, on the following conditions—
 - (a) the personal representative must notify the Secretary of the licence or permit holder's death as soon as practicable,
 - (b) the personal representative must comply with all of the conditions that applied to the deceased licence or permit holder's licence or permit.
- (2) For the purposes of subsection (1)(b), a reference in the Act or the regulations to doing an activity under the licence or permit is taken to be a reference to doing an activity under the exemption.
- (3) The exemption applies from the day on which the holder of the licence or permit dies, until—
 - (a) 6 months after that day, or
 - (b) an earlier day on which—
 - (i) the Secretary gives the personal representative notice that the Secretary is not satisfied that the personal representative is a fit and proper person to hold the licence or permit, or
 - (ii) the personal representative surrenders the exemption by written notice to the Secretary.
- (4) If an exemption ends under subsection (3)(b)—
 - (a) the Secretary may appoint a person (the *appointed person*) to act for the deceased licence or permit holder, if the Secretary is satisfied that the appointed person is a fit and proper person to hold a poppy licence or poppy permit, and
 - (b) the appointed person is exempt from a requirement to hold the licence or permit, on the condition the person must comply with all of the conditions that applied to the deceased licence or permit holder's licence or permit, and
 - (c) the exemption ends 6 months after the day on which the person is appointed.
- (5) For the Act, section 47(3)(b), a person who was employed or engaged under a licence or permit is exempt from the Act, section 6 for conduct that constitutes a breach of the Act merely because of the death of the licence or permit holder.

Part 4 Miscellaneous

15 Fees and costs

- (1) For the Act, sections 13(5), 14(1) and (2) and 18(1)(c), the fees relating to poppy licences and poppy permits are specified in Schedule 2, Part 1.
- (2) For the Act, section 20(2), the cost of an audit that may be recovered from a licence holder is specified in Schedule 2, Part 2.

16 Repeal and savings

- (1) The *Poppy Industry Regulation 2016* is repealed.
- (2) An act, matter or thing that, immediately before the repeal of the *Poppy Industry Regulation 2016*, had effect under that regulation continues to have effect under this regulation.

Schedule 1 Penalty notice offences

1 Application of schedule

- (1) For the Act, section 37—
 - (a) each offence created by a provision specified in this schedule is an offence for which a penalty notice may be issued, and
 - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
 - (a) that limited kind of offence, or
 - (b) an offence committed in those limited circumstances.

Provision	Penalty
Offences under the Act	
Section 12—	
(a) for a corporation	\$5,500
(b) for an individual	\$1,100
Section 21(10)—	
(a) for a corporation	\$1,100
(b) for an individual	\$220
Section 22(4)—	
(a) for a corporation	\$5,500
(b) for an individual	\$1,100

Schedule 2 Fees and audit costs

section 15

Part 1 Fees

	Type of fee	Fee (in fee units)
Poppy cultivation licence		
1	Application fee for grant or renewal of licence	11.43
	(a) plus, for each hour or part of an hour of an inspection that is, in the Secretary's opinion, reasonably required for the determination of the application	1.90
	(b) plus, for a late application for renewal of licence	0.83
2	Licence fee	16.51
3	Annual fee	16.51
Poppy processing licence		
4	Application fee for grant or renewal of licence	16.51
	(a) plus, for each hour or part of an hour of an inspection that is, in the Secretary's opinion, reasonably required for the determination of the application	1.90
	(b) plus, for a late application for renewal of licence	0.83
5	Licence fee	130.80
Poppy permit		
6	Application for grant of permit	6.98

Part 2 Audit costs

Type of cost	Cost (in fee units)
Each hour, or part of an hour, reasonably required for the conduct of the audit	1.90

Part 3 Adjustment of fees and costs for inflation

1 Definitions

In this part—

CPI number means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

financial year means a period of 12 months commencing on 1 July.

2 Calculation of fee unit for regulation

- (1) For this regulation, a **fee unit** is—

- (a) in the financial year 2024–2025—\$100, and
- (b) in each later financial year—the amount calculated as follows—

$$\$100 \times \frac{A}{B}$$

where—

A is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

B is the CPI number for the March quarter of 2024.

- (2) The amount of a fee unit must be rounded to the nearest cent, and an amount of 0.5 cent must be rounded down.
- (3) However, if the amount of a fee unit calculated for a financial year is less than the amount that applied for the previous financial year, then the amount for the previous financial year applies instead.

3 Rounding of fee amounts

The amount of a fee calculated by reference to a fee unit, including the amount of a component of a fee, must be rounded to the nearest dollar, and an amount of 50 cents must be rounded down.

4 Notice of indexed fees

- (1) As soon as practicable after the CPI number for the March quarter is first published by the Australian Bureau of Statistics, the Secretary is required to—
 - (a) notify the Parliamentary Counsel of the amount of the fee unit for the next financial year so that notice of the amount may be published on the NSW legislation website, and
 - (b) give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year resulting from the application of the amount of a fee unit calculated under this part.
- (2) This part operates to change an amount of a fee that is calculated by reference to a fee unit and the change is not dependent on the notification or other notice required by this section.