NORTHERN TERRITORY OF AUSTRALIA

POPPY REGULATION ACT

As in force at 1 May 2016

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 May 2016

POPPY REGULATION ACT

An Act to regulate the cultivation and processing of poppies

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Poppy Regulation Act*.

2 Commencement

(1) The provisions of this Act (except sections 13 and 14) commence on the day on which the Administrator's assent to this Act is declared.

(2) Sections 13 and 14 commence on 1 July 2014.

3 Objects of Act

The objects of this Act are the following:

(a) to provide for regulation of activities in relation to poppies, and things derived from or associated with poppies;

(b) to reduce the risk to the safety and security of persons in the Territory resulting from those activities, by providing for licensing of those activities.

4 Definitions

In this Act:

acting in an official capacity, in relation to the Authority or a poppy control officer, means the Authority or poppy control officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

approved form means a form approved under section 48.

associate, in relation to a person at a particular time, means:

(a) a lineal or adoptive ancestor of any degree, sibling, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person at that time, or a spouse or de facto partner or former spouse or de facto partner of the person or of any of the persons listed in this paragraph at that time; or

(b) a trustee of a trust estate, where the person or an associate referred to in paragraph (a) of the person benefits or is capable of benefiting under the trust or under a subtrust of the trust at that time; or

(c) a partner of the person, or a person who was, within the 2 years immediately preceding that time, a partner of the person; or

(d) a company, if:

(i) the company is, or the majority of its directors are, at that time, accustomed or under an obligation or arrangement, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person or of an associate referred to in paragraph (a), of the person; or

(ii) the person is, the persons who are associates of the person because of paragraphs (a), (b) and (c) are, or the person and the persons who are associates of the person because of those paragraphs are, at that time, in a position to cast, control, or procure the casting of, 50% or more of the maximum number of votes that may be cast at a general meeting of the company; or

(e) if the person is a corporation:

(i) a director or secretary of the corporation, or an associate referred to in paragraph (a), of a director or secretary of the corporation, at that time; or

(ii) a corporation that is, at that time, a related body corporate to the first-mentioned corporation within the meaning of the Corporations Act 2001; or

(iii) a director or secretary of such a related body corporate, or an associate referred to in paragraph (a), of a director or secretary of such a related body corporate at that time; or

(f) if the person is a corporation (the ***first corporation***), another corporation (the ***second corporation***), if:

(i) the ability or capacity to control or procure the composition of the board of directors of the second corporation is held, at that time, by not less than 50% of the persons comprising or having the ability or capacity to control or procure the composition of the board of directors of the first corporation at that time; or

(ii) the ability or capacity to cast, or control or procure the casting of, not less than 50% of the maximum number of votes that may be cast at a general meeting of the second corporation is held, at that time, by persons having the ability or capacity to control or procure the control of not less than 50% of the maximum number of votes that may be cast at a general meeting of the first corporation at that time; or

(iii) the holding of legal title to, or of a beneficial interest, direct or indirect, whether by medium of interposed corporations or trusts or otherwise, in not less than 50% of the shares in the second corporation carrying voting rights in respect of one or more subject matters capable of resolution at a general meeting of the second corporation, is held, at that time, by persons holding legal title to, or a beneficial interest, direct or indirect, whether by medium of interposed corporations or trusts or otherwise, in not less than 50% of the shares in the first corporation carrying voting rights of the same kind at that time.

Authority means the Poppy Licensing Authority mentioned in section 15.

decision notice, for a decision, means a written notice setting out:

(a) the decision and the reasons for it; and

(b) any right the person to whom the notice is to be given has, under this or another Act, to apply for a review of, or to appeal, the decision.

licensee, in relation to a particular time, means a person who holds a poppy licence at that time.

poppy means the whole or any part of a plant, whether fresh or dried, of any of the following species or varieties:

(a) *Papaver somniferum* L.;

(b) a species or variety of poppy prescribed by regulation.

poppy control officer, in relation to a particular time, means:

(a) a person who holds an appointment under section 18 as a poppy control officer at that time; or

(b) a person who is a police officer at that time.

poppy licence means a licence issued under Part 2.

poppy material means:

(a) a poppy; or

(b) poppy-related material.

poppy product means a product that is wholly or partly derived from a poppy.

poppy-related material means:

(a) a poppy product; or

(b) the packaging of a poppy or a poppy product; or

(c) any other thing that is or has been in such close proximity to a poppy or poppy product that a chemical compound in, or derived from, the poppy or product is present in the thing.

process, in relation to a poppy, means doing anything intended to transform a poppy into a poppy product.

5 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

6 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 6

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Poppy licences

7 Poppy licence

(1) The Authority may issue a poppy licence to a person in accordance with this Part.

(2) A poppy licence authorises the licensee to carry out, as specified in the licence, one or more of the following activities, at or from the place specified in the licence, in relation to one or more species or varieties of poppy specified in the licence:

(a) cultivation of poppies;

(b) possession of poppy material;

(c) transportation of poppy material;

(d) processing of poppy material.

(3) Despite any other law, any of the following persons may, during the period when a poppy licence is in force, carry out, in accordance with the terms and conditions of the licence, the activity specified in the poppy licence:

(a) the licensee;

(b) a contractor of the licensee, as required by the terms of the contract with the licensee;

(c) an employee of the licensee, or of a contractor mentioned in paragraph (b), as required by the employee's terms of employment.

(4) A poppy licence is not transferable.

(5) A poppy licence is in force until the earliest of the following:

(a) the end of the period specified in the licence, which must not exceed 3 years;

(b) the day on which the licensee:

(i) if the licensee is an individual – dies; or

(ii) otherwise – is wound up or otherwise ceases to operate;

(c) the day on which a decision notice for a decision to suspend or cancel the licence is served on the licensee.

8 Application for poppy licence

(1) A person (the ***applicant***) may apply for a poppy licence authorising the person to carry out one or more of the activities mentioned in section 7(2), in relation to one or more species or varieties of poppy, at or from the place specified in the application.

(2) The application must be made to the Authority, in the approved form, and must be accompanied by the following:

(a) the applicant's proposed plan, made in compliance with any regulation, for the management of any risks associated with the activity to be carried out under the poppy licence;

(b) evidence that the place at or from which the activity is to be carried out is an appropriate place at or from which to carry out the activity, as regards location, facilities and proposed security arrangements;

(c) evidence that:

(i) the applicant is a fit and proper person to be a licensee; and

(ii) the applicant's associates are fit and proper persons to be concerned with, or associated with, the activity to be carried out under the poppy licence;

(d) evidence that the employees who will carry out the activity under the poppy licence are appropriate persons to carry out the activity;

(e) evidence that any contractors, and their employees, who will carry out the activity under the poppy licence are appropriate persons to carry out the activity;

(f) the application fee (if any) prescribed by regulation;

(g) any other document prescribed by regulation.

9 Consideration of application

(1) As soon as practicable after receiving an application under section 8, the Authority must do the following:

(a) consider the application;

(b) give a copy of the application to the Commissioner of Police and request the Commissioner to issue to the Authority a certificate about the Commissioner's opinion as to whether there is a good reason for a poppy licence not to be issued to the applicant;

(c) complete any investigation in relation to the application that the Authority considers appropriate.

(2) The Commissioner of Police must do the following:

(a) complete any investigation that the Commissioner considers appropriate in relation to the application;

(b) not later than 28 days after receiving the copy under subsection (1)(b), issue to the Authority a certificate stating the Commissioner's opinion as to whether there is a good reason for a poppy licence not to be issued to the applicant.

(3) After completion of the consideration and investigation under subsection (1), the Authority must do one of the following:

(a) if satisfied that a poppy licence should be issued to the applicant – issue a poppy licence to the applicant that authorises an activity to be carried out, on:

(i) the terms and conditions that the Authority considers appropriate; and

(ii) any terms or conditions prescribed by regulation; and

(iii) the following terms and conditions:

(A) the activity must be carried out at or from the place specified in the licence;

(B) the activity must be carried out in relation to the species or variety of poppy specified in the licence;

(C) the contractors, and the employees of the licensee or contactors, carrying out the activity must be appropriate persons to carry out the activity;

(D) the licensee must comply with the plan included in the licence for the management of any risks associated with the activity;

(E) the licensee must keep complete records of the carrying out of the activity under the licence;

(F) if an activity to be carried out is processing of poppy material – the licensee must hold any licence required by the Commonwealth about poppy material;

(b) if not satisfied that enough information has been provided for the Authority to decide whether or not to issue a poppy licence – serve on the applicant a request describing the type of information sought and setting a deadline for the applicant to provide the information;

(c) if satisfied that a poppy licence should not be issued to the applicant – serve a decision notice on the applicant.

(4) If a request under subsection (3)(b) is served on the applicant:

(a) if the applicant does not provide the information requested before the deadline or any extension of it agreed by the Authority – the applicant is taken to have abandoned the application; or

(b) if the applicant provides the information requested before the deadline or any extension of it agreed by the Authority:

(i) the information is added to the original application; and

(ii) the Authority must resume consideration of the application as though the application had been made on the day on which the information is provided.

(5) Despite subsection (3)(a), the Authority must not issue a poppy licence to an applicant unless:

(a) the Authority is satisfied that:

(i) the applicant is a fit and proper person to be a licensee; and

(ii) the applicant's associates are fit and proper persons to be concerned with, or associated with, the activity to be carried out under the poppy licence; and

(b) the Authority is satisfied that the applicant's plan for the management of any risks associated with the activity to be carried out under the poppy licence is an appropriate plan; and

(c) the Authority is satisfied that the place at or from which the activity is to be carried out is an appropriate place at or from which to carry out the activity, as regards location, facilities and proposed security arrangements; and

(d) the Commissioner of Police has:

(i) issued a certificate to the Authority stating the Commissioner's opinion that there is not a good reason that a poppy licence should not be issued to the applicant; or

(ii) not issued any certificate under subsection (2)(b) before the end of the 28 days mentioned in that subsection.

(6) The Authority may issue a poppy licence that:

(a) authorises fewer activities than were applied for by the applicant; or

(b) authorises an activity in relation to fewer species or varieties of poppy than were applied for by the applicant.

10 Renewal of poppy licence

(1) A licensee may apply to the Authority for the renewal of a poppy licence.

(2) A renewal application must be made, in the approved form, at least 2 months before the end of the period specified in the licensee's poppy licence.

(3) This Part applies to the renewal of a poppy licence in the same way as it applies to an application for a poppy licence.

11 Amendment of poppy licence

(1) The Authority may amend a poppy licence by:

(a) amending a term or condition of the poppy licence; or

(b) imposing a term or condition on the poppy licence after the licence has been issued.

(2) The Authority may exercise a power under subsection (1):

(a) on application by the licensee in the approved form; or

(b) on the Authority's own initiative.

(3) An application under subsection (2)(a) must be accompanied by:

(a) the fee (if any) prescribed by regulation; and

(b) any document prescribed by regulation.

(4) The Authority must make a decision about an application under subsection (2)(a) as soon as practicable after receiving the application.

(5) The Authority must serve a decision notice on a licensee as soon as practicable after the Authority:

(a) decides to exercise a power under subsection (1) on its own initiative; or

(b) makes a decision under subsection (4), if the decision is that the amendment of the poppy licence:

(i) is not made; or

(ii) is different from the amendment applied for.

(6) An amendment takes effect on the service of the decision notice.

12 Suspension or cancellation of poppy licence

(1) The Authority may make a decision to suspend or cancel a poppy licence if:

(a) the licensee gives the Authority a written request to suspend or cancel the licence; or

(b) the Authority is satisfied that the licensee has not complied with a term or condition of the licence; or

(c) the Authority is satisfied that the licensee has not complied with this Act or the regulations; or

(d) the Authority is satisfied that the licensee, or any associate of the licensee, is no longer a fit and proper person to be concerned with, or associated with, the activity authorised to be carried out under the licence; or

(e) the Authority is satisfied that the place specified in the licence is no longer appropriate for the carrying out of the activity authorised to be carried out under the licence; or

(f) the Authority is satisfied that the licensee obtained the poppy licence by fraud or misrepresentation; or

(g) the Commissioner of Police requests suspension or cancellation of the licence on the basis of protected information concerning the licensee.

(2) A soon as practicable after making a decision to suspend or cancel a poppy licence, the Authority must:

(a) serve a decision notice on the licensee; and

(b) notify the Commissioner of Police of the suspension or cancellation.

(3) A poppy licence ceases to have effect on the service of the decision notice.

(4) In this section:

protected information means any information, document or thing the production or inspection of which:

(a) is likely to reveal the identity of a police officer or other person who provided information that formed the basis of a decision or opinion of the Commissioner of Police concerning a licensee or applicant; or

(b) is likely to reveal the identity of a person whose name appears in evidence given or information provided to a police officer in the course of an investigation; or

(c) is likely to reveal the identity of a person who is or has been the subject of an investigation conducted by a police officer; or

(d) is likely to reveal an investigation method used by police officers; or

(e) is likely to jeopardise the safety of a police officer or other person mentioned in paragraph (a), (b) or (c); or

(f) is likely to put at risk an ongoing investigation by a police officer; or

(g) is otherwise not in the public interest.

13 Application for review of decision

(1) A person on whom a decision notice has been served may apply to the Northern Territory Civil and Administrative Tribunal for review of the decision.

(2) The application for review must be made:

(a) within 28 days after the decision was made; or

(b) if the Tribunal is satisfied that the person has a reasonable excuse for not applying for review within 28 days – within the additional time that the Tribunal allows.

(3) The application for review must be made in accordance with the *Northern Territory Civil and Administrative Tribunal Act*.

14 Tribunal has jurisdiction

The Northern Territory Civil and Administrative Tribunal has jurisdiction to deal with matters under this Act.

Part 3 Administration

Division 1 Poppy Licensing Authority

15 Appointment of Poppy Licensing Authority

The Chief Executive Officer, or another person appointed in writing by the Minister, is the Poppy Licensing Authority.

16 Functions and powers of Authority

(1) The Authority has the functions conferred on the Authority under this Act or any other Act.

(2) The Authority has:

(a) the powers necessary or convenient to perform the Authority's functions; and

(b) the powers conferred on the Authority by this Act or any other Act.

17 Delegation

The Authority may delegate any of its powers and functions to a public sector employee.

Division 2 Poppy control officers

18 Appointment of poppy control officer

(1) The Minister may appoint a person to be a poppy control officer.

(2) The appointment of a poppy control officer must be in writing and may be subject to conditions specified in the instrument of appointment.

(3) The Minister must be satisfied that a person appointed under this section has the appropriate qualifications or experience required to perform the functions of a poppy control officer.

19 Identity card

(1) The Authority must give a person who is a poppy control officer (other than a police officer) an identity card stating the person's name and that the person is a poppy control officer.

(2) The identity card must:

(a) show a recent photograph of the poppy control officer; and

(b) show the card's date of issue and expiry; and

(c) be signed by the poppy control officer.

(3) This section does not prevent the issue of a single identity card to a person for this and another Act.

(4) A poppy control officer must produce his or her identity card on being requested to do so by a person in respect of whom the poppy control officer has exercised or is about to exercise powers under this Act or any other Act.

20 Functions of poppy control officer

(1) Subject to the conditions of appointment, a poppy control officer's function is to monitor compliance with, and enforce, this Act.

(2) A poppy control officer must perform the functions that are imposed or conferred on the officer under this Act or any other Act or delegated to the officer by the Minister or the Authority.

21 Powers of poppy control officer

(1) A poppy control officer may exercise any of the powers mentioned in subsections (2) and (3) if the officer reasonably believes it is necessary to do so for the performance of the officer's functions.

(2) The poppy control officer may do one or more of the following at a place:

(a) enter, inspect and search the place and anything in the place;

(b) require a person at the place to give the officer specified information about anything at the place or a specified document;

(c) operate any electronic equipment at the place for the purposes of retrieving or recording the information or document mentioned in paragraph (b);

(d) require a person having the control of equipment at the place to do either or both of the following:

(i) stop machinery;

(ii) give the machinery (including anything found on or in it) to another person, or remove it to another place, for a specified examination, or for testing or disposal;

(e) detain or seize the machinery mentioned in paragraph (d) for examination, testing or disposal;

(f) inspect, take samples of, mark for identification or detain or seize any poppy material found at the place for a specified examination or treatment, and open any packaging as necessary to do so;

(g) apply, or require a person having the control of the place to apply, a specified treatment to the place or anything in the place;

(h) make a record in relation to an exercise of a power for this subsection (including, for example, by taking a photograph or making a video recording).

(3) In addition, the poppy control officer may do one or more of the following:

(a) require a person having the control of poppy material to do one or more of the following:

(i) deal with the poppy material in a particular way;

(ii) give the poppy material to another person for a specified examination or for testing;

(iii) dispose of the poppy material as specified by the officer;

(b) detain or seize the poppy material mentioned in paragraph (a) to do a thing mentioned in that paragraph in relation to the poppy material;

(c) require a person having the control of a means of transport (including, for example, an animal or vehicle) to do either or both of the following:

(i) stop the means of transport;

(ii) give the means of transport (including anything found on or in it) to another person, or remove it to a place, for a specified examination, or for disposal;

(d) detain or seize the means of transport mentioned in paragraph (c) for the examination or disposal.

22 Dwelling house

(1) This section applies if a poppy control officer intends to enter a dwelling house under section 21(2).

(2) The poppy control officer must not enter the dwelling house unless the officer:

(a) is permitted by the owner (whether orally or in writing) to enter the dwelling house; or

(b) is authorised to enter the dwelling house under a warrant issued by a justice of the peace; or

(c) is a police officer authorised under the *Police Administration Act* to enter the dwelling house.

(3) In this section:

dwelling house means a place exclusively occupied for residential purposes.

23 Obligations of owners

A person who complies with a requirement under section 21 about a place or thing:

(a) may recover from the owner of the place or thing the expenses incurred by the person in complying with the requirement; and

(b) is not liable to the owner for any damage to the place or thing.

24 Requirement to give information

(1) This section applies if a poppy control officer reasonably suspects a person of committing or attempting to commit an offence against this Act.

(2) The poppy control officer may require the person to give the following information to the officer:

(a) specified information about specified poppy material;

(b) the person's name;

(c) the person's residential and postal addresses;

(d) any other information specified by the officer to enable the officer to contact the person at a later time.

25 Self-incrimination

(1) It is not a reasonable excuse for a person to fail to give information or a document for section 21 or 24 on the grounds that it might incriminate the person.

(2) However, any information or document given by the person is not admissible in any civil or criminal proceeding (other than a proceeding for an offence against this Act, the *Medicines, Poisons and Therapeutic Goods Act* or the *Misuse of Drugs Act*).

Division 3 Seizure procedures

26 Procedure when poppy material detained or seized

(1) If a poppy control officer detains or seizes poppy material under section 21, the officer must, as soon as practicable, do the following:

(a) make a written record of the detention or seizure;

(b) give a receipt to the person from whom the poppy material was taken that:

(i) identifies the poppy material taken; and

(ii) states the name of the poppy control officer who detained or seized the poppy material; and

(iii) states the reasons for the detention or seizure;

(c) send a copy of the receipt to:

(i) if the poppy control officer is a police officer – the Authority and the Commissioner of Police; or

(ii) otherwise – the Authority.

(2) If a poppy control officer detains or seizes poppy material under section 21, the officer, with any assistance necessary, may take or send the poppy material to a place approved by the Authority for it to be examined, tested or stored.

(3) This section does not limit the exercise of any power by a police officer to commence a proceeding in respect of a contravention of this Act in relation to poppy material.

27 Dealing with surrendered poppy material

(1) This section applies if:

(a) the Authority is satisfied on reasonable grounds that this Act has been contravened; and

(b) a person has surrendered poppy material to the Authority and agreed that the Authority may deal with the poppy material.

(2) In dealing with poppy material, the Authority may do one or more of the following:

(a) dispose of the material;

(b) require a person to dispose of the material;

(c) harvest and deal with the material (including destroying it) as the Authority considers appropriate;

(d) enter into an agreement with the person who surrendered the material, or any other person, to deal with the poppy material as required in the circumstances;

(e) any other thing reasonably necessary to ensure the security of the material.

28 Retention and return of poppy material

(1) If a poppy control officer seizes poppy material under section 21, the Authority must, subject to section 27, with any assistance necessary:

(a) take reasonable steps to release or return the material to its lawful owner, if the reason for its detention or seizure no longer exists; or

(b) retain, in a place approved by the Authority, any poppy material required for evidence in a legal proceeding.

(2) If the Authority is of the opinion that there is no lawful owner of the poppy material seized under section 21, the Authority may apply for an order under section 30.

(3) If the poppy material is not returned to the lawful owner within 3 months after it is seized, the Authority must take reasonable steps to return it to the lawful owner unless:

(a) proceedings under this Act or another Act have commenced within the 3 months and the proceedings (including any appeal) have not been completed; or

(b) the Local Court makes an order under section 29 extending the period during which the poppy material may be retained.

29 Local Court may extend 3 month period

(1) The Authority may apply to the Local Court for an extension (not exceeding 3 months) of the period during which poppy material may be retained under section 28.

(2) An application under subsection (1) must be made:

(a) within 3 months after the poppy material is seized under section 21; or

(b) if an extension has been granted under this section, before the end of the period of the extension.

(3) The Local Court may make an order extending the period during which the poppy material is to be retained if satisfied that:

(a) the making of the order is in the interests of justice; and

(b) the total period of retention will not exceed 12 months; and

(c) retention of the poppy material is necessary for the purposes of an investigation into whether a contravention of this Act has occurred.

(4) The Authority must give notice of the application to the lawful owner of the poppy material at least 7 days before the application is made.

Division 4 Order for forfeiture of poppy material

30 Forfeiture, harvest and destruction of poppy material

(1) The Authority may apply to the Local Court for an order under subsection (3) if:

(a) the Authority:

(i) is satisfied on reasonable grounds that a licensee has contravened this Act; and

(ii) has cancelled the licensee's poppy licence under section 12; or

(b) the Authority is of the opinion that there is no lawful owner of the poppy material seized under section 21.

(2) The Local Court may make an order that poppy material be forfeited to the Territory and dealt with in accordance with an order made under subsection (3) if satisfied that:

(a) the poppy material poses a risk to public health and safety; and

(b) it is appropriate to make the order.

(3) The Local Court may make either or both of the following orders (as appropriate):

(a) an order that the poppy material be harvested;

(b) an order that the poppy material be destroyed.

(4) The Local Court may:

(a) give any direction necessary to enable the Authority to carry out the order made under subsection (3); or

(b) authorise the Authority to give a person an appropriate direction to harvest or destroy the poppy material to which the order relates.

31 Recovery of costs

The Authority may recover any costs that the Authority incurs in carrying out an order made under section 30, in a court of competent jurisdiction, as a debt due to the Territory.

Part 4 Offences, liability and criminal proceedings

32 Cultivation, possession, processing of poppy material

A person commits an offence if:

(a) the person engages in conduct related to:

(i) the cultivation of a plant; or

(ii) the possession of:

(A) a plant or material wholly or partly derived from a plant; or

(B) the packaging of a plant or a material mentioned in sub-subparagraph (A); or

(C) anything that is or has been in such close proximity to a plant, material or packaging mentioned in sub-subparagraph (A) or (B) that a chemical compound in, or derived from, the plant, material or packaging is present in the thing; or

(iii) the transportation of a plant, material, packaging or other thing mentioned in subparagraph (ii); or

(iv) the processing of a plant, material, packaging or other thing mentioned in subparagraph (ii); and

(b) the person knows that, or is reckless as to whether, the plant, material, packaging or other thing mentioned in paragraph (a) is poppy material; and

(c) at the time the conduct is engaged in, the person is not:

(i) a licensee; or

(ii) a contractor of a licensee authorised under a contract to engage in the conduct; or

(iii) an employee of a licensee, or of a contractor mentioned in subparagraph (ii).

Maximum penalty: 250 penalty units or imprisonment for 2 years.

33 Contravention of poppy licence by licensee

A licensee commits an offence if:

(a) the licensee engages in conduct; and

(b) the conduct results in a contravention of a term or condition of the licensee's poppy licence.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

34 Contravention of poppy licence by contractor or employee

(1) A person commits an offence if:

(a) the person engages in conduct; and

(b) at the time the conduct is engaged in, the person is:

(i) a contractor of a licensee; or

(ii) an employee of a licensee or of a contractor of a licensee; and

(c) the conduct results in a contravention of a term or condition of the licensee's poppy licence.

Maximum penalty: 50 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

35 Obstruction of poppy control officer

(1) A person commits an offence if:

(a) the person obstructs another person; and

(b) the other person is a poppy control officer; and

(c) the person knows the poppy control officer is acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(b).

(3) In this section:

obstruct, includes hinder and resist.

36 Failure to comply with requirement

(1) A person commits an offence if:

(a) the person is required to do something by another person under section 21(2) or (3), 24 or 27(2); and

(b) the other person is a poppy control officer; and

(c) the person knows the poppy control officer is acting in an official capacity; and

(d) the person engages in conduct that results in a contravention of the requirement.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(2) Strict liability applies to subsection (1)(b).

37 Falsely representing to be poppy control officer

A person commits an offence if the person:

(a) represents, by words or conduct, that the person or another person is a poppy control officer; and

(b) knows the representation is false.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

38 Misleading information and document

(1) A person commits an offence if:

(a) the person gives information to another person; and

(b) the other person is the Authority or a poppy control officer; and

(c) the person knows the information is misleading; and

(d) the person knows the Authority or poppy control officer is acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person gives a document to another person; and

(b) the other person is the Authority or a poppy control officer; and

(c) the person knows the document contains misleading information; and

(d) the person knows the Authority or poppy control officer is acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 2 years .

(3) Strict liability applies to subsections (1)(b) and (2)(b).

(4) Subsection (2) does not apply if the person, when giving the document:

(a) draws the misleading aspect of the document to the Authority's or poppy control officer's attention; and

(b) to the extent to which the person can reasonably do so – gives the Authority or poppy control officer the information necessary to remedy the misleading aspect of the document.

(5) In this section:

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

39 Intimidation to prevent cooperation with Authority

(1) A person (***person A***) commits an offence if person A:

(a) causes, or threatens to cause, harm to another person (***person B***); and

(b) does so:

(i) with intent to discourage person B from cooperating with the Authority; or

(ii) in retribution for person B's having cooperated with the Authority.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) For subsection (1)(b), it is immaterial whether person B intended to cooperate, or had cooperated, with the Authority.

(3) In this section:

cooperate with the Authority includes the following:

(a) complying with a requirement under this Act to give information to the Authority or a poppy control officer;

(b) voluntarily providing information to the Authority or a poppy control officer.

harm includes dismissal from employment or other action detrimental to an employment relationship.

40 Confidentiality of information

(1) A person commits an offence if:

(a) the person obtains information in the course of performing functions connected with the administration of this Act; and

(b) the person engages in conduct that results in the disclosure of the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(a).

(3) Subsection (1) does not apply if:

(a) the person discloses the information:

(i) for the administration of this Act; or

(ii) with the consent of the person to whom the information relates; or

(iii) for legal proceedings arising out of the operation of this Act; or

(b) the information is otherwise available to the public.

Note for subsection (3)

In addition to the circumstances mentioned in subsection (3), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

41 Return of identity card

(1) A person who ceases to be a poppy control officer must return the person's identity card to the Authority within 21 days after the cessation.

Maximum penalty: 20 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the person establishes a reasonable excuse.

42 Criminal liability of executive officer of body corporate

(1) An executive officer of a body corporate commits an offence if:

(a) the body corporate commits an offence by contravening a declared provision (a ***relevant offence***) and the officer was reckless about whether the contravention would happen; and

(b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and

(c) the officer recklessly failed to take reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

(2) Strict liability applies to subsection (1)(b).

(3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:

(a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):

(i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;

(ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);

(iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;

(b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.

(4) Subsection (3) does not limit the matters the court may consider.

(5) This section does not affect the liability of the body corporate.

(6) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.

(7) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.

(8) In this section:

declared provision means:

(a) section 32, 33, 34(1) or 36(1); or

(b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

43 Liability of licensee for actions of others

(1) A licensee commits an offence if:

(a) a contractor, or an employee of a contractor or a licensee, commits an offence under this Act (the ***relevant offence***); and

(b) the licensee failed to take reasonable steps to prevent the commission of the offence; and

(c) the licensee was reckless about whether the commission of the offence would happen.

Maximum penalty: The maximum penalty that may be imposed for the relevant offence.

(2) It is a defence to a prosecution for an offence committed because of subsection (1) that:

(a) the contractor or employee would not have been found guilty of the offence because the contractor or employee would have been able to establish a defence to a prosecution for the relevant offence; or

(b) the licensee did not know, and could not reasonably have been expected to know, that the offence was to be or was being committed; or

(c) the licensee exercised due diligence to prevent the commission of the offence.

(3) This section does not affect the liability of the contractor or employee for the relevant offence.

(4) This section applies whether or not the contractor or employee is prosecuted for, or found guilty of, the relevant offence.

(5) A licensee is not liable to imprisonment if found guilty of an offence because of subsection (1) if the licensee would not have been found guilty of the offence if subsection (1) had not been enacted.

44 Commencing proceedings

(1) A proceeding for an offence against this Act may be commenced:

(a) only by, or with the written approval of, the Authority; and

(b) within 3 years after the day on which the Authority first became aware of the commission of the alleged offence.

(2) A certificate of the Authority stating the day on which the Authority first became aware of the commission of an alleged offence is, in the absence of evidence to the contrary, evidence of that fact.

45 Averments

(1) Subsection (2) applies if, in a proceeding, an averment in the information or complaint states that at a specified time:

(a) a specified place was a place at or which a specified activity was or was not authorised to be carried out under a specified poppy licence; or

(b) a specified person was:

(i) a licensee; or

(ii) a contractor of a specified licensee; or

(iii) an employee of a specified licensee or specified contractor of a specified licensee; or

(iv) a poppy control officer; or

(c) a specified poppy licence had been issued, amended, suspended or cancelled or was or was not in force; or

(d) a specified poppy licence contained specified conditions; or

(e) a specified requirement or notice permitted or required to be given or imposed under this Act had or had not been given or had not been given or imposed.

(2) The statement is taken to have been proved in the absence of evidence to the contrary.

46 Court may order reimbursement of investigation costs

If a person is found guilty of an offence against this Act, the Court may, in addition to any other order it may make under this Act or the *Sentencing Act*, make an order requiring the offender to reimburse the costs and expenses incurred by the Authority in investigating the offence.

Part 5 Miscellaneous matters

47 Protection from liability

(1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as the Authority or a poppy control officer.

(2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(3) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

48 Approved forms

The Authority may approve forms for this Act.

49 Regulations

The Administrator may make regulations under this Act.

Part 6 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015

50 Offences – before and after commencement

(1) Section 42, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the ***new section***) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 28 of that Act (the ***commencement***) only if:

(a) all the conduct constituting the relevant offence occurred after the commencement; and

(b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.

(2) Section 42, as in force before the commencement:

(a) continues to apply in relation to offences committed by a body corporate before the commencement; and

(b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Poppy Regulation Act 2014* (Act No. 16, 2014)**

Assent date	29 May 2014
Commenced	ss 13 and 14: 1 July 2014; rem: 29 May 2014 (s 2)

***Statute Law Amendment (Directors' Liability) Act 2015* (Act No. 26, 2015)**

Assent date	18 September 2015
Commenced	14 October 2015 (*Gaz* G41, 14 October 2015, p 3)

***Local Court (Related Amendments) Act 2016* (Act No. 8, 2016)**

Assent date	6 April 2016
Commenced	1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz* S34, 29 April 2016)

3 LIST OF AMENDMENTS

s 22	amd No. 8, 2016, s 45
s 42	sub No. 26, 2015, s 89
pt 6 hdg	ins No. 26, 2015, s 90
s 50	ins No. 26, 2015, s 90