

## EXPLANATORY STATEMENT

### *Narcotic Drugs (Licence Charges) Act 2016*

### *Narcotic Drugs (Licence Charges) Regulation 2016*

The *Narcotic Drugs (Licence Charges) Act 2016* (the Act) enables the Commonwealth to impose a charge on a licence granted under the *Narcotic Drugs Act 1967* (the ND Act) and that is in force within a specified period.

The ND Act regulates the cultivation of cannabis plants for the production of cannabis and cannabis resins for medicinal and scientific purposes and the manufacture of drugs, such as morphine, of which Australia is the world's leading supplier for raw materials, as well as medicinal cannabis products. The medicinal cannabis framework under the ND Act has recently commenced. The framework authorises the lawful cultivation of cannabis plants and production of cannabis and cannabis resins in Australia in order to provide Australian patients with access to medicinal cannabis for therapeutic purposes. A person requires to be granted a licence under the ND Act in order to lawfully cultivate cannabis plants and produce cannabis or cannabis resins for medicinal or research purposes. There are two types of cannabis licence under the ND Act, one that authorises the cultivation of cannabis for the production of cannabis or cannabis resins for subsequent manufacture into medicinal cannabis products and the second authorises cultivation and production for research purposes.

Section 9 of the Act provides that the Governor-General may make regulations prescribing all matters that are required or permitted to be prescribed, or which are necessary or convenient to be prescribed to give effect to the Act.

The purpose of the *Narcotic Drugs (Licence Charges) Regulation 2016* (the Regulation) is to make regulations setting out the prescribed period when a charge is payable by a licence holder in relation to a medicinal cannabis licence or a cannabis research licence that is in force and the amount of charge payable for a prescribed period. No licence charges are proposed to be imposed on a manufacture licence granted under the ND Act.

The imposition of licence charges forms part of the cost recovery arrangement in relation to the administration of the medicinal cannabis framework. The Minister for Finance was consulted and agreed to the cost recovery model, which is reflected in the Regulation. A cost recovery implementation statement was prepared in relation to the applicable fees and licence charges. The Department of Health has consulted at a series of public meetings held in each state capital about the medicinal cannabis regulatory framework, applicable requirements and costs in the form of fees and charges. Stakeholders, members of the general public, State and Territory government representatives attended the public meetings.

Details of the Regulation are set out in the [Attachment](#).

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislation Act 2003* and commences on the day after registration.

The Minute recommends that the Regulation be made in the form proposed.

Authority: Section 9 of the *Narcotic Drugs  
(Licence Charges) Act 2016*

**Details of the Narcotic Drugs (Licence Charges) Regulation 2016**Section 1 – Name

This section provides for the Regulation to be referred to as the *Narcotic Drugs (Licence Charges) Regulation 2016*.

Section 2 – Commencement

This section provides for the Regulation to commence on the day after registration.

Section 3 – Authority

This section provides that the Regulation is made under the *Narcotic Drugs (Licence Charges) Act 2016* (the Act).

Section 4 – Definitions

Section 4 of the Regulation set outs a number of definitions for the purposes of the Regulation.

The definitions of ‘commercial cannabis research licence’ and ‘non-commercial cannabis research licence’ have the same meanings given under section 54A of the *Narcotic Drugs Regulation 2016*. These terms are used in section 5 of the Regulation in relation to the amount of charge applicable to those licences.

The other definitions listed in section 4 are ‘the Act’, and ‘medicinal cannabis licence’. The Act is the *Narcotic Drugs (Licence Charges) Act 2016* and in which the regulation is made. Medicinal cannabis licence has the same meaning as the *Narcotic Drugs Act 1967* (the ND Act) and is granted under this Act.

Section 5 – Imposition of charge – prescribed period

Subsection 6(1) of the *Narcotic Drugs (Licence Charges) Act 2016* provides that a charge is imposed on a licence that is in force at whichever of the following times is applicable:

- (a) any time, during the financial year (paragraph 6(1)(a)); or
- (b) any time during such other period as is prescribed by the regulations (paragraph 6(1)(b)).

Section 5 of the Regulation specifies the period for the purposes of paragraph 6(1)(b) of the *Narcotic Drugs (Licence Charges) Act 2016*. Thus, paragraph 6(1)(a) of that Act, imposition of a charge on the basis of financial years, would no longer be applicable.

Section 5 of the Regulation specifies that the prescribed period for the purposes of paragraph 6(1)(b) of the Act is the period starting when the licence comes into force and ending when the licence ceases to be in force. A charge would be imposed on a cannabis licence

(medicinal cannabis licence and cannabis research licence) and the licence holder sent an invoice as soon as the licence comes into force. The period of the licence would be specified in the copy of the licence provided to the licence holder under sections 8L (for a medicinal cannabis licence) and 9K (for a cannabis research licence) of the ND Act. A licence ceases to be in force at the end of the period for which it is expressed to be in force or if it is revoked earlier – when it is revoked (refer to sections 8N and 9M of the ND Act).

#### Section 6 - Amount of charge

Section 8(1) of the *Narcotic Drugs (Licence Charges) Act 2016* provides that the amount of charge for a period is such amount as is prescribed by the regulations.

Section 6 of the Regulation specifies the amount of charge payable by a cannabis licence holder for a particular period while the licence is in force. There are two types of cannabis licence under the ND Act, one is a medicinal cannabis licence (refer to Division 1, Part 2, Chapter 2) and the other is a cannabis research licence (refer to Division 2, Part 2, Chapter 2). Section 6 further classifies cannabis research licences into a commercial cannabis research licence and a non-commercial cannabis research licence which are defined under section 54A of the *Narcotic Drugs Regulation 2016*.

A medicinal cannabis licence holder would have to pay \$27,360 as the amount of licence charge payable, for each period of 12 months or part of a period of 12 months, for which the licence is in force. Thus, if a medicinal cannabis licence is granted to a person, it comes into force on 10 January 2017, and the period to which the licence is in force as set out in the copy of the licence is 12 months, then a charge in the amount of \$27,360 will be payable, covering that period of 12 months commencing from 10 January 2017. If the same licence is revoked after 9 months, the charge payable would still be \$27,360.

Similarly, a commercial cannabis research licence holder would have to pay \$27,360 as the amount of licence charge payable, for each period of 12 months, or part of a period of 12 months for which the licence is in force.

In contrast, in relation to a non-commercial cannabis research licence, the amount of charge payable is \$27,360 for the whole period for which the licence is in force. Thus, if the non-commercial cannabis research licence is granted for a period of three years, the licence holder is only required to pay \$27,360 for the whole three years, commencing from the time the licence comes into force.

## Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### *Narcotic Drugs (Licence Charges) Regulation 2016*

The *Narcotic Drugs (Licence Charges) Regulation 2016* is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The Regulation is made under section 9 of the *Narcotic Drugs (Licence Charges) Act 2016* (the Licence Charges Act). The purpose of the Regulation is to make regulations setting out the prescribed period when a charge is payable by a licence holder in relation to a medicinal cannabis licence or a cannabis research licence granted under the *Narcotic Drugs Act 1967* (the ND Act) that is in force and the amount of charge payable by a licence holder in relation to any of those licences for a prescribed period. No licence charges are proposed to be imposed on a manufacture licence granted under the ND Act.

The imposition of licence charges, in addition to the payment of fees, forms part of the cost recovery arrangement in relation to the administration of the medicinal cannabis framework in Australia.

#### **Human rights implications**

The Regulation only relates to the imposition of licence charges in relation a medicinal cannabis licence or a cannabis research licence granted under the ND Act and does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Sussan Ley, Minister for Health and Aged Care**