

Western Australia

LEGISLATIVE COUNCIL

(Hon Dr Christine Sharp)

**Poisons Amendment (Cannabis for Medical
and Commercial Uses) Bill 1999**

A Bill for

An Act to amend the *Poisons Act 1964*.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Poisons Amendment (Cannabis for Medical and Commercial Uses) Act 1999*.

5 **2. Commencement**

(1) Subject to subsection (2), this Act comes into operation on the day it receives the Royal Assent.

(2) Subject to subsection (3), sections 4, 5, 6, 7 and 8 come into operation on a day or days to be proclaimed.

10 (3) If a provision referred to in subsection (2) does not come into operation before 1 January 2001, it comes into operation on that day.

3. Principal Act

15 In this Act, the *Poisons Act 1964** is referred to as the principal Act.

[* *Act No 70 of 1964*.

For subsequent amendments, see 1997 Index to Legislation of Western Australia, pp.181 and 182.]

Part 2 — Permits for cannabis medical treatment

4. Part IV — New Division 2

The principal Act is amended by inserting after section 45 the following new Division —

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“

Division 2 — Cannabis medical treatment

45A. Interpretation

(1) In this Division —

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“**appropriate medical practitioner**” includes a medical practitioner who makes a recommendation in accordance with section 45B;

“**appropriate person**” includes the holder of a cannabis medical treatment permit;

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“**cannabis medical treatment**” means the administration of cannabis for a medical condition and includes palliative care;

“**cannabis medical treatment permit**” means a permit issued by the Commissioner of Health under this Division;

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“**permit**” means a cannabis medical treatment permit;

“**permit holder**” means the person in whose name a permit is issued under this Division;

25

“**primary caregiver**” in relation to a patient, means the person, nominated by the patient, who regularly assumes responsibility for the housing, health or safety of the patient; and

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“**palliative care**” includes treatment for the relief of pain, suffering and discomfort in relation to the patient’s medical condition.

45B. Medical practitioner may recommend permit

- 5 (1) Where a medical practitioner in the lawful practice of his or her profession is satisfied that a patient requires cannabis medical treatment for a current medical condition the medical practitioner may, provided the patient so consents, make a recommendation to the
10 Commissioner of Health for the issue of a cannabis medical treatment permit.
- (2) A recommendation under subsection (1) must be in writing and must —
- (a) state the name and address of —
- 15 (i) the patient; and
(ii) the primary caregiver, if any;
- (b) (i) identify the current medical condition of the patient for which cannabis medical treatment is recommended; and
20 (ii) recommend the amount of cannabis required to treat the medical condition; and
- (c) provide any other information —
- (i) which the Commissioner of Health so
25 requests; or
(ii) which is prescribed by regulation.

45C. Commissioner of Health may issue permit

- (1) On receiving a recommendation made under section 45B the Commissioner of Health may cause to

be carried out any inquiries that he or she considers necessary to properly determine the recommendation and for this purpose may refer the recommendation to the Advisory Committee.

- 5 (2) After considering a recommendation and any inquiry under subsection (1) the Commissioner of Health may issue a cannabis medical treatment permit to the patient or primary caregiver named in the recommendation subject to —
- 10 (i) such terms, conditions, limitations and restrictions which the Commissioner of Health may in his or her discretion impose; and
- (ii) such conditions as may be prescribed.
- 15 (3) Where the Commissioner of Health issues a permit under this section he or she must ensure the lawful availability of cannabis to the permit holder by doing all things necessary under this Act including but not limited to —
- 20 (a) issuing any appropriate authorization to any appropriate medical practitioner under section 23 (2)(d);
- (b) issuing any appropriate licence to any appropriate person under section 41A including a licence to cultivate two cannabis plants; and
- 25 (c) exempting any person under section 50 (3).

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45D. Effect of permit

(1) Notwithstanding any other provision of this Act, or any other Act, a permit holder of a current permit issued under this Division may —

- 5 (a) where the permit holder is the patient the subject of the cannabis treatment, possess and use cannabis;
- 10 (b) where the permit holder is the primary caregiver, possess and supply cannabis to such patient,

provided that the permit holder complies with this Act and the terms, conditions, limitations and restrictions to which the permit is subject.

15 (2) A permit holder who fails to comply with any term, condition, limitation or restriction to which the permit is subject commits an offence.

Penalty: Penalty: \$20 000 or 12 months imprisonment or both

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20 **5. Consequential amendments**

The principal Act is amended —

- (a) in paragraph (i) of section 20 (2), by inserting after “experimental” wherever occurring the following —
“ , medical ”;
- 25 (b) in section 41 (1), by inserting after “experimental” the following —
“ , medical ”; and

(c) in section 59 —

(i) by inserting after the designation “59.” the following new sub-designation —

“ (1) ”; and

5

(ii) by inserting after the end of the section the following new subsection —

“

(2) This section does not apply to —

10

(i) any person issued with a permit under Division 2 of Part IV; or

(ii) any person referred to in subparagraph (i) who is issued with a licence by virtue of the operation of section 45C (3)(b).

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**Part 3 — Authorities to grow and process low-THC
cannabis for commercial purposes**

6. New section 5A — exempt products

5 The principal Act is amended by inserting after section 5 the
following new section —

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5A. Act does not apply to certain processed products

(1) This Act does not apply to —

- 10 (a) a processed fibre product made from cannabis
if the product —
- (i) does not contain more than 0.1 per cent
of tetrahydrocannabinol;
 - (ii) does not contain whole cannabis seeds;
and
 - 15 (iii) is in a form not suitable for ingestion,
smoking or inhaling; or
- (b) a processed product made from cannabis seeds
if the product —
- 20 (i) does not contain more than 0.001 per
cent of tetrahydrocannabinol; and
 - (ii) does not contain whole cannabis seeds.

(2) In this section —

“**cannabis**” means a plant or any part of a plant of the
genus *Cannabis L.*, whether fresh or dried;

“**processed**” means treated by natural retting,
mechanical, chemical or other artificial means but
does not include —

- (a) harvesting; or
- (b) the natural process of decay.

”.

7. New Part IVA — Authorities for low-THC cannabis

The principal Act is amended by inserting after Part IV the
following new Part —

Part IVA — Authorities for low-THC cannabis

Division 1 — Authorities for low-THC cannabis

45E. Interpretation

In this Part —

“**authority**” means an authority issued under
section 45I;

“**cannabis**” means a plant or any part of a plant of the
genus *Cannabis L.*, whether fresh or dried;

“**identification certificate**” means a certificate issued
by the Minister under section 45Q (4);

“**inspector**” means —

- (a) a person authorized as an inspector under
section 45Q; or
- (b) a member of the police force;

“**low-THC cannabis**” means cannabis, the leaves and
flowering heads of which do not contain more than
0.35 per cent of tetrahydrocannabinol;

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“**Minister**” means the Minister for Agriculture as referred to in section 8 (3)(d);

“**serious conviction**” has the meaning given to it by section 9 of the *Spent Convictions Act 1988*; and

5 “**serious offence**” means an indictable offence in relation to the commission of which a serious conviction is recorded;

“**therapeutic use**” in relation to cannabis means use in or in connection with —

- 10 (a) the preventing, diagnosing, curing or alleviating of a disease, ailment, defect or injury in human beings or animals;
- (b) influencing, inhibiting, or modifying of a physiological process in human beings or
15 animals; or
- (c) the testing of the susceptibility of human beings or animals to a disease or ailment.

45F. Application for authority to cultivate and process low-THC cannabis

- 20 (1) A person may apply to the Minister for an authority authorising that person, for commercial purposes relating to non-therapeutic use —
- (a) to possess, process, sell or supply cannabis seed which has been harvested from low-THC
25 cannabis;
- (b) to cultivate and possess cannabis from seed which has been harvested from low-THC cannabis; or

- (c) to possess, process, sell or supply cannabis
which —
- (i) is substantially free of leaves and
flowering heads; and
- 5 (ii) does not contain tetrahydro- cannabinol
in excess of 0.1 per cent.
- (2) An application under subsection (1) must —
- (a) be in writing; and
- 10 (b) be accompanied by the prescribed application
fee.
- (3) An application under subsection (1) must contain or be
accompanied by evidence to the satisfaction of the
Minister that —
- 15 (a) the applicant is a fit and proper person to be
given an authority; and
- (b) the applicant intends to undertake bona fide
commercial activity relating to the
non-therapeutic use of cannabis under the
authority including evidence of the commercial
20 activity to be carried out.
- (4) An applicant must provide any other information about
the applicant or the application which the Minister
reasonably requires.

45G. Minister must investigate application

- 25 (1) On receiving an application under section 45F, the
Minister must cause to be carried out all investigations
and inquiries that the Minister considers necessary to
properly determine the application.

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- (2) The Minister may refer a copy of an application and any supporting documentation to the Commissioner of Police.
- (3) The Commissioner of Police must inquire into and report to the Minister on any matters concerning the application that the Minister requests.

45H. Matters to be considered in determining applications

- (1) In order to prevent criminal activity in the cultivation and processing of low-THC cannabis, the Minister must not issue an authority to an applicant unless the Minister is satisfied that —
- (a) the applicant, or any associate of the applicant, has within the 10 years preceding the application not been found guilty of a serious offence; and
- (b) the applicant, and each associate of the applicant, is a suitable person to be concerned in or associated with the cultivation, processing, sale or supply of low-THC cannabis; and
- (c) the applicant's property or premises will be suitable for the cultivation, processing, sale or supply of low-THC cannabis in relation to location, facilities and proposed security arrangements.
- (2) In particular, the Minister may consider whether —
- (a) the applicant, and each associate of the applicant, is of good repute, having regard to character, honesty and integrity;

- 5
- (b) in the case of an applicant that is not a natural person, the applicant has a satisfactory ownership, trust or corporate structure;
- (c) the applicant is of sound and stable financial background;
- 10 (d) the applicant has any business association with any person or body who or which, in the opinion of the Minister, is not of good repute, having regard to character, honesty and integrity;
- 15 (e) each director, partner, trustee, executive officer and secretary and any other person determined by the Minister to be associated or connected with the ownership, administration or management of the operations or business of the applicant is a suitable person to act in that capacity.
- 20 (3) For the purposes of this section, a person is an associate of an applicant for an authority if the person —
- 25 (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in right of the person or on behalf of any other person) in the business of the applicant to which the authority relates, and by virtue of that interest or power, is able or will be able to exercise a significant influence over or with respect to the management or operation of the business to
- 30 which the authority relates; or

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(b) holds or will hold any relevant position, whether in right of the person or on behalf of any other person in the business of the applicant to which the authority relates.

- 5 (4) In subsection (3) —
- “**relevant financial interest**”, in relation to a business, means —
- (a) any share in the capital of the business; or
- 10 (b) any entitlement to receive any income derived from the business;
- “**relevant position**”, in relation to a business, means the position of director, manager or other executive position or secretary, however that position is designated; and
- 15 “**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
- 20 (b) to elect or appoint any person to any relevant position.

45I. Determination of applications

- 25 (1) After considering an application and any investigation under section 45G, the Minister must determine an application by —
- (a) issuing an authority; or
- (b) refusing to issue an authority.
- (2) The Minister must notify the applicant in writing of the decision under subsection (1).

45J. Terms and conditions of authorities

- 5
- (1) An authority is issued for the term, not exceeding 5 years, specified in the authority unless it is sooner suspended or cancelled.
- (2) An authority relates only to the premises or site described in it.
- 10
- (3) An authority is subject to the terms, conditions, limitations and restrictions specified in it including, but not limited to, terms, conditions, limitations and restrictions relating to —
- (a) the premises or site at which the activities authorized by the authority may be carried out;
- 15
- (b) the source of seed for sowing, including the authentication of the varietal identity and tetrahydrocannabinol content of the crop from which the seed was harvested;
- (c) the keeping of records and other documents;
- (d) the provision of information, records and other documents to the Minister relating to —
- 20
- (i) the activities carried out under the authority;
- (ii) a change in the position of director, manager, secretary or other executive position, however designated or the structure of the business to which the authority relates; or
- 25
- (iii) any other matter that the Minister reasonably requires;
- 30
- (e) the disposal of harvested material and crop residue; and

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- (f) inspection, supervision and surveillance of seed, plants, crops, harvested material and products by inspectors.

45K. Renewal of authorities

- 5 (1) An application for renewal of an authority —
 - (a) may be made up to one month before the expiry of the current authority; and
 - (b) must be in writing and accompanied by the prescribed fee.
- 10 (2) On receiving an application under subsection (1), the Minister, in the Minister's discretion, may renew the authority.
- (3) A renewed authority lasts for the same period as the previous authority.

15 **45L. Authority not transferable**

An authority is not transferable to another person.

45M. Amendment of authorities

- 20 (1) The Minister may, in the Minister's discretion —
 - (a) amend any terms, conditions, limitations or restrictions to which the authority is subject; or
 - (b) impose new terms, conditions, limitations or restrictions on an authority.

45N. Suspension or cancellation

- 25 (1) The Minister may, by notice in writing to the holder of an authority, suspend or cancel an authority if —
 - (a) the holder requests suspension or cancellation;

- 5
- (b) the holder has not complied with the terms, conditions, limitations or restrictions of the authority;
- (c) the holder has failed to comply with this Act or regulations;
- (d) the Minister is satisfied that the holder —
- 10
- (i) is no longer a fit and proper person to hold the authority; or
- (ii) obtained the authority by fraud, misrepresentation or concealment of facts; or
- (e) the holder ceases to carry on the commercial activity to which the authority relates.
- 15
- (2) Where an authority is suspended or cancelled under subsection (1), it ceases to be of effect and any document issued to the former holder must be surrendered to the Minister on demand.

450. Appeal to Supreme Court

- 20
- (1) A person may apply to the Supreme Court for a review of a decision by the Minister —
- (a) to refuse to issue an authority to that person;
- (b) to refuse to renew an authority held by that person; or
- 25
- (c) to suspend, cancel or amend an authority held by that person.

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- (2) An appeal by a person under this section must be instituted —
- (a) within 28 days after the day on which a document setting out the terms of the decision of the Minister is furnished to the person or within such further time as the Supreme Court (whether before or after the expiration of that day) allows; and
- (b) subject to and in accordance with the rules of the Supreme Court.
- (3) The Supreme Court shall hear and determine the appeal and may make such orders as it thinks appropriate by reason of its decision including, without limiting by implication the generality of the foregoing —
- (a) an order affirming, varying or setting aside the decision of the Minister; and
- (b) an order remitting the matter to be decided again, either with or without further information, by the Minister in accordance with the directions of the Supreme Court.

45P. Offence to fail to comply with authority

A person who is the holder of an authority under this Part must comply with the terms, conditions, limitations or restrictions to which the authority is subject.

Penalty: Penalty: \$20 000 or 12 months imprisonment or both

Division 2 — Inspection and enforcement

45Q. Inspectors under this Part

- 5
- (1) The Minister, by instrument, may authorize the following persons to be inspectors for the purposes of all or any of the provisions of this Part —
- (a) any person holding a position under the *Public Sector Management Act 1994*; or
 - (b) any other appropriately qualified person.
- 10
- (2) The Minister may —
- (a) determine the terms and conditions of authorization of inspectors; and
 - (b) in writing, revoke the authorization of an inspector at any time.
- 15
- (3) The terms and conditions of authorization may contain general directions as to how the inspector's powers may be exercised.
- 20
- (4) The Minister must issue an identification certificate to each inspector (other than an inspector who is a member of the police force) which sets out the provisions of this Part for which the inspector is authorized to be an inspector.
- 25
- (5) An inspector, in the course of performing his or her functions under this Part, must produce his or her identification certificate to any person who requests its production.
- (6) In this Division, a reference to an identification certificate in relation to an inspector who is a member

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of the police force is a reference to written evidence of the fact that he or she is a member of the police force.

45R. General powers of inspectors

- 5 (1) For the purposes of determining compliance with this Part or an authority, an inspector may, with such assistance as he or she thinks necessary, at any reasonable time —
- 10 (a) enter and inspect any place, other than premises used as a residence, occupied by any person who is the holder of an authority;
- (b) inspect, count, examine or mark for identification any product, plant or crop in the place;
- 15 (c) require a person to produce any document that the inspector reasonably requires for ascertaining whether this Part or an authority is being complied with and —
- (i) examine the document;
- 20 (ii) make copies of it or take extracts from it; and
- (iii) remove the document for as long as is reasonably necessary to make copies or extracts;
- 25 (d) take or remove for examination samples of or from, or specimens of, any plant of a crop or product to determine —
- (i) the tetrahydrocannabinol content of any plant, crop or product; and
- 30 (ii) that the plant, crop or product has been cultivated or processed in accordance

with the authority or that its possession
is in accordance with the authority; and

- 5 (e) submit any sample or specimen taken in
accordance with this Part to a laboratory or
place approved by the Minister for examination
and testing.

- 10 (2) An inspector may not exercise any powers under this
Part where the inspector fails, on request, to produce
his or her identification certificate for inspection by the
occupier of the place or the person in charge or
apparent control of the place.

45S. Inspector may order harvest or treatment

- 15 (1) Where an inspector is satisfied on reasonable grounds
that any plant or crop contravenes this Part or an
authority, the inspector may order the harvest of the
plant or crop and the treatment of that harvested
material.

- (2) An order under subsection (1) must —

- 20 (a) be in writing;
(b) include a statement for the reasons for ordering
the harvest and treatment; and
(c) be given to the holder of the authority.

- (3) In this section —

25 **“treatment”** means the taking or causing to be taken
such action, measure or procedure as is prescribed
by regulation.

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45T. Inspector has power to detain or seize

5 Where an inspector believes, on reasonable grounds,
that any plant, crop or product contravenes this Part or
an authority, the inspector may detain or seize the
plant, crop or product and deal with it in accordance
with section 45U.

**45U. Procedure where inspector detains or seizes plants,
crops or products**

- 10 (1) Where an inspector detains or seizes any plant, crop or
product, the inspector must immediately —
- 15 (a) give notice in writing of the detention or
seizure including a statement of the reasons for
detaining or seizing the plant, crop or product
to the holder of the authority; and
 - (b) take or send to a laboratory or place approved
by the Minister for examination and testing, the
plant, crop or product or a sample of the plant,
crop or product.
- 20 (2) A person must not remove the whole or any part of a
plant, crop or product detained or seized while the
detention or seizure notice remains in force, except on
the written authority or written direction of an
inspector or the Minister.

Penalty: \$10 000 or six months imprisonment or both

- (3) Where the results of the examination or test of the samples taken or sent in accordance with subsection 1(b) show that the plant, crop or product —
- 5 (a) was not in contravention of this Part or the authority, the inspector must immediately release or return the plant, crop or product to the holder of the authority; or
- (b) was in contravention of this Part or the authority, the inspector must —
- 10 (i) inform the holder of the authority or the person in whose possession the plant, crop or product was found (as the case may be) in writing of the results; and
- 15 (ii) arrange for or order the harvest, disposal or destruction of the plant, crop or product.
- (4) Where an arrangement or order is made for the disposal or destruction of a plant, crop or product under subsection 3(b)(ii), the inspector must give notice of that arrangement or order before that disposal or
- 20 destruction takes place.
- (5) A notice under subsection (4) must —
- (a) be in writing;
- 25 (b) include a statement of the reasons for arranging or ordering the disposal or destruction;
- (c) fix a time for the disposal or destruction; and
- (d) be given to the holder of the authority.
- (6) Nothing in this section limits the power of a member of the police force to take legal proceedings in respect of

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any plant, crop or product found not to comply with
this Part or an authority.

**45V. Appeal to Minister where disposal or destruction
ordered**

- 5 (1) Within 48 hours of receiving notice under section
45W(4), the holder of an authority may lodge an appeal
in writing against the disposal or destruction with the
Minister.
- 10 (2) Within 3 business days after an appeal is lodged under
subsection (1), the Minister must determine the appeal
by —
- (a) cancelling the arrangement or order made by
the inspector under section 45U; or
- 15 (b) confirming the arrangement or order made by
the inspector under section 45U.
- (3) The Minister must notify the holder of the authority in
writing of the determination made under
subsection (2).

45W. Offences in relation to inspector's exercise of power

- 20 (1) A person must not, without reasonable excuse, hinder
or obstruct an inspector in the exercise of a power
under this Part.
- Penalty: Penalty: \$20 000 or 12 months imprisonment
or both

- (2) A person must not, without reasonable excuse, fail to comply with the lawful direction, requirement or order of an inspector.

Penalty: Penalty: \$20 000 or 12 months imprisonment or both

45X. Inspector may possess cannabis for purposes of this Part

An inspector is authorized to have cannabis in his or her possession in the exercise or performance of any power, function or duty conferred on him or her by this Part or the regulations made under this Part.

Division 3 — Regulations under this Part

45Y. Regulations

- (1) The Governor may make regulations for or with respect to —
- (a) fees for applications and renewals for the purposes of this Part;
 - (b) authorizing and requiring inspectors to impose fees and charges of such amounts or rates as are prescribed or determined in the manner prescribed for —
 - (i) sampling and testing cannabis plants and crops grown or products produced in accordance with this Part as required under an authority or to determine the tetrahydrocannabinol content of those plants, crops or products;

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- (ii) supervising the harvesting, disposal or destruction of cannabis plants, crops or products;
 - (iii) carrying out inspections, supervision or surveillance of cannabis plants or crops grown or products produced in accordance with this Part to ensure the terms, conditions, limitations and restrictions of an authority are being complied with;
 - (iv) providing any other service in respect of cannabis plants or crops grown or products produced in accordance with this Part;
- (c) generally prescribing any other matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part.
- (2) Regulations made under this Part may —
- (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstance;
 - (c) provide for different fees for different activities or classes of activity or different cases or classes of cases;
 - (d) provide for specific, minimum or maximum or minimum and maximum fees;
 - (e) provide for the waiver or reduction of fees;

- 5 (f) in the case of applications for the issue or
renewal of authorities, specify fees that reflect
the cost of administration of, and the provision
of inspection and other services in connection
with this Part; and
- (g) leave any matter to be approved or determined
by the Minister or an inspector.

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8. Consequential amendments

10 The principal Act is amended —

- (a) in section 59, by inserting after “or permits under this
Act” the following —

“ except authorities issued under Part IVA ”;

- (b) in paragraph (b) of section 61 —

- 15 (i) in subparagraph (v) by inserting after “Act” the
following —

“

except an authority issued under Part IVA

”;

- 20 (ii) by inserting after subparagraph (v) the following
new subparagraph —

“

- (vi) in the case of a person who holds an
authority issued under Part IVA, by the
25 Minister of Agriculture.

”.

- (c) in section 63, by inserting after “authorized officer”
wherever occurring the following —

“ or inspector ”; and

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(d) in section 61A —

(i) by inserting before “production of a certificate”
the following designation —

“ (a) ”; and

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(ii) by deleting the full stop after “stated in the
certificate” and inserting the following —

“

; and

10

(b) a certificate that any person is or is not or was
or was not on a certain date for a certain period
a holder of an authority under Part IVA, if
purporting to be signed by the Minister of
Agriculture, shall be prima facie evidence of
the facts therein stated.

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