

Application A1039 LOW THC HEMP AS A FOOD

General Procedure

This submission was developed by the NSW Food Authority in consultation with the NSW Department of Premier & Cabinet, NSW Ministry for Police & Emergency Services, NSW Ministry of Health, NSW Trade & Investment and the NSW Department of Primary Industries.

Summary

NSW does not support the proposal to allow the use of low THC hemp in foods based on broader compliance and enforcement policies. NSW remains concerned that the proposed options suggested in Food Standards Australia New Zealand Application A1039 are inconsistent with existing drug policies and would place a substantial burden on law enforcement agencies and the court system.

Specific Issues

Implications for drug enforcement agencies

NSW believes the use of low THC hemp in foods has substantial implications for drug enforcement agencies across Australia.

At present there is limited scientific evidence regarding positive drug tests and the consumption of low THC food. The studies listed in the Assessment Report are generally assessments of blood and urine tests, and do not adequately address saliva drug testing, which is employed by the NSW Police in random roadside drug tests. The widespread use of low THC food could reasonably be expected to create difficulties for law enforcement where persons return a positive drug test, including when driving.

In NSW random roadside drug testing is undertaken to deter individuals from driving while under the influence of drugs, including cannabis, because of the detrimental impact on driving capacity. Unlike methamphetamine and MDA, which are metabolised in the saliva and detected as a result of the presence of metabolites, THC is detected in residue. Considering the sensitivity of the existing saliva testing process, it is likely that THC residue could be detected following consumption of low THC hemp food products.

If the consumption of low THC foods could result in a positive saliva drug test, individuals who had ingested illicit cannabis and were detected through random roadside drug testing could contest the finding, arguing that their positive reading was the result of consumption of low THC food products. Alternatively, those who had only consumed low THC food products could find themselves charged.

Differentiating between those who had used cannabis illicitly and those who had eaten hemp food would fall to the police and courts, which would place a substantial

burden on police and the broader criminal justice system. Should this application proceed, the *NSW Drug Misuse and Trafficking Act 1985 (NSW)* will also require amendment.

For similar reasons, there are wider drug testing issues for a range of agencies and industries which have stringent policies with regard to work force drug testing and Occupational Health and Safety.

NSW does not consider that the nutritional and health benefits of low THC hemp warrant the changes to existing policing methods and longstanding legislation that would be needed to accommodate low THC hemp as a food product.

Cultivation inspection and testing

There is a current regulatory cost burden surrounding the cultivation and manufacture of hemp products. In NSW there are 31 licence holders permitted to grow low THC hemp crops each year for industrial purposes. Many growers so far have rotated hemp with other annual crops. If the production of hemp seed for food leads to a large increase in the number of growers and crops, compliance costs would consequently increase.

Low THC hemp crops grown in NSW are subject to regulatory inspection and sampling for laboratory analysis under the *Hemp Industry Act 2008 (NSW)*. Cost recovery mechanisms for regulatory inspection services have not been applied in NSW while the hemp industry was in the establishment phase. This cost is currently borne by government and is calculated to be approximately \$300 per crop. Inspection fees will be introduced to bring this industry in line with the rest of the agricultural sector in NSW.

THC analysis is performed on all crops at the expense of the grower. Currently, crop samples are analysed in Western Australia and the cost to the grower is high (\$130 analysis fee plus \$120 per sample). NSW government laboratories currently test for THC, mainly in the plant leaf or bodily fluids. A method would need to be developed for specific food matrixes.

There also remains potential for the exploitation of low THC hemp products and crops to hide more potent illegal substances. NSW Police advise that in one instance, cannabis plants were seized from the property of a licensed grower of low THC hemp. These plants were not a low THC variety, and the grower was prosecuted for cultivating cannabis.

Low THC hemp and cannabis

NSW has concerns regarding low THC hemp for food being associated with cannabis, and that the availability of hemp health food products could confuse messages about the health risks of cannabis use. The current application occurs at a time when cannabis use, as measured by the National Drug Strategy Household Survey, has increased for the first time since 1998, and police cannabis detections are rising. A recent study published in *The Lancet* identified Australia and New Zealand as having the highest rates of cannabis consumption in the world.

NSW also has some concerns that though low THC levels in a single food might not have psychoactive properties, it might be possible for an individual to exceed safe consumption levels by combining various compliant and legal low THC content foods together resulting in a psychoactive effect.