



# GREEN GOLD OR LEGAL GREY QUAGMIRE?

**BELINDA SCRIBA**, director – Dispute Resolution and Agriculture, Aquaculture & Fishing sector, and **CLAUDIA GROBLER**, associate – Dispute Resolution practice, at **Cliffe Dekker Hofmeyr**, provide an update on South Africa’s cannabis and hemp industry

South Africa stands at a pivotal crossroad in its relationship with cannabis, a plant woven deeply into its social, cultural and economic fabric for generations. With the global cannabis economy projected to surpass \$100-billion by 2030, the question confronting South Africa is no longer *whether* to engage in cannabis commercialisation, but *how* to do so in a way that is legally sound, economically empowering, socially balanced and acceptable.

The domestic stakes are equally compelling. According to the Department of Trade, Industry and Competition (dtic),

the South African cannabis and hemp sector already represents an estimated R14-billion domestic market, with the government targeting 10 per cent annual growth from this existing base. The formal cannabis industry alone currently generates approximately R5.5-billion in annual revenue. Globally, demand for hemp products is rising sharply, with the hemp market projected to grow at 17.3 per cent annually between 2025 and 2032. For investors and industry participants, understanding where the law currently stands and where it is heading is essential.

## CANNABIS AND HEMP: AN IMPORTANT DISTINCTION

Before engaging with the regulatory landscape, it is important to understand the legal distinction between cannabis, the drug, and hemp, as these two terms are often used interchangeably despite carrying very different legal consequences.

While cannabis and hemp derive from the same plant species, the critical difference lies in their chemical composition: hemp contains less THC (tetrahydrocannabinol – the compound responsible for psychoactive effects) than cannabis. Historically, South Africa applied a threshold of 0.2 per cent THC to distinguish hemp from cannabis. However, as discussed further below, the regulations to the Plant Improvement Act 11 of 2018 (the Plant Improvement Act), effective as of 1 December 2025, raised this threshold to 2 per cent THC.

This is a development that materially expands the scope of what qualifies as hemp and, with it, the commercial opportunity available to cultivators and investors. The two products are also consumed for different purposes. Generally, cannabis, with its higher THC component, is used for recreation and medical consumption for its psychoactive effects (for example, relief from pain or anxiety), while hemp is used more industrially as a natural alternative to other products, such as fuel, textiles and seed-based food and nutritional products, to name a few.

The distinctions between the two matter enormously from a regulatory and investment perspective and are governed by materially different legal frameworks.

## THE CURRENT LEGAL LANDSCAPE

### Cannabis for private use

The Cannabis for Private Purposes Act 7 of 2024 (the Cannabis Act), signed into law on 28 May 2024, establishes a legal framework for the use, possession and cultivation of cannabis in South Africa for private purposes. The private use, possession, cultivation and consumption of cannabis for medicinal reasons is also exempted by the Minister of Health under Schedule 6 of the Medicines and Related Substances Act 101 of 1965 (the Medicines Act). Critically, however, the use of cannabis in a public space and the distribution of cannabis for commercial and recreational purposes remains illegal and constitutes a criminal offence.



Belinda Scriba

## FOR INVESTORS AND AGRICULTURAL STAKEHOLDERS, NOW IS THE TIME TO DEVELOP A THOROUGH UNDERSTANDING OF THE EXISTING REGULATORY FRAMEWORK, POSITION STRATEGICALLY AND ENGAGE WITH THE POLICY PROCESS.

Importantly, while the Cannabis Act has been signed into law, it has not yet been formally promulgated. The main reason for its delayed promulgation is the delay in finalising its supporting regulations, which would prescribe the quantities for possession, cultivation and related matters. In a significant and recent development, however, the Department of Justice and Constitutional Development published a Government Notice (Notice R.7067, dated 2 February 2026) inviting public comments on the Draft Cannabis for Private Purposes Regulations, 2025. Comments were due by 5 March 2026.

The content of these Draft Regulations are noteworthy for several reasons. First, they propose that an adult person may possess a maximum of 750 grams of cannabis in a private or public place at any given time during the course of a single day – a figure that is considerably more generous than many anticipated. Second, the Draft Regulations propose that an adult may cultivate a maximum of five cannabis plants in a private place at any given time, regardless of size, shape or strain. Third, the Draft Regulations include detailed conditions governing the transportation of cannabis, requiring it to be concealed from public view and imposing obligations on both drivers and passengers.

Finally, and perhaps most significantly from a social justice perspective, the Draft Regulations introduce a formal procedure for the expungement of criminal records for cannabis-related offences under prior legislation. These Regulations signify a definite relaxation of the rigid stance taken by the government in the past, indicating the recognition of the fact that while there needs to be control around the industry, a legal structure that allows for the opening up the industry for both its social and economic benefits is also required.

### Medicinal cannabis

The cultivation and commercial trade of medicinal cannabis is legal for those in possession of the relevant licence issued by the South African Health Products Regulatory Authority (SAHPRA),

under section 22C(1)(b) of the Medicines Act. The regulatory framework is rigorous: applicants must meet various compliance standards, appoint a registered nurse and submit to regular audits. SAHPRA oversees the regulated cultivation, manufacturing and export of medicinal cannabis to markets such as Europe, ensuring South Africa remains competitive in the rapidly expanding global medicinal cannabis economy.

### Hemp: commercial cultivation now open – and the stakes just got higher

On the commercial hemp side, as discussed above, the Plant Improvement Act, together with its recent regulations, signified a landmark moment for South Africa's agricultural sector.

In addition to increasing the THC levels permitted, this legislation also legalised the commercial cultivation, import and export of hemp with the relevant permits.

For investors, the significance of the increased threshold to 2 per cent THC cannot be overstated. Under the previous regulatory position, hemp was defined as containing less than 0.2 per cent THC. The raising of this threshold tenfold to 2 per cent substantially broadens the pool of cannabis plants that legally qualify as hemp, and which can therefore be commercially cultivated, imported and exported under the Plant Improvement Act framework.

In practical terms, this means that a far wider variety of strains, including many previously caught in a regulatory no-man's land, can now be lawfully grown for commercial purposes. As stated above, the commercial applications for hemp are extensive. South Africa's climate and agricultural infrastructure are well-suited to large-scale hemp cultivation, and the country is positioned to become a meaningful exporter of hemp to global markets.

The scale of the hemp permitting programme already underway highlights this potential. Since hemp was recognised as an agricultural crop in 2022, the Department of Agriculture has >

issued 2 031 cultivation permits across the country. For agricultural investors and farmers, the commencement of this framework represents arguably the most immediately actionable investment opportunity in the South African cannabis and hemp space today.

### **Social and grow clubs: an unresolved question**

One area of persistent legal uncertainty concerns cannabis social or grow clubs. The clubs are member-based associations, collectively cultivating and sharing cannabis for personal use, with members paying a membership/club fee.

The structure around these clubs is designed to fall within the permits of the Cannabis Act. Section 2(1)(b) of the Cannabis Act provides that an adult person may, without the exchange of consideration per occasion, provide to or obtain cannabis from another adult person in a private place for a private purpose. The Cannabis Act defines "consideration" broadly as meaning "any form of compensation, gift, reward, favour or benefit".



**Claudia Grobler**

On the face of it, grow clubs therefore do not appear to be in direct contravention of the Cannabis Act – a fee is charged for membership, not for the growth and exchange of the cannabis product itself. However structured, these clubs are viewed by our courts as the commercialisation of both the

## **WHILE THE CANNABIS ACT HAS BEEN SIGNED INTO LAW, IT HAS NOT YET BEEN FORMALLY PROMULGATED.**

cultivation and distribution of cannabis in a setting that can reasonably be considered public – this is inconsistent with the Cannabis Act's clear intention to limit cannabis use to personal private consumption.

The Western Cape High Court, in *The Haze Club (Pty) Ltd and others v Minister of Police and others* [2023] 1 All SA 280 (WCC), refused to grant a declaratory order confirming that grow or social clubs are lawful in South Africa. The matter subsequently went on appeal to the Supreme Court of Appeal. Before this court ruled on the matter, the appeal was withdrawn, leaving the High Court judgement as the leading case on grow and social clubs. This has the effect that, while the refusal of the declaratory order does not automatically render these clubs illegal, the legal risk for operators and investors in this space is real and should not be understated.

### **WHAT INVESTORS NEED TO KNOW: THE ROAD AHEAD**

South Africa's cannabis potential is substantial. The country possesses an ideal climate, world-renowned cannabis genetics and a deep cultural heritage in cannabis cultivation. Yet, as matters stand, entrepreneurs, farmers and investors remain constrained by a regulatory framework that legalises private use but does not yet unlock commercial opportunity – a paradox that the government has signalled its intention to resolve.

In this regard, the Cannabis and Hemp Steering Committee has indicated that a new Cannabis Commercialisation Policy is being finalised for submission to Cabinet by April 2026, and a consolidated Cannabis Bill is under development to harmonise the current fragmented legislative landscape. The parliamentary briefing of 6 March 2026 confirmed that the overarching Cannabis Bill is expected to be introduced in Parliament by mid-2027.

At the 2025 State of the Nation Address, President Cyril Ramaphosa stated, "we want South Africa to be leading in the commercial production of hemp and cannabis", with government subsequently confirming that the cannabis master plan

"aims to increase the quality and variety of cannabis being produced for local and international markets" and that "government will also be implementing changes to the policy and regulatory framework to drive investment and jobs in this sector".

### **CONCLUSION**

South Africa's cannabis and hemp sector is evolving. The publication of the Draft Cannabis Regulations in February 2026, the commencement of the Plant Improvement Act framework and the anticipated Cannabis Commercialisation Policy all signal that the legislative deadlock is slowly, but discernibly, beginning to break. For investors and agricultural stakeholders, now is the time to develop a thorough understanding of the existing regulatory framework, position strategically and engage with the policy process.

For the time being, the key investment opportunities in the near term lie in licenced medicinal cannabis cultivation and export, commercial hemp cultivation under the Plant Improvement Act framework, and the pharmaceutical and wellness sectors.

The shifting legal environment presents both challenges and opportunities, and how policymakers, businesses and investors respond will shape the industry's outcome.

Cliffe Dekker Hofmeyr continues to advise clients across all aspects of cannabis and hemp regulation, licensing and commercialisation, and remains committed to helping stakeholders navigate this evolving landscape. ●



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