

South Australia

# Hydroponics Industry Control Regulations 2010

under the *Hydroponics Industry Control Act 2009*

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## Legislative history

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### 1—Short title

These regulations may be cited as the *Hydroponics Industry Control Regulations 2010*.

### 2—Commencement

These regulations come into operation on the same day on which the *Hydroponics Industry Control Act 2009* comes into operation.

### 3—Interpretation

(1) In these regulations—

*Act* means the *Hydroponics Industry Control Act 2009*;

*prescribed duties*—see regulation 8;

*prescribed record keeping location*—see regulation 11;

*simple cannabis offence* has the same meaning as in section 45A of the *Controlled Substances Act 1984*;

*simple possession offence* has the same meaning as in the *Controlled Substances Act 1984*.

- (2) For the purposes of these regulations, a reference to the *residential address* of a person will be taken not to include a reference to an address consisting of a post office box.

#### **4—Code of conduct**

- (1) The Minister may, from time to time, by notice in the Gazette, publish or adopt a code of practice to be followed by licence holders in relation to the sale of prescribed equipment by retail.
- (2) A licence holder must not contravene a code of practice published or adopted under this regulation.

Maximum penalty: \$2 500.

Expiation fee: \$210.

#### **5—Prescribed equipment**

For the purposes of the definition of *prescribed equipment* in section 3 of the Act, the following hydroponic equipment is declared to be prescribed equipment:

- (a) metal halide lights, high pressure sodium lights and mercury vapour lights of 400 watts or greater;
- (b) ballast boxes designed or intended for use in association with a light of a kind referred to in paragraph (a);
- (c) devices (including control gear, lamp mounts and reflectors) designed to amplify light or heat and capable of being used in association with a light of a kind referred to in paragraph (a);
- (d) carbon filters designed to filter air within a room, or from 1 area of a building to another or to outside;
- (e) units designed to contain plants and rotate around a light source so that the plants grow hydroponically while being exposed to a consistent degree of light or heat or both.

#### **6—Carrying on business of selling prescribed equipment by retail**

For the purposes of section 4(1)(b) of the Act, the amount of \$2 400 is prescribed.

#### **7—Hydroponic equipment dealer's licence**

- (1) For the purposes of section 11(2)(c) of the Act, each director of an applicant must be identified by the applicant providing to the Commissioner, in a manner and form determined by the Commissioner—
  - (a) the full name, residential address and date of birth of each director of the applicant; and

- (b) any other information reasonably required by the Commissioner for the purpose of verifying the identity of each director of the applicant.
- (2) For the purposes of section 11(2)(d)(iii) of the Act, any other information reasonably required by the Commissioner for the purposes of determining the relevant application for a hydroponic equipment dealer's licence is prescribed.
- (3) For the purposes of section 11(4)(a)(i) and (b)(i) of the Act, the following offences are prescribed:
  - (a) an offence against the Act, or a law of the Commonwealth or another State or Territory corresponding to the Act;
  - (b) an offence (other than a simple possession offence or a simple cannabis offence) against Part 5 of the *Controlled Substances Act 1984*;
  - (c) an offence (other than an offence corresponding to a simple possession offence or a simple cannabis offence) against a law of the Commonwealth or of another State or Territory corresponding to Part 5 of the *Controlled Substances Act 1984*;
  - (d) an offence against section 17A, 17B or 17C of the *Controlled Substances Act 1984*;
  - (e) an offence against a law of the Commonwealth or of another State or Territory corresponding to section 17A, 17B or 17C of the *Controlled Substances Act 1984*;
  - (f) an offence against section 9B of the *Summary Offences Act 1953*;
  - (g) conspiracy to commit, or an attempt to commit, an offence referred to in a preceding paragraph.

## 8—Prescribed duties

For the purposes of the Act, a person carries out **prescribed duties** in relation to the sale of prescribed equipment by retail if the person—

- (a) —
  - (i) sells, or takes any part in the sale of, prescribed equipment by retail pursuant to a hydroponic equipment dealer's licence; or
  - (ii) purchases or orders prescribed equipment for, or on behalf of, the holder of a hydroponic equipment dealer's licence; or
  - (iii) provides services of any kind in relation to the sale of prescribed equipment to a customer or potential customer of the holder of a hydroponic equipment dealer's licence,  
whether the licence holder is the person's employer or otherwise; or
- (b) being an employee of the holder of a hydroponic equipment dealer's licence, delivers prescribed equipment to, or for, or on behalf of, the licence holder.

## 9—Approval of hydroponics industry employees

- (1) For the purposes of section 17(2)(c)(ii) of the Act, any other information reasonably required by the Commissioner for the purposes of determining the relevant application for approval as a hydroponics industry employee is prescribed.

- (2) For the purposes of section 17(4)(a) of the Act, the following offences are prescribed:
- (a) an offence against the Act, or a law of the Commonwealth or another State or Territory corresponding to the Act;
  - (b) an offence (other than a simple possession offence or a simple cannabis offence) against Part 5 of the *Controlled Substances Act 1984*;
  - (c) an offence (other than an offence corresponding to a simple possession offence or a simple cannabis offence) against a law of the Commonwealth or of another State or Territory corresponding to Part 5 of the *Controlled Substances Act 1984*;
  - (d) an offence against section 17A, 17B or 17C of the *Controlled Substances Act 1984*;
  - (e) an offence against a law of the Commonwealth or of another State or Territory corresponding to section 17A, 17B or 17C of the *Controlled Substances Act 1984*;
  - (f) an offence against section 9B of the *Summary Offences Act 1953*;
  - (g) conspiracy to commit, or an attempt to commit, an offence referred to in a preceding paragraph.

## 10—Identification of purchasers

For the purposes of section 21 of the Act, a purchaser produces identification that complies with this regulation if the identification consists of—

- (a) 1 of the following kinds of identification:
  - (i) a current photographic driver's licence issued under the *Motor Vehicles Act 1959* or under a corresponding law of another State or a Territory;
  - (ii) a passport issued by the Commonwealth or under the law of another country, bearing a photograph of the person (being a current passport or a passport that has been expired for not more than 2 years);
  - (iii) a current photographic Proof of Age card issued by the Registrar of Motor Vehicles or by a corresponding public authority of the Commonwealth or another State or a Territory;
  - (iv) a current photographic firearms licence;
  - (v) a current photographic licence or photographic permit issued under a law of the Commonwealth or a State or Territory;
  - (vi) a photographic student identification card issued by an Australian educational institution; and
- (b) 2 of the following kinds of identification:
  - (i) a certified copy of, or extract from, a register of births kept under an Australian law, or under the law of the country in which the purchaser was born;
  - (ii) a document issued or addressed to the purchaser by the Commonwealth or a State or Territory;

- (iii) a document showing the name and residential address of the purchaser issued by a public utility, a bank or credit union or a similar body;
- (iv) an identification card in the purchaser's name issued by the person's employer;
- (v) an identification card in the purchaser's name issued by a professional or trade association;
- (vi) any other document determined by the Commissioner to be a document included in the ambit of this paragraph.

### **11—Prescribed record keeping location**

- (1) For the purposes of these regulations, the *prescribed record keeping location* of a licence holder will be taken to be—
  - (a) in the case of a licence holder carrying on the business of selling prescribed equipment by retail at particular premises—those premises; or
  - (b) in any other case—the premises specified by the Commissioner by notice in writing given to the licence holder.
- (2) A licence holder must not change his or her prescribed record keeping location except with the written approval of the Commissioner (which must not be unreasonably withheld).

### **12—Records of prescribed transactions**

- (1) For the purposes of section 23(1) of the Act, the following information is required:
  - (a) the name, address and business name (if any) of the licence holder;
  - (b) the place at which the prescribed transaction occurred;
  - (c) the date and time of the prescribed transaction;
  - (d) a description of the prescribed equipment involved in the transaction (including, to avoid doubt, the quantity of prescribed equipment involved in the transaction);
  - (e) if the prescribed transaction was a sale of prescribed equipment—
    - (i) the full name, residential address and date of birth of the purchaser of the prescribed equipment; and
    - (ii) details of the identification produced by the purchaser for the purposes of compliance with section 21 of the Act; and
    - (iii) the name of the person to whom the purchaser produced the identification;
  - (f) if the prescribed transaction was a purchase of prescribed equipment—the name and address of the person from whom the prescribed equipment was purchased;
  - (g) the name of each approved person who takes part in the prescribed transaction.

- (2) A licence holder must keep the information required to be kept under section 23(1) of the Act—
  - (a) at the licence holder's prescribed record keeping location; and
  - (b) for a period of not less than 7 years after the date on which the record is made.
- (3) The information required to be kept under section 23(1) of the Act may be kept in written or electronic form.
- (4) For the purposes of section 23(3) of the Act, the *prescribed particulars* in respect of a prescribed transaction is—
  - (a) in the case of a prescribed transaction consisting of the purchase of prescribed equipment—the information referred to in subregulation (1)(c) and (f); or
  - (b) in any other case—the information referred to in subregulation (1)(a) to (e) (inclusive).
- (5) For the purposes of section 23(3) of the Act, the prescribed particulars in respect of a prescribed transaction must be transferred to the Commissioner in accordance with the following provisions:
  - (a) the prescribed particulars must be transferred to the Commissioner within 72 hours of the prescribed transaction occurring;
  - (b) the prescribed particulars must be transferred to the Commissioner in a manner and form determined from time to time by the Commissioner by notice in the Gazette.

### **13—Staffing records**

- (1) For the purposes of section 24 of the Act, a licence holder must make a record of the full name, date of birth and residential address of each person working in, or for the purposes of, the licence holder's business (whether or not the person is an approved person).
- (2) A licence holder must keep a record required to be kept under section 24 of the Act—
  - (a) at the licence holder's prescribed record keeping location; and
  - (b) for a period of not less than 7 years after the date on which the record is made.

### **14—Annual fees and returns**

- (1) An applicant for the issue of a hydroponics equipment dealer's licence, or for approval as a hydroponics industry employee, must, at the time of application, pay to the Commissioner the annual fee fixed by these regulations that would be payable if the application were granted.
- (2) If an application referred to in subregulation (1) is not granted by the Commissioner, the Commissioner must refund the annual fee paid under that subregulation to the applicant.
- (3) Each licence holder, and each approved person, must, in each year—
  - (a) pay to the Commissioner the annual fee fixed by these regulations; and

- (b) lodge with the Commissioner a return in the manner and form required by the Commissioner.
- (4) Each licence holder, and each approved person, must pay the annual fee and lodge the return on or before—
  - (a) the last day of the month in each year nominated in writing to the licence holder or person by the Commissioner; or
  - (b) if the Commissioner does not nominate a month—the last day of the month in each year that is the same month as the month in which the licence holder's licence was granted, or the person approved.
- (5) If a licence holder or approved person fails to pay the annual fee or lodge the return in accordance with this regulation, the Commissioner may, by notice in writing, require the licence holder or person to make good the default and, in addition, to pay to the Commissioner the amount fixed by these regulations as a penalty for default.
- (6) If the licence holder or approved person fails to comply with a notice under subregulation (5) within 28 days after service of the notice, the licence holder's licence or the person's approval (as the case requires) is revoked.

## 15—Fees

The fees set out in Schedule 1 are prescribed for the purposes set out in that Schedule.

### Schedule 1—Fees

1 Application for hydroponic equipment dealer's licence—	
(a) if the applicant is a body corporate	\$613
(b) if the applicant is a natural person	\$378
2 Application for approval as hydroponics industry employee	\$378
3 Annual fee for licence holders—	
(a) if the licence holder is a body corporate	\$671
(b) if the licence holder is a natural person	\$514
4 Annual fee for approved person	\$245
5 Penalty for default (regulation 14(5))	\$140

### Schedule 2—Transitional provisions

#### 1—Interpretation

In this Schedule—

*transitional period* means the period commencing on the day that clause 1 of Schedule 1 of the Act comes into operation and expiring 3 months after that day.

#### 2—Certain people may carry out prescribed duties during transitional period

- (1) Subject to this clause, a person (other than a person who must be refused approval under section 17(4)(a), (b) or (d) of the Act) may carry out prescribed duties in relation to the sale of prescribed equipment by retail as if he or she were approved as a hydroponics industry employee under that section.

- (2) A person may only carry out prescribed duties in relation to the sale of prescribed equipment by retail pursuant to this clause until—
- (a) he or she applies for approval as a hydroponics industry employee in accordance with section 17 of the Act; or
  - (b) the expiry of the transitional period,
- whichever occurs first.

### **3—Certain provisions of Act not to apply during transitional period**

- (1) The following provisions of the Act do not apply to, or in relation to, a person during the transitional period:
- (a) section 21;
  - (b) section 23;
  - (c) section 24.
- (2) However, nothing in subclause (1) exempts a record made or kept during the transitional period from the operation of Part 4 of the Act.

### **4—Expiry of Schedule**

This Schedule will expire on the day after the expiry of the transitional period.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal regulations

Year	No	Reference	Commencement
2010	2	<i>Gazette 14.1.2010 p60</i>	1.3.2010: r 2

### Provisions varied

New entries appear in bold.

Provision	How varied	Commencement
Sch 2	will expire: Sch 2 cl 4	(2.6.2010)