

South Australia

Local Government (Mobile Food Vendors) Amendment Act 2017

An Act to amend the *Local Government Act 1999*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Local Government (Mobile Food Vendors) Amendment Act 2017*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Local Government Act 1999*

4—Amendment of section 4—Interpretation

Section 4(1)—after the definition of *member* insert:

mobile food vending business means a business involving the sale of food or beverages from a vehicle (within the meaning of the *Road Traffic Act 1961*);

5—Amendment of section 222—Permits for business purposes

Section 222—after subsection (1) insert:

- (1a) However, subject to the regulations, a council must grant a permit under this section for the purposes of a mobile food vending business.

6—Amendment of section 224—Conditions of authorisation or permit

Section 224—after its present contents (now to be designated as subsection (1)) insert:

- (2) Subject to subsection (3), a condition made in relation to a permit for the purposes of a mobile food vending business under section 222 must be consistent with—
 - (a) the location rules adopted by the council under section 225A; and
 - (b) any requirement prescribed by the regulations.
- (3) Without limiting subsection (2), the regulations may—
 - (a) require that certain conditions be imposed in prescribed cases; and
 - (b) prohibit the imposition of certain conditions in prescribed cases; and
 - (c) prescribe requirements in relation to conditions relating to the payment of fees.
- (4) Subsection (2)(a) does not apply in relation to a permit for the purposes of a mobile food vending business primarily engaged in the sale of ice cream.

7—Insertion of section 224A

After section 224 insert:

224A—Breach of condition of authorisation or permit

A person must not breach or fail to comply with a condition of a permit for the purposes of a mobile food vending business under section 222.

Maximum penalty: \$2 500.

Expiation fee: \$210.

8—Amendment of section 225—Cancellation of authorisation or permit

- (1) Section 225—delete subsection (1) and substitute:
 - (1) A council may, by notice in writing to the holder of an authorisation or permit—
 - (a) in the case of a permit for the purposes of a mobile food vending business under section 222—cancel the permit for breach of a condition if the breach is sufficiently serious to justify cancellation of the permit; or
 - (b) in any other case—cancel the authorisation or permit for breach of a condition.
- (2) Section 225—after subsection (3) insert:
 - (4) If a council cancels a permit under subsection (1)(a), an application for a permit for the purposes of a mobile food vending business under section 222 must not, for a period (not exceeding 6 months) specified by the council at the time of cancellation, be made by or on behalf of the person who, before the cancellation, held the permit.

9—Insertion of section 225A

After section 225 insert:

225A—Location rules—general

- (1) For the purposes of section 224(2)(a), a council must prepare and adopt rules (*location rules*) that set out locations within the council area in which mobile food vending businesses may operate.
- (2) A council's location rules must comply with the following requirements:
 - (a) requirements prescribed by the regulations;
 - (b) requirements (if any) specified by the Minister by notice in the Gazette.
- (3) A requirement specified by the Minister under subsection (2)(b) may relate to location rules of councils generally or those of a particular council or councils.
- (4) A council—
 - (a) may from time to time amend its location rules; and
 - (b) must amend its location rules in order to ensure that the rules comply with—
 - (i) any requirement specified by the Minister under subsection (2)(b); or
 - (ii) any direction given by the Small Business Commissioner under subsection (7).

- (5) If the Small Business Commissioner recommends under section 225B(5) that a council amend its location rules—
 - (a) the council must give consideration to amending its location rules in accordance with the recommendation; and
 - (b) if the council resolves not to amend its location rules in accordance with the recommendation—the council must provide written reasons for the resolution to the Small Business Commissioner and the applicant under section 225B.
- (6) If the applicant under section 225B is dissatisfied with the written reasons provided by a council in relation to a recommendation under section 225B(5) that the council amend its location rules, the applicant may request the Small Business Commissioner to consider directing the council to amend its location rules in accordance with the recommendation.
- (7) The Small Business Commissioner may, on a request under subsection (6) and if satisfied that it is appropriate to do so taking into account the written reasons of the council, direct the council to amend its location rules in accordance with the recommendation referred to in subsection (6).
- (8) If a council is given a direction by the Small Business Commissioner under subsection (7), the council must not fail to comply with the direction.

Maximum penalty: \$5 000.

225B—Location rules—disputes

- (1) If the operator of a food business in a council area is directly adversely affected by the location rules of the council under section 225A, the operator may apply to the Small Business Commissioner for a review of the location rules by the Small Business Commissioner (who is conferred with the function of conducting such a review).
- (2) An application under subsection (1) must—
 - (a) be made in a manner and form determined by the Small Business Commissioner; and
 - (b) include any information required by the Small Business Commissioner.
- (3) The Small Business Commissioner may—
 - (a) conduct a review under this section in such manner as the Commissioner determines to be appropriate; and
 - (b) specify procedures and requirements that are to apply in connection with a review under this section.

- (4) The Small Business Commissioner may, in conducting a review under this section, exercise any power of the Commissioner that applies under the *Small Business Commissioner Act 2011* in relation to the performance of the Commissioner's functions under that Act.
- (5) After conducting a review under this section, the Small Business Commissioner may, if the Commissioner considers it appropriate to do so, recommend to the relevant council that the council amend its location rules.
- (6) In this regulation—
food business means a business the primary purpose of which is the retail sale of food or beverages.

Schedule 1—Transitional provision

1—Transitional provision

- (1) The holder of a permit for the purposes of a mobile food vending business granted under section 222 of the *Local Government Act 1999* before the commencement of this clause and in force on that commencement may surrender the permit to the council and request the issue of a fresh permit under section 222 (as in force immediately after the commencement of this clause).
- (2) On receiving a request under subclause (1), the council must grant the holder of the surrendered permit a fresh permit in accordance with section 222 (as in force immediately after the commencement of this clause).
- (3) The issue of a fresh permit automatically cancels the permit that was surrendered.
- (4) If the holder of a permit who surrenders the permit under this clause paid an annual fee or charge to the council in respect of the permit, the council must refund the fee or charge on a *pro rata* basis, such that the amount of the refund is calculated by multiplying—
 - (a) the annual fee or charge that was paid; and
 - (b) the proportion that the number of whole months between the date of surrender of the permit and the date of the end of the term of the permit bears to 12 months.