

South Australia

Hydroponics Industry Control Act 2009

An Act to prevent criminal infiltration of the hydroponics industry; to prevent the misapplication of certain types of hydroponic equipment by monitoring its sale and supply; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Hydroponics Industry Control Act 2009*.

2—Commencement

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

3—Interpretation

In this Act—

approval means approval as a hydroponics industry employee under section 17;

authorised officer means—

(a) a police officer; and

(b) a person, or class of persons, authorised by the Minister under section 25;

Commissioner means the Commissioner of Police;

criminal intelligence means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety;

director of a body corporate includes—

- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;

hydroponic equipment means equipment that is designed to be used, or is of a kind that is commonly used, for a purpose related to the cultivation of plants using hydroponic methods;

licence or ***hydroponic equipment dealer's licence*** means a hydroponic equipment dealer's licence under section 11;

prescribed equipment means hydroponic equipment declared by the regulations to be prescribed equipment (whether or not the equipment is in working order or has been, or is being, modified in any way);

sell includes—

- (a) auction, barter, exchange or let on hire; or
- (b) offer for sale, auction, barter, exchange or letting on hire; or
- (c) cause or permit to be offered for sale, auction, barter, exchange or letting on hire; or
- (d) possess for the purposes of sale, auction, barter, exchange or letting on hire;

senior police officer means a police officer of or above the rank of inspector.

4—Carrying on business of selling prescribed equipment by retail

- (1) For the purposes of this Act, a person will be taken to be carrying on the business of selling prescribed equipment by retail if the person—
 - (a) sells prescribed equipment by retail on not less than 6 days in any calendar year; or
 - (b) sells prescribed equipment by retail with a total wholesale value exceeding an amount prescribed by the regulations for the purposes of this paragraph; or
 - (c) sells prescribed equipment in the circumstances prescribed by the regulations for the purposes of this subsection.
- (2) If in proceedings for an offence against this Act it is established that the defendant—
 - (a) was at the relevant time the holder of a hydroponic equipment dealer's licence; and
 - (b) had possession of prescribed equipment,

it will be presumed, in the absence of proof to the contrary, that the defendant had possession of the equipment for the purposes of sale in the course of the defendant's business of selling prescribed equipment by retail.

5—Commissioner subject to control and direction of Minister

- (1) The Commissioner is, for the purposes of this Act, subject to the control and direction of the Minister.
- (2) A Ministerial direction under this Act will be taken not to be a direction for the purposes of section 8 of the *Police Act 1998*.

6—Delegation

Despite section 19 of the *Police Act 1998*, the Commissioner—

- (a) may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police; and
- (b) may not delegate any other function or power of the Commissioner under this Act except to a senior police officer.

7—Criminal intelligence

- (1) If the Commissioner—
 - (a) refuses an application for a licence or an approval or for a renewal of a licence, or varies or revokes a condition, or imposes a new condition, of a licence or approval, or revokes or proposes to revoke a licence or approval under this Act; and
 - (b) the decision to do so is made because of information that is classified by the Commissioner as criminal intelligence,

the Commissioner is not required to provide any grounds or reasons for the decision other than that to grant the application would be contrary to the public interest, or that it would be contrary to the public interest if the licence or approval were to continue in force without variation or new condition imposed, or that it would be contrary to the public interest if the person were to be or continue to be licensed or approved.

- (2) In any proceedings relating to a licence or approval, the court determining the proceedings—
 - (a) must, on the application of the Commissioner, take steps to maintain the confidentiality of information classified by the Commissioner as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
 - (b) may take evidence consisting of, or relating to, information that is so classified by the Commissioner by way of affidavit.

8—Non-derogation

The provisions of this Act are in addition to, and do not derogate from, the provisions of any other Act.

9—Exemptions

- (1) The Minister may, by notice in the Gazette, grant exemptions from this Act or specified provisions of this Act—
 - (a) to a person, or persons of a class, specified in the notice; or
 - (b) in relation to prescribed equipment, or prescribed equipment of a class, specified in the notice.
- (2) An exemption under subsection (1) may be granted by the Minister on conditions specified by the Minister.
- (3) The Minister may, at any time, by further notice in the Gazette—
 - (a) vary or revoke an exemption; or
 - (b) vary or revoke a condition of an exemption, or impose a new condition, on any grounds the Minister thinks fit.
- (4) Before granting an exemption, or varying or revoking an exemption or condition of an exemption, the Minister must consult with the Commissioner.

Part 2—Licences and approvals

Division 1—Hydroponic equipment dealer's licence

10—Requirement for licence

A person must not—

- (a) carry on the business of selling prescribed equipment by retail; or
 - (b) hold himself or herself out as carrying on such a business,
- unless the person holds a licence under section 11.

Maximum penalty: \$20 000.

11—Hydroponic equipment dealer's licence

- (1) Subject to this section, the Commissioner may, on application by a person, issue or renew a hydroponics equipment dealer's licence.
- (2) An application for a licence must—
 - (a) be made to the Commissioner in the manner and form approved by the Commissioner; and
 - (b) be accompanied by the prescribed fee; and
 - (c) if the applicant is a body corporate, identify each director of the applicant in accordance with the requirements (if any) set out in the regulations; and
 - (d) be accompanied by—
 - (i) if the applicant is a natural person—such photographs of the applicant, and in such form, as may be specified by the Commissioner;

- (ii) if the applicant is a body corporate—such photographs of each director of the applicant, and in such form, as may be specified by the Commissioner;
 - (iii) any other information prescribed by the regulations.
- (3) The Commissioner must not issue a licence to a person, or renew a person's licence, unless the Commissioner is satisfied that—
 - (a) if the applicant is a natural person—the person is a fit and proper person to hold a licence; or
 - (b) if the applicant is a body corporate—each director of the applicant is a fit and proper person to hold a licence.
- (4) The Commissioner must refuse to issue a licence to a person, or to renew a person's licence—
 - (a) if the applicant is a natural person—
 - (i) if the person has been found guilty of a prescribed offence within the 5 years immediately preceding the application; or
 - (ii) if the person is subject to a control order (within the meaning of the *Serious and Organised Crime (Control) Act 2008*); or
 - (b) if the applicant is a body corporate—
 - (i) if any director of the applicant has been found guilty of a prescribed offence within the 5 years immediately preceding the application; or
 - (ii) if any director of the applicant is subject to a control order (within the meaning of the *Serious and Organised Crime (Control) Act 2008*); or
 - (c) if it appears to the Commissioner that to grant the application would be contrary to the public interest; or
 - (d) for any other reason declared by the regulations to be within the ambit of this subsection.
- (5) Without limiting the matters to which the Commissioner may have regard, the Commissioner may, in determining whether to issue or renew a licence, have regard to—
 - (a) the reputation, honesty and integrity of the person; and
 - (b) the reputation, honesty and integrity of people with whom the person associates or has associated.
- (6) A licence is subject to such conditions as may be specified by the Commissioner in the licence.
- (7) The Commissioner may by notice in writing given to a licence holder, vary or revoke a condition of the licence, or impose a new condition, on any grounds the Commissioner thinks fit.
- (8) A licence holder who contravenes or fails to comply with a condition of his or her licence is guilty of an offence.

Maximum penalty: \$20 000.

- (9) Subject to this Act, a licence issued or renewed under this section remains in force for the period specified in the licence.
- (10) The Commissioner may renew a licence despite the fact that application for renewal of the licence was made after the end of the previous term of the licence.
- (11) A licence has effect, on issue or renewal, from the date specified in the licence for that purpose (and which may be earlier than the date of application for the issue or renewal of the licence).
- (12) A licence holder may, at any time, by notice in writing to the Commissioner, surrender his or her licence, at which time the licence ceases to have effect.

12—Commissioner may require fingerprints

- (1) If a person applies for a licence, the Commissioner may, by notice in writing, request—
 - (a) if the applicant is a natural person—the person; and
 - (b) if the applicant is a body corporate—each director of the body corporate,to attend at a specified time and place for the purpose of having his or her fingerprints taken.
- (2) If the Commissioner has requested a person to attend for the taking of fingerprints under subsection (1), the Commissioner is not required to consider the application in relation to which the request has been made until the fingerprints have been taken and the results of any analysis or comparison of the fingerprints provided to the Commissioner.

13—Suspension or revocation of licence

- (1) The Commissioner may, by notice in writing given to a licence holder, suspend or revoke the person's licence if the Commissioner is satisfied on reasonable grounds that—
 - (a) the person has contravened this Act; or
 - (b) the person is not, or is no longer, for any reason a fit and proper person to hold a licence; or
 - (c) it is otherwise in the public interest to do so.
- (2) A suspension of a licence—
 - (a) may be made for a specified period or until revoked by the Commissioner; and
 - (b) may operate generally or in relation to a particular aspect of the licence holder's business.

14—Change of information relating to licence

A licence holder must, within 14 days after any change in any information supplied to, or required by, the Commissioner for the purposes of determining an application for a licence under section 11, provide written notice of the change to the Commissioner.

Maximum penalty: \$2 500.

Expiation fee: \$210.

Division 2—Approval of hydroponics industry employees

15—Requirement for approval

- (1) Subject to section 16, a person must not carry out prescribed duties in relation to the sale of prescribed equipment by retail unless the person is approved as a hydroponics industry employee under section 17.
Maximum penalty: \$20 000.
- (2) Subsection (1) does not apply—
 - (a) to a person who is the holder of a hydroponic equipment dealer's licence; or
 - (b) to a director of a body corporate that is the holder of a hydroponic equipment dealer's licence identified, in accordance with section 11(2)(c), in the relevant licence application.
- (3) If a person contravenes subsection (1), the—
 - (a) holder of a hydroponic equipment dealer's licence pursuant to which the prescribed equipment was purportedly sold by retail; and
 - (b) if the licence holder is not the person's employer—relevant employer of the person,are each guilty of an offence.
Maximum penalty: \$20 000.
- (4) It is defence in proceedings for an offence against subsection (3) if the defendant proves that he or she believed on reasonable grounds that the person who contravened subsection (1) was approved as a hydroponics industry employee at the relevant time.

16—Temporary approval on application

A person who—

- (a) has applied for approval as a hydroponics industry employee in accordance with section 17; and
- (b) has not previously been refused approval under section 17 or had his or her approval revoked; and
- (c) is not a person who must be refused approval under section 17(4)(a), (b) or (d),

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 section 17, until the day on which the Commissioner determines the person's application.

17—Commissioner may approve hydroponics industry employees

- (1) The Commissioner may, on application by a natural person, approve the person as a hydroponics industry employee.
- (2) An application for approval must—
 - (a) be made to the Commissioner in the manner and form approved by the Commissioner; and

- (b) be accompanied by the prescribed fee; and
- (c) be accompanied by—
 - (i) if the applicant is a natural person—such photographs of the applicant, and in such form, as may be specified by the Commissioner;
 - (ii) any other information prescribed by the regulations.
- (3) The Commissioner must not approve a person unless the Commissioner is satisfied that the person is a fit and proper person to be involved in the sale of prescribed equipment by retail.
- (4) The Commissioner must refuse to approve a person—
 - (a) if the person has been found guilty of a prescribed offence within the 5 years immediately preceding the application for approval; or
 - (b) if the person is subject to a control order (within the meaning of the *Serious and Organised Crime (Control) Act 2008*); or
 - (c) if it appears to the Commissioner that to approve the person as a hydroponics industry employee would be contrary to the public interest; or
 - (d) for any other reason declared by the regulations to be within the ambit of this subsection.
- (5) Without limiting the matters to which the Commissioner may have regard, the Commissioner may, in determining whether to approve a person, have regard to—
 - (a) the reputation, honesty and integrity of the person; and
 - (b) the reputation, honesty and integrity of people with whom the person associates or has associated.
- (6) An approval is subject to such conditions as may be specified by the Commissioner in the approval.
- (7) The Commissioner may, by notice in writing given to an approved person, vary or revoke a condition of the approval, or impose a new condition, on any grounds the Commissioner thinks fit.
- (8) An approved person who contravenes or fails to comply with a condition of his or her approval is guilty of an offence.
Maximum penalty: \$20 000.
- (9) An approved person may, at any time, by notice in writing to the Commissioner, surrender the approval, at which time the approval ceases to have effect.

18—Commissioner may require fingerprints

- (1) If a person applies for approval, the Commissioner may, by notice in writing, request the person to attend at a specified time and place for the purpose of having his or her fingerprints taken.
- (2) If the Commissioner has requested a person to attend for the taking of fingerprints under subsection (1), the Commissioner is not required to consider the application in relation to which the request has been made until the fingerprints have been taken and any relevant information provided to the Commissioner.

19—Revocation of approval

- (1) The Commissioner may, by notice in writing given to an approved person, revoke the person's approval if the Commissioner is satisfied on reasonable grounds that—
 - (a) the person has contravened this Act; or
 - (b) the person is not, or is no longer, for any reason a fit and proper person to be approved; or
 - (c) it is otherwise in the public interest to do so.
- (2) The Commissioner must, before revoking an approval—
 - (a) give written notice to the person of the proposed revocation, including, subject to section 7, a statement of the reasons that the Commissioner considers justify the revocation; and
 - (b) allow the person a period of 21 days (or such longer period as the Commissioner may in any particular case allow) to show cause why the approval should not be revoked.
- (3) The Commissioner may suspend an approval pending final determination of the question as to whether the approval should be revoked.
- (4) On revoking an approval, the Commissioner must cause notice of the revocation to be given, personally or by post, to all persons affected by the revocation.

Division 3—Appeal

20—Appeal

- (1) A person who is dissatisfied with a decision of the Commissioner under this Part may appeal to the Administrative and Disciplinary Division of the District Court against the decision.
- (2) Subject to subsection (3)(b), an appeal must be instituted within 1 month of the making of the decision appealed against.
- (3) Subject to section 7—
 - (a) the Commissioner must, if so required by the appellant, state in writing the reasons for the Commissioner's decision; and
 - (b) if the reasons of the Commissioner are not given in writing at the time of making the decision and the appellant (within 1 month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the appellant receives the written statement of those reasons.

Part 3—Sales of prescribed equipment

Division 1—Identification

21—Purchaser must produce identification

A person must not sell prescribed equipment by retail to another person (the *purchaser*) unless the purchaser first produces identification that complies with any requirements set out in the regulations.

Maximum penalty: \$20 000.

22—Identification cards

- (1) The Commissioner must issue an identity card in a form approved by the Commissioner to each of the following persons:
 - (a) the holder of a hydroponic equipment dealer's licence (being a licence holder who is a natural person);
 - (b) each director of a body corporate that is the holder of a hydroponic equipment dealer's licence identified, in accordance with section 11(2)(c), in the relevant licence application;
 - (c) each person approved as a hydroponics industry employee under section 17.
- (2) A person to whom an identity card has been issued under this section must carry the card at all times while on premises at which prescribed equipment is sold pursuant to a hydroponic equipment dealer's licence, or while carrying out duties in relation to such sale.

Maximum penalty: \$2 500.
Expiation fee: \$210.
- (3) A person required to carry an identification card under subsection (2) must produce it forthwith if requested to do so by an authorised officer.

Maximum penalty: \$2 500.
Expiation fee: \$210.

Division 2—Record keeping

23—Records of prescribed transactions

- (1) A licence holder must keep the information required by the regulations in relation to each prescribed transaction occurring in the course of, or for the purposes of, the licence holder's business.

Maximum penalty: \$20 000.
- (2) The information required to be kept under subsection (1) must be kept in accordance with any requirements set out in the regulations.

- (3) A licence holder must transfer to the Commissioner, in accordance with any requirements set out in the regulations, the prescribed particulars in respect of each prescribed transaction.

Maximum penalty: \$20 000.

- (4) Without limiting subsection (3), the regulations may require that the prescribed particulars of each prescribed transaction be transferred electronically.

- (5) In this section—

prescribed transaction means—

- (a) the sale of prescribed equipment (whether by retail or wholesale); or
- (b) the purchase of prescribed equipment (whether from a wholesaler or otherwise); or
- (c) any other transaction involving prescribed equipment declared by the regulations to be included in the ambit of this definition.

24—Staffing records

A licence holder must make and retain records in accordance with the regulations in relation to the persons working in, or for the purposes of, the licence holder's business.

Maximum penalty: \$2 500.

Expiation fee: \$210.

Part 4—Enforcement

25—Authorised officers

- (1) The Minister may authorise a person, or a class of persons, to be an authorised officer for the purposes of this Act.
- (2) An authorisation may be made subject to conditions or limitations specified in the instrument of authorisation.
- (3) The Minister may, by notice in writing to an authorised officer, vary or revoke an authorisation, or a condition or limitation of an authorisation, on any grounds the Minister thinks fit.

26—Powers of entry and inspection

- (1) An authorised officer may—
 - (a) enter and remain in or on any premises, place or vehicle that the officer reasonably suspects is used for, or in connection with, carrying on the business of selling prescribed equipment by retail (and, if entry is refused, may employ such force as is reasonably necessary to gain entry); and
 - (b) inspect or search the premises, place or vehicle or any equipment or other thing on the premises, place or vehicle.
- (2) An authorised officer may—
 - (a) inspect any records kept by a licence holder and, for that purpose, require the licence holder, or an employee or agent of the licence holder, to produce the records; and

- (b) examine, copy or take extracts from records kept by a licence holder, or require the licence holder, or an employee or agent of the licence holder, to provide a copy of the records; and
 - (c) remove and retain records kept by a licence holder for so long as is reasonably necessary for the purpose of making a copy of the record.
- (3) An authorised officer may not exercise the power of entry conferred by this section in relation to residential premises except—
 - (a) with the consent of the occupier of the premises; or
 - (b) on the authority of a warrant issued by a magistrate under this section; or
 - (c) if there are reasonable grounds to suspect that the premises are used on a continuing or regular basis for, or in connection with, carrying on the business of selling prescribed equipment by retail.
- (4) A magistrate may issue a warrant for the purposes of this section if satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.
- (5) An authorised officer may, in exercising a power under this section, be accompanied by such assistants as may reasonably be required in the circumstances.
- (6) A person who—
 - (a) hinders an authorised officer in the exercise of powers under this section; or
 - (b) refuses or fails to comply with a requirement made under this section,is guilty of an offence.
Maximum penalty: \$5 000.
- (7) An authorised officer (other than a police officer in uniform) must produce to the person (if any) affording the officer entry to premises under this section a certificate of authority issued to the authorised officer by the Minister.

27—Commissioner may require information from wholesalers

- (1) The Commissioner may, by notice in writing, for any purpose associated with the administration or operation of this Act, require a person carrying on the business of selling prescribed equipment by wholesale to provide the information specified in the notice to the Commissioner in the manner, and within the period, specified in the notice.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under subsection (1).
Maximum penalty: \$5 000.
Expiation fee: \$315.

Part 5—Miscellaneous

28—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this Act.

Maximum penalty: \$20 000.

29—Statutory declaration

If a person is required to provide information to the Commissioner, the Commissioner may require the information to be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been verified in accordance with the requirements of the Commissioner.

30—Liability for act or default of officer, employee or agent

For the purposes of this Act, an act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

31—Offences by bodies corporate

If a body corporate is guilty of an offence against this Act, each director of the body corporate is, subject to the general defence under this Part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

32—Self-incrimination

If a person is required to provide information or to produce a document, record or equipment under this Act and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against Part 3 of this Act, or an offence against this or any other Act relating to the provision of false or misleading information.

33—General defence

It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

34—Annual report

- (1) The Commissioner must, on or before 31 October in each year, submit to the Minister a report on the administration of this Act during the period of 12 months ending on the preceding 30 June.
- (2) The Minister must, within 6 sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

35—Service of documents

- (1) Subject to this Act, a notice or document required or authorised by this Act to be given to or served on a person may—
 - (a) be served on the person personally; or
 - (b) be posted in an envelope addressed to the person—
 - (i) at the person's last known address; or
 - (ii) if the person is a licence holder—at the person's address for service; or
 - (c) if the person is a licence holder—be left for the person at the person's address for service with someone apparently over the age of 16 years; or
 - (d) by transmitting it to the person by fax or email to the fax number or email address last provided to the Commissioner by the person for that purpose.
- (2) The address for service of a licence holder is the address of which the Commissioner has been last notified in writing by the licence holder as the licence holder's address for service.

36—Evidentiary provision

- (1) In proceedings for an offence against this Act, an allegation in the complaint—
 - (a) that a person named in the complaint is or is not, or was or was not on a specified date, the holder of a hydroponic equipment dealer's licence; or
 - (b) that a person named in the complaint is or is not, or was or was not on a specified date, approved as a hydroponics industry employee; or
 - (c) that a specified person is or is not, or was or was not on a specified date, an authorised officer; or
 - (d) that equipment specified in the complaint was prescribed equipment,will be accepted as proved in the absence of proof to the contrary.
- (2) In any legal proceedings, a document apparently certified by the Commissioner to be a licence, approval or other document issued under this Act, or to be a copy of such a licence, approval or other document, will be accepted as such in the absence of proof to the contrary.

37—Review of operation of Act

- (1) The Minister must, as soon as practicable after the third anniversary of the commencement of this section, conduct a review of the operation and effectiveness of this Act.
- (2) The Minister, or any person involved in the conduct of the review, must maintain the confidentiality of information provided to the Minister or other person that is classified by the Commissioner as criminal intelligence.
- (3) The Minister must prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.

38—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) make provision in relation to the electronic transfer of information for the purposes of this Act, including specifying—
 - (i) technical or operational requirements relating to such transfer; or
 - (ii) a particular application, software or device, or a particular class of application, software or device, to be used for that purpose;
 - (b) require licence holders to comply with a code of conduct or practice;
 - (c) make provisions of a savings or transitional nature consequent on the enactment of this Act or the commencement of specified provisions of this Act or specified regulations under this Act;
 - (d) incorporate or operate by reference to a specified code or standard as in force at a specified time or as in force from time to time;
 - (e) fix fees to be paid in respect of any matter under this Act and regulate the recovery, refund, waiver or reduction of such fees;
 - (f) impose a penalty, not exceeding a fine of \$10 000, for contravention of, or non-compliance with, a regulation;
 - (g) fix expiation fees, not exceeding \$315, for alleged offences against the regulations.
- (3) The regulations may—
 - (a) be of general application or limited application;
 - (b) make different provision according to the matters or circumstances to which they are expressed to apply;
 - (c) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a specified class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject;
 - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Commissioner or the Minister.
- (4) If a code or standard is referred to or incorporated in the regulations—
 - (a) a copy of the code or standard must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and
 - (b) evidence of the contents of the code or standard may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code or standard.

Schedule 1—Transitional provisions

1—Existing hydroponics businesses

- (1) Subject to this clause, a person who, immediately before the commencement of this clause, was carrying on the business of selling hydroponic equipment by retail and who is not a person who must be refused a licence under section 11(4)(a), (b) or (d) may—
 - (a) carry on the business of selling prescribed equipment by retail; and
 - (b) hold himself or herself out as carrying on such a business; and
 - (c) carry out prescribed duties (within the meaning of section 15) in relation to the sale of prescribed equipment by retail,as if he or she were licensed under section 11.
- (2) A person may only carry on the business of selling prescribed equipment by retail pursuant to this clause until—
 - (a) the Commissioner issues a hydroponic equipment dealer's licence to the person under section 11; or
 - (b) the Commissioner refuses to issue a hydroponic equipment dealer's licence to the person under section 11; or
 - (c) the expiration of 3 months after the commencement of this clause,whichever occurs first.

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.

Principal Act

| Year | No | Title | Assent | Commencement |
|------|----|--|-----------|---|
| 2009 | 49 | <i>Hydroponics Industry Control Act 2009</i> | 5.11.2009 | 1.3.2010 (<i>Gazette 14.1.2010 p50</i>) |