

South Australia

Primary Industry Funding Schemes (Deer Industry Fund) Regulations 2002

under the *Primary Industry Funding Schemes Act 1998*

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Part 1—Preliminary

1—Citation

These regulations may be cited as the *Primary Industry Funding Schemes (Deer Industry Fund) Regulations 2002*.

2—Commencement

These regulations will come into operation on the day on which clause 1(e) of Schedule 2 of the *Livestock Act 1997* comes into operation.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Primary Industry Funding Schemes Act 1998*;

carcass of a deer includes the hide of the deer;

Chief Inspector means the Chief Inspector of Stock appointed under the *Livestock Act 1997*;

consultative committee—see regulation 5;

deer means an animal of the family *Cervidae*;

Fund—see regulation 4;

inspector means an inspector appointed under the *Livestock Act 1997*;

large species deer means deer of the species *Javan Rusa*, *Wapiti*, *Elk*, *Sambar* or *Red*;

Livestock Regulations means the *Livestock Regulations 1998* (see *Gazette 22.1.1998 p288*), as varied;

net proceeds, in relation to the sale of the carcass of a deer, means the gross proceeds of the sale less any expenses incurred in relation to transportation and slaughter of the deer and sale of the carcass of the deer;

owner of deer means a person who owns or is entitled to possession of the deer (whether alone or jointly or severally with others);

registration fee for a registration period means the fee payable for an application for registration or renewal of registration in respect of that period under the *Livestock Regulations*;

registration period for deer means a period for which a person is registered as a keeper of the deer under the *Livestock Act 1997*;

small species deer means deer of the species *Fallow*, *Chittal*, *Moluccan Rusa* or any other species of deer excluding large species deer.

Part 2—South Australian Deer Industry Fund

4—Establishment of Fund

- (1) The *South Australian Deer Industry Fund* (the *Fund*) is established.
- (2) The Fund will be administered by the Minister.
- (3) The Fund consists of—
 - (a) the amount in the compensation fund on the repeal of the *Deer Keepers Act 1987* paid into the Fund under the *Livestock Regulations*; and
 - (b) contributions paid or collected in accordance with these regulations; and
 - (c) net proceeds of sales paid into the Fund under Part 3; and
 - (d) income of the Fund from investment; and
 - (e) any other money received by the Minister for payment into the Fund.

5—Consultative committee to advise on application of Fund

The Deer Advisory Group, established by the Minister under Part 2 of the *Livestock Act 1997* to represent the deer industry, will be the consultative committee to advise the Minister in relation to the application of the Fund.

6—Contributions to Fund

- (1) The following contributions are payable to the Minister for payment into the Fund by the owner of deer for each registration period for the deer:
 - (a) an amount calculated at 30 cents for each large species deer, and 15 cents for each small species deer owned or expected to be owned by the person at the commencement of the registration period; or
 - (b) if the amount calculated in accordance with paragraph (a) would be more than \$200—\$200; or
 - (c) if the amount calculated in accordance with paragraph (a) would be less than \$10—\$10.
- (2) A person may elect to pay a contribution to the Fund under this regulation exceeding an amount calculated in accordance with subregulation (2)(a) but not exceeding \$200.
- (3) The contributions for a registration period are payable at the same time as registration fees for that registration period are payable.
- (4) A person may, by notice in writing to the Minister, within a 12 month period following a registration period in respect of which the person has paid contributions, make a claim for a refund in respect of those contributions.
- (5) If the person satisfies the Minister that the person is entitled to a refund, the Minister must pay to the person an amount determined in accordance with the following formula:

$$R = C + \left(C \times \frac{M_1}{12} \times I_1 \right) + \left(C \times \frac{M_2}{12} \times I_2 \right)$$

where—

R is the amount of the refund;

C is the amount of the contributions paid by the person in respect of the registration period for which the claim is made;

M₁ is the number of whole months for which the person was registered as a deer keeper (and had paid contributions) in the first 12 months of the registration period in respect of which the claim is made;

I₁ is the annual short term interest rate for the financial year that comprises or ends in the first 12 months of the registration period in respect of which the claim is made (as published by the Reserve Bank of Australia) expressed as a percentage;

M₂ is the number of whole months for which the person was registered as a deer keeper (and had paid contributions) in the second 12 months of the registration period in respect of which the claim is made;

I₂ is the annual short term interest rate for the financial year that comprises or ends in the second 12 months of the registration period in respect of which the claim is made (as published by the Reserve Bank of Australia) expressed as a percentage.

7—Application of Fund

- (1) The Fund may be applied by the Minister for any of the following purposes:
 - (a) payment of outstanding claims for compensation made or pending against the Deer Compensation Fund under the repealed *Deer Keepers Act 1987*;
 - (b) payment of compensation and other amounts under Part 3;
 - (c) the undertaking of programs relating to deer, deer products or any other aspect of the deer industry recommended to the Minister by the consultative committee;
 - (d) repayment of contributions to the Fund under regulation 6;
 - (e) payment of the reasonable operating and management expenses of the Deer Advisory Group (whether sitting as the Deer Advisory Group under the *Livestock Act 1997* or as the consultative committee under these regulations);
 - (f) payment of the expenses of administering the Fund (including expenses incurred in assessing compensation payable under these regulations and expenses incurred by an inspector under regulation 9 if those expenses exceed the proceeds of sale obtained under that regulation).
- (2) A person who has refused or failed to pay contributions under this Part or who has received a refund under regulation 6 is not entitled to any direct service or benefit under a program funded under subregulation (1)(c) for a period of 2 years from the date on which the contributions (that were not paid, or refunded) fell due.
- (3) The Minister must, from time to time, determine an amount to be set aside in the Fund for the purposes of payments of compensation and other amounts under Part 3.

Part 3—Compensation scheme

8—Claim for compensation

- (1) Subject to these regulations, the owner of deer destroyed in accordance with a notice or order issued under Division 4 of Part 4 of the *Livestock Act 1997*, or by action taken or caused to be taken by an inspector under that Division, for the purposes of controlling or eradicating Tuberculosis may claim compensation for the deer.
- (2) Only one claim may be made in respect of a deer.
- (3) A claim for compensation may not be made in respect of deer unless, immediately prior to the destruction of the deer, the deer were kept by a person registered under the *Livestock Act 1997* as a deer keeper.

9—Sale of carcass of destroyed deer

If a notice or order is issued or action taken or caused to be taken in relation to a deer as referred to in regulation 8(1), the following provisions apply:

- (a) an inspector may give the owner of the deer written notice requiring the owner to assign the deer to the Minister;
- (b) if such a notice is given, a claim for compensation cannot be made under these regulations unless the owner complies with the notice;
- (c) if the owner of the deer assigns the deer to the Minister—

- (i) an inspector must ensure that the deer is destroyed;
- (ii) an inspector may sell or otherwise dispose of the carcass of the deer as the inspector considers appropriate;
- (iii) the net proceeds of the sale (if any) must be paid into the Fund;
- (iv) if the owner of the deer makes a claim for compensation under these regulations and the net proceeds of the sale exceed the amount of compensation paid in respect of the deer under these regulations, the excess must be paid from the Fund to the owner;
- (v) if no claim for compensation under these regulations is made in respect of the deer during the period allowed by these regulations, the amount of the net proceeds of the sale must be paid from the Fund to the owner of the deer.

10—Amount of compensation

- (1) Subject to this regulation, the amount of compensation that may be claimed for a deer is the lesser of—
 - (a) \$400; or
 - (b) the value of the deer (for meat) immediately before its destruction.
- (2) If the deer was not assigned to the Minister or the deer was assigned to the Minister but the net proceeds of the sale of the carcass of the deer have been paid from the Fund to the owner of the deer under regulation 9(c)(v), the amount of compensation that may be claimed is reduced by the amount of the net proceeds (if any) of the sale of the carcass of the deer.
- (3) A deer is to be valued—
 - (a) as if it were unaffected by Tuberculosis; and
 - (b) having regard to the value of comparable deer (for meat) at the nearest most recent markets selling such deer for meat, whether those markets are in the State or in any other State or Territory of the Commonwealth; and
 - (c) using a method of valuation determined by the Minister after consultation with the consultative committee.
- (4) Compensation may not include any amount for loss of profit or production, loss arising from breach of contract or other consequential loss.
- (5) If the owner of a deer has been paid compensation or is entitled to compensation in respect of the deer under any other law, the amount of compensation that may be claimed under these regulations is reduced by the amount so paid or to which the owner is so entitled.

11—Procedure for making claim and determination of claim

- (1) A claim for compensation must be made to the Chief Inspector within one month after the issuing of the notice or order for destruction of the deer or the destruction of the deer by the inspector (as the case requires).
- (2) The Chief Inspector may, if satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that a claim be made within the period fixed by this regulation.

- (3) A claim for compensation must be made in the form and contain or be accompanied by the information required by the Chief Inspector (including, if the deer was not assigned to the Minister, information relating to the proceeds (if any) of the sale of the carcass of the deer).
- (4) The Chief Inspector may, with the approval of the Minister, determine that no compensation, or a reduced amount of compensation, is payable to a claimant if the Chief Inspector is satisfied that—
- (a) the deer was visibly affected by Tuberculosis and the owner failed to notify an inspector of that fact; or
 - (b) the owner (or a person who kept the animal on behalf of the owner) failed to carry out any written direction of an inspector for the control or eradication of Tuberculosis and that the failure was a probable cause of the deer being affected by the disease; or
 - (c) the owner (or a person who kept the animal on behalf of the owner) failed to take reasonable steps to minimise the risk of deer affected by Tuberculosis being introduced into the owner's herd or the deer otherwise becoming affected by Tuberculosis; or
 - (d) the deer was destroyed within three months of being introduced into South Australia and was likely to have been affected by Tuberculosis when so introduced; or
 - (e) the aggregate number of deer destroyed in the registration period and for which claims have been made by the owner is such that, if contributions were paid to the Fund for that number of deer at the rate of 30 cents for each large species deer and 15 cents for each small species deer, the contributions would exceed the actual contributions paid to the Fund by the owner for that registration period; or
 - (f) the owner (or a person who kept the animal on behalf of the owner) has refused or failed to pay contributions as required under Part 2; or
 - (g) the owner (or a person who kept the animal on behalf of the owner) has, at his or her request, been refunded contributions under regulation 6, at any time within the period of 2 years immediately preceding the claim for compensation.
- (5) Before the Minister gives approval under subregulation (4), the Minister must consult the consultative committee.
- (6) The Chief Inspector must, by written notice, inform the claimant, the Minister and the consultative committee of the Chief Inspector's determination of the claim.
- (7) The claimant may, within one month after receiving notice of the amount of compensation to be paid, object in writing to the Minister to the proposed amount on the grounds set out in detail in the objection.
- (8) If an objection is not made within the time allowed, the claimant's entitlement to compensation is finally determined for the purposes of these regulations.
- (9) If an objection to a proposed amount of compensation is made, the Minister may, after consulting the consultative committee—
- (a) affirm the decision against which the objection is made; or

- (b) rescind the decision and substitute a decision that the Minister considers appropriate.
- (10) A decision of the Minister after consideration of an objection is final and without appeal.

Part 4—Miscellaneous

12—False or misleading statements

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 information provided, or record kept, for the purposes of these regulations.

Maximum penalty: \$5 000.

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 regulations

Year	No	Reference	Commencement
2002	174	<i>Gazette 29.8.2002 p3270</i>	1.9.2002: r 2