



SOUTH AUSTRALIA POLICE
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Overview of the Hydroponics Industry Control Act, 2009

Introduction

This overview is intended to assist Hydroponic Industry dealers and employees in the understanding of obligations under the Hydroponics Industry Control Act, 2009 and regulations. It is a summary of the main provisions of the legislation only and all prospective licensees should take steps to familiarise themselves with the legislation.

This Act commenced on 1 March 2010 and all parts of the Act and Regulations come into force as of 1 June 2010.

The Hydroponics Industry Control Act is available in full at www.legislation.sa.gov.au

It is important to note the provisions applicable to persons who **MUST BE REFUSED A LICENCE** who **CANNOT** carry on the business of selling prescribed equipment by retail as of the commencement of the Act.

Prescribed Equipment

The Hydroponics Industry Control Regulations define prescribed equipment.

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;

Licences

Under Section 11 of the Act it is an offence for a person to carry on the business of selling prescribed equipment by retail; or hold himself or herself out as carrying on such a business unless the person holds a licence.

sell includes—

- auction, barter, exchange or let on hire; or
- offer for sale, auction, barter, exchange or letting on hire; or
- cause or permit to be offered for sale, auction, barter, exchange or letting on hire; or
- possess for the purposes of sale, auction, barter, exchange or letting on hire;



Licence applications

The Commissioner of Police holds the responsibility for issuing Hydroponics Dealer's Licences. The application for a licence must—

- be in the form approved by the Commissioner;
- be accompanied by the prescribed fee;
- if the applicant is a body corporate, identify each director of the applicant;
- be accompanied by a photograph of the applicant, or photographs of each director and
- any other information prescribed by the regulations.

The Commissioner **must not** issue a licence to a person, or renew a person's licence, unless the Commissioner is satisfied that—

- the person is a fit and proper person to hold a licence; or
- if the applicant is a body corporate—each director of the applicant is a fit and proper person to hold a licence.

The Commissioner **must refuse** to issue a licence to a person, or to renew a person's licence—

- if the person has been found guilty of a **prescribed offence** within the 5 years immediately preceding the application; or
- if the person is subject to a control order (within the meaning of the *Serious and Organised Crime (Control) Act 2008*); or
- if any director of the applicant has been found guilty of a prescribed offence within the 5 years immediately preceding the application; or
- 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
- if it appears to the Commissioner that to grant the application would be contrary to the public interest; or

The Commissioner may, in deciding whether to issue or renew a licence, have regard to—

- the reputation, honesty and integrity of the person; and
- the reputation, honesty and integrity of people with whom the person associates or has associated.

A licence is subject to such conditions as may be specified by the Commissioner in the licence and may vary or revoke a condition of the licence, or impose a new condition.

Subject to Section 12 of the Act, the Commissioner may also request an applicant for a licence to provide his or her fingerprints. The same applies to each director of a body corporate making application.





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Each licence holder or director of a body corporate holding a licence will be issued with an identity card which must be carried at all times whilst the person is on premises at which prescribed items are sold or whilst carrying out prescribed duties at such premises.

Transitional Provisions

A Transitional period was available to businesses or persons who, immediately before the commencement of the Act, was carrying on the business of selling hydroponic equipment by retail. This did not apply to a person who must be refused a licence.

This Transitional period has now expired and as of 1 June 2010, it is unlawful for any person or business to sell prescribed hydroponic equipment by retail without a hydroponic equipment dealer's licence or Ministerial Exemption.

Persons who must be refused

The Commissioner **must refuse** to issue a licence to a person

- if the person has been found guilty of a prescribed offence within the 5 years immediately preceding the application; or
- if any director of the applicant has been found guilty of a prescribed offence within the 5 years immediately preceding the application.

*This means that existing Hydroponic business falling within the above category **CANNOT** carry on the business of selling prescribed equipment by retail as of the commencement of the Act.*

Hydroponics Industry Employees

The Commissioner of Police has the responsibility for issuing Hydroponics Industry Employee approvals.

Subject to Section 16 of the Act, 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.

Persons holding a hydroponic dealer's licence or are directors of a body corporate which holds a hydroponics dealer's licence are not required to be further approved and may carry out the same prescribed duties as a hydroponics industry employee.

Similar rules to issuing Dealer's licences apply to issuing approvals, including:

- fitness and propriety testing;
- persons who must be refused an approval;
- payment of fees; and
- fingerprinting and photographing of applicants.





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A hydroponics industry employee who applies for approval, who has not previously been refused and is not a person who must be refused an approval, may carry on prescribed duties as if he or she was approved, until such time as the Commissioner determines the person's application.

Identity Cards

Each approved employee will be issued with an identity card which must be carried at all times whilst the person is on premises at which prescribed items are sold or whilst carrying out prescribed duties at such premises. Licence holders and directors of bodies corporate who hold a licence will also be issued identity cards.

Sale of Prescribed Equipment

In accordance with Section 21 of the Act, a person must not sell prescribed equipment by retail to another person unless the **purchaser** first produces identification as outlined in regulations.

The regulations list acceptable documents to establish the identity of the purchaser.

Record Keeping

In accordance with Section 23 of the Act, a licence holder must keep records as prescribed in the regulations in relation to each **prescribed transaction** occurring in the course of or for the purpose of the licence holder's business.

Prescribed transaction means:

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

Transfer of Records to Police

A licence holder must transfer to the Commissioner of Police the prescribed particulars of each prescribed transaction. Not all records required to be kept will necessarily have to be transferred to Police. Details of the purchase and purchaser of prescribed hydroponic equipment will be required to be transferred to Police within 3 days of the transaction. You will need access to a computer or other device with internet capability to achieve this.

If you are granted a Licence or are required to transfer details to Police, information and assistance will be supplied on how to achieve this.





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Staffing Records

Under Section 24, licence holders must make and retain records in relation to the persons working in, or for the purpose of, the licence holder's business. This includes approved employees and any other persons employed in the business.

Appeals

Section 20 of the Act outlines appeals against the Commissioner's decision concerning the granting of licences and approvals.

- A person who is dissatisfied with a decision of the Commissioner may appeal to the Administrative and Disciplinary Division of the District Court against the decision.
- An appeal must be instituted within 1 month of the making of the decision appealed against.
- The Commissioner must, if so required by the appellant, state in writing the reasons for the decision.

Application Process

Information concerning the application process for Hydroponic Industry Dealer's Licences and Hydroponic Industry Employee Approvals is available on the Hydroponics page of the Services section at the South Australia Police website www.police.sa.gov.au.

If a licence or approval is subsequently determined and refused, both the business and the employee must cease trading in prescribed equipment

Exemptions

Section 9 will allow the Minister for Police to grant exemptions from the Act. The process of exemption exists as it is recognised some of the proposed items of prescribed equipment have legitimate uses not necessarily related to the retail hydroponics industry. This may include use in lighting, major electrical and hardware businesses. In these cases, and subject to the circumstances in which the items are sold, the Minister may consider granting an exemption to particular businesses with or without conditions.

Businesses selling *prescribed hydroponics equipment* by retail are required to be licensed in accordance with the Act. However, if you believe that your business may qualify for an exemption, you can apply to the Minister for an exemption. All such applications will be considered on an individual basis and will most likely take into account the primary purpose and nature of the business, prescribed equipment intended to be sold and the purpose for which 'prescribed equipment' is promoted or advertised by the business.





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The requirement to be licensed under the Hydroponics Industry Control Act will relate to carrying on the business of selling *prescribed equipment* by retail. Businesses who sell prescribed equipment by **wholesale only** will not need to be licensed or granted an exemption.

Further information concerning Ministerial Exemptions, can be found on the Hydroponics page of the Services section at the SAPOL website www.police.sa.gov.au.

Enforcement

Police and other persons authorised by the Minister, have powers of entry and inspection under Section 26 of the Act. These powers include:

- authority to enter and remain on premises, places or vehicles reasonably suspected of being used in connection with selling prescribed equipment by retail;
- inspection or searching the premises, place or vehicle;
- inspecting records kept by the licence holder and requesting production of the records;
- examining, copying or taking extracts from those records or require the licence holder or employee of the licence holder to provide copies;
- removing and retaining such records for a reasonable time to make copies.

Similar authority exists in relation to residential premises but only:

- with the consent of the occupier or
- on the authority of a warrant issued by a magistrate or
- if it is suspected on reasonable grounds the residential premises are used continually or regularly for carrying of the business of selling prescribed equipment by retail.

Authorised officers may be accompanied by such assistants as may reasonably be required. It is an offence to hinder an authorised officer in exercise of the powers under this Section of the Act.

If you are unsure as to the legal consequences of the new legislation it is recommended that you seek independent legal advice.