



**SOUTH AUSTRALIA POLICE**  
KEEPING SA SAFE

## **Hydroponics Industry Control Act, 2009** **Frequently Asked Questions**

### **Introduction**

This document is intended to assist Hydroponic Industry dealers and employees in the understanding of obligations under the Hydroponics Industry Control Act, 2009 and regulations. It should be read in association with other documents which can be found on the Hydroponics page of the Services section of the South Australia Police website. ([www.police.sa.gov.au](http://www.police.sa.gov.au))

The Act and regulations can be viewed at [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au)

This Act commenced on 1 March 2010.

**Q 1** Why was the Hydroponics Industry Control Act brought in?

**A** The purpose of the Act is to prevent criminal infiltration of the hydroponics industry and the misapplication of certain types of hydroponics equipment by monitoring its sale and supply. The Act is part of a series of measures implemented by the Government designed to reduce the impact of drugs on the South Australian community.

**Q 2** Which parts of the hydroponics industry are affected by the Act?

**A** Any person who, or business which sells prescribed hydroponics equipment by retail is required to be licensed.

This includes businesses which sell this equipment by way of Internet sales.

**Q 3** What is *prescribed hydroponics equipment*?

**A** Under the 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.

The following hydroponics equipment is ***prescribed equipment***.

- metal halide lights, high pressure sodium lights and mercury vapour lights of 400 watts or greater;
- ballast boxes designed or intended for use in association with the above lights;
- devices (including control gear, lamp mounts and reflectors) designed to amplify light or heat and capable of being used with the above lights;
- carbon filters designed to filter air within a room, or from one area of a building to another or to outside;



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- 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.

**Q 4** Does this mean electrical equipment businesses which may sell such things as the lights and shades also have to be licensed?

**A** Any business which sells any of the prescribed equipment falls within the ambit of this Act no matter whether the business sells only one or two items of prescribed equipment.

**Q 5** Is this consistent with the Government's desire to reduce the impact of drugs in the community?

**A** A business may apply to the Minister for Police for an exemption to the Act if it can be shown, for example, the sale of prescribed equipment is intended for legitimate uses not connected to the manufacture or cultivation of illicit drugs. 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.

**Q 6** How would I apply for such a Ministerial Exemption?

**A** The SAPOL internet site outlines this procedure and contains a guide as to the type of information to be included in any application.

**Q 7** I own a hydroponics business which has been trading for many years. Do I have to apply for a licence under this Act or will you just send me one.

**A** The Act commenced on 1 March 2010 as of that date if you sell prescribed hydroponic equipment by retail you need to be licensed under this Act.

You should also make yourself familiar with provisions relating to persons who ***must be refused a licence*** within this document.

**Q 8** How do I go about applying for a hydroponic equipment dealer's licence?

**A** The Commissioner of Police holds the responsibility of administration of the licensing regime. This authority is delegated to the Assistant Commissioner, Operations Support Service. Your application will be processed by SAPOL's Licensing Enforcement Branch who will forward the application to the Assistant Commissioner for determination. Each applicant for a dealer's licence will be required to:

- complete an application form;
- undergo a fit and proper person test;
- have his or her fingerprints and photograph taken, and
- pay the application and annual fee.





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If the licence holder is a body corporate, then each director will be subjected to the same requirements, although only one application and annual fee is payable.

**Q 9** What are the fees?

**A** The fees are:

Application for hydroponic equipment dealer's licence—  
if the applicant is a body corporate \$651  
if the applicant is a natural person \$401

Annual fee for licence holders—  
if the licence holder is a body corporate \$713  
if the licence holder is a natural person \$546

Application for approval as hydroponics industry employee \$401  
Annual fee for approved person \$260

**Q 10** So, as long as I make application and pay the fees, I will be granted a licence?

**A** In determining the grant of a licence, the Commissioner of Police will take into account:

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

In addition, 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.





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**Q 11** What are *prescribed offences*?

- A** Prescribed offences are declared in the regulations and include:
- any offence against Part 5 of the Controlled Substances Act, including, other than simple possession, offences relating to possession, trafficking, manufacturing, producing or supply of controlled drugs, plants or equipment;
  - manufacturing, sale or supply or possession or storage of precursors;
  - sale of drug paraphernalia;
  - offences of a like kind in any corresponding legislation from any State or Territory;
  - conspiracy, or attempting, any of the above offences.

**Q 12** What happens if I am refused a licence?

- A** You will be advised in writing of the refusal and the reason(s) for this refusal. If you are refused a licence, you will be unable to sell prescribed hydroponic equipment by retail.

You will also be entitled to a refund of the annual fee following the expiry of the appeal period (one month from the date of the refusal.) Application fees are non-refundable.

**Q 13** Do I have any right of appeal?

- A** 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.
  - a fee is payable to lodge such an Appeal.

**Q 14** I have an existing hydroponics store. I am the sole owner but have a number of staff members working for me in the business. How does this Act affect them?

- A** The Act states 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.

**Q 15** What are prescribed duties?

- A** Prescribed duties include:
- selling, or takes any part in the sale of, prescribed equipment by retail;
  - purchasing or ordering prescribed equipment for, or on behalf of, the holder of a dealer's licence;
  - providing services of any kind in relation to the sale of prescribed equipment to a customer or potential customer of the holder of a





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dealer's licence, whether the licence holder is the person's employer or otherwise;

- being an employee of the holder of a dealer's licence, delivers prescribed equipment to, or for, or on behalf of, the licence holder.

**Q 16** How do my employees gain approval?

- A** 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.

**Q 17** What if my employee is refused approval. Can he or she still work in my store?

- A** Yes, just as long as he or she is not involved in any prescribed duties.

**Q 18** How do I become licensed and have my staff approved to comply with the Act, especially if I am starting a new business?

- A** You cannot sell prescribed hydroponics equipment by retail without a licence, nor can your employees conduct prescribed duties without approval. You and your staff may continue to sell non-prescribed equipment within your business or if you are commencing a new business, sell other hydroponics related products other than prescribed hydroponics equipment prior to being issued a licence and your staff, their approvals. Once licensed and staff approved, you may then sell prescribed hydroponic equipment by retail.

**Q 19** Who are persons who must be refused a licence?

- A** 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 existing Hydroponic businesses falling within the above category **CANNOT** carry on the business of selling prescribed equipment by retail as of the commencement of the Act.*

**Q 20** How will customers know I am and my employees are licensed / approved under the Act?

- A** 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 and must carry them under the same circumstances.





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**Q 21** What else does this Act require me to do?

**A** There are requirements regarding the making and keeping of records and these are outlined in the regulations. They include:

- records of ALL staff, not only approved staff, and
- records of all prescribed transactions including to whom you have sold prescribed equipment.

**Q 22** How will I know the details of customers buying my products?

**A** There are requirements for customers to produce appropriate identification before making a purchase of prescribed equipment, including photographic I/D and other recognised documents. These details will need to be obtained and recorded by the licence holder.

**Q 23** What am I expected to do with all these records?

**A** Details of the purchase and purchaser of prescribed hydroponic equipment are 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.

**Q 24** This all seems to be targeted at driving me out of my business just because some of my customers grow drugs; something out of my control. In brief terms what are my options in this industry?

**A** Put simply your options are either:

- continue trading or commence trading in other items and goods other than prescribed hydroponic equipment; or
- apply and be granted a licence and employee approvals, continue to trade in all hydroponic equipment and comply with all provisions of the Act.

**Q 25** How do I go about applying for a licence and /or employee approval?

**A** Information concerning the application process for Hydroponic Equipment Dealer's Licences and Hydroponics Industry Employee Approvals are available on the Hydroponics page of the Services section at the South Australia Police website. ([www.police.sa.gov.au](http://www.police.sa.gov.au))

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

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

