



FRUIT AND PLANT PROTECTION ACT 1992

No. 67 of 1992

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ELIZABETHAE II REGINAE

A.D. 1992

No. 67 of 1992

An Act to provide for the protection of fruit and plants from disease; to repeal the Fruit and Plant Protection Act 1968, the Fruit and Vegetables (Prevention of Injury) Act 1927, the Fruit Fly Act 1947 and the Sale of Fruit Act 1915; to make consequential amendments to the Phylloxera Act 1936; and for other purposes.

[Assented to 19 November 1992]

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Fruit and Plant Protection Act 1992*.

Commencement

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

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“Chief Inspector” means the Chief Inspector appointed under Part 2;

“disease” means—

(a) any bacterium, fungus, insect, mite or other arthropod, protozoan, virus or other organism or pathogen;

or

(b) any other condition,

affecting a fruit or plant, declared by the Minister under this Part to be a disease;

“fruit” includes any part of a fruit;

“inspector” means a person appointed as an inspector under Part 2;

“packaging” includes the whole or any part of a package, container, covering, packing or material of any description that is being or has been used to cover or contain a fruit or plant;

“plant” means—

(a) the whole or any part of a tree, vine, flower, shrub, vegetable or other vegetation;

(b) any material used for the propagation of a tree, vine, flower, shrub, vegetable or other vegetation,

whether alive or dead (including timber that has been sawn or dressed);

“quarantine station” means a place declared by the Minister under this Part to be a quarantine station;

“sell” includes possess, offer, display or consign for sale;

“vehicle” includes an aircraft, train or a vessel.

(2) For the purposes of this Act—

(a) soil will be taken to be affected by disease if a plant affected by disease has been growing in the soil;

(b) packaging or any other thing will be taken to be affected by disease if the packaging or other thing has been used to contain or cover, or has been in contact with, a fruit, plant or soil affected by disease.

NOTE: For definition of divisional penalties and expiation fees see Appendix.

Disease

4. (1) For the purposes of this Act, the Minister may, by notice in the *Gazette*, declare that a condition of fruit or plants is a disease.

(2) The Minister may, by notice in the *Gazette*, vary or revoke a notice under subsection (1).

Quarantine stations

5. (1) The Minister may, by notice in the *Gazette*, declare a place to be a quarantine station in which fruit, plants, soil, packaging or other thing may, subject to this Act, be held, examined, disinfected, treated, destroyed or otherwise disposed of.

(2) The Minister may, by notice in the *Gazette*, vary or revoke a notice under subsection (1).

PART 2
ADMINISTRATION

Appointment of inspectors

6. (1) The Minister may, by instrument in writing, appoint persons to be inspectors for the purposes of this Act.

(2) An appointment under subsection (1) may be conditional.

(3) The Minister must provide an inspector with a certificate of appointment setting out any conditions attaching to the appointment.

(4) An inspector must, at the request of a person in relation to whom the inspector has exercised or intends to exercise powers under this Act, produce the inspector's certificate of appointment.

Chief Inspector and deputy

7. (1) The Minister may, by instrument in writing, appoint a person to be the Chief Inspector for the purposes of this Act.

(2) The Minister may, by instrument in writing, appoint a person to be the deputy of the Chief Inspector, and a person so appointed has, while acting in the absence of the Chief Inspector, all the powers and functions of the Chief Inspector under this or any other Act.

Delegation by Chief Inspector

8. (1) The Chief Inspector may delegate to any person (including an inspector) any of the Chief Inspector's powers or functions under this Act.

(2) A delegation under this section—

(a) may be subject to such conditions as the Chief Inspector thinks fit;

(b) is revocable at will;

(c) does not derogate from the power of the Chief Inspector to act in any matter himself or herself.

General powers of inspectors

9. (1) An inspector may, for the purposes of exercising any power conferred on the inspector by this Act or determining whether this Act is being or has been complied with—

(a) enter and search any land, premises, vehicle or place;

(b) where reasonably necessary, break into or open any part of, or anything in or on, the land, premises, vehicle or place or, in the case of a vehicle, give directions with respect to the stopping or moving of the vehicle;

(c) take photographs, films or video recordings;

(d) require a person—

(i) to answer a question to the best of that person's knowledge, information and belief;

(ii) to take reasonable steps to provide information;

(e) require a person to produce any books, documents or records in his or her possession or control;

(f) require a person to produce any information stored by computer, microfilm or by any other process;

(g) examine, copy and take extracts from any books, documents, records or information produced under this section or require a person to provide a copy of any such book, document, record or information.

(2) An inspector may—

(a) identify, by marking or otherwise, any land, building or other structure, fruit, plant, soil, packaging or thing in respect of which powers have been exercised under this Act;

(b) require the owner of any fruit, plant, soil, packaging or other thing to deliver it to a quarantine station;

(c) seize and retain anything that may constitute evidence of the commission of an offence against this Act;

(d) seize any fruit, plant, soil, packaging or other thing brought into a place, removed from a place, or moved from one place to another, in contravention of this Act;

(e) use reasonable force to prevent the commission of an offence against this Act.

(3) An inspector must not exercise the power conferred by subsection (1) (b) in relation to any residential premises except on the authority of a warrant issued by a justice.

(4) A justice must not issue a warrant under subsection (3) unless satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.

(5) Where an inspector seizes any fruit, plant, soil, packaging or other thing under subsection (2) (d), the inspector may do one or more of the following in relation to the fruit, plant, soil, packaging or other thing:

(a) retain it;

(b) cleanse, disinfect or otherwise treat it or subject it to treatment;

(c) submit it for scientific testing and analysis for the purposes of determining whether it is affected by disease or a chemical residue;

(d) return it to its owner subject to any specified conditions (including conditions requiring payment of costs and expenses reasonably incurred in taking action in relation to it under this section);

(e) destroy or otherwise dispose of it.

(6) A person may be required to answer a question put by an inspector or to produce books, documents, records or information notwithstanding that the answer to the question or the contents of the books, documents, records or information would tend to incriminate him or her of an offence.

(7) If a person objects to answering a question or to producing books, documents, records or information of a kind referred to in subsection (6), the answer to the question or the contents of the books, documents, records or information are not admissible against that person in criminal proceedings (except in proceedings for an offence under this Act of making a false or misleading statement).

(8) An occupier of land or premises or a person apparently in charge of a vehicle must, at the request of an inspector who is exercising or proposing to exercise any powers under this Act in connection with the land, premises or vehicle, or any fruit, plant, soil, packaging or other thing on the land or premises or in the vehicle, give to the inspector, or a person assisting the inspector, such assistance and provide such facilities as the inspector may reasonably require for the effective exercise of those powers.

(9) An inspector, or a person assisting an inspector, who—

(a) addresses offensive language to any other person;

or

(b) without lawful authority or a reasonable belief as to lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Penalty: Division 6 fine.

Immunity

10. (1) An inspector incurs no civil or criminal liability for an act or omission in good faith in the exercise or performance, or purported exercise or performance, of a power or function under this Act.

(2) A civil liability that would, but for subsection (1), lie against a person lies against the Crown.

PART 3

DISEASE CONTROL

DIVISION 1—REPORTING AND INVESTIGATION

Reporting

11. (1) Where a person knows or has reason to suspect that fruit or plants owned by the person, or in the person's possession or control, are affected by disease, the person must—

(a) report the matter to an inspector by the quickest practicable means;

(b) furnish the inspector with such further information as the inspector may reasonably require;

and

(c) take all reasonable measures to prevent the spread of the disease.

Penalty: Division 4 fine.

(2) A report is not required under this section with respect to a particular matter if the person knows or reasonably believes that the matter has already been reported to an inspector.

(3) A person who grows, propagates or processes fruit or plants for profit or gain will, if the fruit or plants are affected by disease, be taken to know or have reason to suspect that the fruit or plants are so affected in the absence of proof to the contrary.

Investigation

12. (1) An inspector may carry out an investigation as reasonably necessary for the purposes of—

(a) determining whether fruit or plants are affected by disease;

(b) identifying or tracing any cause or source or potential cause or source of disease.

(2) An inspector may, for the purposes of an investigation under this section, examine, take samples from or test any insect, fruit, plants, soil, packaging or other thing.

DIVISION 2—CONTROL AND PREVENTION

Prohibition on introducing or importing fruit, plants, etc. affected by disease

13. (1) Subject to this section, a person must not introduce or import into the State a disease, or any fruit, plant, soil, packaging or other thing affected by disease.

(2) The Minister may, by notice in the *Gazette*, declare that the introducing or importing into the State of any fruit, plant, soil, packaging or other thing of a specified kind that the Minister reasonably suspects is or might be affected by disease is prohibited absolutely or subject to exceptions and conditions specified in the notice.

(3) The Minister may, by notice in the *Gazette*, vary or revoke a notice under subsection (2).

(4) The Minister may, for the purposes of furthering agricultural interests, scientific research or the biological control of a disease, by notice in writing, exempt a person from complying with this section subject to conditions set out in the notice.

(5) The Minister must consult widely with, and take into account the advice of, members of the agricultural and scientific communities before taking action under subsection (4).

(6) The Minister may, by further notice in writing, vary or revoke a notice under subsection (4).

(7) A person—

(a) who contravenes or fails to comply with this section or a notice under this section;

or

(b) who purchases or takes delivery of anything introduced or imported into the State in contravention of this section or a notice under this section,

is guilty of an offence.

Penalty:

(a) in the case of a prescribed offence—division 7 fine;

(b) in any other case—division 4 fine.

Expiation Fee: For a prescribed offence—division 7 fee.

(8) In this section—

“prescribed offence” means an offence that consists of introducing or importing into the State—

(a) not more than one kilogram of fruit, or five plants, for the person’s own consumption or enjoyment;

or

(b) any soil, packaging or thing (other than fruit or plants) not intended for sale or use for commercial purposes.

Quarantine areas

14. (1) The Minister may, by notice in the *Gazette*, declare a portion of the State, specified in the notice, to be a quarantine area—

(a) in respect of all diseases;

or

(b) in respect of those diseases specified in the notice.

(2) A notice under this section may—

(a) prohibit the removal from a quarantine area of—

(i) any fruit or plant of a species or kind;

(ii) any packaging or other thing of a kind,

specified in the notice that might, in the opinion of the Minister, transmit a disease;

(b) require the owners or occupiers of land or premises within the quarantine area to take measures (including the destruction of fruit and plants), specified in the notice, that are, in the opinion of the Minister, necessary for the control or eradication of a disease;

(c) require the owners or occupiers of land or premises within specified portions of the quarantine area to take more stringent measures (including the destruction of fruit and plants), specified in the notice, than the owners or occupiers of other land or premises within the quarantine area;

(d) prohibit the planting and propagation of plants, or plants of a specified species or kind, within the quarantine area during a period specified in the notice;

(e) prohibit absolutely or subject to exceptions and conditions specified in the notice the importing into the quarantine area of—

(i) any fruit or plant of a species or kind;

(ii) any soil, packaging or other thing,
specified in the notice;

(f) be varied or revoked by the Minister by further notice in the *Gazette*.

(3) A person who contravenes or fails to comply with a notice under this section is guilty of an offence.

Penalty: Division 4 fine.

Orders relating to disease affected fruit or plants

15. (1) Where the Chief Inspector knows or reasonably suspects that any fruit or plant is or might become affected by disease, he or she may, with the approval of the Minister, issue such orders under this section as may be reasonably necessary to prevent the outbreak or spread of the disease—

(a) to the person who owns or has possession or control of the fruit or plant;

(b) to the owners or occupiers of land or premises in the vicinity.

(2) One or more of the following orders may be issued in relation to any fruit, plant, soil, packaging or other thing that is or might become affected by disease:

(a) an order requiring that it be kept at a specified place for a specified period;

(b) an order requiring that it be subjected to specified treatment;

(c) an order requiring that it be subjected to examinations or tests at specified intervals or that other specified action be taken for the purposes of determining the presence of disease;

(d) an order restricting or prohibiting its sale or supply or restricting the purposes for which it may be used;

(e) an order requiring that it be destroyed or disposed of in a specified manner;

(f) an order prohibiting the planting and propagation of plants, or plants of a specified species or kind, on specified land during a specified period.

(3) Where the Chief Inspector cannot locate after reasonable inquiry a person of whom the Chief Inspector intended to make any requirement for action by order under this section, the Chief Inspector may—

(a) cause the action to be taken by an inspector or other person;

(b) recover costs and expenses reasonably incurred under this subsection by action in a court of competent jurisdiction as a debt owed by the owner of the fruit, plant, soil, packaging or other thing in respect of which action was taken by the inspector or other person.

Orders generally

16. (1) An order under this Division—

(a) must be in writing;

(b) may be of general or limited application.

(2) The Chief Inspector may, by further order, vary or revoke the order.

(3) An order under this Division that is of a continuing nature has effect for such period as is specified in the order.

(4) Where an order of a continuing nature is issued under this Division on the basis of a suspicion, the Chief Inspector must, as soon as practicable, take reasonable steps to determine whether that suspicion is correct.

(5) If a person refuses or fails to comply with an order issued under this Division, the Chief Inspector may cause an inspector or other person to take any necessary action to give effect to the order.

(6) The Chief Inspector may recover costs and expenses reasonably incurred under subsection (5) by action in a court of competent jurisdiction as a debt owed by the person to whom the order was issued.

Offences relating to orders

17. A person to whom an order has been issued under this Division who contravenes or fails to comply with the order is guilty of an offence.

Penalty: Division 4 fine.

DIVISION 3—MISCELLANEOUS

Accredited production areas

18. (1) Where the Minister is satisfied that, through the exercise of good management by the producers and processors of fruit and plants in a specified area, the area is free of a specified disease or diseases, the Minister may, by notice in the *Gazette*, declare that area to be free of the disease or diseases specified in the notice and authorize the use of specified statements in respect of fruit or plants produced or processed in that area when advertising, packaging or selling those fruit or plants.

(2) The Minister may, by notice in the *Gazette*, vary or revoke a notice under subsection (1).

(3) A person must not use a statement specified in a notice under subsection (1) otherwise than in respect of fruit or plants produced or processed in the area specified in the notice.

Penalty: Division 4 fine.

Compensation

19. (1) The Minister may pay compensation to any person who has suffered loss in consequence of an order made under Division 2.

(2) An application for compensation under this section—

(a) must be in writing;

(b) must be made in a manner and form determined by the Minister;

and

(c) must be supported by such evidence as the Minister may require.

(3) No action lies against the Minister to compel him or her to make a payment of compensation under this section.

Prohibition on sale of fruit or plants affected by disease

20. (1) A person must not, without the approval of the Chief Inspector, sell or supply—

(a) any fruit or plant affected by disease;

or

(b) any fruit or plant subject to an order under Division 2.

Penalty: Division 4 fine.

(2) The owner of land or premises in relation to which an order is in force under Division 2 must notify the Chief Inspector of any intended sale of the land or premises at least 28 days before the date of settlement.

Penalty: Division 7 fine.

(3) Where a person is guilty of an offence against this section, a court may (in addition to any other penalty that may be imposed) order the person to pay to the person to whom the fruit, plant, land or premises were sold or supplied such compensation as the court thinks fit.

PART 4
MISCELLANEOUS

Offences relating to inspector's powers

21. A person must not—

- (a) hinder or obstruct an inspector, or a person assisting an inspector, in the exercise of powers under this Act;
- (b) refuse or fail to comply with any request or requirement made by an inspector under this Act;
- (c) falsely represent, by words or conduct, that he or she is an inspector;
- (d) remove or interfere with any identification mark or device used for the purposes of this Act.

Penalty: Division 6 fine.

False or misleading statements

22. A person must not, in furnishing information under this Act, make a statement that is false or misleading in a material particular.

Penalty: Division 6 fine.

Service of notices and orders

23. A notice or order required or authorized by this Act to be given or issued to a person may be given or issued—

- (a) by delivering it personally to the person or an agent of the person;
 - (b) by leaving it for the person at his or her place of residence or business with someone apparently over the age of 16 years;
 - (c) by posting it to the person or agent of the person at his or her last known address;
- or
- (d) by transmission by facsimile machine to a facsimile machine number provided by that person for that purpose.

Vicarious liability

24. (1) For the purposes of this Act, an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.

(2) Where a body corporate commits an offence against this Act, each member of the governing body of the body corporate is guilty of an offence and liable to the penalty applicable to the principal offence unless it is proved that the member could not by the exercise of reasonable diligence have prevented the commission of that offence.

Evidence

25. (1) In any legal proceedings, a document apparently executed by the Minister certifying as to a matter relating to—

- (a) the appointment of an inspector under this Act;
- (b) an order or approval of the Chief Inspector or any other inspector under this Act;
- (c) a delegation under this Act;

(d) the amount of costs and expenses incurred in taking any specified action under this Act,

constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(2) An allegation in a complaint—

(a) that a specified person is or was the owner or occupier of specified property;

(b) that specified fruit or plants were within a specified area;

(c) that specified fruit or plants are or were affected by disease;

(d) that something done was done without the approval of the Chief Inspector,

constitutes proof, in the absence of proof to the contrary, of the matters so alleged.

Summary offences

26. (1) An offence against this Act is a summary offence.

(2) Proceedings for an offence against this Act may be commenced at any time within three years of the day on which the offence is alleged to have been committed.

Continuing offences

27. (1) Where an offence against a provision of this Act is committed by a person by reason of a continuing act or omission—

(a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence;

and

(b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction, of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence.

(2) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

General defence

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

Incorporation of codes and standards

29. (1) A notice given by the Minister, or a regulation made, under this Act may—

(a) be of general or limited application;

(b) apply, adopt or incorporate, with or without modification, any code, standard or other document prepared or approved by a body or authority referred to in the notice or regulation as in force from time to time or as in force at a specified time.

(2) Where a code, standard or other document is applied, adopted or incorporated in a notice or regulation—

(a) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at the office of the Chief Inspector;

and

(b) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document apparently certified by or on behalf of the Minister as a true copy of the code, standard or other document.

Regulations

30. (1) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

(2) The regulations may prescribe a fine, not exceeding a division 7 fine, for contravention of the regulations.

SCHEDULE 1*Repealed Acts*

The following Acts are repealed by this Act:

Fruit and Plant Protection Act 1968;
Fruit and Vegetables (Prevention of Injury) Act 1927;
Fruit Fly Act 1947;
Sale of Fruit Act 1915.

SCHEDULE 2

Consequential Amendments

The *Phylloxera Act 1936* is amended by striking out subsections (7) and (8) of section 38 and substituting the following subsection:

(7) Notwithstanding the *Fruit and Plant Protection Act 1992*, the board may, with the consent of the Minister—

- (a) introduce into the State any cuttings of vines for planting in a nursery established by the board;
- (b) introduce, dispose of or plant in any part of the State any vines or cuttings of vines that have been grown in a nursery established by the board and have been in the nursery for a sufficient time to ensure that they are free from phylloxera.

APPENDIX

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of assent to this Act divisional penalties and expiation fees are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

Note: This appendix is provided for convenience of reference only.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor