

South Australia

# Phylloxera and Grape Industry Act 1995

An Act to provide for the protection of vineyards from disease and to assist and support the grape industry in South Australia.

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Phylloxera and Grape Industry Act 1995*.

### 3—Interpretation

In this Act, unless the contrary intention appears—

**Board** means the Phylloxera and Grape Industry Board of South Australia continued under Part 2;

**Chief Inspector** means the Chief Inspector appointed under the *Fruit and Plant Protection Act 1992*;

**cutting** means a portion of a grape vine cane that has not been planted in soil or permitted to develop roots;

**disease** means—

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

that may affect vines;

**Fund** means the Phylloxera and Grape Industry Fund continued under Part 4;

*owner* means—

- (a) the owner in fee simple; or
- (b) in relation to land held under an agreement to purchase from the Crown—the person entitled to the benefit of the agreement; or
- (c) in relation to land held under a Crown lease or licence—the lessee or licensee;

*prescribed region* means a region defined by regulation;

*Register* means the Register maintained under Part 3;

*registered person* means a person registered in the Register;

*Selection Committee* means the Phylloxera and Grape Industry Board Selection Committee appointed by the Minister under Part 2;

*vine* means a grape vine, alive or dead, or any vine cutting or part of a vine;

*vineyard* means a parcel of land in which one or more vines are planted, growing or found.

**Note—**

For definition of divisional penalties (and divisional expiation fees) see Appendix.

## **Part 2—Phylloxera and Grape Industry Board of South Australia**

### **Division 1—Constitution of Board**

#### **4—Establishment of Board**

- (1) The *Phylloxera Board of South Australia* continues in existence as the *Phylloxera and Grape Industry Board of South Australia*.
- (2) The Board is a body corporate with full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.
- (3) Where an apparently genuine document purports to bear the common seal of the Board, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to that document.

#### **5—Constitution of Board**

- (1) Subject to subsection (3), the Board consists of—
  - (a) the Chief Inspector; and
  - (b) up to eight members appointed by the Minister of whom—
    - (i) one will be a person nominated by the Minister with expertise in viticultural research; and
    - (ii) up to seven will be persons nominated by the Selection Committee in accordance with subsection (2).

- (2) When nominating members of the Board, the Selection Committee must ensure that—
  - (a) no more than one member is nominated from each prescribed region; and
  - (b) all members have proven experience, knowledge and commitment to the improvement of the State's grape growing and wine industries, and their protection from disease; and
  - (c) any other requirements notified in writing by the Minister are satisfied.
- (3) No member of the Selection Committee may be nominated or appointed as a member of the Board.

## **6—Terms and conditions of members**

- (1) An appointed member of the Board will hold office for a term of not more than three years and, at the end of that term, will be eligible for reappointment.
- (2) A member of the Board is entitled to allowances and expenses determined by the Minister.
- (3) The Minister may remove an appointed member of the Board from office—
  - (a) for misconduct; or
  - (b) for neglect of duty; or
  - (c) for incompetence; or
  - (d) for mental or physical incapacity to carry out satisfactorily the duties of his or her office.
- (4) The office of an appointed member becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office; or
  - (c) resigns by written notice addressed to the Minister; or
  - (d) is removed from office by the Minister under subsection (3).
- (5) On the office of an appointed member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.
- (6) An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership, or a defect in the appointment of a member.

## **7—Presiding member of Board**

- (1) The members of the Board must, in July each year, elect one of their number to be the presiding member of the Board for a term of one year.
- (2) A member is, on the expiration of a term of office as presiding member, eligible for re-election.
- (3) If the presiding member ceases to be a member of the Board before the expiration of a term of office, the members of the Board must elect one of their number to be the presiding member for the balance of the term.

## **8—Conduct of business by Board**

- (1) Five members of the Board constitute a quorum of the Board.

- (2) Each member present at a meeting of the Board is entitled to one vote on a matter arising for decision at the meeting, but the presiding member has, in the event of an equality of votes, a casting vote as well as a deliberative vote.
- (3) A decision carried by a majority of the votes of the members present at a meeting of the Board is a decision of the Board.
- (4) A conference conducted by telephone, video or other electronic means between members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present.
- (5) Subject to this Act, the business of the Board may be conducted in the manner determined by the Board.

### **9—Conflict of interest**

- (1) A member of the Board who has an interest in a matter before the Board must disclose the existence of that interest to the Board.

Penalty: Division 6 fine or division 6 imprisonment.

- (2) A member of the Board has an interest in a matter before the Board if—
  - (a) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment; or
  - (b) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, obtain or have a reasonable expectation of obtaining a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a non-pecuniary detriment,

not being a benefit or detriment that would be enjoyed or suffered by the member, or the person who is closely associated with a member, in common with a class of persons that forms part of or is substantially involved in the grape growing or wine industries.

- (3) A person is closely associated with a member of the Board if that person is—
  - (a) a body corporate of which the member is a director or a member of the governing body; or
  - (b) a proprietary company in which the member is a shareholder; or
  - (c) a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee; or
  - (d) a party to a partnership or share-farming agreement to which the member is also a party; or
  - (e) an employer or an employee of the member; or
  - (f) the spouse, domestic partner, parent or child of the member.
- (4) A disclosure under subsection (1) must be recorded in the minutes of the Board.

- (5) A member of the Board who has an interest in a matter before the Board—
- (a) must not, except on the request of the Board, take part in any discussion by the Board relating to that matter; and
  - (b) must not vote in relation to that matter; and
  - (c) must, unless the Board permits otherwise, be absent from the meeting room when any such discussion or voting is taking place.

Penalty: Division 6 fine or division 6 imprisonment.

- (6) It is a defence to a charge of an offence against this section for the defendant to prove that, at the time of the alleged offence, the defendant was unaware of his or her interest in the matter.
- (7) The fact that a member has failed to comply with this section in relation to a matter does not, of itself, invalidate a resolution or decision on that matter, but, where it appears that the non-compliance may have had a decisive influence on the passing of the resolution or the making of the decision, the Supreme Court may, on the application of the Board, the Minister or any person affected by the resolution or decision, annul the resolution or decision and make such ancillary orders as it thinks fit.
- (8) In this section—
- domestic partner* means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;
- spouse*—a person is the spouse of another if they are legally married.

## **Division 2—Phylloxera and Grape Industry Board Selection Committee**

### **10—Establishment and membership of Selection Committee**

- (1) The *Phylloxera and Grape Industry Board Selection Committee* is established.
- (2) The Selection Committee consists of five members appointed by the Minister.
- (3) The Minister must appoint the members of the Selection Committee from a panel of 10 persons nominated in accordance with this section.
- (4) The Minister must invite—
- (a) the South Australian Farmers Federation Incorporated; and
  - (b) the Wine and Brandy Producers Association of South Australia Incorporated; and
  - (c) any other organisations or bodies that, in the opinion of the Minister, have significant involvement in grape growing or winemaking,
- to each nominate a specified number of persons to the panel from which the Minister will choose members of the Selection Committee and to provide reasons in writing in support of each nomination.
- (5) The Minister must appoint at least one member of the Selection Committee from the persons nominated to the panel by the South Australian Farmers Federation Incorporated and at least one member from the persons nominated by the Wine and Brandy Producers Association of South Australia Incorporated.

- (6) At least one member of the Selection Committee must be a man and at least one must be a woman.
- (7) The Minister must appoint a member of the Selection Committee to preside at meetings of the Selection Committee.

### **11—Term and conditions of office of Selection Committee**

- (1) The members of the Selection Committee are appointed for a period and on terms and conditions, including payment of allowances, determined by the Minister.
- (2) The Board must pay the allowances payable to members of the Selection Committee and any reasonable expenses of the Selection Committee.
- (3) The Minister may remove a member of the Selection Committee from office—
  - (a) for misconduct; or
  - (b) for neglect of duty; or
  - (c) for incompetence; or
  - (d) for mental or physical incapacity to carry out satisfactorily the duties of his or her office.
- (4) The office of a member becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office; or
  - (c) resigns by written notice addressed to the Minister; or
  - (d) is removed from office by the Minister under subsection (3).
- (5) On the office of a member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

### **12—Procedures of Selection Committee**

- (1) A decision may not be made at a meeting of the Selection Committee unless all members are present or participate by telephone, video or other electronic means.
- (2) Each member of the Selection Committee is entitled to one vote on a matter arising for decision at the meeting.
- (3) A decision carried by a majority of the votes of the members present at a meeting of the Selection Committee is a decision of the Selection Committee.
- (4) A conference conducted by telephone, video or other electronic means between members will, for the purposes of this section, be taken to be a meeting of the Selection Committee at which the participating members are present.
- (5) The Selection Committee may engage consultants to assist it in nominating persons for appointment as members of the Board.
- (6) Subject to this section, the procedure of the Selection Committee is in its discretion.

## **Division 3—Functions and powers of Board**

### **13—Functions of Board**

- (1) The Board has the following functions (its *primary functions*):
  - (a) to identify and assess—
    - (i) the relative threat to the State's vineyards posed by phylloxera and other diseases; and
    - (ii) the risk of spreading diseases through the movement of machinery, equipment, vines and other vectors into and within the State;
  - (b) to develop policies in relation to—
    - (i) appropriate restrictions on or conditions for the movement of machinery, equipment, vines and other vectors into and within the State to prevent the spread of disease; and
    - (ii) the quarantine of vines that are or may be affected by disease; and
    - (iii) appropriate measures for the control of outbreaks of disease in the State;
  - (c) to develop plans for the eradication of disease in the State's vineyards;
  - (d) to support and encourage the conduct and evaluation of research into—
    - (i) disease resistance and tolerance of root stocks and scions; and
    - (ii) diseases that affect or may affect vines, and any matter relating to such diseases, including their control;
  - (e) to publish the results of relevant research;
  - (f) to promote awareness of the dangers of disease among the public and people involved in grape growing or winemaking;
  - (g) to disseminate information on disease and work practices or industry codes of practice that would minimise the risk of disease, or its spread, to people involved in grape growing or winemaking;
  - (h) to approve nurseries (whether within or outside the State) that are capable of producing propagative material that is free of specified diseases or industry-based accreditation schemes for such nurseries;
    - (i) subject to subsection (3), to collect and, on request by an interested person, supply data relating to vineyards and vine health in South Australia;
    - (j) to perform the other functions assigned to the Board by or under this Act or by the Minister.
- (2) The Board has the additional function of assisting and supporting the grape industry in its initiatives.
- (3) The Board must not supply data that relates to or reveals any details relating to a particular person or business unless the person or proprietor of the business consents to the release of the data.



#### **14—Action to be taken on outbreak of disease**

If an outbreak of disease occurs, the Chief Inspector and the presiding member of the Board must—

- (a) determine the appropriate action to be taken to control the outbreak; and
- (b) provide on-going advice to the Minister in relation to the outbreak and the action being taken to control it.

#### **15—Regional and other committees**

- (1) The Board must establish committees representing each of the prescribed regions (*regional committees*) to advise the Board in relation to vine health in those regions and any other matter determined by the Board.
- (2) A member of the Board may be appointed to a regional committee.
- (3) The Board may establish other committees (which may, but need not, consist of or include members of the Board) to advise or assist the Board.

#### **16—General powers**

For the purpose, or in the course, of performing its functions, the Board may—

- (a) accept money or other things provided or given to the Board by an authority or person for the performance of its functions under this Act;
- (b) obtain expert or technical advice on any matter on terms and conditions determined by the Board;
- (c) employ staff on terms and conditions approved by the Minister or make use of Public Service facilities or the services of Public Service employees;
- (d) enter into a contract or arrangement of any kind;
- (e) acquire, hold, deal with and dispose of real or personal property;
- (f) exercise any other powers that are necessary or expedient for, or incidental to, the performance of its functions.

#### **17—Delegation**

- (1) The Board may delegate any of its functions or powers under this Act—
  - (a) to a member of the Board; or
  - (b) to a committee appointed by the Board; or
  - (c) to a particular person or body; or
  - (d) to the person for the time being occupying a particular office or position.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the Board to act in any matter; and
  - (d) is revocable at will by the Board.

## **Division 4—Five year plan**

### **18—Duty to prepare and maintain five year plan**

- (1) The Board must, within 12 months after the commencement of this Act—
  - (a) prepare a plan of the Board's proposed principal undertakings and activities for the ensuing five years; and
  - (b) present that plan at a public meeting convened by the Board of which notice has been given in accordance with this section.
- (2) The Board must, at least two weeks before the date of a meeting to be held under subsection (1)—
  - (a) publish a notice of the date, time, place and purpose of that meeting in a newspaper circulating generally throughout the State; and
  - (b) send a copy of that notice by post to each registered person.
- (3) The Board may revise and update the plan at any time, but must present a revised plan for the ensuing five years to a public meeting (of which notice has been given in accordance with subsection (2)) at least once every 12 months after the initial presentation of the plan.

## **Part 3—The Register**

### **19—The Register**

- (1) The Board must maintain a Register of persons who own vineyards comprising 0.5 hectares or more of planted vines (the *Register*).
- (2) The Board will enter the following particulars in the Register in relation to each registered person:
  - (a) the person's name and address; and
  - (b) the location of the vineyard (including Section Number, District and Hundred); and
  - (c) the varieties of vines planted; and
  - (d) the area of each variety planted; and
  - (e) the age of the vines; and
  - (f) the source of the vines; and
  - (g) any other information relevant to the Board's functions under this Act, that the Board thinks fit.

### **20—Power of Board to inspect assessments**

For the purposes of this Part, the Board may, without payment—

- (a) make searches in the Lands Titles Registration Office; and

- (b) inspect and take extracts from the records relating to rates, charges or taxes under the *Local Government Act 1934*, the *Irrigation Act 1994* or the *Land Tax Act 1936* kept by the council or authority responsible for collecting the rates, charges or taxes.

## 21—Returns

A person who—

- (a) transfers or acquires ownership of a vineyard comprising 0.5 hectares or more of planted vines; or
- (b) establishes a vineyard comprising 0.5 hectares or more of planted vines on land owned by the person; or
- (c) extends a vineyard owned by the person so that it comprises 0.5 hectares or more of planted vines; or
- (d) removes vines from a vineyard owned by the person so that the vineyard ceases to comprise 0.5 hectares or more of planted vines,

must, within three months, provide the Board with a return containing the particulars required to be entered in the Register under this Part.

Penalty: Division 8 fine.

Expiation fee: Division 8 fee.

## 22—Correction of Register

- (1) The Board may correct the Register from time to time—
  - (a) to reflect details provided in a return under this Part; or
  - (b) subject to subsection (2), to bring entries or particulars contained in the Register into conformity with the most accurate information available to the Board.
- (2) If a correction under subsection (1)(b) would have the effect of increasing a contribution payable under Part 4, the Board must not make the correction unless the owner of the vineyard has been given written notice of the proposed correction and allowed a period (not less than one month from service of the notice) to make submissions in relation to the proposed correction.

## Part 4—Financial and reporting

### 23—Contributions

- (1) Subject to this section, the Board may by notice in the Gazette require that—
  - (a) a registered person; or
  - (b) a winemaker; or
  - (c) a distiller,

pay to the Board a contribution towards the costs incurred, or to be incurred, by the Board in carrying out its primary functions under this Act, in an amount determined in accordance with rules approved by the Minister and specified in the notice.

- (2) The Minister may approve different rules for the determination of contributions in respect of the various classes of persons listed in subsection (1).
- (3) A contribution payable under this section will be levied and collected or recovered by the Commissioner of Land Tax on behalf of the Board as if the contribution were land tax, and will be subject to the same penalties for delay or default in payment.
- (4) A contribution payable under this section will, until payment, be a charge on the land on which the vineyard, winery or distillery is situated.

## **24—Phylloxera and Grape Industry Fund**

- (1) The Fund at the Treasury known as the *Phylloxera Fund* continues in existence as the *Phylloxera and Grape Industry Fund*.
- (2) The Fund consists of—
  - (a) all contributions paid under this Part; and
  - (b) any income paid into the Fund under subsection (4); and
  - (c) all other money that is required or authorised by law to be paid into the Fund.
- (3) Any money in the Fund that is not for the time being required for the purposes of this Act may be invested by the Treasurer.
- (4) The income from investment of money belonging to the Fund will be paid into the Fund.
- (5) The Board may apply any part of the Fund—
  - (a) in defraying the expenses incurred by the Board in the performance of its primary functions under this Act; or
  - (b) in making any other payment required or authorised by law.

## **25—Accounts and audit**

- (1) The Board must keep proper accounts of all money received and paid by or on account of the Board, showing the purposes for which that money has been received or paid.
- (2) The Board must cause its accounts to be audited by a registered company auditor or the Auditor-General at least once in each year.

## **26—Report**

- (1) The Board must, no later than 31 July in each year, submit to the Minister a report on its operations during the financial year of the Board ending on the preceding 30 April.
- (2) The report must incorporate—
  - (a) the audited statement of accounts of the Board for the period to which the report relates; and
  - (b) the five year plan prepared or revised by the Board under this Act.
- (3) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.
- (4) After each meeting of the Board, the Board must provide a report on its activities undertaken since its previous meeting to—
  - (a) every regional committee; and

- (b) every organisation invited to nominate persons to the panel from which appointments are made to the Selection Committee under Part 2.
- (5) A report under subsection (4) may include the minutes of the most recent Board meeting.

## **Part 5—Miscellaneous**

### **27—Members of Board to be inspectors**

The members of the Board are inspectors under the *Fruit and Plant Protection Act 1992 ex officio*.

### **28—Protection from personal liability**

- (1) A person engaged in the administration of this Act incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, by the person or by a body of which he or she is a member, of a power, function or duty under this Act.
- (2) A liability that would, but for subsection (1), lie against the person, lies instead against the Crown.

### **29—False or misleading statements**

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

Penalty: Division 7 fine.

### **30—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act or 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—Transitional provisions**

### **1—Interpretation**

In this Schedule—

*the repealed Act* means the *Phylloxera Act 1936*.

### **3—Vacation of office**

On the commencement of this Act, the members of the Phylloxera Board who held office immediately prior to that commencement vacate their offices so that appointments may be made to the Board under this Act.

### **4—Districts to continue as prescribed regions**

The Phylloxera Districts defined in Schedule 2 of the repealed Act continue as prescribed regions under this Act until a regulation is made defining regions for the purposes of this Act.

## **5—Contributions**

Contributions will continue to be payable in accordance with the determination last made by the Phylloxera Board of South Australia under the repealed Act until the Board makes a fresh determination under this Act.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- 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](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Phylloxera and Grape Industry Act 1995* repealed the following:

*Phylloxera Act 1936*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1995	19	<i>Phylloxera and Grape Industry Act 1995</i>	13.4.1995	31.8.1995 ( <i>Gazette 31.8.1995 p552</i> )
<b>2006</b>	<b>43</b>	<b><i>Statutes Amendment (Domestic Partners) Act 2006</i></b>	<b>14.12.2006</b>	<b>Pt 63 (s 168)—1.6.2007 (<i>Gazette 26.4.2007 p1352</i>)</b>
2009	2	<i>Plant Health Act 2009</i>	12.2.2009	Sch 1 (cl 3 & 4)—1.8.2009 ( <i>Gazette 30.7.2009 p3437</i> )

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
Pt 2		
<b>s 9</b>		
<b>s 9(3)</b>	<b>amended by 43/2006 s 168(1)</b>	<b>1.6.2007</b>
<b>s 9(8)</b>	<b>inserted by 43/2006 s 168(2)</b>	<b>1.6.2007</b>
Sch		
<i>cl 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	

## **Appendix—Divisional penalties and expiation fees**

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

<b>Division</b>	<b>Maximum imprisonment</b>	<b>Maximum fine</b>	<b>Expiation fee</b>
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.*