

SOUTH AUSTRALIA

FRUIT AND PLANT PROTECTION ACT, 1968

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

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APPENDIX LEGISLATIVE HISTORY

FRUIT AND PLANT PROTECTION ACT, 1968

being

Fruit and Plant Protection Act, 1968, No. 47 of 1968
[Assented to 19 December 1968]¹

as amended by

Fruit and Plant Protection Act Amendment Act, 1976, No. 44 of 1976 [Assented to 28 October 1976]
Fruit and Plant Protection Act Amendment Act, 1985, No. 108 of 1985 [Assented to 7 November 1985]
Fruit and Plant Protection Act Amendment Act, 1986, No. 87 of 1986 [Assented to 4 December 1986]

¹ Came into operation 1 July, 1975: *Gaz.* 22 May 1975, p. 1987.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act to protect fruit and plants from pests and disease.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title and commencement

1. This Act may be cited as the *Fruit and Plant Protection Act, 1968*, and shall come into operation on a day to be fixed by proclamation.

Repeal and saving

2. (1) The *Vine, Fruit and Vegetable Protection Act, 1885*, the *Vine, Fruit and Vegetable Protection Amendment Act, 1910*, and the *Vine, Fruit and Vegetable Protection Act Amendment Act, 1959*, are repealed.

(2) The second schedule to the *Statute Law Revision Act, 1935*, and the second schedule to the *Statute Law Revision Act, 1936*, are amended by striking out such portions thereof as relate to the *Vine, Fruit and Vegetable Protection Act, 1885*, or the *Vine, Fruit and Vegetable Protection Amendment Act, 1910*.

(3) A person appointed under the *Vine, Fruit and Vegetable Protection Act, 1885-1959*, as chief inspector or an inspector, and holding that office immediately before the commencement of this Act, shall be deemed to have been appointed to the corresponding office under this Act and shall be subject to the provisions of this Act accordingly.

(4) All proclamations and regulations in force under the *Vine, Fruit and Vegetable Protection Act, 1885-1959*, immediately before the commencement of this Act, shall, insofar as not inconsistent with an express provision of this Act, be deemed to have been made under this Act and shall remain in force until revoked under this Act.

Interpretation

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

"disease" includes any infection or affection of a fruit or plant that the Minister, by notice published in the *Gazette*, declares to be a disease for the purposes of this Act, and any abnormality or disorder of, or injury to, a fruit or plant caused by a pest:

"fruit" includes the peel, skin, shell, husk, seed, stone or nut of any fruit:

"host fruit" means fruit of a species that is susceptible to disease:

"host plant" means a plant of a species that is susceptible to disease:

"inspector" includes the chief inspector:

"orchard" means any place whereon or wherein host plants are grown or propagated:

"owner" includes occupier, manager or superintendent:

"packaging" includes any covering, container, package, case, box, bag, wrapping, packing and any material of any description that is being, or has been used to cover or contain any fruit or plant:

3.

"pest" means any organism or micro-organism that the Minister, by notice published in the *Gazette*, declares to be a pest for the purposes of this Act:

"plant" means any tree, vine, flower, shrub, vegetable or other vegetation, or any part thereof, or any material for the propagation thereof, whether alive or dead, and includes timber that has been sawn or dressed:

"premises" means any land, building or structure (including a moveable building or structure):

"quarantine area" means an area declared by proclamation under section 7 of this Act to be a quarantine area:

"vehicle" includes an aircraft or a vessel.

Minister may prohibit introduction of certain fruit and plants into the State

4. (1) The Minister may, by notice published in the *Gazette*, prohibit absolutely, or prohibit unless certain conditions specified in the notice are complied with, the importation or introduction into the State or any part thereof of—

- (a) any pest, or any fruit or plant affected by disease;
- (b) any fruit or plant of a species that is, in the opinion of the Minister, likely to introduce a pest or disease into the State;
- (c) any host fruit or host plant of any species that has been grown in a place, country, region, area or place, specified in the notice, in which host fruit or host plants of that species are subject to pests or disease;
- (ca) any soil or other substance in which a plant affected by disease has been growing;

and

- (d) any packaging in which any fruit or plant affected by disease has been contained or packed, or any goods with which it has come in contact.

(2) A person shall not contravene a notice under subsection (1) of this section.

Penalty: Five thousand dollars or imprisonment for three months.

Minister may specify ports and places wherethrough host fruit and plants may be introduced into the State

5. (1) The Minister may, by notice published in the *Gazette*, specify any ports or places as the only ports or places wherethrough host fruit, host plants or packaging may be introduced into the State.

(2) A person shall not introduce any host fruit, host plant or packaging into the State except through a port or place specified in a notice under subsection (1) of this section.

Penalty: Five thousand dollars or imprisonment for three months.

Quarantine stations

6. The Minister may, by notice published in the *Gazette*, declare any place or area to be a quarantine station wherein fruit, plants and packaging may, subject to this Act, be held in quarantine, examined, disinfected, treated, destroyed or otherwise disposed of.

Quarantine areas

7. (1) The Minister may, by notice published in the *Gazette*—

- (a) declare any portion of the State, specified in the notice, to be a quarantine area (either in respect of all pests and diseases or of such pests and diseases as are specified in the notice);
- (b) prohibit the removal from a quarantine area of any fruit or plant of a species specified in the notice and of any packaging or other thing, specified in the notice, that, in his opinion, might transmit a pest or disease;
- (c) require the owners of land within a quarantine area to take prescribed measures for the control or eradication of a pest or disease;
- (d) require the owners of land within the quarantine area to take such measures (in addition to those prescribed) for the control or eradication of a pest or disease (including, if he thinks it necessary, the uprooting and destruction of plants and the destruction of fruit) as are specified in the notice;
- (e) require the owners of land within specified portions of the quarantine area to take more stringent measures, specified in the notice, than the owners of the remainder of the land within the quarantine area;

and

- (f) prohibit the planting and propagation of plants, or plants of a specified species, within the quarantine area during a period specified in the notice.

(2) A person shall not contravene or fail to comply with a notice under subsection (1) of this section.

Penalty: Five thousand dollars or imprisonment for three months.

* * * * *

Notifiable pests and diseases

8. (1) The Minister may, by notice published in the *Gazette*, declare certain pests and diseases to be notifiable pests and diseases.

(2) A person who discovers any fruit or plant affected by a pest or disease declared under subsection (1) to be a notifiable pest or disease, shall forthwith notify the chief inspector of that discovery and shall furnish him with such information in relation thereto as he may, by notice in writing served personally or by post upon that person, require.

Penalty: Five thousand dollars.

(3) The owner of an orchard in which there is any fruit or plant affected by a pest or disease, declared under subsection (1) to be a notifiable pest or disease, shall be deemed to have discovered that the fruit or plant was so affected unless the contrary is proved.

Measures to be taken by orchardists

9. (1) The Minister may, by notice published in the *Gazette*, require the owner of every orchard to apply to all host trees therein such treatment and measures as he deems necessary to prevent the outbreak or spread of a pest or disease and specifies in the notice.

(2) A person shall not fail to comply with a notice under subsection (1) of this section.

Penalty: Five thousand dollars.

* * * * *

Appointment of inspectors

10. (1) The Minister may appoint a chief inspector and such inspectors as he deems necessary for the purposes of this Act.

(2) A chief inspector or inspector shall hold office subject to such terms and conditions as the Minister may determine.

(3) A chief inspector or inspector shall be entitled to receive such remuneration as the Minister may determine.

Powers of inspectors

11. (1) An inspector may enter and inspect premises in or on which he reasonably suspects there is—

(a) any fruit or plant affected by pest or disease;

or

(b) soil in which a plant affected by disease has been growing.

(2) An inspector may stop, detain and inspect any vehicle in or on which he reasonably suspects there is—

(a) any fruit or plant affected by pest or disease;

or

(b) soil in which a plant affected by disease has been growing.

(3) In the course of carrying out an inspection under this section an inspector may—

(a) disinfect or otherwise treat any fruit, plant, soil, packaging or other goods;

(b) require the owner of any fruit or plant to deliver the fruit or plant to a quarantine station;

6.

(c) remove and destroy any fruit or plant affected by a prescribed pest or disease, and any packaging in which any fruit or plant affected by a prescribed pest or disease has been packed;

(d) remove and dispose of any soil in which a plant affected by a prescribed pest or disease has been growing;

and

(e) take such photographs or films as he thinks fit.

(3a) In the exercise of his powers under this Act, an inspector may be accompanied by such persons as he considers necessary or desirable in the circumstances.

(3b) A person shall not hinder or obstruct an inspector, or a person accompanying an inspector, in the exercise by the inspector or the person accompanying the inspector, of the powers conferred by this Act.

Penalty: Five thousand dollars.

(3c) A person of whom a requirement is made under this section shall not refuse or fail to comply with the requirement.

Penalty: Five thousand dollars.

(4) An inspector may make or erect on any premises whereon any fruit or plant has been found affected by a pest or disease such marks or notices as he deems necessary to indicate that a specimen of the fruit or plant has been removed therefrom for the purpose of examination, or that upon examination has been found affected by a pest or disease.

(5) If the removal of any fruit or plant from any premises has been prohibited under any provision of this Act, an inspector may erect or cause to be erected notice of that fact upon the premises.

(6) A person shall not interfere with any mark or notice made or erected under this section.

Penalty: Five thousand dollars.

Inspector may require owners to take prescribed measures

12. (1) If an inspector is of opinion that any fruit or plant is affected by a pest or disease, he may serve upon the owner of the premises whereon or wherein the fruit or plant was discovered a notice directing that prescribed measures specified in the notice be taken for the control or eradication of the pest or disease.

(2) An inspector may serve upon the owners of any premises that is, in his opinion, in such proximity to the place wherein the fruit or plant was found to be affected by a pest or disease that the pest or disease might be transmitted thereto, notices directing that prescribed measures specified in the notices be taken to prevent the spread of the pest or disease.

(3) A notice under this section may also contain a direction (which may be varied or revoked by a subsequent notice) that the owner of the premises must not remove, or permit to be removed therefrom, any fruit, plant or packaging during a period specified in the notice.

(4) A person shall not contravene, or fail to comply with, a notice under this section.

Penalty: Five thousand dollars.

Minister may empower inspectors to take action

13. (1) If, in the opinion of the Minister, adequate measures for the control or eradication of a pest or disease are not being taken, the Minister may direct an inspector to implement such measures for the control or eradication of the pest or disease as the inspector deems necessary including, if the Minister so directs (but not otherwise), the destruction of fruit, plants and packaging.

(2) Where the Minister has given a direction under subsection (1) of this section, the inspector may with or without assistants, enter upon any premises and implement measures for the control or eradication of the pest or disease in accordance with the direction of the Minister.

(3) Any expenses incurred by an inspector in acting under subsection (2) of this section may be recovered by him as a debt due to him from the owner of the premises whereon or wherein the action was taken, in any court of competent jurisdiction.

(4) The Minister may delegate to the chief inspector his powers under this section but such a delegation shall not derogate from the powers of the Minister to act under this section himself.

Certain immunity from liability

14. (1) No liability shall attach to an inspector for anything done by him *bona fide* and without negligence in the exercise or performance, or purported exercise or performance, of his powers or functions under this Act.

(2) No liability shall attach to any person for anything done by him *bona fide* and without negligence in assisting an inspector purporting to exercise or perform his powers or functions under this Act.

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Summary disposal of offences

16. Proceedings for offences under this Act shall be disposed of summarily.

Service

17. Where under this Act provision is made for an inspector to serve a notice upon the owner of any premises that notice may be served—

(a) personally;

or

(b) by registered post;

or

- (c) by affixing it in some conspicuous place upon the premises.

Financial provision

18. The moneys required for the purposes of this Act shall be paid out of moneys appropriated by Parliament for those purposes.

Ministerial notices

19. (1) The Minister may, by notice published in the *Gazette*, vary or revoke a notice given by him under this Act.

(2) A notice given by the Minister under this Act may—

- (a) be of general or limited application;
- (b) incorporate, or operate by reference to, a standard or code of practice of a particular authority or body as in force at a particular time, or as in force from time to time, and with or without modification to the standard or code;

or

- (c) exempt, conditionally or unconditionally, any person or class of person from the operation of the notice.

Regulations

20. (1) The Governor may make such regulations as are contemplated by this Act, or as he deems necessary or expedient for the purposes of this Act, and, without limiting the generality of the foregoing, regulations—

- (a) prescribing the measures to be taken by the owners of orchards to prevent the outbreak or spread of pests and diseases;
- (b) prescribing the pests and diseases that entitle an inspector to remove and destroy a fruit or plant affected thereby under section 11 of this Act;
- (c) prescribing the measures to be taken for the control or eradication of a pest or disease by persons upon whom a notice has been served under section 12 of this Act;
- (d) prescribing the measures for the control or eradication of a pest or disease to be taken by owners of land within a quarantine area, which measures may relate to quarantine areas generally or to areas quarantined in respect of a particular pest or disease;
- (e) prescribing the treatment to which the owners of orchards within a quarantine area shall subject fruit and plants grown upon their orchards;
- (f) prohibiting the export of any specified species of host fruit or host plant from an area quarantined in respect of any specified pest or disease;
- (g) prohibiting the removal of any fruit or plant affected by a pest or disease from the place wherein it is found to be so affected or prescribing the conditions that must be satisfied before such removal;

9.

- (ga) prescribing, and providing for the payment of, fees in respect of action taken by the Minister or an inspector under this Act;
- (gb) prescribing, and providing for information to be set out in, certificates for the identification of any specified class of fruit, plant, soil or vehicle brought into the State;
- (gc) exempting or providing for the exemption of, conditionally or unconditionally, any person or class of persons from any provision of this Act;
- (gd) conferring any powers, functions or duties on the Minister, the chief inspector or an inspector that may be necessary or expedient for the administration and enforcement of this Act;

and

- (h) prescribing the penalties, recoverable summarily, not exceeding one thousand dollars, for breach of or non-compliance with the regulations.

(2) A regulation made under this section may—

- (a) be of general or limited application;

or

- (b) incorporate, or operate by reference to, a standard or code of practice of a particular authority or body as in force at a particular time, or as in force from time to time, and with or without modification to the standard or code.

10.

SCHEDULE

Transitional Provisions

1. A proclamation in force under a provision of this Act immediately before the commencement of the *Fruit and Plant Protection Act Amendment Act, 1985* (not being a proclamation to which clause 2 applies) has (and shall be deemed to have had from the commencement of that amending Act) the force and effect of a notice under that provision as amended by that amending Act and is subject to variation or revocation by a notice under this Act.

2. A proclamation in force under section 3 of this Act immediately before the commencement of the *Fruit and Plant Protection Act Amendment Act, 1986*, has the force and effect of a notice under that section and is subject to variation or revocation by a notice under this Act.

APPENDIX

Legislative History

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| Section 3: | definition of "disease" amended by 87, 1986, s. 2(a) definition of "pest" amended by 87, 1986, s. 2(b) definition of "premises" inserted by 108, 1985, s. 2(a) definition of "vehicle" inserted by 108, 1985, s. 2(b) |
| Section 4(1): | amended by 108, 1985, s. 3(a)-(d) |
| Section 4(2): | amended by 108, 1985, s. 3(e), (f) |
| Section 5(1): | amended by 108, 1985, s. 4(a) |
| Section 5(2): | amended by 108, 1985, s. 4(b), (c) |
| Section 6: | amended by 108, 1985, s. 5 |
| Section 7(1): | amended by 44, 1976, s. 2(a), (b) |
| Section 7(2): | amended by 44, 1976, s. 2(c); 108, 1985, s. 6(a) |
| Section 7(3): | inserted by 44, 1976, s. 2(d); repealed by 108, 1985, s. 6(b) |
| Section 8(1): | amended by 108, 1985, s. 7(a) |
| Section 8(2) | amended by 108, 1985, s. 7(b), (c) |
| Section 8(3): | amended by 108, 1985, s. 7(b) |
| Section 9(1): | amended by 44, 1976, s. 3(a), (b) |
| Section 9(2): | amended by 44, 1976, s. 3(c); 108, 1985, s. 8(a) |
| Section 9(3): | inserted by 44, 1976, s. 3(d); repealed by 108, 1985, s. 8(b) |
| Section 11(1), (2) and (3): | substituted by 108, 1985, s. 9(a) |
| Section 11(3a), (3b) and (3c): | inserted by 108, 1985, s. 9(a) |
| Section 11(4): | amended by 108, 1985, s. 9(b) |
| Section 11(5): | amended by 108, 1985, s. 9(c) |
| Section 11(6): | amended by 108, 1985, s. 9(d) |
| Section 12(1) and (3): | amended by 108, 1985, s. 10(a) |
| Section 12(2): | amended by 108, 1985, s. 10(b) |
| Section 12(4): | amended by 108, 1985, s. 10(c) |
| Section 13: | amended by 108, 1985, s. 11 |
| Section 15: | repealed by 108, 1985, s. 12 |
| Section 17: | amended by 108, 1985, s. 13 |
| Section 19: | inserted by 108, 1985, s. 14; redesignated as s. 19(1) by 87, 1986, s. 3 |
| Section 19(2): | inserted by 87, 1986, s. 3 |
| Section 20: | amended by 44, 1976, s. 4; 108, 1985, s. 15; amended and redesignated as s. 20(1) by 87, 1986, s. 4 |
| Section 20(2): | inserted by 87, 1986, s. 4(b) |
| Schedule: | inserted by 87, 1986, s. 5 |