

South Australia

Fruit and Plant Protection Act 1992

An Act to provide for the protection of fruit and plants from disease; and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 3 Interpretation
- 4 Disease
- 5 Quarantine stations

Part 2—Administration

- 6 Appointment of inspectors
- 7 Chief Inspector and deputy
- 8 Delegation by Chief Inspector
- 9 General powers of inspectors
- 10 Immunity

Part 3—Disease control

Division 1—Reporting and investigation

- 11 Reporting
- 12 Investigation

Division 2—Control and prevention

- 13 Prohibition on introducing fruit, plants etc affected by disease
- 14 Quarantine areas
- 15 Orders relating to disease affected fruit or plants
- 16 Orders generally
- 17 Offences relating to orders

Division 3—Miscellaneous

- 18 Accredited production areas
- 19 Compensation
- 20 Prohibition on sale of fruit or plants affected by disease

Part 4—Miscellaneous

- 21 Offences relating to inspector's powers
- 22 False or misleading statements
- 23 Service of notices and orders

24	Vicarious liability
25	Evidence
26	Summary offences
27	Continuing offences
28	General defence
29	Incorporation of codes and standards
30	Regulations

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

3—Interpretation

(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 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.

4—Disease

- (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).

5—Quarantine stations

- (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

6—Appointment of inspectors

- (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.

7—Chief Inspector and deputy

- (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.

8—Delegation by Chief Inspector

- (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.

9—General powers of inspectors

- (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.
Maximum penalty: \$5 000.

10—Immunity

- (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

11—Reporting

- (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; and
 - (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.

Maximum penalty: \$20 000.

- (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.

12—Investigation

- (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

13—Prohibition on introducing fruit, plants etc affected by disease

- (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, for the purpose of preventing the introduction into, or spread of disease in, the State, prohibit, by notice in the Gazette, the introduction or importation into the State of any specified class of fruit, plant, soil, packaging or other thing (either absolutely or subject to conditions).
- (3) The Minister may, by notice in the Gazette, vary or revoke a notice under subsection (2).

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- (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.

Maximum penalty:

In the case of a prescribed offence—\$2 500.

In any other case—\$20 000.

Expiation fee: For a prescribed offence—A fee determined in accordance with a scale prescribed by the regulations.

- (8) In this section—

prescribed offence means an offence that consists of a person introducing or importing anything into the State, or purchasing or taking delivery of anything introduced or imported into the State, for domestic use, consumption or enjoyment (and not for the purposes of sale or any other commercial purpose).

14—Quarantine areas

- (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.
- Maximum penalty: \$20 000.

15—Orders relating to disease affected fruit or plants

- (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.

16—Orders generally

- (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.

17—Offences relating to orders

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.

Maximum penalty: \$20 000.

Division 3—Miscellaneous

18—Accredited production areas

- (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 authorise 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.

Maximum penalty: \$20 000.

19—Compensation

- (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; and
 - (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.

20—Prohibition on sale of fruit or plants affected by disease

- (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.

Maximum penalty: \$20 000.

- (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.

Maximum penalty: \$2 500.

- (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

21—Offences relating to inspector's powers

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.

Maximum penalty: \$5 000.

22—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.

Maximum penalty: \$5 000.

23—Service of notices and orders

A notice or order required or authorised 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; or
- (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; or
- (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.

24—Vicarious liability

- (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.

25—Evidence

- (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.

26—Summary offences

- (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.

27—Continuing offences

- (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.

28—General defence

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.

29—Incorporation of codes and standards

- (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.

30—Regulations

- (1) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.
- (2) The regulations may impose fines, not exceeding \$2 500, for offences against the regulations.

Legislative history

Notes

- 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.

Repeal of Act

The *Fruit and Plant Protection Act 1992* was repealed by Sch 1 cl 5(1) of the *Plant Health Act 2009* on 1.8.2009.

Legislation repealed by principal Act

The *Fruit and Plant Protection Act 1992* repealed the following:

Fruit and Plant Protection Act 1968

Fruit and Vegetables (Prevention of Injury) Act 1927

Fruit Fly Act 1947

Sale of Fruit Act 1915

Legislation amended by principal Act

The *Fruit and Plant Protection Act 1992* amended the following:

Phylloxera Act 1936

Principal Act and amendments

Year	No	Title	Assent	Commencement
1992	67	<i>Fruit and Plant Protection Act 1992</i>	19.11.1992	1.2.1993 (<i>Gazette 17.12.1992 p2192</i>)
1996	71	<i>Fruit and Plant Protection (Enforcement) Amendment Act 1996</i>	22.8.1996	4.11.1996 (<i>Gazette 31.10.1996 p1460</i>)

Provisions amended

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

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
s 3(1)		
inspector	substituted by 71/1996 s 3	4.11.1996
Pt 2		

Fruit and Plant Protection Act 1992—4.11.1996 to 31.7.2009—repealed
Legislative history

s 9		
s 9(9)	amended by 71/1996 Sch	4.11.1996
Pt 3		
s 11		
s 11(1)	amended by 71/1996 Sch	4.11.1996
s 13		
s 13(2)	substituted by 71/1996 s 4(a)	4.11.1996
s 13(7)	amended by 71/1996 s 4(b)	4.11.1996
s 13(8)	substituted by 71/1996 s 4(c)	4.11.1996
s 14		
s 14(3)	amended by 71/1996 Sch	4.11.1996
s 17	amended by 71/1996 Sch	4.11.1996
s 18		
s 18(3)	amended by 71/1996 Sch	4.11.1996
s 20		
s 20(1) and (2)	amended by 71/1996 Sch	4.11.1996
Pt 4		
ss 21 and 22	amended by 71/1996 Sch	4.11.1996
s 30		
s 30(2)	substituted by 71/1996 Sch	4.11.1996
<i>Schs 1 and 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	