

South Australia

## **Plant Health Act 2009**

An Act to provide for the protection of plants from pests, the regulation of the movement of plants into, within and out of the State, and the control, destruction and suppression of pests; to repeal the *Fruit and Plant Protection Act 1992* and the *Noxious Insects Act 1934*; to make related amendments to other Acts; and for other purposes.

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### **Contents**

#### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Pests and plant related products
- 5 Quarantine stations

#### Part 2—Protection of plant health

##### Division 1—Reporting of pest affected plants and plant related products and noxious insects

- 6 Reporting of pest affected plants and plant related products and noxious insects

##### Division 2—Control and prevention

- 7 Prohibition on introducing pest affected plants or plant related products
- 8 Quarantine areas
- 9 Orders relating to pest affected plants or plant related products
- 10 Action in emergency situations
- 11 Prohibition on sale of pest affected plants or plant related products

#### Part 3—Packaging, identifying and transporting plants and plant related products

##### Division 1—Packaging and labelling of fruits, vegetables and nuts

- 12 Packaging and labelling of fruit, vegetables and nuts for sale
- 13 Identification of plants sold for propagation

##### Division 2—Manifests

- 14 Manifests

## Part 4—Accreditation and registration schemes

### Division 1—Accreditation of production areas

- 15 Accreditation of production areas

### Division 2—Accreditation of persons

- 16 Application for accreditation  
17 Grant of accreditation  
18 Authority conferred by accreditation  
19 Assurance certificates and evidence of verification  
20 Conditions of accreditation  
21 Periodic fees and returns  
22 Variation of accreditation  
23 Surrender of accreditation  
24 Suspension or cancellation of accreditation  
25 Offences

### Division 3—Registration of importers

- 26 Application for registration  
27 Grant of registration  
28 Conditions of registration  
29 Periodic fees and returns  
30 Variation of registration  
31 Surrender of registration  
32 Suspension or cancellation of registration  
33 Offence

### Division 4—Register

- 34 Register

### Division 5—Reviews and appeals

- 35 Review by Minister  
36 Appeal to District Court

## Part 5—Enforcement

### Division 1—Approved auditors

- 37 Approved auditors  
38 Duty of auditor to report certain matters  
39 Offence to hinder or obstruct auditor

### Division 2—Inspectors

#### Subdivision 1—Appointment and identification

- 40 Appointment of Chief Inspector and deputy  
41 Appointment of inspectors  
42 Identification of inspectors

#### Subdivision 2—Powers

- 43 General powers  
44 Power to investigate

45 Power to issue plant health certificates

Subdivision 3—Miscellaneous

46 Immunity from liability

47 Warrant procedures

48 Offence to hinder etc inspectors

Part 6—Miscellaneous

49 Delegation

50 Compensation

51 False or misleading statements

52 Self-incrimination

53 Service of notices and orders

54 Vicarious liability

55 Evidence

56 Commencement of prosecution of offences

57 Continuing offences

58 General defence

59 Incorporation of codes and standards

60 Regulations

Schedule 1—Related amendments, repeal and transitional provisions

Part 1—Related amendments

Division 1—Preliminary

1 Amendment provisions

Division 2—Amendment of *Citrus Industry Act 2005*

2 Amendment of section 5—Functions of Board

Division 3—Amendment of *Phylloxera and Grape Industry Act 1995*

3 Amendment of section 3—Interpretation

4 Amendment of section 27—Members of Board to be inspectors

Part 2—Repeal

5 Repeal

Part 3—Transitional provisions

6 Transitional provisions

7 Regulations

Legislative history

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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 *Plant Health Act 2009*.

**2—Commencement**

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

**3—Interpretation**

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

*accreditation conditions*—see section 20;

*accredited person* means a person accredited under Part 4 Division 2;

*approved auditor* means a person approved to be an auditor under Part 5 Division 1;

*assurance certificate* means—

(a) an assurance certificate issued by an accredited person under Part 4 Division 2; or

(b) a certificate corresponding to an assurance certificate issued under a corresponding law;

*Chief Inspector* means the Chief Inspector appointed under Part 5 Division 2;

*corresponding law* means a law of another State declared by the regulations to be a law that corresponds to this Act;

*disease* means a bacterium, fungus, protozoa, phytoplasma, virus or any other organism or pathogen;

*importer* means a person who brings or introduces plants or plant related products into the State for the purposes of sale or any other commercial purpose;

*inspector* means an inspector appointed under Part 5 Division 2;

*label* includes a ticket, manifest, cartnote, stamp, tag or sticker;

*noxious insect* means any species of migratory or gregarious grasshopper;

*packaging* includes the whole or any part of a package, container, crate, covering, packing or material of any description that is being or has been used to cover or contain a plant or plant related product;

*pest*—see section 4;

*place* includes any land, road or premises;

*plant* means—

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

(b) the whole or any part of the fruit or nut of a tree, vine or shrub; and

- (c) 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);

**plant health certificate** means—

- (a) a plant health certificate issued by an inspector under Part 5 Division 2; or  
 (b) a certificate corresponding to a plant health certificate issued under a corresponding law;

**plant related product** means—

- (a) soil, potting mix, packaging, agricultural machinery or equipment; and  
 (b) any other material or item declared by the Minister under section 4 to be a plant related product;

**premises** means any land, building or structure (including a moveable building or structure);

**quarantine station** means a place declared by the Minister under section 5 to be a quarantine station;

**registered importer** means an importer registered under Part 4 Division 3;

**sell** includes possess, offer, display or consign for sale;

**soil** does not include clean sand;

**State** includes a Territory;

**vehicle** includes an aircraft, a train or a vessel.

- (2) For the purposes of this Act—
- (a) soil or potting mix will be taken to be affected by a pest if a plant affected by a pest has been growing in the soil or potting mix;
- (b) a plant related product (other than soil or potting mix) will be taken to be affected by a pest if the product has been used to contain or cover, or has been in contact with, a plant, soil or potting mix affected by a pest.

#### **4—Pests and plant related products**

- (1) The Minister may, by notice in the Gazette, declare—
- (a) a disease; or  
 (b) an insect, a mite or other arthropod, a snail, slug or nematode; or  
 (c) any other organism; or  
 (d) any other condition,
- that affects or may affect a plant or plant related product to be a pest for the purposes of this Act.
- (2) The Minister may, by notice in the Gazette, declare material or an item to be a plant related product for the purposes of this Act.
- (3) The Minister may, by notice in the Gazette, vary or revoke a notice under this section.

## **5—Quarantine stations**

- (1) The Minister may, by notice in the Gazette, declare a place to be a quarantine station in which a plant or plant related product 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 this section.

## **Part 2—Protection of plant health**

### **Division 1—Reporting of pest affected plants and plant related products and noxious insects**

#### **6—Reporting of pest affected plants and plant related products and noxious insects**

- (1) A person who knows or has reason to suspect that a plant or plant related product is affected by a pest must—
  - (a) immediately report the matter to an inspector by the quickest practicable means; and
  - (b) provide the inspector with such further information as the inspector may reasonably require; and
  - (c) take all reasonable measures to prevent the spread of the pest.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
  - (b) in the case of a natural person—\$20 000.
- (2) A person who knows or has reason to suspect that noxious insects have appeared on premises (whether or not occupied by the person) must immediately report the matter to an inspector by the quickest practicable means.

Maximum penalty: \$1 250.  
Expiation fee: \$160.
- (3) 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.
- (4) A person who grows, propagates or processes plants or plant related products for profit or gain will, if the plants or plant related products are affected by a pest, be taken to know or have reason to suspect that the plants or plant related products are so affected in the absence of proof to the contrary.

### **Division 2—Control and prevention**

#### **7—Prohibition on introducing pest affected plants or plant related products**

- (1) Subject to this section, a person must not bring or introduce into the State a pest or a plant, or plant related product, affected by a pest.

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- (2) The Minister may, for the purpose of preventing the introduction into, or spread within, the State of a pest, prohibit, by notice in the Gazette, the bringing or introduction into the State of a specified class of plant or plant related product (either absolutely or subject to conditions).
- (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 pest, 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 brought or introduced into the State in contravention of this section or a notice under this section,

is guilty of an offence.

Maximum penalty:

- (a) in the case of a minor offence—\$5 000;
- (b) in any other case—
  - (i) in the case of a body corporate—\$100 000;
  - (ii) in the case of a natural person—\$20 000.

Expiation fee: In the case of a minor offence—\$315.

- (8) In this section—

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

## 8—Quarantine areas

- (1) The Minister may, by notice in the Gazette, declare the whole of the State, or a portion of the State specified in the notice, to be a quarantine area—
  - (a) in respect of all pests; or
  - (b) in respect of those pests specified in the notice.
- (2) A notice under this section may do 1 or more of the following:
  - (a) prohibit the removal from a quarantine area of—
    - (i) a plant of a species or kind specified in the notice that might, in the opinion of the Minister, transmit a pest; and

- (ii) a plant related product of a kind specified in the notice that might, in the opinion of the Minister, transmit a pest;
  - (b) require the owners or occupiers of premises within the quarantine area to take measures (including the destruction of plants and plant related products), specified in the notice, that are, in the opinion of the Minister, necessary for the control or eradication of a pest;
  - (c) require the owners or occupiers of premises within specified portions of the quarantine area to take more stringent measures (including the destruction of plants and plant related products), specified in the notice, than the owners or occupiers of other premises within the quarantine area;
  - (d) prohibit absolutely or subject to exceptions and conditions specified in the notice persons, vehicles, machinery or equipment entering or departing from the quarantine area or a specified portion of the quarantine area;
  - (e) prohibit absolutely or subject to exceptions and conditions specified in the notice the bringing or introducing into the quarantine area of—
    - (i) a plant of a species or kind specified in the notice; and
    - (ii) any plant related product of a kind specified in the notice;
  - (f) prohibit the planting, propagation or harvesting of plants, or plants of a specified species or kind, within the quarantine area during a period specified in the notice.
- (3) The Minister may, by notice in the Gazette, vary or revoke a notice under this section.
- (4) A person—
- (a) who contravenes or fails to comply with a notice under this section; or
  - (b) who purchases or takes delivery of anything brought or introduced into a quarantine area in contravention of a notice under this section,

is guilty of an offence.

Maximum penalty:

- (a) in the case of a minor offence—\$5 000;
- (b) in any other case—
  - (i) in the case of a body corporate—\$100 000;
  - (ii) in the case of a natural person—\$20 000.

Expiation fee: In the case of a minor offence—\$315.

- (5) In this section—

***minor offence*** means an offence that consists of—

- (a) a person bringing or introducing anything into, or removing anything from, a quarantine area for domestic use, consumption or enjoyment (and not for the purposes of sale or any other commercial purpose); or
- (b) a person purchasing or taking delivery of anything brought or introduced into, or removed from, a quarantine area for domestic use, consumption or enjoyment (and not for the purposes of sale or any other commercial purpose).



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**9—Orders relating to pest affected plants or plant related products**

- (1) If the Chief Inspector knows or reasonably suspects that a plant or plant related product is or might become affected by a pest, he or she may, with the approval of the Minister, issue such orders under this section as may be reasonably necessary to prevent or minimise the outbreak or spread of the pest to any of the following persons:
  - (a) a person who owns or has possession or control of the plant or plant related product;
  - (b) a person who sold or supplied the plant or plant related product;
  - (c) an owner or occupier of premises in the area specified in the order.
- (2) The Chief Inspector may issue 1 or more of the following orders in relation to any plant or plant related product that is or might become affected by a pest:
  - (a) an order requiring that it be kept at a specified place for a specified period or otherwise restricting or prohibiting its movement;
  - (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 a pest;
  - (d) an order restricting or prohibiting its sale or supply or restricting the purposes for which it may be used;
  - (e) if it has been sold or supplied—an order requiring that it be recalled;
  - (f) an order requiring that it be destroyed or disposed of in a specified manner;
  - (g) an order prohibiting the planting, propagation or harvesting of plants, or plants of a specified species or kind, on specified land during a specified period;
  - (h) an order requiring any other action be taken as may be reasonably necessary in the circumstances.
- (3) An order issued under this section may be subject to such conditions as the Chief Inspector specifies in the order.
- (4) If the Chief Inspector cannot, after reasonable inquiry, locate a person of whom the Chief Inspector intended to make any requirement for action by an order, the Chief Inspector may—
  - (a) cause the action to be taken by an inspector or other person; and
  - (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 plant or plant related product in respect of which action was taken by the inspector or other person.
- (5) An order under this section—
  - (a) must be in writing; and
  - (b) may be of general or limited application; and
  - (c) may, by further order of the Chief Inspector, be varied or revoked.

- (6) An order that is of a continuing nature has effect for such period as is specified in the order (and, if an order of such a nature is issued on the basis of a suspicion, the Chief Inspector must, as soon as practicable, take reasonable steps to determine whether that suspicion is correct).
- (7) If a person refuses or fails to comply with an order, the Chief Inspector may cause an inspector or other person to take any necessary action to give effect to the order.
- (8) The Chief Inspector may recover costs and expenses reasonably incurred under subsection (7) by action in a court of competent jurisdiction as a debt owed by the person to whom the order was issued.
- (9) A person to whom an order has been issued under this section who contravenes or fails to comply with the order is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

## **10—Action in emergency situations**

- (1) If an inspector considers on reasonable grounds that urgent action is required for the purposes of controlling, preventing the spread of, or eradicating, a pest, the inspector may, after giving such notice (if any) as may be reasonable in the circumstances, take any action that could be required to be taken by notice or order under this Part, or cause such action to be taken.
- (2) Action may be taken or caused to be taken under this section whether or not an order or notice has been issued in relation to the pest under this Part.

## **11—Prohibition on sale of pest affected plants or plant related products**

- (1) A person must not, without the approval of the Chief Inspector, sell or supply—
  - (a) a plant or plant related product affected by a pest; or
  - (b) a plant or plant related product subject to an order under this Part.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

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

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) If 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 plant or plant related product was sold or supplied such compensation as the court thinks fit.

## **Part 3—Packaging, identifying and transporting plants and plant related products**

### **Division 1—Packaging and labelling of fruits, vegetables and nuts**

#### **12—Packaging and labelling of fruit, vegetables and nuts for sale**

- (1) A person must not pack for sale or sell any fruit, vegetables or nuts in packaging unless the packaging—
- (a) is in good repair; and
  - (b) is clean and free of extraneous visible matter; and
  - (c) is free of any objectionable odour; and
  - (d) is labelled in accordance with the regulations.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) A person must not pack for sale or sell any fruit, vegetables or nuts in used packaging except in accordance with the regulations (which may prohibit the use of certain used packaging absolutely or subject to conditions).

Maximum penalty: \$5 000.

Expiation fee: \$315.

#### **13—Identification of plants sold for propagation**

A person must not sell any prescribed plant for propagation unless it is accompanied by a label or other notice in writing containing the information prescribed by the regulations.

Maximum penalty: \$5 000.

Expiation fee: \$315.

### **Division 2—Manifests**

#### **14—Manifests**

- (1) A person must not bring or introduce into the State plants or plant related products for sale or any other commercial purpose unless, before so doing, a manifest that conforms to the requirements of the Minister about its form, contents and the manner in which it is made has been lodged with the Chief Inspector.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) A person must not tranship, or transport through the State, plants or plant related products for sale in another State unless, before so doing, a manifest that conforms to the requirements of the Minister about its form, contents and the manner in which it is made has been lodged with the Chief Inspector.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) A person referred to in subsection (1) or (2) must, at a quarantine station or on the request of an inspector, produce a copy of the manifest.

Maximum penalty: \$5 000.

Expiation fee: \$315.

## **Part 4—Accreditation and registration schemes**

### **Division 1—Accreditation of production areas**

#### **15—Accreditation of production areas**

- (1) If the Minister is satisfied that, through the exercise of good management by the producers and processors of plants or plant related products in a specified area, the area is free of a specified pest or specified pests, the Minister may, by notice in the Gazette, declare that area to be free of the pest or pests specified in the notice and authorise the use of specified statements in respect of plants or plant related products produced or processed in that area when advertising, packaging or selling those plants or plant related products.
- (2) The Minister may, by notice in the Gazette, vary or revoke a notice under this section.
- (3) A person must only use a statement specified in a notice under this section in respect of plants or plant related products produced or processed in the area specified in the notice.

Maximum penalty: \$20 000.

Expiation fee: \$500.

### **Division 2—Accreditation of persons**

#### **16—Application for accreditation**

- (1) An application for accreditation for the purposes of this Division must be made to the Minister and must—
- (a) be in the manner and form, and contain the information, required by the Minister; and
  - (b) be accompanied by the fee fixed by the regulations.
- (2) The Minister may, by written notice, require the applicant—
- (a) to provide the Minister with further information, documents or records relevant to the application; or
  - (b) to allow an inspector or an approved auditor to inspect premises, facilities, vehicles, plant or equipment, or any other thing, proposed to be used by the applicant in connection with the issuing of certificates under the proposed accreditation.
- (3) The Minister may refuse the application if the applicant does not comply with such a request.
- (4) The applicant may, with the approval of the Minister or at the request of the Minister, amend the application before the Minister has finished considering it.

## 17—Grant of accreditation

- (1) On application for accreditation, the Minister must grant the accreditation sought by the applicant or another accreditation if satisfied—
  - (a) that the applicant is a suitable person to hold such accreditation; and
  - (b) if the applicant is a body corporate—that each director of the body corporate is a suitable person to be the director of a body corporate that holds such accreditation; and
  - (c) that the applicant satisfies any requirements for accreditation relating to protocols, operational procedures or other matters prescribed by the regulations.
- (2) For the purposes of determining the suitability of a person under subsection (1), the Minister may, without limitation, take into account—
  - (a) any offence committed by the person against—
    - (i) this Act or an Act repealed by this Act; or
    - (ii) a corresponding law; or
    - (iii) a prescribed Act; or
  - (b) any offence of dishonesty committed by the person.
- (3) Accreditation may be granted in the form the Minister considers appropriate.

## 18—Authority conferred by accreditation

Accreditation authorises the person named in the accreditation to do either or both of the following:

- (a) to issue assurance certificates in relation to the movement of a plant or plant related product within the State, into or out of the State, or for another purpose;
- (b) to verify assurance certificates or other documents, or the packaging or labelling of plants and plant related products,

in accordance with the terms and conditions of the accreditation.

## 19—Assurance certificates and evidence of verification

- (1) An assurance certificate may be issued in a form approved by the Minister.
- (2) An assurance certificate issued in respect of a plant or plant related product—
  - (a) grown, produced, processed, packed, used, treated or tested in the State; or
  - (b) to be brought or introduced into the State,may certify that the plant or plant related product complies with specified requirements of this Act or a corresponding law in relation to the control or prevention of the spread of pests.
- (3) Without limiting the generality of subsection (2), an assurance certificate issued in respect of a plant or plant related product may certify as to any of the following matters:
  - (a) that it is free of any or a specified pest;

- (b) that it is free of any or a specified pest, disease, pest infestation, infection or condition within the meaning of a corresponding law;
  - (c) that it is in a specified condition;
  - (d) that it is from a specified area;
  - (e) that it has been treated in a specified way or with specified treatments;
  - (f) that it has been transported in a specified manner or via a specified route;
  - (g) that it meets specified requirements;
  - (h) as to any other matter specified in the certificate.
- (4) Verification of assurance certificates or other documents, or the packaging or labelling of plants and plant related products, may be evidenced in a manner and form approved by the Minister.

## **20—Conditions of accreditation**

- (1) The Minister may impose conditions on a person's accreditation (*accreditation conditions*).
- (2) Without limiting the conditions that may be imposed under subsection (1), the conditions may include the following:
- (a) a condition restricting the class or type of certificate that may be issued;
  - (b) a condition restricting the activities in respect of which a certificate may be issued;
  - (c) a condition restricting the class or type of assurance certificate or other document that may be verified;
  - (d) a condition restricting the use of the accreditation in some other way;
  - (e) a condition as to the records to be kept by the accredited person;
  - (f) a condition requiring compliance with prescribed protocols and operational procedures;
  - (g) a condition requiring compliance with applicable codes or rules made under this Act as in force from time to time;
  - (h) a condition relating to the audit from time to time of all or part of the operations authorised by the accreditation (including the payment of all or part of the costs of the audit) and the reporting of the results of the audit to the Minister;
  - (i) a condition requiring the accredited person to provide, in the manner and form determined by the Minister, such other information as the Minister may from time to time require;
  - (j) any other condition that the Minister thinks fit.
- (3) An accredited person must not contravene a condition of the person's accreditation.
- Maximum penalty:
- (a) in the case of a contravention of a prescribed condition—\$5 000;
  - (b) in any other case—

- (i) in the case of a body corporate—\$100 000;
- (ii) in the case of a natural person—\$20 000.

Expiation fee: In the case of a contravention of a prescribed condition—\$315.

## **21—Periodic fees and returns**

- (1) An accredited person must, for each period fixed by regulation and not later than the date fixed by regulation—
  - (a) pay to the Minister the fee fixed by regulation; and
  - (b) lodge with the Minister a return that conforms to the requirements of the Minister about its form, contents and the manner in which it is made.
- (2) If an accredited person fails to lodge the return or pay the accreditation fee in accordance with this section, the Minister may, by written notice, require the accredited person to make good the default and, in addition, to pay to the Minister the amount prescribed as a penalty for default.
- (3) If an accredited person—
  - (a) fails to comply with a notice under subsection (2) within 14 days after the giving of the notice—the accreditation is suspended until the notice is complied with; and
  - (b) fails to comply with any such notice within 3 months after the giving of the notice—the accreditation is cancelled.
- (4) The Minister must cause written notice of the suspension or cancellation to be given to the person.

## **22—Variation of accreditation**

- (1) The Minister may vary the terms or conditions of a person's accreditation by written notice to the person as the Minister considers appropriate.
- (2) The Minister's power under this section may be exercised on the Minister's own initiative or on the application of the accredited person and payment of the prescribed fee.

## **23—Surrender of accreditation**

- (1) An accredited person may surrender the person's accreditation to the Minister.
- (2) At the time accreditation to issue assurance certificates is surrendered, the person must also surrender any unissued assurance certificates to the Minister.

Maximum penalty: \$1 250.

Expiation fee: \$160.

## **24—Suspension or cancellation of accreditation**

- (1) The Minister may suspend or cancel the accreditation of an accredited person if—
    - (a) the accredited person obtained the accreditation improperly; or
    - (b) an accredited person—
      - (i) has ceased to undertake the activity authorised by the accreditation;
- or

- (ii) has not paid fees or charges payable to the Minister or an approved auditor within the required time; or
  - (iii) has been guilty of a contravention of a condition of the accreditation; or
  - (iv) has committed an offence against this Act; or
  - (v) has been convicted of an indictable offence.
- (2) A suspension under this section may be for a specified period, or until the fulfilment of specified conditions, or until further order of the Minister.
- (3) A suspension under this section may—
- (a) be effective immediately; or
  - (b) be expressed to have effect at a specified future time; or
  - (c) be expressed to have effect at a specified future time unless a specified condition is fulfilled.
- (4) The Minister must—
- (a) notify the accredited person in writing of the action taken or proposed to be taken specifying the reasons for the action; and
  - (b) allow the accredited person at least 14 days within which to make submissions to the Minister in relation to the action or proposed action (as the case may be).
- (5) If the Minister suspends or cancels an accreditation, the person must, within 14 days of the suspension or cancellation, return the accreditation (and, if relevant, any unissued assurance certificates) to the Minister.
- Maximum penalty: \$1 250.  
Expiation fee: \$160.
- (6) In this section—
- accredited person*** includes a person whose accreditation has been suspended.

## **25—Offences**

- (1) A person must not verify that—
- (a) an assurance certificate or other document relating to a plant or plant related product required under this Act or a corresponding law; or
  - (b) the packaging or labelling of plants or plant related products,
- complies with the requirements of this Act or a corresponding law (as the case may be) except as authorised by accreditation granted under this Division.
- Maximum penalty:
- (a) in the case of a body corporate—\$100 000;
  - (b) in the case of a natural person—\$20 000.
- (2) A person must not issue an assurance certificate in relation to a plant or plant related product except as authorised by accreditation granted under this Division.
- Maximum penalty:



- (a) in the case of a body corporate—\$100 000;
  - (b) in the case of a natural person—\$20 000.
- (3) A person must not issue anything that purports to be an assurance certificate unless the person is accredited under this Division to do so.
- Maximum penalty:
- (a) in the case of a body corporate—\$100 000;
  - (b) in the case of a natural person—\$20 000.
- (4) A person must not alter or permit to be altered any information or statement in an assurance certificate unless—
- (a) the alteration is authorised in writing by the accredited person who issued the certificate; or
  - (b) the alteration—
    - (i) relates to the splitting of a consignment to which the certificate relates; and
    - (ii) is made by an inspector or a person authorised by accreditation granted under this Division to split consignments.
- Maximum penalty:
- (a) in the case of a body corporate—\$100 000;
  - (b) in the case of a natural person—\$20 000.

## **Division 3—Registration of importers**

### **26—Application for registration**

- (1) An application for registration as an importer under this Division must be made to the Minister and must—
  - (a) be in the manner and form, and contain the information, required by the Minister; and
  - (b) be accompanied by the fee fixed by the regulations.
- (2) The Minister may, by written notice, require the applicant to provide the Minister with further information, documents or records relevant to the application.
- (3) The Minister may refuse an application if the applicant does not comply with such a request.
- (4) The applicant may, with the approval of the Minister or at the request of the Minister, amend the application before the Minister has finished considering it.

### **27—Grant of registration**

- (1) The Minister must grant an application for registration as an importer if satisfied—
  - (a) that the applicant is a suitable person to be so registered; and
  - (b) if the applicant is a body corporate—that each director of the body corporate is a suitable person to be the director of a body corporate that is so registered; and

- (c) that the applicant satisfies any requirements for registration relating to protocols, operational procedures or other matters prescribed by the regulations.
- (2) For the purposes of determining the suitability of a person under subsection (1), the Minister may, without limitation, take into account—
  - (a) any offence committed by the person against—
    - (i) this Act or an Act repealed by this Act; or
    - (ii) a corresponding law; or
    - (iii) a prescribed Act; or
  - (b) any offence of dishonesty committed by the person.
- (3) Registration may be granted in the form the Minister considers appropriate.

## **28—Conditions of registration**

- (1) The Minister may impose conditions on a person's registration as an importer.
- (2) Without limiting the conditions that may be imposed under subsection (1), the conditions may include—
  - (a) a condition restricting the type of plant or plant related product that the person may bring or introduce into the State; and
  - (b) a condition as to the records to be kept by the registered importer; and
  - (c) a condition requiring compliance with prescribed protocols and operational procedures; and
  - (d) a condition requiring compliance with applicable codes or rules made under this Act as in force from time to time; and
  - (e) a condition requiring the registered importer to provide, in the manner and form determined by the Minister, such information as the Minister may from time to time require; and
  - (f) any other condition that the Minister thinks fit.
- (3) A registered importer must not contravene a condition of the importer's registration.

Maximum penalty:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of a natural person—\$5 000.

Expiation fee:

- (a) in the case of a body corporate—\$500;
- (b) in the case of a natural person—\$315.

## **29—Periodic fees and returns**

- (1) A registered importer must, for each period fixed by regulation and not later than the date fixed by regulation—
  - (a) pay to the Minister the fee fixed by regulation; and

- (b) lodge with the Minister a return that conforms to the requirements of the Minister about its form, contents and the manner in which it is made.
- (2) If a registered importer fails to lodge the return or pay the registration fee in accordance with this section, the Minister may, by written notice, require the registered importer to make good the default and, in addition, to pay to the Minister the amount prescribed as a penalty for default.
- (3) If a registered importer—
  - (a) fails to comply with a notice under subsection (2) within 14 days after the giving of the notice—the registration is suspended until the notice is complied with; and
  - (b) fails to comply with any such notice within 3 months after the giving of the notice—the registration is cancelled.
- (4) The Minister must cause written notice of the suspension or cancellation to be given to the importer.

### **30—Variation of registration**

- (1) The Minister may vary the terms or conditions of an importer's registration by written notice to the importer as the Minister considers appropriate.
- (2) The Minister's power under this section may be exercised on the Minister's own initiative or on the application of the registered importer and payment of the prescribed fee.

### **31—Surrender of registration**

A registered importer may surrender the registration to the Minister.

### **32—Suspension or cancellation of registration**

- (1) The Minister may suspend or cancel the registration of an importer if—
  - (a) the registration was obtained improperly; or
  - (b) the registered importer—
    - (i) has ceased to undertake the activity authorised by the registration; or
    - (ii) has not paid fees or charges payable to the Minister within the required time; or
    - (iii) has been guilty of a contravention of a condition of the registration; or
    - (iv) has committed an offence against this Act; or
    - (v) has been convicted of an indictable offence.
- (2) A suspension under this section may be for a specified period, or until the fulfilment of specified conditions, or until further order of the Minister.
- (3) A suspension under this section may—
  - (a) be effective immediately; or
  - (b) be expressed to have effect at a specified future time; or

- (c) be expressed to have effect at a specified future time unless a specified condition is fulfilled.
- (4) The Minister must—
  - (a) notify the registered importer in writing of the action taken or proposed to be taken specifying the reasons for the action; and
  - (b) allow the registered importer at least 14 days within which to make submissions to the Minister in relation to the action or proposed action (as the case may be).
- (5) If the Minister suspends or cancels a registration, the holder of the registration must, within 14 days of the suspension or cancellation, return the registration to the Minister.

Maximum penalty: \$1 250.  
Expiation fee: \$160.
- (6) In this section—

*registered importer* includes an importer whose registration has been suspended.

### **33—Offence**

A person must not bring or introduce into the State plants or plant related products for sale or any other commercial purpose except as authorised by registration granted under this Division.

Maximum penalty:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of a natural person—\$5 000.

Expiation fee:

- (a) in the case of a body corporate—\$500;
- (b) in the case of a natural person—\$315.

## **Division 4—Register**

### **34—Register**

- (1) The Minister must maintain a register of—
  - (a) production areas accredited under Division 1; and
  - (b) persons accredited under Division 2; and
  - (c) importers registered under Division 3.
- (2) The register may contain the information and be kept in the form that the Minister considers appropriate.

## **Division 5—Reviews and appeals**

### **35—Review by Minister**

- (1) A person may apply to the Minister for review of a decision of the Minister—
  - (a) refusing an application for the grant of accreditation under Division 2; or

- (b) refusing an application for the grant of registration under Division 3; or
  - (c) imposing or varying conditions of any such accreditation or registration; or
  - (d) suspending or cancelling any such accreditation or registration.
- (2) An application for review of a decision of the Minister must be made within 28 days after the day on which the person is given written notice of the decision.
  - (3) The Minister may determine an application for review as the Minister thinks fit.
  - (4) A review must be determined within 28 days of the application being lodged with the Minister.
  - (5) If a review is not determined within that period, the Minister is to be taken to have confirmed the decision.

### **36—Appeal to District Court**

- (1) An applicant for a review under this Division who is not satisfied with the decision of the Minister on the review may appeal to the Administrative and Disciplinary Division of the District Court against the decision.
- (2) Subject to subsection (4), an appeal must be instituted within 28 days of the making of the decision appealed against.
- (3) The Minister must, if required by the applicant for the review, state in writing the reasons for the decision.
- (4) If the reasons of the Minister are not given to the applicant for the review in writing at the time of making the decision and that person (within 28 days of the making of the decision) requires the Minister to state the reasons in writing, the time for instituting an appeal runs from the time at which that person receives the written statement of those reasons.

## **Part 5—Enforcement**

### **Division 1—Approved auditors**

#### **37—Approved auditors**

- (1) The Minister may approve a person as an auditor for the purposes of this Act if the Minister is satisfied that the person can provide satisfactory and efficient audit services for the purposes of this Act and that the services will be provided by suitably qualified persons.
- (2) An approval is subject to conditions imposed by the Minister.
- (3) Without limiting subsection (2), the conditions may include the following:
  - (a) a condition requiring the person to enter into an agreement (an *audit agreement*) with the Minister;
  - (b) a condition limiting the functions or powers of the person;
  - (c) a condition limiting the area of the State in which those functions or powers may be exercised;
  - (d) a condition fixing fees to be paid to the Minister.

- (4) An audit agreement—
- (a) must regulate the provision of audit services for the purposes of this Act; and
  - (b) must provide that the agreement terminates if the approval is withdrawn by the Minister; and
  - (c) must set out the requirements relating to audit reports including the content of the reports; and
  - (d) may regulate the charges to be made by the auditor for audit services under this Act (by fixing specific charges or maximum and minimum charges or by setting out a method of calculating charges); and
  - (e) may regulate the withdrawal of audit services for non-payment of charges; and
  - (f) may provide for the suspension of obligations under the agreement in specified circumstances; and
  - (g) may contain any other provision agreed between the Minister and the person.
- (5) The Minister and an approved auditor may, by agreement, vary or terminate an audit agreement.
- (6) The Minister may, by written notice to the approved auditor—
- (a) impose a further condition of approval; or
  - (b) vary or revoke a condition of approval; or
  - (c) cancel the approval if satisfied that the auditor is in breach of a condition of the approval or a term of the audit agreement between the auditor and the Minister.
- (7) An approval or audit agreement under this section does not derogate from the right of an inspector to exercise a power under this Act.

### **38—Duty of auditor to report certain matters**

If, in the course of conducting an audit in respect of an accredited person, an approved auditor forms a reasonable belief that the accredited person—

- (a) has engaged or is engaging in conduct that constitutes a breach of a prescribed accreditation condition; or
- (b) has engaged or is engaging in conduct of a prescribed kind,

the auditor must, as soon as reasonably practicable, inform the Minister of the name and address of the accredited person and the details about the facts and circumstances giving rise to the belief.

Maximum penalty: \$5 000.

### **39—Offence to hinder or obstruct auditor**

A person who hinders or obstructs a person performing an audit under this Division is guilty of an offence.

Maximum penalty: \$5 000.

## **Division 2—Inspectors**

### **Subdivision 1—Appointment and identification**

#### **40—Appointment of 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.

#### **41—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.

#### **42—Identification of inspectors**

- (1) An inspector must be issued with an identity card in a form approved by the Minister—
  - (a) containing a photograph of the person and the person's name or a unique identification code; and
  - (b) stating that the person is an inspector under this Act.
- (2) An inspector must, at the request of a person in relation to whom the inspector intends to exercise any powers under this Act or any other Act, produce his or her identity card for inspection by the person.
- (3) If a person in possession of an identity card issued to the person under this section ceases to be an inspector, the person must immediately return the identity card to the Minister.

Maximum penalty: \$1 250.

### **Subdivision 2—Powers**

#### **43—General powers**

- (1) An inspector may—
  - (a) enter and search and, if necessary, use reasonable force to break into or open—
    - (i) any premises or vehicle; or
    - (ii) part of, or anything in or on, any premises or vehicle; and
  - (b) enter premises to carry out an investigation under section 44; and
  - (c) enter premises to—

- (i) apply, instal, inspect or retrieve a bait, lure, trap or other equipment for the purpose of monitoring, controlling or eradicating a pest; or
  - (ii) carry out any other work or operation as may be necessary for the identification, destruction or suppression of a pest; and
- (d) give directions with respect to the stopping or movement of a vehicle; and
- (e) require a person to produce a document, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process; and
- (f) examine, copy or take extracts from a document or information so produced or require a person to provide a copy of any such document or information; and
- (g) verify that a certificate or other document relating to a plant or plant related product complies with the requirements of this Act or a corresponding law; and
- (h) verify that the packaging or labelling of plants or plant related products complies with the requirements of this Act or a corresponding law; and
- (i) take photographs, films or audio, video or other recordings; and
- (j) seize and retain any insect or other pest, or plant or plant related product, that the inspector reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act; and
- (k) seize any plant or plant related product brought into a place, removed from a place, or moved from 1 place to another, in contravention of this Act; and
- (l) require a person holding or required to hold an accreditation or registration under this Act to produce it for inspection; and
- (m) require the owner of any plant, plant related product or other thing to deliver it to a quarantine station; and
- (n) identify, by marking, tagging or otherwise, any premises, plant, plant related product or other thing in respect of which powers have been exercised under this Act; and
- (o) erect signs at, on or near any place or area in respect of which powers have been exercised under this Act; and
- (p) require a person who the inspector reasonably suspects has committed, is committing, or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity; and
- (q) require a person who the inspector reasonably suspects has knowledge of matters in respect of which information is required for the administration or enforcement of this Act to answer questions in relation to those matters; and
- (r) give a direction required in connection with the exercise of a power conferred by this Act or otherwise in connection with the administration or enforcement of this Act.



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- (2) An inspector—
- (a) may only exercise the powers conferred by subsection (1) as reasonably required for the administration and enforcement of this Act; and
  - (b) may only exercise the power to use force under subsection (1)(a) on the authority of a warrant issued by a magistrate or in circumstances in which the inspector reasonably believes that urgent action is required in order to prevent or mitigate the spread of a pest; and
  - (c) may only exercise the power conferred by subsection (1)(c) if the occupier of the premises—
    - (i) has been given 24 hours notice in writing; or
    - (ii) has consented to the entry.
- (3) Despite subsection (2)(c), this section does not authorise an inspector to enter a part of premises occupied as a residence except—
- (a) with the consent of the occupier; or
  - (b) on the authority of a warrant issued by a magistrate.
- (4) If an inspector seizes any plant or plant related product under subsection (1)(k), the inspector may do 1 or more of the following in relation to the plant or plant related product:
- (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 a pest 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.
- (5) An inspector may be assisted in the exercise of powers under this Act by such persons as the inspector considers necessary in the circumstances.
- (6) An inspector may require an occupier of premises or a person apparently in charge of a vehicle or other thing to give to the inspector or a person assisting the inspector such assistance as is reasonably required by the inspector for the effective exercise of powers under this Act.

#### **44—Power to investigate**

- (1) An inspector may carry out an investigation as reasonably necessary for the purposes of—
- (a) determining whether a plant or plant related product is affected by a pest; or
  - (b) determining the presence of noxious insects or other pests; or
  - (c) identifying or tracing any cause or source or potential cause or source of a pest.

- (2) An inspector may, for the purposes of an investigation under this section, examine, take samples from or test any insect or other pest, plant or plant related product.

#### **45—Power to issue plant health certificates**

- (1) An inspector may issue a plant health certificate in a form approved by the Minister in relation to plants or plant related products—
- (a) grown, produced, processed, packed, used, treated or tested in the State; or
  - (b) to be brought or introduced into the State.
- (2) Without limiting the generality of subsection (1), a plant health certificate issued in relation to a plant or plant related product may certify as to any of the following matters:
- (a) that it is free of any or a specified pest;
  - (b) that it is free of any or a specified pest, disease, pest infestation, infection or condition within the meaning of a corresponding law;
  - (c) that it is in a specified condition;
  - (d) that it is from a specified area;
  - (e) that it has been treated in a specified way or with specified treatments;
  - (f) that it has been transported in a specified manner or via a specified route;
  - (g) that it complies with specified accreditation conditions;
  - (h) that it meets specified requirements;
  - (i) as to any other matter specified in the certificate.
- (3) Before issuing a plant health certificate in relation to a plant or plant related product, the inspector may do 1 or more of the following:
- (a) inspect the plant or plant related product;
  - (b) take samples of or from the plant or plant related product;
  - (c) supervise the treatment or grading of the plant or plant related product;
  - (d) inspect or test materials, chemicals or equipment used to treat or grade the plant or plant related product;
  - (e) do any other thing the inspector reasonably considers necessary in the circumstances.
- (4) A plant health certificate may be issued in relation to the movement of a plant or plant related product within the State, into or out of the State, or for another purpose.
- (5) A person who is not an inspector must not issue a plant health certificate.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
  - (b) in the case of a natural person—\$20 000.
- (6) A person must not alter, or permit to be altered, any information or statement in a plant health certificate unless—
- (a) the alteration is authorised in writing by an inspector; or

- (b) the alteration—
  - (i) relates to the splitting of a consignment to which the certificate relates; and
  - (ii) is made by a person authorised by accreditation granted under Part 4 Division 2 to split consignments.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

### **Subdivision 3—Miscellaneous**

#### **46—Immunity from liability**

- (1) No civil liability attaches to an inspector, or a person assisting an inspector, for an act or omission in the exercise or performance, or purported exercise or performance of powers, functions or duties conferred or imposed by or under this Act or another Act or any law.
- (2) An action that would, but for subsection (1), lie against an inspector or person lies instead against the Crown.
- (3) This section does not prejudice rights of action of the Crown in respect of an act or omission not in good faith.

#### **47—Warrant procedures**

- (1) A magistrate must not issue a warrant for the purposes of this Part unless satisfied that the warrant is reasonably required in the circumstances.
- (2) An application for a warrant may be made personally or, if, in the opinion of the applicant, the warrant is urgently required and there is not enough time to lodge a written application and appear before a magistrate, by fax transmission or telephone.
- (3) The grounds of an application for a warrant must be verified by affidavit.
- (4) If an application for the issue of a warrant is made by fax transmission, the following provisions apply:
  - (a) the application must be in a form approved by the Chief Magistrate;
  - (b) the application must be accompanied (through fax transmission) by an affidavit made by the applicant verifying the facts referred to in the application;
  - (c) the applicant must be available to speak to the magistrate by telephone;
  - (d) the magistrate is entitled to assume, without further inquiry, that a person who identifies himself or herself as the applicant acting in the capacity of an inspector during a telephone conversation with the magistrate is indeed the applicant acting in that capacity;
  - (e) the magistrate may, on being satisfied as to the circumstances of urgency and the grounds for the issue of a warrant, make out and sign a warrant;
  - (f) the warrant is to be taken to have been issued, and comes into force, when signed by the magistrate;

- (g) the magistrate must forward the warrant to the applicant by fax transmission.
- (5) If an application for a warrant is made by telephone, the following provisions apply:
- (a) the applicant must inform the magistrate of the applicant's name and identify himself or herself as an inspector and the magistrate, on receiving that information, is entitled to assume its accuracy without further inquiry;
  - (b) the applicant must inform the magistrate of the purpose for which the warrant is required, the grounds on which it is sought and the circumstances giving rise to the urgency of the application;
  - (c) the magistrate may, on being satisfied as to the circumstances of urgency and the grounds for the issue of the warrant, inform the applicant of the facts on which the magistrate relies as grounds for the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts;
  - (d) if the applicant gives such an undertaking, the magistrate may then make out and sign a warrant;
  - (e) the warrant is to be taken to have been issued, and comes into force, when signed by the magistrate;
  - (f) the magistrate must inform the applicant of the terms of the warrant;
  - (g) the applicant must fill out and sign a warrant form (the *duplicate warrant*) that—
    - (i) sets out the name of the magistrate who issued the original and the terms of the warrant; and
    - (ii) complies with any other prescribed requirements;
  - (h) the applicant must, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c) and a copy of the duplicate warrant.
- (6) A warrant, if not executed at the expiration of 1 month from the date of its issue, then expires.

#### **48—Offence to hinder etc inspectors**

A person who—

- (a) hinders or obstructs an inspector, a person assisting an inspector, or an animal accompanying an inspector, in the exercise of powers under this Act; or
- (b) refuses or fails to comply with a requirement or direction of an inspector under this Act; or
- (c) removes, damages or interferes with any notice, sign, identification mark, label, tape, seal, lock or other device used for the purposes of this Act; or
- (d) when required by an inspector under this Act to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an inspector,

is guilty of an offence.

Maximum penalty: \$5 000.

## **Part 6—Miscellaneous**

### **49—Delegation**

- (1) The Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this Act.
- (2) The Chief Inspector may delegate to a person (including an inspector) a function or power of the Chief Inspector under this Act.
- (3) 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 delegator to act in any matter; and
  - (d) is revocable at will.
- (4) A function or power delegated by the Minister under this section may, if the instrument of delegation so provides, be further delegated.

### **50—Compensation**

- (1) The Minister may pay compensation to any person who has suffered loss or damage as a direct consequence of a notice or an order made under Part 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 the Minister to make a payment of compensation under this section.

### **51—False or misleading statements**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in an application made, information provided, or a certificate issued, under this Act.

Maximum penalty:

- (a) if the person made the statement knowing that it was false or misleading—\$10 000;
- (b) in any other case—\$5 000.

## 52—Self-incrimination

If a person is required to answer a question or to produce, or provide a copy of, a document or information under this Act and the answer or document or information would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless answer or produce, or provide a copy of, the document or information, but the answer or document or information will not be admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty other than proceedings in respect of the making of a false or misleading statement or declaration.

## 53—Service of notices and orders

- (1) 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 the person's 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 the person's or agent's last known place of residence or business.
- (2) Without limiting subsection (1), a notice or order required or authorised to be given to a person under this Act may be given or issued—
  - (a) by posting it to the person at the address last provided to the Minister by the person for that purpose; or
  - (b) by transmitting it to the person by fax transmission or email to the fax number or email address last provided to the Minister by the person for that purpose; or
  - (c) in the case of a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth—in accordance with that Act.

## 54—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) If 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.

## 55—Evidence

- (1) In proceedings, a certificate apparently executed by the Minister certifying as to a matter relating to—
  - (a) the accreditation of a place; or
  - (b) the accreditation of a person; or
  - (c) the registration of an importer; or
  - (d) the appointment of an inspector; or

- (e) the approval of an auditor; or
- (f) an order or approval of the Chief Inspector or any other inspector; or
- (g) a delegation; or
- (h) an exemption; or
- (i) a notice; or
- (j) an application; or
- (k) the receipt or non-receipt of information; or
- (l) the amount of costs and expenses incurred in taking 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; or
  - (b) that specified plants or plant related products were within a specified area; or
  - (c) that specified plants or plant related products are or were affected by a pest; or
  - (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.

## **56—Commencement of prosecution of offences**

Proceedings for an offence under this Act may be commenced at any time within 3 years of the day on which the offence is alleged to have been committed.

## **57—Continuing offences**

- (1) If 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 despite the fact that any period within which, or time before which, the act is required to be done has expired or passed.

## 58—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.

## 59—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; and
  - (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) If 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.

## 60—Regulations

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) Without limiting subsection (1), the regulations may—
  - (a) fix fees to be paid in respect of a matter under this Act and regulate, or provide for the Minister to regulate, the payment, recovery, waiver or reduction of such fees; and
  - (b) exempt, or provide for the Minister to exempt, a class of persons, plants, plant related products or activities from the application of this Act or a specified provision of this Act unconditionally or subject to specified conditions; and
  - (c) impose fines, not exceeding \$5 000, for offences against the regulations; and
  - (d) fix expiation fees, not exceeding \$315, for alleged offences against the regulations.
- (3) Regulations under this Act may—
  - (a) be of general application or limited application; and
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the Chief Inspector; and



- (d) include evidentiary provisions to facilitate proof of contraventions of the regulations for the purposes of proceedings for offences.
- (4) Regulations under this Act may provide for fees that vary or are determined by the Minister according to factors specified in the regulations.

## **Schedule 1—Related amendments, repeal and transitional provisions**

### **Part 1—Related amendments**

#### **Division 1—Preliminary**

##### **1—Amendment provisions**

In this Part, a provision under a heading to a Division referring to the amendment of a specified Act amends the Act so specified.

#### **Division 2—Amendment of *Citrus Industry Act 2005***

##### **2—Amendment of section 5—Functions of Board**

Section 5(1)(i)—delete "*Fruit and Plant Protection Act 1992*" and substitute:  
*Plant Health Act 2009*

#### **Division 3—Amendment of *Phylloxera and Grape Industry Act 1995***

##### **3—Amendment of section 3—Interpretation**

Section 3, definition of *Chief Inspector*—delete "*Fruit and Plant Protection Act 1992*" and substitute:

*Plant Health Act 2009*

##### **4—Amendment of section 27—Members of Board to be inspectors**

Section 27—delete "*Fruit and Plant Protection Act 1992*" and substitute:  
*Plant Health Act 2009*

### **Part 2—Repeal**

#### **5—Repeal**

- (1) The *Fruit and Plant Protection Act 1992* is repealed.
- (2) The *Noxious Insects Act 1934* is repealed.

### **Part 3—Transitional provisions**

#### **6—Transitional provisions**

- (1) The person holding appointment as the Chief Inspector, deputy of the Chief Inspector, or inspector, under the repealed Act immediately before the commencement of this Schedule will become, on the commencement of this clause, a person holding the corresponding appointment under this Act.

- (2) The notice signed by the Minister on 6 February 2006 (see Gazette 16 February 2006 p552) as varied from time to time and in force immediately before the commencement of this Schedule continues in force and will be taken to be a notice in force under this Act (and the *Plant Quarantine Standard South Australia* adopted under clause 7.1 of that notice will be taken to be adopted in the notice under section 59 of this Act).
- (3) A declaration under section 4 of the repealed Act in operation immediately before the commencement of this Schedule that a condition of fruit or plants is a disease will be taken to be a declaration of a pest under section 4 of this Act.
- (4) A declaration under section 5 of the repealed Act in operation immediately before the commencement of this Schedule that a place is a quarantine station will be taken to be a declaration that a place is a quarantine station under section 5 of this Act.
- (5) A notice under section 13 of the repealed Act in force immediately before the commencement of this Schedule prohibiting the introduction or importation into the State of any specified class of fruit, plant, soil, packaging or other thing will be taken to be a notice prohibiting the bringing or introduction into the State of a specified class of plant or plant related product under section 7 of this Act.
- (6) A declaration under section 14 of the repealed Act in operation immediately before the commencement of this Schedule that a place is a quarantine area will be taken to be a declaration that a place is a quarantine area under section 8 of this Act.
- (7) A declaration under section 18 of the repealed Act in operation immediately before the commencement of this Schedule will be taken to be a declaration under section 15 of this Act.
- (8) A notice incorporating a code, standard or other document under section 29 of the repealed Act in force immediately before the commencement of this Schedule will be taken to be a notice in force under this Act incorporating a code, standard or other document under section 59 of this Act.
- (9) In this clause—

*repealed Act* means the *Fruit and Plant Protection Act 1992* repealed under Part 2 of this Schedule.

## **7—Regulations**

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule, apply to any amendment or repeal effected by this Schedule.

## 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).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2009	2	<i>Plant Health Act 2009</i>	12.2.2009	1.8.2009 ( <i>Gazette 30.7.2009 p3437</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 115 (ss 268 & 269)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )