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## SAN JOSÉ SCALE CONTROL ACT, 1962-1975

being

San José Scale Control Act, 1962, No. 41 of 1962 [Assented to 8th November, 1962]<sup>1</sup>;

as amended by

Statutes Amendment (Oriental Fruit Moth Control, Red Scale Control and San José Scale Control) Act, 1964, No. 50 of 1964 [Assented to 30th October, 1964];

Statutes Amendment (Oriental Fruit Moth Control, Red Scale Control and San José Scale Control) Act, 1967, No. 49 of 1967 [Assented to 19th October, 1967];

and

Statute Law Revision Act, 1975, No. 24 of 1975 [Assented to 27th March, 1975].

### An Act to provide for the control and eradication of San José Scale and for other purposes.

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

1. This Act may be cited as the "San José Scale Control Act, 1962-1975".

Short title.  
Citation  
amended by 24,  
1975, s. 3 (1)  
(2nd Sched.).

2. This Act shall come into force on a day to be fixed by the Governor by proclamation<sup>1</sup>.

Commence-  
ment.

3. In this Act, unless the context otherwise requires—

Interpretation.

"Committee" means a San José Scale Committee appointed by the Minister pursuant to section 7 of this Act:

"district" means an area declared by the Governor to be a district under section 4 of this Act:

"host tree" means all or any of the following trees, namely, almond tree, apricot tree, peach tree, pear tree, nectarine tree, apple tree and any other shrub, vine or plant known to be infested with San José Scale:

"keeper", in relation to an orchard, means a person who carries on the business of an orchardist thereon:

Def. inserted by  
50, 1964, s. 15.

"orchard" means any area of land on which not less than forty host trees are growing:

"San José Scale" means the insect pest known as *quadraspidiotus perniciosus* or "San José Scale":

"tree", "vine", "shrub" and "plant" respectively shall include the fruit or other product of the tree, vine, shrub or plant and any or every part of the tree, vine, shrub or plant and of the fruit or product thereof.

<sup>1</sup> Came into operation 31st January, 1963: *Gaz.* 31st January, 1963, p. 193.

Declaration of districts.

4. The Governor may by proclamation declare any area in the State to be a district for the purposes of this Act. The Governor may at any time amend or revoke any such proclamation.

Owner or keeper to be registered.  
S.5 amended by 49, 1967, s. 19(a); redesignated s.5(1) by 49, 1967, s.19(b).

5. (1) Subject to this Act and the regulations the owner or keeper of every orchard within a district shall apply to the Department of Agriculture<sup>1</sup> to be registered, and, upon due application being made, shall be registered, as the owner or keeper, as the case may be, of the orchard but not more than one person may be registered in respect of each orchard.

Subsec. (2) inserted by 49, 1967, s.19(b).

(2) An application under subsection (1) of this section shall be made in the manner and form prescribed and shall be accompanied by particulars of where the orchard or orchards of which the applicant is the owner or keeper is or are situated, the number of host trees therein and such further or other particulars as may be prescribed.

Poll for constitution of San José Scale Committee.

6. (1) The Minister may, whenever it appears expedient so to do, direct that a poll be held within a district on the question whether a San José Scale Committee shall be appointed for that district.

Subsec. (2) amended by 24, 1975, s.3(1) (2nd Sched.).

(2) The Electoral Commissioner shall conduct the poll upon the day fixed by the Minister.

Subsec. (3) amended by 50, 1964, s. 19 (Sched.); substituted by 49, 1967, s.20(a).

(3) Every person who, not less than twenty-one days before the day fixed by the Minister under this section, is duly registered as the owner or keeper of an orchard within the district shall be entitled to vote at the poll and a person not then so registered shall not be entitled to vote at the poll.

Subsec. (3a) inserted by 49, 1967, s.20(a); amended by 24, 1975, s.3(1) (2nd Sched.).

(3a) The Minister shall prepare and supply to the Electoral Commissioner a list of all persons entitled to vote at the poll.

Subsec. (4) amended by 49, 1967, s.20(b).

(4) The poll shall be conducted by postal vote and each voter shall have one vote only whether registered as the owner or keeper of one or a number of orchards.

Subsec. (5) amended by 24, 1975, s.3(1) (2nd Sched.).

(5) Subject to this Act and the regulations the poll shall be conducted in such manner as the Electoral Commissioner deems proper.

(6) The Governor may make regulations prescribing any matters necessary or convenient for or in connection with any poll to be held under this section.

Result of Poll and constitution of San José Scale Committees.

7. If on a poll being taken pursuant to section 6 of this Act at least sixty per centum of those persons who vote on the question being not less than thirty per centum of all the persons qualified and entitled to vote thereon, vote in favour of the appointment of a Committee for the district, the following provisions shall operate and have effect:—

(a) the Minister shall, by notice in the *Gazette*, appoint and name a San José Scale Committee for the district;

(b) such Committee shall consist of five members, four of whom shall be persons who were entitled to vote at the poll and who may at the Minister's discretion be nominated by such growers' organization or association within the district as the Minister shall approve; the fifth member of the Committee shall be nominated by the Minister and shall be the chairman of the Committee; each member shall hold office for a term of three years and shall be eligible for reappointment from time to time;

<sup>1</sup> For interpretation of reference to Department of Agriculture see proclamation under Public Service Act, 1967-1975: *Gaz.* 6th November, 1975, p. 2340.

- (c) the Governor may make regulations prescribing the holding of, and procedure at, meetings of the Committee, the filling of casual vacancies, and the payment out of the funds of the Committee of fees and allowances to members of the Committee for their services as such.

7a. (1) Every Committee appointed and named by the Minister pursuant to section 7 of this Act shall, subject to section 8 of this Act, be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of suing and being sued and of acquiring, holding and disposing of property of all kinds.

Incorporation  
of Committees.  
S. 7a enacted by  
49, 1967, s. 21.

(2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Committee affixed to a document and shall presume that it was duly affixed.

8. (1) The Minister shall when requested so to do by a petition signed by not less than ten per centum of the persons registered as owners or keepers of orchards within a district, direct that a poll be held within the district on the question whether the Committee for that district should be dissolved. The provisions of subsections (2), (3), (4), (5) and (6) of section 6 shall apply in respect of any such poll.

Poll for  
dissolution of  
Committee.

(2) If on the taking of such a poll at least sixty per centum of those persons who vote on the question, being not less than thirty per centum of all the persons qualified and entitled to vote thereon, vote in favour of the dissolution of the Committee for the district the Committee shall proceed to wind up its affairs and when the affairs of the Committee are wholly wound up all moneys and other assets held by the Committee shall become the property of Her Majesty and shall be dealt with as the Minister directs.

(3) No petition under this section shall be presented within a period of three years after the holding of a poll under this section.

9. A Committee shall have the following powers, namely:—

Powers of  
Committee.

- (a) to take all such steps as the Committee shall deem fit for the control and eradication of San José Scale within the district;
- (b) by any person or persons authorized in writing by the Committee under the hand of its chairman to enter upon any land or premises within the district and for the purpose of controlling and eradicating San José Scale, to remove, spray, fumigate, prune or otherwise treat all or any trees, vines, shrubs and plants therein with such materials and by such methods as the Committee shall from time to time on the recommendation of the Director of Agriculture<sup>1</sup> determine;
- (c) to establish and administer a fund to consist of moneys received pursuant to this Act;
- (d) to purchase, hire, or acquire, plant, equipment and materials;
- (e) to borrow money to enable it to exercise any of the powers or functions conferred on it by this Act and to give security over any of its assets for repayment of moneys so borrowed;
- (f) to appoint and engage such officers and employees as the Committee shall think fit and to remunerate them with moneys from the fund;

<sup>1</sup> For interpretation of reference to Director of Agriculture see proclamation under Public Service Act, 1967-1975: *Gaz.* 6th November, 1975, p. 2340.

- (g) to demand and recover payment of fees and charges from the owner or occupier of any land or premises in the district for any treatment carried out by or on behalf of the Committee in pursuance of this Act and to fix any accounting period in relation to the liability for and payment of those fees and charges;
- (h) to estimate the fees and charges payable in respect of an accounting period so fixed, by any such owner or occupier and demand and recover from him one half of those fees and charges at the commencement of that period and the balance of those fees and charges not earlier than four months thereafter;
- (i) to refund to, or demand and recover from such owner or occupier, so soon as it can be ascertained, the amount by which the estimate of the fees and charges is greater or less as the case may be than the assessment of the fees and charges;
- (j) to commence and maintain by and in the name of the Committee proceedings against, and to recover from any owner or occupier any such fees and charges by action in the local court nearest to the land or premises in respect of which such charge shall have been made, provided that the Committee may, in its discretion, waive or settle any such charges;
- (k) such other powers, not inconsistent with this Act, as may be prescribed.

Para. (j)  
amended by 49,  
1967, s. 22.

Committee may  
require control  
and eradication  
of San José  
Scale.  
S. 9a enacted by  
50, 1964, s. 16.

**9a.** (1) If it appears to the Committee of a district or any member thereof that any tree, vine, shrub or plant within the district is, or is likely to be, affected with San José Scale, the Committee may serve upon the occupier of the land or premises on which the tree, vine, shrub or plant is found a notice in accordance with subsection (2) of this section signed by the chairman of the Committee directing that the occupier shall take such measures for the control and eradication of San José Scale as are specified in the notice.

(2) The notice may require the occupier to bait, spray, fumigate, prune or otherwise treat, within such period as is specified in the notice, all or any of his trees, vines, shrubs and plants with such materials and by such methods as are specified in the notice, but no materials or methods shall be so specified unless they have been recommended by the Director of Agriculture<sup>1</sup>.

(3) If the occupier fails to comply with the notice according to the tenor thereof, he shall be guilty of a contravention of this Act.

(4) The Committee shall, as soon as practicable after serving the notice, report that fact and the circumstances of the case to the Minister.

(5) If, upon the report of the Committee, the Minister is satisfied that the occupier has not complied with the notice according to the tenor thereof, or that, notwithstanding compliance therewith, San José Scale has not been eradicated from the land or premises in respect of which the notice was served, the Minister may direct the Committee or any member thereof to take such steps as the Committee deems necessary for the eradication of San José Scale, including, if the Minister so directs, the destruction of any specified trees, vines, shrubs or plants or any specified kind or kinds of trees, vines, shrubs or plants on the land or premises.

(6) Upon any such direction it shall be lawful for the Committee or any member thereof to act as so directed without any further or other authority.

<sup>1</sup> For interpretation of reference to Director of Agriculture see proclamation under Public Service Act, 1967-1975: *Gaz.* 6th November, 1975, p. 2340.

(7) The Committee may recover, as a debt, by action in any court of competent jurisdiction, the amount of any expenses incurred by the Committee or any member thereof in acting under subsection (6) of this section.

Subsec. (7)  
amended by 49,  
1967, s. 23.

(8) Any notice under this section shall be served by post or given personally to the occupier, or his agent, or, if it is not known to the Committee who is the occupier of the land, or if the land is unoccupied and it is not known to the Committee who is the owner thereof, the notice shall be served by affixing it to some conspicuous object on the land.

(9) Where the Committee proposes to issue a notice under this section in respect of land which is unoccupied, the notice may be served upon the owner thereof, and thereupon the provisions of this section shall extend in relation to the owner as if the references to "the occupier" in this section were references to "the owner".

10. (1) A Committee may, by notice in the *Gazette* from time to time require persons who are registered under this Act in the district for which the Committee is appointed to pay to the Committee contributions in such amounts or at such rates as the Minister shall from time to time approve towards the general costs of the administration of this Act by the Committee.

Contributions to  
Committee.

(2) The notice shall specify the persons or classes of persons who are required to pay contributions, the amount of the contributions or the manner in which they are computed and the time on or before which they must be paid.

(3) The Committee shall, by post or personal service, give to every person liable to contribute under this section a written notice of the amount payable by him and the time when that amount is to be paid, and if the Committee decides that contributions may be paid by instalments, the notice shall also state the amount of the instalments and the times when they are to be paid. The contribution shall be payable in accordance with the notice.

(4) If any contribution or instalment thereof is not paid in full as and when it becomes payable, the Committee may recover the amount owing, as a debt, by action in any court of competent jurisdiction.

Subsec. (4)  
amended by 49,  
1967, s. 24.

(5) An owner or keeper of an orchard registered under this Act shall, upon being requested so to do by notice in writing under the hand of the chairman of a Committee, furnish to the Committee on or before the twenty-eighth day of February in each year a statement in writing truly setting forth the number of host trees in that orchard and the respective ages of such trees as at the first day of January in that year.

Subsec. (5)  
inserted by 50,  
1964, s. 17.

11. A person shall not obstruct, interfere with or wilfully delay a Committee or any officer or employee of a Committee or any person or persons authorized in writing by the Committee in the execution of any of its or his duties or powers under this Act.

Obstruction,  
etc., of  
Committee.  
S. 11 amended  
by 50, 1964,  
s. 19 (Sched.).

12. All acts and proceedings of a Committee shall, notwithstanding the subsequent discovery of any defect in the appointment of any member thereof, or at the time of the act or proceeding there was a vacancy in the office of any member, be as valid as if all the members had been duly appointed and had acted as members of the Committee and as if the Committee had been properly and fully constituted.

Validity of acts  
of Committee.

13. Neither a Committee nor any member, officer or employee thereof or person authorized in writing by it shall be liable except in respect of any wilful

Protection to  
Committee.

neglect or default to any legal proceedings for anything done in pursuance of this Act.

General  
penalty.  
S. 14 amended  
by 24, 1975,  
s. 3(1) (2nd  
Sched.).

14. Every person who contravenes or fails to comply with any provision of this Act or the regulations whether by act or omission shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred dollars.

Summary  
procedure.  
S. 15  
redesignated  
s. 15(1) by 50,  
1964, s. 18.

15. (1) Proceedings for offences against this Act shall be heard and determined summarily.

Subsec. (2)  
inserted by 50,  
1964, s. 18;  
amended by 49,  
1967, s. 25.

(2) A complaint for any such offence committed within a district may be laid by and in the name of the Committee for that district, and any fine imposed in proceedings for that offence shall be paid to that Committee for the use of that Committee.

Regulations.

16. The Governor may make regulations not inconsistent with this Act prescribing all matters required or permitted to be prescribed or which may be necessary or convenient to be prescribed for giving effect to this Act.

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