

South Australia

Phylloxera and Grape Industry Act 1995

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

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

3—Interpretation

In this Act, unless the contrary intention appears—

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

Chief Inspector means the Chief Inspector appointed under the *Plant Health Act 2009*;

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

disease means—

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

that may affect vines;

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

owner means—

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

prescribed region means a region defined by regulation;

Register means the Register maintained under Part 3;

registered person means a person registered in the Register;

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

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

Note—

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

Part 2—Phylloxera and Grape Industry Board of South Australia

Division 1—Constitution of Board

4—Establishment of Board

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

5—Constitution of Board

- (1) Subject to subsection (3), the Board consists of—
 - (a) the Chief Inspector; and
 - (b) up to eight members appointed by the Minister of whom—
 - (i) one will be a person nominated by the Minister with expertise in viticultural research; and
 - (ii) up to 7 will be persons nominated by 1 or more organisations or bodies that, in the opinion of the Minister, have significant involvement in grape growing or winemaking.
- (2) When nominating members of the Board, each nominating organisation or body referred to in subsection (1)(b)(ii) must ensure that—
 - (a) written reasons are provided to the Minister in support of each nomination; and
 - (c) any other requirements notified in writing by the Minister are satisfied.
- (3) The Minister must ensure that—
 - (a) no more than 1 member from each prescribed region is appointed to the Board; and

- (b) all members of the Board have proven experience, knowledge and commitment to the improvement of the State's grape growing and wine industries, and their protection from disease.

6—Terms and conditions of members

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

7—Presiding member of Board

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

8—Conduct of business by Board

- (1) Five members of the Board constitute a quorum of the Board.
- (2) Each member present at a meeting of the Board is entitled to one vote on a matter arising for decision at the meeting, but the presiding member has, in the event of an equality of votes, a casting vote as well as a deliberative vote.
- (3) A decision carried by a majority of the votes of the members present at a meeting of the Board is a decision of the Board.

- (4) A conference conducted by telephone, video or other electronic means between members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present.
- (5) Subject to this Act, the business of the Board may be conducted in the manner determined by the Board.

9—Conflict of interest under Public Sector (Honesty and Accountability) Act

A member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with those engaged in or associated with the grape growing industry generally or the wine industry generally, or a substantial section of those engaged in or associated with the grape growing industry or the wine industry.

Division 3—Functions and powers of Board

13—Functions of Board

- (1) The Board has the following functions (its *primary functions*):
 - (a) to identify and assess—
 - (i) the relative threat to the State's vineyards posed by phylloxera and other diseases; and
 - (ii) the risk of spreading diseases through the movement of machinery, equipment, vines and other vectors into and within the State;
 - (b) to develop policies in relation to—
 - (i) appropriate restrictions on or conditions for the movement of machinery, equipment, vines and other vectors into and within the State to prevent the spread of disease; and
 - (ii) the quarantine of vines that are or may be affected by disease; and
 - (iii) appropriate measures for the control of outbreaks of disease in the State;
 - (c) to develop plans for the eradication of disease in the State's vineyards;
 - (d) to support and encourage the conduct and evaluation of research into—
 - (i) disease resistance and tolerance of root stocks and scions; and
 - (ii) diseases that affect or may affect vines, and any matter relating to such diseases, including their control;
 - (e) to publish the results of relevant research;
 - (f) to promote awareness of the dangers of disease among the public and people involved in grape growing or winemaking;
 - (g) to disseminate information on disease and work practices or industry codes of practice that would minimise the risk of disease, or its spread, to people involved in grape growing or winemaking;

- (h) to approve nurseries (whether within or outside the State) that are capable of producing propagative material that is free of specified diseases or industry-based accreditation schemes for such nurseries;
 - (i) subject to subsection (3), to collect and, on request by an interested person, supply data relating to vineyards and vine health in South Australia;
 - (j) to perform the other functions assigned to the Board by or under this Act or by the Minister.
- (2) The Board has the additional function of assisting and supporting the grape industry in its initiatives.
- (3) The Board must not supply data that relates to or reveals any details relating to a particular person or business unless the person or proprietor of the business consents to the release of the data.

14—Action to be taken on outbreak of disease

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

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

15—Regional and other committees

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

16—General powers

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

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

17—Delegation

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

Division 4—Five year plan

18—Duty to prepare and maintain five year plan

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

Part 3—The Register

19—The Register

- (1) The Board must maintain a Register of persons who own vineyards comprising 0.5 hectares or more of planted vines (the *Register*).
- (2) The Board will enter the following particulars in the Register in relation to each registered person:
 - (a) the person's name and address; and

- (b) the location of the vineyard (including Section Number, District and Hundred); and
- (c) the varieties of vines planted; and
- (d) the area of each variety planted; and
- (e) the age of the vines; and
- (f) the source of the vines; and
- (g) any other information relevant to the Board's functions under this Act, that the Board thinks fit.

20—Power of Board to inspect assessments

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

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

21—Returns

A person who—

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

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

Penalty: Division 8 fine.

Expiation fee: Division 8 fee.

22—Correction of Register

- (1) The Board may correct the Register from time to time—
 - (a) to reflect details provided in a return under this Part; or
 - (b) subject to subsection (2), to bring entries or particulars contained in the Register into conformity with the most accurate information available to the Board.

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- (2) If a correction under subsection (1)(b) would have the effect of increasing a contribution payable under Part 4, the Board must not make the correction unless the owner of the vineyard has been given written notice of the proposed correction and allowed a period (not less than one month from service of the notice) to make submissions in relation to the proposed correction.

Part 4—Financial and reporting

23—Contributions

- (1) Subject to this section, the Board may by notice in the Gazette require that—

- (a) a registered person; or
- (b) a winemaker; or
- (c) a distiller,

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

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

24—Phylloxera and Grape Industry Fund

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

25—Accounts and audit

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

26—Report

- (1) The Board must, no later than 31 July in each year, submit to the Minister a report on its operations during the financial year of the Board ending on the preceding 30 April.
- (2) The report must incorporate—
 - (a) the audited statement of accounts of the Board for the period to which the report relates; and
 - (b) the five year plan prepared or revised by the Board under this Act.
- (3) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.
- (4) After each meeting of the Board, the Board must provide a report on its activities undertaken since its previous meeting to—
 - (a) every regional committee; and
 - (b) the Wine Grape Council of South Australia; and
 - (c) the South Australian Wine Industry Association Incorporated; and
 - (d) any other organisation or body prescribed by regulation.
- (5) A report under subsection (4) may include the minutes of the most recent Board meeting.

Part 5—Miscellaneous

27—Members of Board to be inspectors

The members of the Board are inspectors under the *Plant Health Act 2009 ex officio*.

28—Power of 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) 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 Minister to act in any matter; and
 - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

29—False or misleading statements

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

Penalty: Division 7 fine.

30—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) The regulations may prescribe a fine, not exceeding a division 7 fine, for contravention of the regulations.
- (3) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of the *Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015*.
- (4) A provision of a regulation made under subsection (3) may, if the regulation so provides, take effect from the commencement of this subsection or from a later day.
- (5) To the extent to which a provision takes effect under subsection (4) 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.

Schedule—Transitional provisions

1—Interpretation

In this Schedule—

the repealed Act means the *Phylloxera Act 1936*.

3—Vacation of office

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

4—Districts to continue as prescribed regions

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

5—Contributions

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

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- 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.

Legislation repealed by principal Act

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

Phylloxera Act 1936

Principal Act and amendments

New entries appear in bold.

| Year | No | Title | Assent | Commencement |
|-------------|-----------|---|------------------|---|
| 1995 | 19 | <i>Phylloxera and Grape Industry Act 1995</i> | 13.4.1995 | 31.8.1995 (<i>Gazette</i> 31.8.1995 p552) |
| 2006 | 43 | <i>Statutes Amendment (Domestic Partners) Act 2006</i> | 14.12.2006 | Pt 63 (s 168)—1.6.2007 (<i>Gazette</i> 26.4.2007 p1352) |
| 2009 | 2 | <i>Plant Health Act 2009</i> | 12.2.2009 | Sch 1 (cl 3 & 4)—1.8.2009 (<i>Gazette</i> 30.7.2009 p3437) |
| 2009 | 84 | <i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i> | 10.12.2009 | Pt 113 (ss 265 & 266)—1.2.2010 (<i>Gazette</i> 28.1.2010 p320) |
| 2015 | 8 | <i>Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015</i> | 18.6.2015 | Pt 29 (ss 184—190)—1.7.2015 (<i>Gazette</i> 25.6.2015 p3076) |
| 2019 | 25 | <i>Statutes Amendment and Repeal (Simplify) Act 2019</i> | 3.10.2019 | Pt 35 (s 77)—3.10.2019: s 2(1) |

Provisions amended

New entries appear in bold.

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

| Provision | How varied | Commencement |
|-----------------|--|--------------|
| Pt 1 | | |
| s 2 | <i>omitted under Legislation Revision and Publication Act 2002</i> | |
| s 3 | | |
| Chief Inspector | amended by 2/2009 Sch 1 cl 3 | 1.8.2009 |

| | | |
|---|--|------------------|
| <i>Selection Committee</i> | <i>deleted by 8/2015 s 184</i> | <i>1.7.2015</i> |
| Pt 2 | | |
| Pt 2 Div 1 | | |
| s 5 | | |
| s 5(1) | amended by 8/2015 s 185(1) | 1.7.2015 |
| s 5(2) | amended by 8/2015 s 185(2), (3) | 1.7.2015 |
| | (b) deleted by 8/2015 s 185(3) | 1.7.2015 |
| s 5(3) | substituted by 8/2015 s 185(4) | 1.7.2015 |
| <i>s 9 before substitution by 84/2009</i> | | |
| s 9(3) | <i>amended by 43/2006 s 168(1)</i> | <i>1.6.2007</i> |
| s 9(8) | <i>inserted by 43/2006 s 168(2)</i> | <i>1.6.2007</i> |
| s 9 | substituted by 84/2009 s 265 | 1.2.2010 |
| Pt 2 Div 2 | <i>deleted by 8/2015 s 186</i> | <i>1.7.2015</i> |
| Pt 2 Div 4 | | |
| s 18 | | |
| s 18(2) | amended by 25/2019 s 77 | 3.10.2019 |
| Pt 4 | | |
| s 26 | | |
| s 26(4) | amended by 8/2015 s 187 | 1.7.2015 |
| Pt 5 | | |
| s 27 | amended by 2/2009 Sch 1 cl 4 | 1.8.2009 |
| s 28 | <i>deleted by 84/2009 s 266</i> | <i>1.2.2010</i> |
| s 28 | inserted by 8/2015 s 188 | 1.7.2015 |
| s 30 | | |
| s 30(3)—(5) | inserted by 8/2015 s 189 | 1.7.2015 |
| Sch | | |
| cl 2 | <i>omitted under Legislation Revision and Publication Act 2002</i> | |

Transitional etc provisions associated with Act or amendments

Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015

190—Transitional provision

A member of the Selection Committee within the meaning of the *Phylloxera and Grape Industry Act 1995* as in force immediately before the commencement of section 186 of this Act ceases to hold office on the commencement of this section.

Historical versions

1.6.2007

1.8.2009

1.2.2010

1.7.2015

Appendix—Divisional penalties and expiation fees

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

| Division | Maximum imprisonment | Maximum fine | Expiation fee |
|----------|----------------------|--------------|---------------|
| 1 | 15 years | \$60 000 | — |
| 2 | 10 years | \$40 000 | — |
| 3 | 7 years | \$30 000 | — |
| 4 | 4 years | \$15 000 | — |
| 5 | 2 years | \$8 000 | — |
| 6 | 1 year | \$4 000 | \$300 |
| 7 | 6 months | \$2 000 | \$200 |
| 8 | 3 months | \$1 000 | \$150 |
| 9 | — | \$500 | \$100 |
| 10 | — | \$200 | \$75 |
| 11 | — | \$100 | \$50 |
| 12 | — | \$50 | \$25 |

Note: This appendix is provided for convenience of reference only.