

# **Plant Health Bill 2007**

## **EXPLANATION OF CLAUSES**

### **Part 1—Preliminary**

#### **1—Short title**

#### **2—Commencement**

These clauses are formal.

#### **3—Interpretation**

This clause sets out the meaning of terms included in the measure. Some of the important definitions include *disease*, *pest*, *plant*, *assurance certificate*, *plant health certificate* and *plant related product*. It also provides that 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. A plant related product 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**

The Minister may declare, by notice in the Gazette, a disease, insect, mite, arthropod, snail, slug, nematode or other organism that affects a plant or a plant related product to be a pest for the purposes of this measure. In this way, the measure will only apply to those pests that are so declared.

#### **5—Quarantine stations**

The Minister may declare, by notice in the Gazette, a place to be a quarantine station in which a plant or plant related product may be held, examined, disinfected, treated, destroyed or disposed of.

### **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**

A person who knows or suspects that a plant or plant related product is affected by a pest must immediately report it to an inspector and provide the inspector with such information that he or she reasonably requires. The person must also take reasonable measures to prevent the spread of the pest. Failure to do so may result in a penalty of \$100 000 for a body corporate or \$20 000 for a natural person. If a person fails to immediately report the appearance of noxious insects on premises to an inspector, the penalty is \$1 250. The offence may be expiated on payment of \$160. Failure to report the presence of locusts and small plague grasshoppers (both native species) presents a

very small risk compared to what might ensue from the failure to report a quarantinable pest.

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

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

A person must not introduce or import into the State a pest or a plant or plant related product affected by a pest. The Minister has the power to prohibit by notice in the Gazette, either absolutely or subject to conditions, the introduction or importation into the State of a specified class of plant or plant related products. The Minister may exempt a person from complying with these obligations for the purposes of furthering agricultural interests, scientific research or the biological control of a pest. Before granting such an exemption, the Minister must consult widely with members of the agricultural and scientific communities. Contravening this clause or a Ministerial notice, or taking delivery of a thing brought into the State in contravention of this clause or a notice, is an offence with a penalty of \$5 000, or expiation fee of \$315 for a minor offence (defined to be where something is introduced or imported or taken delivery of for domestic use, consumption or enjoyment and not for sale or commercial purposes), and in all other cases, \$100 000 for a body corporate or \$20 000 for a natural person.

### **8—Quarantine areas**

The Minister may, by notice in the Gazette, declare the whole or part of the State to be a quarantine area in relation to all or specified pests. The notice may impose conditions or require specified action in relation to the quarantine area, including prohibiting the removal of particular plant species or plant related products that may transmit a pest; requiring the owners or occupiers of premises within the quarantine area to take particular measures for the control or eradication of a pest including the destruction of plants; prohibiting or restricting persons, vehicles, machinery or equipment from entering or leaving a quarantine area; prohibiting the importation of certain plants or plant related products into a quarantine area or prohibiting the planting, propagation or harvesting of certain plants within the area during a specified period. Failing to comply with a notice under this clause is an offence with a penalty of \$5 000 or expiation fee of \$315 for a minor offence (defined as relating to domestic use, consumption or enjoyment and not for sale or commercial purposes) and in all other cases—\$100 000 for a body corporate and \$20 000 for a natural person.

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

This clause gives the Chief Inspector the power (to be exercised with the approval of the Minister) to issue orders if he or she knows or suspects that a plant or plant related product is or might become affected by a pest. The purpose of the orders is to prevent the outbreak or spread of the pest and may be issued in writing to the person who owns or has possession or control of the affected plant or plant related product, or to owners or occupiers of premises in the vicinity. The orders may require that a plant or plant related product be kept at a specified place or otherwise restrict or prohibit its movement; require that a plant or plant related product be subjected to a particular treatment, examination or test; prohibit the sale or supply of a plant or plant related product; require the destruction or disposal of a plant or plant related product, or prohibit the planting, propagation or harvesting of specified plants or plant related

products on particular land for a certain period of time. The orders may be subject to such conditions as the Chief Inspector may impose.

If the Chief Inspector is unable to locate a person who is required to take action under an order, or that person refuses or fails to comply with the order, the Chief Inspector may cause the action to be taken by an inspector or other person instead. Any costs or expenses incurred in relation to the action may be recovered in court from the owner of the particular plant or plant related product or the person issued with the order.

Contravening or failing to comply with an order is an offence with a penalty of \$100 000 for a body corporate and \$20 000 for a natural person.

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

If an inspector reasonably considers that urgent action is required for the purpose of the control, prevention, or eradication of a pest, under this clause, the inspector may, after giving such notice as is reasonable in the circumstances (if any), take any action that could be required to be taken by a ministerial notice or order of the Chief Inspector issued under Part 2 of the measure.

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

The sale or supply of a plant or plant related product affected by a pest or subject to an order under Part 2 of the measure is prohibited without the approval of the Chief Inspector. There is a penalty of \$100 000 for a body corporate and \$20 000 for a natural person. The owner of a premises in respect of which an order is in force is required to notify the Chief Inspector of any intended sale of the premises at least 28 days before the date of settlement. Failing to do so is an offence with a penalty of \$5 000 that may be expiable on payment of an expiation fee of \$315. In addition to any penalty imposed, a person found guilty of an offence under this clause may be ordered by the court to pay compensation to the person to whom the plant or plant related product was sold or supplied.

## **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 requirements for fruit, vegetables and nuts for sale**

This clause makes it an offence for a person to sell or pack for sale, any fruit, nuts or vegetables if the packaging is not clean and in good repair, and labelled in accordance with the requirements of the regulations. A person must also comply with any requirements or prohibitions prescribed by the regulations in relation to the use of used packaging. There is a penalty of \$5 000 or an expiation fee of \$315 for contravening this clause.

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

This clause prohibits a person from selling any prescribed plant for propagation unless it is accompanied by a label or other written notice containing the information

required by the regulations. There is a penalty of \$5 000 or expiation fee of \$315 for contravening this clause.

## **Division 2—Requirement to produce manifests when importing or transshipping plants and plant related products**

### **14—Requirement to produce manifests when importing or transshipping plants and plant related products**

A person is required under this clause to lodge a manifest with the Chief Inspector that complies with the requirements of the Minister before importing plants or plant related products for sale into South Australia. A person must not transship through South Australia a plant or plant related product for sale in another State unless the person has lodged a manifest with the Chief Inspector prior to entering this State. The person must produce a copy of the manifest at a quarantine station or on the request of an inspector. There is a penalty of \$5 000 or an expiation fee of \$315 for contravening any of these requirements.

## **Part 4—Accreditation**

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

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

The Minister may declare, by notice in the Gazette, that an area specified in the notice is free of specified pests and that specified statements may be used in advertising, packaging or selling plants or plant related products produced or processed in that area. It is an offence to use any such statement in relation to plants or plant related products not produced or processed in the specified area, the penalty for which is \$20 000 (which may be expiated on payment of \$500 expiation fee).

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

#### **16—Obligation of persons issuing assurance certificates to be accredited**

This Division establishes a co-regulation scheme whereby persons in the private sector may be accredited by the Minister to issue assurance certificates. This clause provides that it is an offence for a person to issue an assurance certificate other than as authorised by accreditation granted under this Division. The penalty for a contravention of this provision is \$100 000 for a body corporate or \$20 000 for a natural person.

#### **17—Assurance certificates**

Assurance certificates 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 and may certify that specified plants or plant related products comply with this measure (or a corresponding law) in relation to the control or prevention of the spread of pests. Examples of matters about which certification may be given are included in the clause.

**18—Obligation of persons verifying assurance certificates and plant packaging to be accredited**

This clause provides that a person must not verify that documents such as plant health certificates and assurance certificates issued under this measure or a corresponding law, or the packaging or labelling of plants or plant related products comply with the requirements of this Act or a corresponding law except as authorised by accreditation granted under this measure. The penalty for a contravention of this provision is \$100 000 for a body corporate or \$20 000 for a natural person.

**19—Manner and form of verification**

This clause provides that the verification under clause 18 may be evidenced in a manner or form approved by the Minister.

**20—Application for accreditation**

Applications for accreditation under this proposed Division must be made to the Minister in the manner and form required by the Minister and be accompanied by the prescribed fee.

**21—Grant of accreditation**

The Minister must grant an accreditation on application if satisfied that the person is a suitable person to hold accreditation.

**22—Authority conferred by accreditation**

This clause provides that a person named in the accreditation is authorised to issue assurance certificates, and/or 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.

**23—Periodic fees and returns**

An accredited person must lodge a return with the Minister for the period and at a time set out in the regulations. The return must also be accompanied by a fee fixed by the regulations. If a person fails to lodge the return or pay the annual fee, the Minister may require the person to make good the default and pay an amount set by the regulations as a penalty by notice in writing. The person has 14 days in which to comply with the notice or the person's accreditation will be suspended. If the person is still in default 3 months after the Minister's notice, the accreditation will be cancelled. Written notice of a suspension or cancellation will be given to the person.

**24—Conditions of accreditation**

This clause gives the Minister the power to place conditions on a person's accreditation. Examples of what these conditions may contain are set out in the provision and include restrictions on the class or type of assurance certificate that can be issued under the accreditation; restrictions on the activities in relation to which the certificate can be issued; restrictions on the class or type of documents that may be verified; conditions regarding the records to be kept by the accredited person; conditions requiring compliance with prescribed protocols or operational procedures; conditions relating to the audit of the person's operations under the accreditation, and conditions regarding the provision of information required by the Minister. It is an

offence for an accredited person to contravene a condition of the person's accreditation. In relation to contravening a prescribed condition, there is a penalty of \$5 000 or an expiation fee of \$315. In relation to any other conditions, the penalty is \$100 000 for a body corporate or \$20 000 for a natural person.

## **25—Variation of accreditation**

This clause provides that the Minister may vary the terms or conditions of an accreditation by written notice to the accredited person. The variation may be on the initiative of the Minister, or at the request of the accredited person and payment of the prescribed fee.

## **26—Surrender of accreditation**

Under this clause, an accredited person may surrender his or her accreditation to the Minister and in relation to an accreditation to issue assurance certificates, must also surrender any unissued assurance certificates. Failing to do so may result in a penalty of \$1 250 or expiation fee of \$160.

## **27—Suspension or revocation of accreditation**

This clause sets out the grounds on which an accreditation may be suspended or revoked by the Minister. These include where a person obtained the accreditation improperly, or the accredited person has ceased to carry on the activity authorised by the accreditation or has failed to pay fees or charges relating to the accreditation within the required time. An accreditation may also be suspended or revoked if the accredited person breaches an accreditation condition or commits an offence against this measure or has been convicted of an indictable offence. Suspension of an accreditation may be for a specified period or until certain conditions are fulfilled or until the Minister orders otherwise. A suspension may be effective immediately or from a specified time. Written notice must be given to the person of the action or proposed action and the reasons for it and allow the person 14 days in which to make submissions to the Minister in relation to the action or proposed action. A person is required to return the accreditation and any unissued assurance certificates within 14 days of the suspension or revocation of the accreditation. Failing to do so may result in a penalty of \$1 250 or an expiation fee of \$160.

## **28—Offences**

This clause sets out certain offences relating to accreditation and assurance certificates. These include that a person must not issue anything that purports to be an assurance certificate unless the person is accredited to do so. The penalty for doing so is \$100 000 for a body corporate and \$20 000 for a natural person. It is also an offence to alter information in an assurance certificate without the written authority of the person issuing the certificate, or in the case of an alteration that relates to the splitting of a consignment, the alteration is made by an inspector or a person authorised to split consignments under an accreditation. The penalty for doing so is \$100 000 for a body corporate and \$20 000 for a natural person.

## **29—Register of accredited persons**

The Minister is required under this clause to keep a register of accredited persons in the form considered appropriate by the Minister.

## **Division 3—Reviews and appeals**

### **30—Review of accreditation decisions by Minister**

This clause provides that if the Minister refuses an application for the issue or variation of the terms or conditions of accreditation, application may be made for a review of the decision. Application for a review of a decision of the Minister to suspend or cancel an accreditation or to vary the terms and conditions of accreditation may also be made. An application for a review made under this clause must be made within 28 days from when the person was given written notice of the decision. The Minister has the discretion to determine the application for review as he or she sees fit. The determination must be made within 28 days of the application being lodged, or the decision will be taken to have been confirmed by the Minister.

### **31—Appeal to District Court**

A decision of the Minister on review may be appealed by the applicant to the Administrative and Disciplinary Division of the District Court within 28 days. The Minister must give written reasons for the decision if required by the applicant for the review, and any time for instituting an appeal will run from the time the applicant receives the written statement of those reasons.

## **Part 5—Enforcement**

### **Division 1—Approved auditors**

#### **32—Approved auditors**

This clause provides that the Minister may approve a person as an auditor for the purposes of this measure if satisfied that the person can provide satisfactory and efficient audit services and the person is suitably qualified. The Minister may impose conditions on the approval including that the person enter into an audit agreement with the Minister, conditions limiting the functions or powers of the person or limiting the area of the State in which those powers may be exercised, or conditions fixing fees that are to be paid to the Minister. An audit agreement entered into by the person and the Minister must regulate the provision of audit services under this measure and set out the requirements relating to audit reports, and also provide that the agreement will terminate if approval is withdrawn by the Minister. The agreement may also regulate the charges that may be made by the auditor for audit services and the withdrawal of audit services for the non-payment of such charges. The Minister and approved auditor may by agreement, vary or terminate an audit agreement. The Minister may impose further conditions of approval or vary or revoke a condition by written notice to the approved auditor. The Minister may also cancel an approval if satisfied the auditor is in breach of a condition of the approval or a term of the audit agreement. The rights of an inspector to exercise a power under this measure is not limited by an approval or audit agreement.

#### **33—Duty of auditors to report certain matters**

This clause provides that if on conducting an audit, an approved auditor forms a reasonable belief that an accredited person is or has breached a prescribed accreditation condition or is or has engaged in conduct of a prescribed kind, the

auditor must inform the Minister of the name and address of the accredited person and the details of the facts and circumstances giving rise to the belief.

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

Under this clause, it is an offence to hinder or obstruct an auditor performing an audit under this Division of the measure with a penalty of \$5 000.

## **Division 2—Inspectors**

### **Subdivision 1—Appointment**

#### **35—Appointment of Chief Inspector and deputy**

This clause provides that the Minister may appoint a person to be the Chief Inspector and the deputy of the Chief Inspector. While acting in his or her absence, the deputy has all the powers and functions of the Chief Inspector under this measure or any other Act.

#### **36—Appointment of inspectors**

Under this clause, the Minister may appoint inspectors for the purposes of this measure by instrument in writing. Such an appointment may be conditional.

#### **37—Identification of inspectors**

This clause provides that an inspector must be issued with an identity card that contains a photograph and the name of the person or a unique identification code. An inspector must produce this card for inspection at the request of a person in relation to whom the inspector intends to exercise any powers under this measure or any other Act. If a person ceases to be an inspector, the person must immediately return the identity card to the Minister. There is a penalty of \$1 250 for failing to do so.

### **Subdivision 2—Powers**

#### **38—General powers**

This clause provides inspectors with powers to enter, search, give directions, require production of documents, verify assurance certificates, packaging and labelling, seize and retain plants or plant related products, etc, as may be reasonably required for the administration and enforcement of this measure. Certain powers may only be exercised on the authority of a warrant or with the consent of the occupier of the premises. The clause also sets out what an inspector may do with a plant or plant related product seized under this clause.

#### **39—Power to investigate**

This clause provides inspectors with power to carry out investigations as reasonably necessary for the purposes of determining whether a plant or plant related product is affected by a pest or identifying or tracing pests.

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

This clause provides that inspectors may issue plant health certificates in respect of plants or plant related products—

- grown, produced, packed, used, treated or tested in the State; or
- to be imported, introduced or brought into the State.

#### **Subdivision 3—Miscellaneous**

#### **41—Immunity from liability**

This clause provides for immunity from civil liability for inspectors and persons assisting inspectors in carrying out their duties under this measure. Any action that would, in the absence of this clause, lie against an inspector or person lies instead against the Crown.

#### **42—Warrant procedures**

This clause provides for the procedures for obtaining warrants for the purposes of this measure in accordance with current practice.

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

This clause creates an offence of hindering or obstructing an inspector in the exercise of powers under this measure, the penalty for which is a fine of \$5 000.

### **Part 6—Miscellaneous**

#### **44—Delegation**

This clause provides the Minister and the Chief Inspector with power to delegate a function or power under this measure.

#### **45—Compensation**

Under this clause, the Minister is given a discretion to pay compensation to any person who has suffered loss in consequence of a notice or an order made under proposed Part 2 of the measure.

#### **46—False or misleading statements**

This clause creates an offence if a person makes a statement that is false or misleading in a material particular in an application made, information provided or a certificate issued under this measure. The penalty, in the case where the person knowingly made a false or misleading statement is \$10 000 and, in any other case, \$5 000.

#### **47—Self-incrimination**

This clause makes provision against self-incrimination.

#### **48—Service of notices and orders**

This clause makes provision for the service of notices and order under this measure in the usual terms.

#### **49—Vicarious liability**

This clause provides that 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.

This clause further provides that if a body corporate commits an offence against this measure, 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.

#### **50—Evidence**

This clause makes provision for evidentiary procedures for the purposes the measure.

#### **51—Continuing offences**

Under this clause, if an offence against the measure is committed by reason of a continuing act or omission, the person liable for the offence is liable, in addition to the penalty for the offence, to a daily penalty for each day on which the act or omission continues.

#### **52—General defence**

It is a defence to a charge of an offence against the measure if the defendant provides that the offence did not result from any failure on his or her part to take reasonable care to avoid the commission of the offence.

#### **53—Incorporation of codes and standards**

Notices given or regulations made under the measure may be of general or limited application and may 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.

#### **54—Regulations**

The Governor may make such regulations as may be necessary or expedient for the purposes of the measure.

### **Schedule 1—Transitional and repeal provisions**

Schedule 1 provides for the repeal of the *Fruit and Plant Protection Act 1992* and the *Noxious Insects Act 1934*.

### **Schedule 2—Related amendments**

Schedule 2 provides for amendments consequential on the passage of this measure to the *Citrus Industry Act 2005* and the *Phylloxera and Grape Industry Act 1995*.