**PHYLLOXERA AND GRAPE INDUSTRY BILL 1994**

**Legislative Assembly, 30 November 1994, pages 1315-8**

Second reading

The Hon. J.K.G. Oswald, for the Hon. D.S. BAKER (Minister for Primary Industries), obtained leave and introduced a Bill for an Act to provide for the protection of vineyards from disease and to foster the development of the grape industry in South Australia. Read a first time.

The Hon. J.K.G. OSWALD: I move:

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in Hansard without my reading it.

Leave granted.

This Bill results from careful deliberations which began with the release in November 1992 of the Green Paper on the Phylloxera Act 1936. That Green Paper, in turn, was a product of the ongoing legislative review program which determines the worth of statutory measures.

It accurately can be said that this was a significant project within the review program because it centred on the South Australian grape industry and its most important adjunct, the wine industry. Within this scenario there is also the smaller but no less important table-grape industry.

Responses to the Green Paper were delayed by the unusual weather of the 1992/1993 summer, but eventually and not surprisingly there was unqualified industry support for retention of the principles set by the 1936 Act. Those responses were submitted by representative groups (such as vine improvement committees) rather than individuals and it was clear that there had been considerable discussion within industry.

Support for retention of the legislation did not consist of simple dismissal of Green Paper option number two, which suggested repeal of the Act. Rather, there was significant endorsement of the fifth Green Paper option which proposed expansion of the Act to grape diseases other than phylloxera.

Other principles to receive support were as follows:

The Phylloxera Board should determine all policy for the protection of the State's grape industry against disease. However, measures to extend such protection should rest solely in the Fruit and Plant Protection Act 1992, The Chief Inspector under that Act should be appointed to the Board to ensure smooth translation of this principle.

An additional facet of Green Paper option number five—namely that the Board enjoy the power to endorse industry-based vine accreditation schemes—should be adopted. This would free-up considerably the trade in propagative material but not increase the risk of disease, given proper surveillance of those schemes. In all of this, attention is likely to remain focused on phylloxera.

The Phylloxera Board's research and extension role should be clarified. At the same time, the worth of the Phylloxera Fund as a source of compensation in the event of an outbreak should be examined.

These and lesser points of agreement were written into a White Paper in March 1994 which subsequently was circulated to grape industry groups. That action was followed by meetings between such groups and departmental officers. The whole approach to the issue has been careful because of a resurgence in some circles, of the belief that the Phylloxera Act offers the industry protection against the introduction of the damaging phylloxera organism. Moreover there seemed to be a fear that the Act was about to be dismantled and the protection removed.

The facts which had to be reinforced were the following:

As far as can be ascertained, the powers of protection offered by the Phylloxera Act have never been applied. Instead, measures against the introduction of phylloxera have been invoked under the Fruit and Plant Protection Act 1992 and its predecessors.

Under the proposed Bill, the industry-based Board will have a very clear and firm say about protection of the grape industry against disease, but the protection itself, correctly, will continue to be offered by the Act just described.

Honourable Members now see before them a Bill that reflects both the earlier and more recent consultative processes. Inevitably, certain of the original proposals have undergone changes in emphasis or are now expressed more directly. Such is the case with the proposal that the Board be selected rather than elected as previously. The specific provision that the South Australian Farmers Federation and the Wine and Brandy Producers Association participate in the selection process will be noted.

A subtle but significant addition to the thrust of the Bill can be found in the latter part of its long title, that is "... to foster the development of the grape industry…" and in the simple expression of that aim in clause 12(1)(j). This will provide all sectors of the industry with a forum for the analysis and resolution of needs and trends that are crucial to the effective, efficient production of grapes and wine in this State.

I commend the Bill to the House.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause contains definitions of words and phrases used in the proposed Act.

PART 2PHYLLOXERA AND GRAPE INDUSTRY BOARD OF SOUTH AUSTRALIA

DIVISION 1—CONSTITUTION OF BOARD

Clause 4: Continuance of Board

This clause provides that the Phylloxera Board of South Australia continues in existence as the Phylloxera and Grape Industry Board of South Australia as a body corporate with full juristic capacity.

Clause 5: Constitution of Board The Board consists of—

the Chief Inspector (appointed under the Fruit and Plant Protection Act 1992); and

up to eight members appointed by the Minister of whom one will be a person nominated by the Minister with expertise in viticultural research and up to seven will be persons nominated by the Selection Committee.

When nominating members of the Board, the Selection Committee must ensure that—

no more than one member is nominated from each prescribed region;

at least one member has been endorsed by the South Australian Farmers Federation Incorporated to represent that association's interests;

at least one member has been endorsed by the Wine and Brandy Producers Association of South Australia Incorporated to represent that association's interests;

all members have a proven commitment to the improvement of the State's grape and wine industry, and its protection from disease;

any other requirements notified in writing by the Minister are satisfied.

No member of the Selection Committee may be nominated or appointed as a member of the Board.

Clause 6: Terms and conditions of members

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, is eligible for reappointment. A member of the Board is entitled to allowances and expenses determined by the Minister and may be removed from office by the Minister for the usual reasons. On the office of an ap­pointed member becoming vacant, a person must be appointed in accordance with this proposed Act to the vacant office.

Clause 7: Presiding member of Board

The members must elect a presiding member in each July. In the event that the office of the presiding member becomes vacant before the expiration of the term of office, the members must elect another member to preside.

Clause 8: Conduct of business by Board

A quorum of the Board consists of five members with each member present at a meeting having a vote on a matter before the Board. The presiding member at a meeting of the Board has a casting as well as a deliberative vote. A majority decision is a decision of the Board.

DIVISION 2—PHYLLOXERA AND GRAPE INDUSTRY BOARD SELECTION COMMITTEE

Clause 9: Establishment and membership of Selection Committee

The Phylloxera and Grape Industry Board Selection Committee is established. The Selection Committee consists of five members appointed by the Minister from a panel of 10 persons nominated by the South Australian Farmers Federation Incorporated, the Wine and Brandy Producers Association of South Australia Incorporated and any other organisations or bodies that, in the opinion of the Minister, have significant involvement in grape growing or winemaking. The Minister must appoint a member of the Selection Committee to preside at meetings of the Selection Committee.

Clause 10: Term and conditions of office of Selection Committee

The members of the Selection Committee are appointed for a period and on terms and conditions, including payment of allowances, determined by the Minister with the Board paying the allowances payable to members of the Selection Committee and any reasonable expenses of the Selection Committee. A member of the Selection Committee may be removed from office by the Minister for the usual reasons.

Clause 11: Procedures of Selection Committee

A decision may not be made at a meeting of the Selection Committee unless all members are present or participate by telephone, video or other electronic means. Each member of the Selection Committee is entitled to one vote on a matter arising for decision at the meeting and a decision carried by a majority of the votes of the members present at a meeting of the Selection Committee is a decision of the Selection Committee. The Selection Committee may engage consultants to assist it in nominating persons for appointment as members of the Board.

DIVISION 3—FUNCTIONS AND POWERS OF BOARD

Clause 12: Functions of Board

The functions of the Board are—

to identify and assess—

the relative threat to the State's vineyards posed by phylloxera and other diseases; and

the risk of spreading diseases through the movement of machinery, equipment and vines into and within the State;

to develop policies in relation to—

appropriate restrictions on or conditions for the movement of machinery, equipment and vines into and within the State to prevent the spread of disease; and

the quarantine of vines that are or may be affected by disease; and

appropriate measures for the control of outbreaks of disease in the State;

to develop plans for the eradication of disease in the State's vineyards;

to support and encourage the conduct and evaluation of research into—

disease resistance and tolerance of root stocks and scions; and

diseases that affect or may affect vines, and any matter relating to such diseases, including their control;

to publish the results of relevant research;

to promote awareness of the dangers of disease among the public and people involved in grape growing or winemaking;

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;

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;

to collect and, on request by an interested person, supply data relating to vineyards and vine health in South Australia;

to foster the development of the grape industry;

to perform the other functions assigned to the Board by or under this Act or by the Minister.

Clause 13: 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—

determine the appropriate action to be taken to control the outbreak; and

provide on-going advice to the Minister in relation to the out­break and the action being taken to control it.

Clause 14: Regional and other committees

The Board must establish regional committees representing each of the prescribed regions to advise the Board in relation to vine health in those regions and any other matter determined by the Board. A member of a regional committee may also be a Board member and holds office for a term and on conditions determined by the Board. The Board may establish other committees to advise or assist the Board.

Clause 15: General powers

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

accept money or other things provided or given to the Board by an authority or person for the performance of its functions under this proposed Act;

obtain expert or technical advice on any matter on terms and conditions determined by the Board;

employ staff on terms and conditions approved by the Minister or make use of Public Service facilities or the services of Public Service employees;

enter into a contract or arrangement of any kind;

acquire, hold, deal with and dispose of real or personal property;

exercise any other powers that are necessary or expedient for, or incidental to, the performance of its functions.

Clause 16: Delegation

The Board may delegate any of its functions or powers under this Act to a member of the Board, to a committee appointed by the Board, to a particular person or body or to the person for the time being occupying a particular office or position.

DIVISION 4—FIVE YEAR PLAN

Clause 17: Duty to prepare and maintain five year plan

The Board must, within 12 months after the commencement of this proposed Act prepare a plan of the Board's proposed principal undertakings and activities for the ensuing five years and present that plan at a public meeting convened by the Board. The Board must, at least two weeks before the date of a meeting to be held under this proposed section publish a notice of the date, time, place and purpose of that meeting in a newspaper circulating generally throughout the State and send a copy of that notice by post to each registered person.

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 this proposed section) at least once every 12 months after the initial presentation of the plan.

PART 3

THE REGISTER

Clause 18: The Register

The Board must maintain a Register of persons who own vineyards comprising 0.4 hectares or more of planted vines in which the Board must enter (in relation to each registered person) the following information:

the person's name and address; and

the location of the vineyard (including Section Number, District and Hundred); and

the varieties of vines planted; and

the area of each variety planted; and

the age of the vines; and

the source of the vines; and

any other information the Board thinks fit.

Clause 19: Power of Board to inspect assessments

For the purposes of proposed Part 3, the Board may (without payment) make searches in the Lands Titles Registration Office and 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.

Clause 20: Returns

A person who—

transfers or acquires ownership of a vineyard comprising 0.4 hectares or more of planted vines; or

establishes a vineyard comprising 0.4 hectares or more of planted vines on land owned by the person; or

extends a vineyard owned by the person so that it comprises 0.4 hectares or more of planted vines; or

removes vines from a vineyard owned by the person so that the vineyard ceases to comprise 0.4 hectares or more of planted vines,

but does not, within three months, provide the Board with a return containing the particulars required to be entered in the Register under this proposed Part is guilty of an offence and liable to a division 8 fine ($1 000) that is expiable on payment of a division 8 fee ($150).

Clause 21: Correction of Register

The Board may correct the Register from time to time. If a correction would have the effect of increasing a contribution payable under proposed 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

Clause 22: Contributions

Subject to this proposed section, the Board may by notice in the Gazette require that—

a registered person; or

a winemaker; or

a distiller,

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

The Minister may approve different rules for the determination of contributions in respect of the various classes of persons listed.

A contribution payable under this proposed 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, will be subject to the same penalties for delay or default in payment and will, until payment, be a charge on the land on which the vineyard, winery or distillery is situated.

Clause 23: Phylloxera and Grape Industry Fund

The Fund at the Treasury known as the Phylloxera Fund continues in existence as the Phylloxera and Grape Industry Fund. The Fund consists of—

all contributions paid under this proposed Part; and

any income paid into the Fund; and

all other money that is required or authorised by law to be paid into the Fund.

Any money in the Fund that is not for the time being required for the purposes of this proposed Act may be invested by the Treasurer and any income from any such investment will be paid into the Fund.

The Board may apply any part of the Fund in defraying the expenses incurred by the Board in the performance of its functions or in making any other payment required or authorised by law.

Clause 24: Accounts and audit

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 and must cause its accounts to be audited by a registered company auditor or the Auditor-General at least once in each year.

Clause 25: Report

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 incorporating the audited statement of accounts of the Board for the period to which the report relates and the five year plan prepared or revised by the Board. The Minister must, within 12 sitting days after receipt of a report under this proposed section, cause copies of the report to be laid before each House of Parliament.

PART 5

MISCELLANEOUS

Clause 26: Members of Board to be inspectors

The members of the Board are inspectors under the Fruit and Plant Protection Act 1992 ex officio.

Clause 27: Protection from personal liability

A person engaged in the administration of this proposed Act incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, by the person or by a body of which he or she is a member, of a power, function or duty under this proposed Act. A liability that would, but for proposed subsection (1), lie against the person, lies instead against the Crown.

Clause 28: False or misleading statements

A person who, in furnishing information under this proposed Act, makes a statement that is false or misleading in a material particular is guilty of an offence and liable to a division 7 fine ($2 000).

Clause 29: Regulations

The Governor may make such regulations as are contemplated by this proposed Act or as are necessary or expedient for the purposes of this proposed Act. The regulations may prescribe a fine, not exceeding a division 7 fine ($2 000), for contravention of the regulations.

SCHEDULE

Transitional and Repeal

The schedule repeals the Phylloxera Act 1936 and contains provi­sions of a transitional nature.

Mr CLARKE secured the adjournment of the debate.