**FRUIT AND PLANT PROTECTION BILL 1992**

**Legislative Assembly, 9 September 1992, pages 559-62**

Second reading

**The Hon. LYNN ARNOLD (Minister of Agriculture)** obtained leave and introduced a Bill for an Act to provide for the protection of fruit and plants from disease; to repeal the Fruit and Plant Protection Act 1968, the Fruit and Vegetables (Prevention of Injury) Act 1927, the Fruit Fly Act 1947 and the Sale of Fruit Act 1915; to make consequential amendments to the Expiation of Offences Act 1987 and the Phylloxera Act 1936; and for other purposes. Read a first time.

The Hon. LYNN ARNOLD: 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.

Explanation of Bill

This Bill is to replace the Fruit and Plant Protection Act 1968 which had its origins in the 1880s. Despite various amendments, the current Act seems not to have broken from those origins and remains somewhat archaic. For example, the Act speaks of ‘importation’ and ‘introduction’ but not of sale or possession. These words recall the days of the interstate transport system before railways predominated when the arrival of goods was mostly by sea or river. Rail, in turn, has yielded to road transport which is particularly suited to perishable goods, so there now is great rapidity and diversity of interstate trade in plant products.

The measure before honourable members mirrors those changes and recognises that speed is of the essence in quarantine as it is in fire control. I do not believe it unfair to say of the present Act, that it would be hard pressed, in a legal context, to meet any dire quarantine emergency. This is largely because it requires either the making of regulations or ministerial notices before some types of action can be taken.

These remarks must be qualified by relating that South Australia has been fortunate, perhaps unique, in that the persuasive powers of departmental officers and cooperation by the public, has seen action precede legal formalities. However, it might equally be said that we are yet to face a true emergency and that the powers envisaged by this Bill ultimately must come into full play.

On a broader note, some may argue that the proposed measures are necessary as a buffer to the Commonwealth’s revised quarantine policies. That point is as valid as the argument that the ease of contemporary travel and commerce between the States are sufficient reasons for the proposals.

Two things are quite clear—both industry and consumers (who were consulted on the issue) want to see this type of legislation, embodying the appropriate powers, retained. Secondly (and obviously), if South Australia had no such Act it would stand alone in this nation and would almost certainly be spumed as a trading partner both here and overseas.

The background to this Bill should not be concluded without stating that South Australia has developed sensible conditions of entry for a range of fresh products sought by both traders and consumers and moreover with the clear objective of reducing costs to the nation’s growers and merchants, South Australia has impressed on other States, the need for rationalisation of interstate quarantine criteria. Thus far it appears to have succeeded in the most significant of areas, namely the provisions concerning fruit fly hosts.

 As to specific aspects of the Bill, I believe several warrant examination. First, organisms previously defined as either diseases or pests appear under the single definition of ‘disease’ in the Bill. This change simply is for ease of expression in the Act and subordinate measures.

The general powers of inspectors in clause 9 have much the same intent as those of the present Act and in the main would be concerned with items illegally introduced from interstate. However, in recasting these along the lines of the Stock Act which Parliament saw fit to pass in 1990, there would be provision for the entry of residential premises under a justice’s warrant. Such warrants would be desirable on rare occasions involving serious breaches of the Act or grave plant health threats. In addition, clause 9 provides for scientific testing of fruit and other items for the presence of disease or chemical residues. The objective in testing for the latter would be to substantiate any claim that a seized product had undergone a prescribed treatment before entering the State.

Proposed provisions for the reporting and investigation of diseases again are modelled on the Stock Act 1990. These are followed by clause 13 which, in prohibiting or controlling the entry of various things from interstate, mirrors the current Fruit and Plant Protection Act and adds two features. First it is proposed that the Minister may, after appropriate consultation, permit the introduction of a disease for the purposes of research or biological control. It is possible that the current Act allows such action but it seems appropriate to clearly spell this out in the Bill. The use of sterile fruit flies in the biological control of that pest is one project that could be launched under this provision. Necessary safeguards would, of course, be attached to such proposals.

The second feature makes it an offence to purchase or take delivery of anything introduced or imported into the State in contravention of the Act. This would overcome the doubts expressed at the opening of this report and make it clear that the Act extends beyond ‘importation’ and ‘introduction’ of such goods.

Declaration by the Minister, of quarantine areas under clause 14 and the imposition of disease controls within these, are provisions taken from the current Act. These powers have been used successfully and, I might add, have been accepted by producers during outbreaks of the disease onion smut. The provisions have particular application to longlived organisms such as that just mentioned. An addition to the existing powers is to be found in the proposal concerning prohibitions on the entry of material into a quarantine area.

Clause 15—orders relating to disease affected fruit or plants—is designed for the unexpected, such as the sudden emergence of a virulent exotic disease. The provisions are not unlike those currently in place but in conferring on the Chief Inspector the power to order things to be done, there is no longer a requirement to make regulations beforehand. However, that power is balanced by the proviso that the Minister must first approve the action to be taken by the Chief Inspector.

This feature sets the Bill slightly apart from the Stock Act 1990 which does not require ministerial approval of such action. In this instance, however, it is recognised that unlike farm livestock, fruit and plants are grown both by commercial producers and householders. This makes eradication campaigns more socially complex and justify ministerial overview. The proviso is also in line with the green paper which broadly argued that all such powers rest with the Minister.

The concept contained in clause 18 of accredited production areas was raised by industry and while the provisions are quite broad, their application is unlikely to go beyond the objective promoted by the industry. That objective simply is to reinforce with interstate authorities the fact that a particular area is free of disease and in so doing, ease the entry of produce to another State or States.

Payment of compensation for losses due to quarantine action is modelled on a provision of the Fruit Fly Act 1947. There would be no compulsion to make such payments.

Provision for the expiation of offences in clause 21 is a further suggestion by industry. In addition, penalties for serious offences would undergo a significant increase, but within this, it is proposed to set lower penalties for illegal introductions of material for personal use.

Clause 30 picks up a provision of the current Act which has proved to be particularly worthwhile since its passage by Parliament in 1986. Specifically, the operation of the Plant Quarantine Standard under a ministerial notice has set this State ahead of others in the speedy and effective administration of interstate plant quarantine. This standard has been accepted readily by importers and has enhanced the development and policing of sensible conditions of entry or where required, stringent restrictions.

The power to make regulations has been incorporated in the Bill but in all the circumstances is unlikely to be taken beyond the setting of fees.

This Bill will repeal the current Fruit and Plant Protection Act 1968 and also secures the repeal of the Fruit Fly Act for the reasons already given as well as two moribund measures, the Fruit and Vegetables (Prevention oF Injury) Act 1927 and Sale of Fruit Act 1915. Neither of these has application to today’s packaging and handling technology.

Finally it is proposed to concurrently amend the Phylloxera Act 1936. This simple change would provide that the Minister consent to the introduction of vines into the State by the Phylloxera Board. At present the Governor gives such consent but that process in an era of numerous introductions, is unnecessarily burdensome.

I commend the Bill to members. The provisions of the Bill are as follows.

Part I of the Bill (‘Preliminary’) is comprised of clauses 1 to 5.

Clauses 1 and 2 are formal.

Clause 3 provides for the definitions of words and phrases used in the Bill.

Clause 4 provides that, for the purposes of this Act, the Minister may, by notice in the Gazette, declare that a condition of fruit or plants is a disease. Such a notice may be varied or revoked.

Clause 5 provides that the Minister may, by notice in the Gazette, declare a place to be a quarantine station in which fruit, plants, soil, packaging or other thing may, subject to this Act, be held, examined, disinfected, treated, destroyed or otherwise disposed of. Such a notice may be varied or revoked.

Part 2 of the Bill (comprising clauses 6 to 10) deals with administrative matters.

Clause 6 provides that the Minister may, by instrument in writing, appoint persons to be inspectors for the purposes of this Act. Such an appointment may be conditional and the Minister must provide an inspector with a certificate of appointment setting out any such conditions. Subclause (4) provides that an inspector must, at the request of a person in relation to whom the inspector has exercised or intends to exercise powers under this Act, produce his or her certificate of appointment.

Clause 7 provides that the Minister may, by instrument in writing, appoint a person to be the Chief Inspector for the purposes of this Act and a person to be the deputy of the Chief Inspector. The person appointed as the deputy has, while acting in the absence of the Chief Inspector, all the powers and functions of the Chief Inspector.

Clause 8 provides that the Chief Inspector may delegate to any person (including an inspector) any of the Chief Inspector’s powers or functions under this Act. Such a delegation may be subject to such conditions as the Chief Inspector thinks fit, is revocable at will and does not derogate from the power of the Chief Inspector to act in any matter himself or herself.

Clause 9 provides that an inspector may, for the purposes of exercising any power conferred on the inspector by this Act or determining whether this Act is being or has been complied with—

• enter and search any land, premises, vehicle or place;

• where reasonably necessary, break into or open any part of, or anything in or on, the land, premises, vehicle or place or, in the case of a vehicle, give directions with respect to the stopping or moving of the vehicle;

• take photographs, films or video recordings;

• require a person to a answer questions or to provide information;

• require a person to produce any books, documents or records in his or her possession or control;

• require a person to produce any information stored by computer, microfilm or by any other process;

• examine, copy and take extracts from, or provide copies of, any books, documents, records or information produced under this section.

 Subclause (2) provides that an inspector may—

 • identify any land, building or other structure, fruit, plant, soil, packaging or thing in respect of which powers have been exercised under this Act;

• require the owner of any fruit, plant, soil, packaging or other tiling to deliver it to a quarantine station; e seize and retain anything that may constitute evidence of the commission of an offence against this Act;

• seize any fruit, plant, soil, packaging or other thing brought into a place, removed from a place, or moved from one place to another, in contravention of this Act;

• use reasonable force to prevent the commission of an offence against this Act.

Subclause (3) provides that an inspector must not exercise the power conferred by proposed subsection (1) (b) in relation to any residential premises except on the authority of a warrant issued by a justice who must be satisfied (by information given on oath) that the warrant is reasonably required in the circumstances.

Subclause (5) provides that where an inspector seizes any fruit, plant, soil, packaging or other thing under proposed subsection (2) (d), the inspector may do one or more of die following in relation to it:

• retain it;

• cleanse, disinfect or otherwise treat it or subject it to treatment;

• submit it for scientific testing and analysis for the purposes of determining whether it is affected by disease or a chemical residue;

• return it to its owner subject to any specified conditions;

• destroy or otherwise dispose of it.

Subclauses (6) and (7) provide that a person may be required to answer a question put by an inspector or to produce books, documents, records or information notwithstanding that the answer to the question or the contents of the books, documents, records or information would tend to incriminate him or her of an offence. If a person objects to answering such a question or to producing such books, documents, records or information, the answer to the question or the contents of the books, documents, records or information are not admissible against that person in criminal proceedings (except in proceedings for an offence under this Act of making a false or misleading statement).

Subclause (8) provides that an occupier of land or premises or a person apparently in charge of a vehicle must give to an inspector (or a person assisting an inspector) exercising or proposing to exercise any powers under this Act such assistance and provide such facilities as the inspector may reasonably require.

Subclause (9) provides that an inspector (or a person assisting an inspector) who addresses offensive language to any other person or who, without lawful authority or a reasonable belief as to lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person, is guilty of an offence and liable to a penalty of a division 6 fine ($4 000).

Clause 10 provides that an inspector incurs no civil or criminal liability for an act or omission in good faith in the exercise or performance, or purported exercise or performance, of a power or function under this Act and that civil liability that would, but for this clause, lie against a person lies against the Crown.

Part 3 of the Bill (comprising clauses 11 to 20) deal with the control of disease in relation to fruit and plants.

Clause 11 provides that where a person knows or has reason to suspect that fruit or plants owned by him or her or in his or her possession or control are affected by disease, the person is guilty of an offence if he or she does not report the matter to an inspector by the quickest practicable means, does not furnish the inspector with such information as reasonably required and does not take all reasonable measures to prevent the spread of the disease. The penalty for such an offence is a division 6 fine ($4 000).

Subclause (2) provides that a report is not required with respect to a particular matter if the person knows or reasonably believes that the matter has already been reported to an inspector.

Subclause (3) provides that a person who grows, propagates or processes fruit or plants for profit or gain will, if the fruit or plants are affected by disease, be taken to know or have reason to suspect that the fruit or plants are so affected in the absence of proof to the contrary.

Clause 12 provides that an inspector may carry out an investigation as reasonably necessary for the purposes of determining whether fruit or plants are affected by disease and/or identifying or tracing any cause or source or potential cause or source of disease. For this investigatory purpose, an inspector may examine, take samples from or test any insect, fruit, plants, soil, packaging or other thing.

Clause 13 provides that, subject to this proposed section a person must not introduce or import into the State a disease, or any fruit, plant, soil, packaging or other thing affected by disease.

Subclause (2) provides that the Minister may, by notice in the Gazette, declare that the introducing or importing into the State of any fruit, plant, soil, packaging or other thing of a specified kind that the Minister reasonably suspects is or might be affected by disease is prohibited absolutely or subject to exceptions and conditions specified in the notice. Such a notice may be varied or revoked by the Minister by further notice in the Gazette (proposed subclause (3)).

Subclause (4) provides that the Minister may, for the purposes of furthering agricultural interests, scientific research or the biological control of a disease, by notice in writing, exempt a person from complying with this section subject to conditions set out in the notice. Before taking action under proposed subsection (4), the Minister must consult widely with, and take into account the advice of, members of the agricultural and scientific communities. Such a notice may, by further notice in writing, be varied or revoked by the Minister.

Subclause (7) provides that a person who contravenes or fails to comply with this proposed section or a notice under it or who purchases or takes delivery of anything introduced or imported into the State in contravention of this proposed section or a notice under it is guilty of an offence. The penalty for this offence is two-tiered. If the offence consists of introducing or importing into the State not more than one kilogram of fruit or five plants for the person’s own consumption or enjoyment or any soil, packaging or thing (other than fruit or plants) not intended for sale or use for commercial purposes (a ‘prescribed offence’), the penalty is a division 7 fine ($2 000). The fine, in any other case, is a division 4 fine ($15 000).

Clause 14 provides that the Minister may, by notice in the Gazette, declare a portion of the State to be a quarantine area in respect of all diseases or in respect of those diseases specified in the notice. A notice under this proposed section may—

• prohibit the removal from a quarantine area of any fruit or plant of a species or kind or any packaging or other thing of a kind that might transmit a disease;

• require the owners or occupiers of land or premises within the quarantine area to take measures that are necessary for the control or eradication of a disease;

• require the owners or occupiers of land or premises within specified portions of the quarantine area to take more stringent measures than the owners or occupiers of other land or premises within the quarantine area;

• prohibit the planting and propagation of plants, or plants of a specified species or kind, within the quarantine area during a period specified in the notice;

• prohibit absolutely or subject to exceptions and conditions specified in the notice the importing into the quarantine area of any fruit or plant of a species or kind or any soil, packaging or other thing, specified in the notice;

• be varied or revoked by the Minister by further notice in the Gazette.

Clause 15 provides that where the Chief Inspector knows or reasonably suspects that any fruit or plant is or might become affected by disease, he or she may, with the approval of the Minister, issue such orders under this section as may be reasonably necessary to prevent the outbreak or spread of the disease to the person who owns or has possession or control of the fruit or plant or to the owners or occupiers of land or premises in the vicinity.

Subclause (2) provides that one or more of the following orders may be issued in relation to any fruit, plant, soil, packaging or other thing that is or might become affected by disease:

• requiring that it be kept at a specified place for a specified period;

• requiring that it be subjected to specified treatment;

• 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 disease;

• restricting or prohibiting its sale or supply or restricting the purposes for which it may be used;

• requiring that it be destroyed or disposed of in a specified manner;

• prohibiting the planting and propagation of plants, or plants of a specified species or kind, on specified land during a specified period.

Subclause (3) provides that where the Chief Inspector cannot locate after reasonable inquiry a person of whom the Chief Inspector intended to make any requirement for action by order under this proposed section the Chief Inspector may cause the action to be taken by an inspector or other person and recover costs and expenses reasonably incurred by action in a court of competent jurisdiction as a debt owed by the owner of the fruit, plant, soil, packaging or other thing in respect of which action was taken by the inspector or other person.

Clause 16 provides that an order under proposed Division 2 of Part 3 (comprising clauses 13 to 17) must be in writing but may be of general or limited application and may, by further order, be varied or revoked. If it is an order that is of a continuing nature, it has effect for such period as is specified in the order.

Subclause (4) provides that where an order of a continuing nature is issued under this proposed Division on the basis of a suspicion, the Chief Inspector must, as soon as practicable, take reasonable steps to determine whether that suspicion is correct.

Subclause (5) provides that if a person refuses or fails to comply with an order issued under this proposed Division, the Chief Inspector may cause an inspector or other person to take any necessary action to give effect to the order and the Chief Inspector may recover costs and expenses reasonably incurred in such a case by action in a court of competent jurisdiction as a debt owed by the person to whom die order was issued.

Clause 17 provides that a person to whom an order has been issued under this proposed Division who contravenes or fails to comply with the order is guilty of an offence and liable to a penalty of a division 4 fine ($15 000).

Clause 18 provides that where the Minister is satisfied that, through the exercise of good management by the producers and processors of fruit and plants in a specified area, the area is free of a specified disease or diseases, the Minister may, by notice in the Gazette, declare that area to be free of the disease or diseases specified in the notice and authorize the use of specified statements in respect of fruit or plants produced or processed in that area when advertising, packaging or selling those fruit or plants. Such a notice may be varied or revoked. It is an offence for a person to use a statement specified in a notice under proposed subsection (1) otherwise than in respect of fruit or plants produced or processed in the area specified in the notice which carries a penalty of a division 7 fine ($2 000).

Clause 19 provides that the Minister may pay compensation to any person who has suffered loss in consequence of an order made under proposed Division 2 of Part 3. Such an application for compensation must be in writing, must be made in a manner and form determined by the Minister and must be supported by such evidence as the Minister may require. No action lies against the Minister to compel him or her to make any payment of compensation.

Clause 20 provides that a person who, without the approval of the Chief Inspector, sells or supplies any fruit or plant affected by disease or any fruit or plant subject to an order under proposed Division 2 of Part 3 is guilty of an offence and liable to a penalty of a division 7 fine ($2 000).

Subclause (2) provides that the owner of land or premises in relation to which an order is in force under proposed Division 2 of Part 3 must notify the Chief Inspector of any intended sale of the land or premises at least 28 days before the date of settlement. The penalty for noncompliance with this proposed subsection is a division 7 fine ($2 000).

Subclause (3) provides that where a person is guilty of an offence against this proposed 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 fruit, plant, land or premises were sold or supplied such compensation as the court thinks fit

Part 4 of the Bill (comprising clauses 21 to 30) deals with miscellaneous matters.

Clause 21 provides that a person must not—

• hinder or obstruct an inspector, or a person assisting an inspector, in the exercise of powers under this Act;

• refuse or fail to comply with any request or requirement made by an inspector under this Act;

• falsely represent, by words or conduct, that he or she is an inspector,

• remove or interfere with any identification mark or device used for the purposes of this Act

The penalty for offending against this proposed section is a division 6 fine ($4 000).

Clause 22 provides that a person who, in furnishing information under this Act, makes a statement that is false or misleading in a material particular is guilty of an offence and liable to a division 6 fine ($4 000).

Clause 23 provides that a notice or order required or authorised by this Act to be given or issued to a person may be given or issued by delivering it personally to the person (or his or her agent), by leaving it for the person at his or her place of residence or business with someone apparently over the age of 16 years, by posting it to the person (or his or her agent) at his or her last known address or by transmission by facsimile machine to a facsimile machine number provided by that person for that purpose.

Clause 24 provides that 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. It is further provided that were 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.

Clause 25 provides that in any legal proceedings, a document apparently executed by the Minister certifying as to a matter relating to—

• the appointment of an inspector under this Act;

• an order or approval of the Chief Inspector or any other inspector under this Act;

• a delegation under this Act;

• the amount of costs and expenses incurred in taking any specified action under this Act, constitutes proof, in the absence of proof to the contrary, of the matters so certified.

Subclause (2) provides that an allegation in a complaint—

• that a specified person is or was the owner or occupier of specified property; 9 that specified fruit or plants were within a specified area;

• that specified fruit or plants are or were affected by disease;

 • 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.

Clause 26 provides that an offence against this Act is a summary offence and that proceedings for such an offence can be commenced at any time within three years from the day on which it is alleged the offence was committed.

Clause 27 provides that where an offence against a provision of this Act is committed by a person by reason of a continuing act or omission, 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 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.

Subclause (2) provides that for the purposes of this proposed section, an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

Clause 28 provides that 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.

Clause 29 provides that a notice given by the Minister, or a regulation made, under this Act 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.

Subclause (2) provides that where a code, standard or other document is applied, adopted or incorporated in a notice or regulation, a copy of it 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. This subclause further provides that 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.

Clause 30 provides that the Governor may make such regulations as are necessary or expedient for the purposes of this Act including prescribing a fine, not exceeding a division 7 fine ($2 000), for contravention of the regulations.

Schedule 1 of the Bill repeals the Fruit and Plant Protection Act 1968, the Fruit and Vegetables (Prevention of Injury) Act 1927, the Fruit Fly Act 1947 and the Sale of Fruit Act 1915.

 Schedule 2 of the Bill provides for consequential amendments to the Phylloxera Act 1936.

Mr D.S. BAKER secured the adjournment of the debate.