

South Australia

Citrus Industry Act 1991

An Act to provide for the organisation and development of the citrus industry and the marketing of citrus fruit; and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 3 Interpretation

Part 2—The Citrus Board of South Australia

Division 1—Constitution of the Board

- 4 Establishment of the Board
- 5 Membership of Board
- 6 Term and conditions of office
- 7 Procedures of Board
- 8 Conflict of interest

Division 2—The Citrus Board Selection Committee

- 9 Establishment and membership of selection committee
- 10 Term and conditions of office of selection committee
- 11 Procedures of selection committee
- 12 Conflict of interest over appointments

Division 3—Functions and powers of the Board

- 13 Functions of the Board
- 14 General powers
- 15 Committees
- 16 Delegation
- 17 Staff
- 18 Exemptions
- 19 Power to require returns

Division 4—Preparation of five year plan

- 20 Duty to prepare and maintain five year plan

Division 5—Financial and reporting

- 21 Contributions from registered persons
- 22 Accounts and audit
- 23 Report

Part 3—Registration

- 24 The register
- 25 Registration of growers, packers, processors, wholesalers and volume retailers
- 26 Cancellation or suspension of registration
- 27 Appeal against decisions of the Board
- 28 Offence to breach condition of registration
- 29 Offence to grow, pack, process or sell citrus fruit unless registered
- 30 Offences in relation to selling, packing or purchasing citrus fruit
- 31 Permit for registered grower to sell by retail

Part 4—Marketing orders

- 32 Power to issue marketing orders

Part 5—Miscellaneous

- 33 Powers of inspectors
- 34 Protection from personal liability
- 35 Arrangements to evade Act
- 36 Offences and penalties
- 37 Regulations

Schedule—Transitional provisions

- 2 Interpretation
- 3 Transfer of registration or licence
- 4 Vacation of office
- 5 Contributions

Legislative history

Appendix—Divisional penalties and expiation fees

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Citrus Industry Act 1991*.

3—Interpretation

In this Act, unless the contrary intention appears—

the Board means the Citrus Board of South Australia, continued in existence under Part 2;

citrus fruit means citrons, lemons, limes, grapefruit, mandarins, oranges, sevilles and tangerines or a hybrid of any of those fruits;

grower means a person who carries on the business of producing citrus fruit for sale;

inspector means—

- (a) a member of the police; or

- (b) a person authorised by the Board to exercise the powers of an inspector under this Act;

marketing, in relation to citrus fruit or a citrus fruit product, means each step taken in relation to—

- (a) the preparation of harvested citrus fruit for sale by wholesale or for processing; and
(b) the packing of citrus fruit for sale by wholesale; and
(c) the processing of citrus fruit into a citrus fruit product for sale by wholesale; and
(d) the packing of a citrus fruit product for sale by wholesale; and
(e) the sale of citrus fruit or a citrus fruit product by wholesale; and
(f) the storing, handling, shipping and transporting of citrus fruit or a citrus fruit product for sale by wholesale,

and any incidental activity;

packer means a person who carries on the business of packing citrus fruit for sale by wholesale;

processor means a person who carries on the business of processing citrus fruit into a citrus fruit product for sale by wholesale;

product, in relation to citrus fruit, means a substance which is derived, wholly or in part, from citrus fruit;

the register means the register established and maintained by the Board under this Act;

registered means registered under this Act;

registered person means a person whose name appears in the register;

retailer means a person who carries on the business of selling citrus fruit by retail, but does not include a grower who sells citrus fruit by retail pursuant to a permit under this Act;

the selection committee means the Citrus Board Selection Committee appointed by the Minister under this Act;

sell includes—

- (a) send forward or deliver for sale or barter; and
(b) receive or have in possession for sale or barter; and
(c) offer or expose for sale or barter; and
(d) cause, suffer or allow to be sold or bartered or offered or exposed for sale or barter,

and **sale** and **sold** have corresponding meanings;

volume retailer means a retailer who, during a prescribed period, purchases a greater quantity of citrus fruit for the purpose of sale by retail than the quantity prescribed for that period;

wholesaler means a person who carries on the business of selling citrus fruit or a citrus fruit product by wholesale, but not as a packer.

Note—

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

Part 2—The Citrus Board of South Australia

Division 1—Constitution of the Board

4—Establishment of the Board

- (1) The *Citrus Board of South Australia* continues in existence.
- (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—Membership of Board

- (1) The Board consists of eight members appointed by the Governor, of whom—
 - (a) one (the presiding member) will be a person nominated by the Minister; and
 - (b) four will be registered growers nominated by the selection committee, being growers who have, in the opinion of the committee, extensive knowledge of and experience in the production of citrus fruit; and
 - (c) three will be persons (other than registered growers) nominated by the selection committee, being persons who have, in the opinion of the committee, extensive knowledge of and experience in the marketing of citrus fruit or citrus fruit products or any other foodstuffs.
- (2) For the purposes of this section, a director of a company that is registered as a grower will be regarded as a registered grower.
- (3) At least one member nominated by the selection committee must be a woman and one a man.
- (4) The Governor—
 - (a) must appoint a member of the Board, nominated by the Minister, to be the deputy presiding member of the Board; and
 - (b) may appoint a person, nominated by the selection committee, to be the deputy of any member of the Board (other than the presiding member).
- (5) A person appointed as the deputy of a member may, in the absence of that member, act as a member of the Board.
- (6) No member of the selection committee may be nominated or appointed as a member, or as the deputy of a member, of the Board.
- (7) Where a person is nominated by the selection committee under this section, the committee must at the same time advise the Minister in writing of the reasons for the nomination of that person.

- (8) If the selection committee fails to nominate a person for the purposes of subsection (1) or (4) within eight weeks after receiving a written request from the Minister to do so, the Governor may appoint a person nominated by the Minister, and a person so appointed will be taken to have been duly appointed under that subsection.

6—Term and conditions of office

- (1) A member of the Board will be appointed for such term, not exceeding three years, as the Governor specifies in the instrument of appointment and is, on the expiration of his or her term of office, eligible for re-appointment.
- (2) A member of the Board is entitled to such allowances and expenses as the Governor may determine.
- (3) The allowances and expenses to which a member of the Board is entitled under subsection (2) must be paid out of the funds of the Board.
- (4) The Governor may remove a 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.
- (5) The office of a 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 Governor under subsection (4).
- (6) On the office of a member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

7—Procedures of Board

- (1) A meeting of the Board will be chaired by the presiding member or, in his or her absence, by the deputy presiding member, and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Board must choose one of their number to preside at the meeting.
- (2) Five members of the Board constitute a quorum of the Board and no business may be transacted at a meeting of the Board unless a quorum is present.
- (3) Subject to subsection (2), the Board may act notwithstanding vacancies in its membership.
- (4) Each member present at a meeting of the Board is (subject to section 8) entitled to one vote on a matter arising for decision at the meeting, but the person presiding at the meeting has, in the event of an equality of votes, a casting vote as well as a deliberative vote.
- (5) A decision carried by a majority of the votes cast by the members present and voting at a meeting is a decision of the Board.

- (6) The Board must cause accurate minutes to be kept of its proceedings at meetings.
- (7) The procedure for the calling of meetings of the Board and for the conduct of business at meetings will, subject to this Act, be determined by the Board.

8—Conflict of interest

- (1) A member of the Board who has an interest in a matter before the Board must disclose the existence of that interest to the Board.

Penalty: Division 6 fine or division 6 imprisonment.

- (2) A member of the Board has an interest in a matter before the Board if—
 - (a) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment; or
 - (b) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, obtain or have a reasonable expectation of obtaining a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a non-pecuniary detriment,

not being a benefit or detriment that would be enjoyed or suffered by the member, or the person who is closely associated with a member, in common with a class of persons that forms part of or is substantially involved in the citrus industry.

- (3) A person is closely associated with a member of the Board if that person is—
 - (a) a body corporate of which the member is a director or a member of the governing body; or
 - (b) a proprietary company in which the member is a shareholder; or
 - (c) a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee; or
 - (d) a party to a partnership or share-farming agreement to which the member is also a party; or
 - (e) an employer or an employee of the member; or
 - (f) the spouse, parent or child of the member.
- (4) A disclosure under subsection (1) must be recorded in the minutes of the Board.
- (5) A member of the Board who has an interest in a matter before the Board—
 - (a) must not, except on the request of the Board, take part in any discussion by the Board relating to that matter; and
 - (b) must not vote in relation to that matter; and
 - (c) must, unless the Board permits otherwise, be absent from the meeting room when any such discussion or voting is taking place.

Penalty: Division 6 fine or division 6 imprisonment.

- (6) It is a defence to a charge of an offence against this section for the defendant to prove that, at the time of the alleged offence, the defendant was unaware of his or her interest in the matter.
- (7) The fact that a member has failed to comply with this section in relation to a matter does not, of itself, invalidate a resolution or decision on that matter, but, where it appears that the non-compliance may have had a decisive influence on the passing of the resolution or the making of the decision, the Supreme Court may, on the application of the Board, the Minister or any person affected by the resolution or decision, annul the resolution or decision and make such ancillary orders as it thinks fit.

Division 2—The Citrus Board Selection Committee

9—Establishment and membership of selection committee

- (1) The *Citrus Board Selection Committee* is established.
- (2) The committee consists of five members, appointed by the Minister.
- (3) The Minister must appoint the members of the selection committee from a panel of ten persons nominated in accordance with this section.
- (4) The Minister must invite such organisations or other bodies as are, in the opinion of the Minister, substantially involved in the citrus industry—
 - (a) to each nominate a specified number of persons to the panel from which the Minister must appoint members of the selection committee; and
 - (b) to provide reasons in writing in support of each nomination.
- (5) The Minister must appoint a member of the selection committee to preside at meetings of the committee.

10—Term and conditions of office of selection committee

- (1) A member of the selection committee will be appointed for a term of three years and is, on the expiration of his or her term of office, eligible for re-appointment.
- (2) A member of the selection committee is entitled to such allowances and expenses as the Minister may determine.
- (3) The allowances and expenses to which a member of the committee is entitled under subsection (2) must be paid out of the funds of the Board.
- (4) The Minister may remove a member of the selection committee 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.
- (5) The office of a 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 (4).
- (6) Subject to subsection (7), on the office of a member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.
- (7) On the office of a member becoming vacant prior to the completion of the full term for which that member was appointed, a suitable person may be appointed for the remainder of that term by the Minister.

11—Procedures of selection committee

- (1) A meeting of the selection committee will be chaired by the member appointed by the Minister to preside at meetings or, in his or her absence, by a member chosen by the members present at the meeting.
- (2) The committee may act notwithstanding that there is a vacancy (but not more than one) in its membership.
- (3) Subject to section 12—
- (a) all members of the committee must be present when the committee is making a nomination to the Board;
 - (b) four members of the committee constitute a quorum for the purpose of the transaction of any other business by the committee.
- (4) Each member of the committee is (subject to section 12) entitled to one vote on a matter arising for decision at a meeting of the committee, but the person presiding at the meeting has, in the event of an equality of votes, a casting vote as well as a deliberative vote.
- (5) A decision carried by a majority of the votes cast by the members of the committee present and voting at a meeting is a decision of the committee.
- (6) The committee must cause accurate minutes to be kept of its proceedings at meetings.
- (7) The procedure for the calling of meetings of the committee and for the conduct of business at such meetings may, subject to this Act, be determined by the committee.

12—Conflict of interest over appointments

- (1) A member of the selection committee who is closely associated with a person who is under consideration by the committee for nomination to the Board must disclose the existence of that association to the committee.
- Penalty: Division 6 fine or division 6 imprisonment.
- (2) A member of the committee is closely associated with another person if that other person is—
- (a) a director or member of the governing body of a body corporate of which the member is a director or member of the governing body; or
 - (b) a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee; or
 - (c) a party to a partnership or share-farming agreement to which the member is also a party; or

- (d) an employer or employee of the member; or
 - (e) the spouse, parent or child of the member.
- (3) A disclosure under subsection (1) must be recorded in the minutes of the committee.
- (4) A member of the committee who is closely associated with a person under consideration by the committee—
- (a) must not, except on the request of the committee, take part in a discussion by the committee relating to that person; and
 - (b) must not vote in relation to the nomination of that person to the Board; and
 - (c) must, unless the committee permits otherwise, be absent from the meeting room when any such discussion or voting is taking place.

Penalty: Division 6 fine or division 6 imprisonment.

- (5) It is a defence to a charge of an offence against this section for the defendant to prove that, at the time of the alleged offence, the defendant was unaware of his or her association with the person concerned.
- (6) The fact that a member has failed to comply with this section in relation to a person does not invalidate a resolution or decision made in relation to that person.

Division 3—Functions and powers of the Board

13—Functions of the Board

The functions of the Board are—

- (a) to develop policies for—
 - (i) the orderly marketing of citrus fruit and citrus fruit products; and
 - (ii) achieving and maintaining minimum quality standards for citrus fruit and citrus fruit products;
- (b) to support and encourage the export of citrus fruit and citrus fruit products from the State;
- (c) to collect information relating to the production and marketing of citrus fruit and citrus fruit products within Australia and overseas, including—
 - (i) the current wholesale market price; and
 - (ii) trends in production and marketing; and
 - (iii) the estimated future demand for, and production and price of, citrus fruit and citrus fruit products within Australia and overseas,and to provide that information to registered persons and to such other persons or classes of persons as the Board thinks fit;
- (d) to undertake, assist or encourage the promotion of, and encourage the consumption of, citrus fruit and citrus fruit products;
- (e) to undertake, assist or encourage—
 - (i) research into citrus fruit, citrus fruit products and the citrus industry generally; and

- (ii) the development of citrus fruit, citrus fruit products and the citrus industry;
- (f) to provide information, training, review of procedures or advice to assist growers, packers, processors and other persons involved in the citrus industry—
 - (i) to improve the production or marketing of citrus fruit or citrus fruit products; or
 - (ii) to comply with this Act or a law of the Commonwealth or of another State or a Territory of the Commonwealth relating to the citrus industry;
- (g) to perform the other functions assigned to the Board by or under this Act or by the Minister.

14—General powers

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

- (a) undertake concerted action with marketing authorities of citrus fruit or citrus fruit products outside the State in the marketing within or outside Australia of citrus fruit and citrus fruit products produced in Australia; or
- (b) develop codes of practice in relation to any aspect of the citrus industry; or
- (c) collect from any person on behalf of the Commonwealth (or an agency of the Commonwealth) money payable to the Commonwealth or that agency under a law of the Commonwealth relating to the citrus industry; or
- (d) arrange for the payment, when and in whatever manner the Board thinks fit (including payment by instalment) of any money payable to the Board under this or any other Act; or
- (e) 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; or
- (f) seek expert or technical advice on any matter from any person on such terms and conditions as the Board thinks fit; or
- (g) enter into a contract or arrangement of any kind, including—
 - (i) a partnership or joint venture agreement; or
 - (ii) an agreement to appoint, or act as, an agent,whether within or outside the State; or
- (h) acquire, hold, deal with and dispose of real or personal property; or
- (i) borrow or lend money; or
- (j) exercise any other powers that are necessary or expedient for, or incidental to, the performance of its functions.

15—Committees

- (1) The Board may establish committees (which may, but need not, consist of or include members of the Board) to advise or assist the Board.

- (2) The functions and procedures of a committee established under subsection (1) will be as determined by the Board.

16—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.

17—Staff

- (1) The Board may employ, on terms and conditions fixed by the Board, such persons as it considers necessary or expedient for the proper administration of this Act.
- (2) An employee of the Board is not a Public Service employee.
- (3) The Board may, with the approval of the Minister administering an administrative unit of the Public Service of the State, on terms mutually arranged, make use of the services of any employee or use any of the facilities of the administrative unit.

18—Exemptions

- (1) The Board may, by notice in the Gazette, exempt a person or class of persons from a provision of this Act or a regulation or order made under this Act.
- (2) An exemption under this section may be subject to such conditions as the Board thinks fit.
- (3) The Board may, by notice in the Gazette, vary or revoke a notice under this section.

19—Power to require returns

- (1) The Board may, by notice in writing served personally or by post on a person to whom the notice relates, require a registered person to furnish in writing to the Board within the time specified in the notice such information in relation to citrus fruit or a citrus fruit product as the Board thinks necessary for the administration of this Act and as is specified in the notice.
- (2) A notice under subsection (1) may include a requirement for—
 - (a) particulars of citrus fruit, by reference to type, variety, size, grade, quality, quantity or any other factor, produced, delivered for sale, purchased, sold or processed within a period specified in the notice; and
 - (b) in the case of a registered grower—

- (i) particulars of the number of citrus trees, or the area planted with citrus trees, by reference to age, type and variety, that he or she is growing for the production and sale of citrus fruit; and
 - (ii) the total area of citrus trees grown by the grower for the production and sale of citrus fruit, as at the date or within the period specified in the notice; and
 - (iii) an estimate of citrus fruit, by reference to type, variety, size, grade, quality, quantity or any other factor, that he or she expects to produce for marketing within a period specified in the notice.
- (3) A person who—
- (a) without reasonable excuse refuses or fails to comply with a requirement under this section; or
 - (b) knowingly furnishes to the Board information that is false or misleading in a material particular,

is guilty of an offence.

Penalty:

For a first offence—a division 8 fine.

For a subsequent offence—a division 7 fine.

Division 4—Preparation of five year plan

20—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 in a newspaper circulating generally throughout the State; 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.

Division 5—Financial and reporting

21—Contributions from registered persons

- (1) The Board may require all registered persons, or registered persons of a particular class, to pay contributions to the Board towards the costs incurred, or to be incurred, by the Board in carrying out its functions under this Act.

- (2) Contributions under this section and their method of payment or collection may be determined by the Board in such manner as it thinks fit.
- (3) Before the Board requires initial payment of contributions by a particular class of registered persons, or varies the rate or amount of existing contributions, the Board must consult, in such manner and to such extent as it thinks fit, with the persons liable to pay the contribution concerned.

22—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 at least once in each year.

23—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.

Part 3—Registration

24—The register

- (1) For the purposes of this Act, the Board must keep a register of all persons registered under this Act.
- (2) The register must show—
 - (a) the name and address of each registered person; and
 - (b) the capacity in which that person is registered; and
 - (c) such other particulars as are prescribed or as the Board thinks fit.

25—Registration of growers, packers, processors, wholesalers and volume retailers

- (1) A person who is required by this Act to be registered may apply to the Board in accordance with this section for registration.
- (2) An applicant under this section must—
 - (a) apply in the prescribed form; and
 - (b) provide such information relevant to the application as is prescribed and such additional information relevant to the application as the Board may require; and
 - (c) pay the prescribed fee (if any) or such portion of that fee as is prescribed.

- (3) Where a person applies in accordance with subsection (2) for registration as a grower, the Board must, on being satisfied that the applicant is a grower, register the applicant in that capacity.
- (4) Where a person applies in accordance with subsection (2) for registration as a packer or processor and the Board is satisfied—
- (a) that the applicant has sufficient business knowledge, experience and financial resources to properly carry on the business of packing or processing citrus fruit; and
 - (b) that the applicant meets such requirements (as to the provision or standard of premises, facilities or equipment or as to any other matters) for registration as may be prescribed,
- the Board must register the applicant in the relevant capacity.
- (5) Where a person applies in accordance with subsection (2) for registration as a wholesaler or volume retailer and the Board is satisfied that the applicant meets such requirements (as to the provision or standard of premises, facilities or equipment or as to any other matters) for registration as may be prescribed, the Board must register the applicant in the relevant capacity.
- (6) The registration of a person under this section—
- (a) has effect, subject to this Act, for a period of 12 months; and
 - (b) will—
 - (i) on application in the prescribed form containing such information as is prescribed; and
 - (ii) on payment of the prescribed fee (if any) or such portion of that fee as is prescribed,be renewed for successive periods of 12 months; and
 - (c) is not transferable; and
 - (d) ceases to be in force—
 - (i) on written notice of surrender being given to the Board by the registered person; or
 - (ii) on the death of the registered person or, in the case of a corporate body, on that body being dissolved; or
 - (iii) on cancellation or suspension of the registration by the Board under this Act.
- (7) The Board may register a person under subsection (4) or (5) on such conditions as the Board considers appropriate.
- (8) The Board may, from time to time, by notice in writing to a registered person, add to, vary or revoke any conditions of the registration of that person.
- (9) Notice of action taken under subsection (8) must be served on the registered person by the Board either personally or by post at least six months before the change is to take effect.

26—Cancellation or suspension of registration

- (1) Where a registered person contravenes or fails to comply with this Act, or a condition to which the registration of that person is subject, the Board may cancel, or suspend for such period as it thinks fit or until further order of the Board, the registration of that person.
- (2) Where a fee or contribution is payable under this Act by a registered person, the Board may, if the person is in default of payment of that contribution, fee or an instalment by more than a month, suspend the registration of that person until the overdue amount is paid or arrangements for the payment of the amount are made to the satisfaction of the Board.
- (3) The Board must give a registered person at least two weeks' notice of a proposed cancellation or suspension of that person's registration.

27—Appeal against decisions of the Board

- (1) The following persons may appeal in accordance with the regulations to a court of summary jurisdiction against decisions of the Board under section 25 or 26:
 - (a) an applicant for registration who is refused registration;
 - (b) an applicant for registration who is aggrieved by a proposed condition of registration;
 - (c) a registered person who is aggrieved by a proposed addition to or variation of the conditions of his or her registration;
 - (d) a registered person whose registration is cancelled or suspended.
- (2) A decision of the Board to cancel or suspend the registration of a person continues to have effect notwithstanding the institution of an appeal against the decision, unless the Board or a court of summary jurisdiction, on the application of the person, suspends the operation of the decision pending the determination of the appeal.
- (3) The court may, on determining an appeal under this section, confirm, vary or revoke the decision of the Board and make such ancillary orders (including orders for costs) as the court thinks fit.

28—Offence to breach condition of registration

A registered person must not contravene or fail to comply with a condition to which his or her registration is subject.

Penalty: Division 7 fine.

29—Offence to grow, pack, process or sell citrus fruit unless registered

A person must not carry on a business as—

- (a) a grower; or
- (b) a packer; or
- (c) a processor; or
- (d) a wholesaler; or
- (e) a volume retailer,

unless that person is registered as a grower, packer, processor, wholesaler or volume retailer, as the case may require.

Penalty:

For a first offence—a division 8 fine.

For a subsequent offence—a division 7 fine.

30—Offences in relation to selling, packing or purchasing citrus fruit

- (1) Subject to subsection (2), a grower must not sell citrus fruit except to a registered packer, a registered processor, a registered wholesaler or a registered volume retailer.
- (2) Subsection (1) does not apply in relation to citrus fruit sold in accordance with a permit under this Act.
- (3) A grower must not sell citrus fruit to a registered wholesaler or a registered volume retailer unless the fruit has been prepared and packed (whether within this State or elsewhere) in accordance with the regulations.
- (4) A packer must not pack citrus fruit unless that fruit is prepared and packed in accordance with the regulations.
- (5) A packer must not sell, on the packer's own behalf or on behalf of any other person, citrus fruit produced in or outside this State unless that fruit has been prepared and packed (whether within this State or elsewhere) in accordance with the regulations.
- (6) A processor must not sell citrus fruit, on the processor's own behalf or on behalf of any other person, except to another processor (whether within this State or elsewhere).
- (7) Subject to subsection (8)—
 - (a) a wholesaler must not purchase citrus fruit for the purpose of resale except from a registered grower or a registered packer; and
 - (b) a volume retailer must not purchase citrus fruit for the purpose of sale by retail except from a registered grower, a registered packer or a registered wholesaler; and
 - (c) a retailer other than a volume retailer must not purchase citrus fruit for the purpose of sale by retail except from a registered wholesaler.
- (8) Nothing in subsection (7) prevents the purchase of citrus fruit from a person outside this State.
- (9) A wholesaler or retailer must not purchase citrus fruit for the purpose of resale unless the fruit has been prepared and packed (whether within this State or elsewhere) in accordance with the regulations.
- (10) A person who contravenes this section is guilty of an offence.

Penalty:

For a first offence—a division 8 fine.

For a subsequent offence—a division 7 fine.

31—Permit for registered grower to sell by retail

- (1) A registered grower may apply to the Board for a permit to sell by retail citrus fruit grown by that registered grower.

- (2) An applicant under this section must—
 - (a) apply in the prescribed form; and
 - (b) provide such information relevant to the application as the Board may require; and
 - (c) pay the prescribed fee.
- (3) The Board may, on such conditions as it thinks fit, issue a permit to a registered grower under this section.
- (4) A registered grower must not contravene or fail to comply with a condition to which his or her permit under this section is subject.
Penalty:
For a first offence—a division 8 fine.
For a subsequent offence—a division 7 fine.
- (5) The Board may, by notice in writing to the registered grower—
 - (a) add to, vary or revoke any conditions of a permit under this section; or
 - (b) revoke the permit.

Part 4—Marketing orders

32—Power to issue marketing orders

- (1) For the purpose of ensuring the orderly marketing of citrus fruit sold for processing, the Board may, with the approval of the Minister, by order—
 - (a) fix the price or minimum price at which citrus fruit may be sold or purchased for processing and prohibit its sale and purchase for that purpose except in accordance with that fixed price or minimum price; or
 - (b) fix the rate of commission on the sale of citrus fruit for processing and prohibit its sale for that purpose except in accordance with that rate of commission; or
 - (c) fix the terms and conditions on which citrus fruit may be sold or purchased for processing and prohibit its sale and purchase for that purpose except under those terms and conditions; or
 - (d) vary or revoke an order made under paragraph (a), (b) or (c).
- (2) An order under subsection (1) may vary according to—
 - (a) the place or time of sale; or
 - (b) the type, variety, size, grade, quality or quantity of citrus fruit or any other factor; or
 - (c) any circumstance, rule or formula specified in the order.
- (3) Where an order is made under this section—
 - (a) the order must be published in a newspaper circulating generally throughout the State; and
 - (b) the order has effect on the day on which it is so published.

- (4) An order made under subsection (1)(a), (b) or (c) remains in force for such period, not exceeding—
- (a) in the case of an order fixing a price or minimum price—3 months; or
 - (b) in the case of an order fixing a rate of commission or terms and conditions of sale—12 months,
- as the Board thinks fit and specifies in the order.
- (5) The Minister may, except in the case of an order fixing a price or minimum price, or the variation or revocation of such an order, waive the requirement that an order under this section be made with the approval of the Minister.
- (6) A waiver under subsection (5)—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) may relate to orders of a specified class; and
 - (d) is revocable at will by the Minister.
- (7) The Board may, for the purpose of determining whether to make, vary or revoke an order under this section, consult with such persons in such manner as it thinks fit.
- (8) A person may, at the request of the Board or otherwise—
- (a) make a submission to the Board on the exercise of the powers of the Board under this section; and
 - (b) engage in discussions or negotiations incidental to making or considering such a submission.
- (9) A person who contravenes or fails to comply with an order under this section is guilty of an offence.

Penalty:

For a first offence—a division 7 fine.

For a subsequent offence—a division 5 fine.

Part 5—Miscellaneous

33—Powers of inspectors

- (1) Subject to this Act, an inspector may, for the purpose of ascertaining whether the provisions of this Act are being complied with, or where he or she reasonably suspects that an offence against this Act has been or is being committed—
- (a) enter land on which trees are grown for the production and sale of citrus fruit, or enter premises used for the purpose of storing, handling, packing, buying, delivering or selling citrus fruit or a citrus fruit product or processing citrus fruit into a citrus fruit product, and may—
 - (i) inspect and take stock of the trees, citrus fruit or citrus fruit products on the land or premises; and

- (ii) inspect any accounts, books, documents or other business records relating to the trees, citrus fruit or citrus fruit products kept on the land or premises; and
 - (iii) make copies of or take extracts from any such accounts, books, documents or other business records and retain those copies and extracts;
 - (b) enter (and, if necessary for that purpose, require the driver to stop) a vehicle by which citrus fruit or a citrus fruit product is being conveyed and may—
 - (i) inspect and take stock of the citrus fruit or product; and
 - (ii) inspect any accounts, books, documents or other business records relating to the citrus fruit or product; and
 - (iii) make copies of or take extracts from any such accounts, books, documents or other business records and retain those copies and extracts;
 - (c) open a package or other container containing citrus fruit or a citrus fruit product found on or in any such land, premises or vehicle;
 - (d) take samples of citrus fruit or a citrus fruit product found on or in any such land, premises, vehicle, package or other container;
 - (e) prevent the movement of any citrus fruit or a citrus fruit product for such time as is necessary to complete his or her inspection, but only if he or she has reasonable grounds for suspecting that an offence against this Act is being or has been committed in relation to that fruit or product;
 - (f) where a package or other container containing citrus fruit or a citrus fruit product, or a ticket or label on any collection or display of citrus fruit or a citrus fruit product, is falsely marked or contravenes or does not comply with this Act, efface the false mark, or by such means as are at his or her disposal, prominently indicate that the package, container, accumulation, collection or display is falsely marked, or destroy the ticket or label;
 - (g) where an offence against this Act is being or has been committed in relation to citrus fruit or a citrus fruit product, direct the owner or the person for the time being in charge of the citrus fruit or product to do everything necessary to ensure that the Act is not contravened or is complied with, as the case may be;
 - (h) require a person who the inspector reasonably suspects has committed or is committing an offence against this Act to state the person's full name and usual place of residence;
 - (i) require a person who the inspector reasonably suspects has knowledge concerning any matter pertaining to the administration of this Act to answer questions in relation to those matters.
- (2) Where an inspector has exercised a power under subsection (1)(e) or (f), he or she must forthwith give the owner or person for the time being in charge of the citrus fruit or product concerned notice orally or in writing of the action that has been taken.
- (3) In exercising powers under this section an inspector may use such force as is reasonably necessary for the purpose.

- (4) The following provisions apply in relation to the power of entry under subsection (1)(a):
- (a) an inspector cannot exercise the power for the purpose of ascertaining whether the provisions of this Act are being complied with except at a reasonable time of the day;
 - (b) an inspector cannot exercise the power in relation to a building except—
 - (i) where the building is owned or occupied by a person registered under this Act but is not a residence; or
 - (ii) on the authority of a warrant issued by a justice.
- (5) A justice must not issue a warrant under subsection (4) unless satisfied, on information given on oath—
- (a) that there are reasonable grounds to suspect that an offence against this Act has been or is being committed; and
 - (b) that a warrant is reasonably required in the circumstances.
- (6) An inspector may be accompanied and assisted by such persons as he or she thinks necessary in exercising any powers under this section.
- (7) A person who, without reasonable excuse—
- (a) hinders an inspector or his or her assistant in the exercise of powers under this section; or
 - (b) fails to comply with a requirement of an inspector under this section; or
 - (c) fails to answer, to the best of the person's knowledge, information and belief, a question put to the person pursuant to this section,
- is guilty of an offence.
- Penalty: Division 7 fine.
- (8) A person is not obliged to answer a question or to produce an account, book, document or record if to do so would tend to incriminate the person.

34—Protection from personal liability

- (1) A person engaged in the administration of this 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 Act.
- (2) A liability that would, but for subsection (1), lie against the person, lies instead against the Crown.

35—Arrangements to evade Act

Any contract or arrangement, whether oral or in writing, the purpose or effect of which is either directly or indirectly to defeat, evade or prevent the operation of this Act is void and of no effect.

36—Offences and penalties

- (2) In any proceedings for an offence against this Act, it is a defence for the defendant to prove that, in the circumstances of the case, there was no failure on his or her part to take reasonable care to avoid commission of the offence.
- (3) Proceedings for an offence against this Act may, notwithstanding any other Act to the contrary, be commenced at any time within 12 months after the commission of the offence.
- (4) Proceedings under this Act may be taken on behalf of the Board by an officer of the Board authorised in writing by the Board for the purpose.
- (5) In any proceedings instituted by or on behalf of the Board under this Act, an allegation contained in the complaint or summons—
 - (a) that an officer is appointed as an officer of the Board; or
 - (b) that an officer is authorised to take proceedings on behalf of the Board; or
 - (c) that a person has been given by the Board the authority to do any act or thing, is conclusive proof of that appointment, authorisation or authority, as the case may be.

37—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) Without limiting the generality of subsection (1), the regulations may—
 - (a) regulate the handling, treatment, grading, packing, labelling, storage, transportation or offering or displaying for sale of citrus fruit or citrus fruit products;
 - (b) prescribe the manner in which the register is to be kept, including the information that is to be included in the register;
 - (c) prohibit, regulate or restrict the use of particular brands in the marketing of citrus fruit or citrus fruit products;
 - (d) require registered persons to keep prescribed records and accounts in relation to all citrus fruit or citrus fruit products in their possession from time to time, and prescribe—
 - (i) the methods of keeping such records and accounts; and
 - (ii) the form in which they are to be kept;
 - (e) prescribe the measures to be taken by a registered person (or a person who has citrus fruit for sale) to prevent deterioration, decay, contamination or infection of the citrus fruit in that person's charge or custody;
 - (f) prescribe the conditions to be fulfilled in respect of citrus fruit or citrus fruit products intended for export from the State and prohibit the export of fruit unless those conditions are fulfilled;
 - (g) require persons by whom or on behalf of whom citrus fruit is transported within the State to keep prescribed records in relation to the fruit;

- (h) prescribe the terms and conditions under which citrus fruit may be bought by the Board;
 - (i) provide for the payment, collection or recovery of contributions (or interest on overdue amounts) payable by registered persons to the Board pursuant to this Act;
 - (j) prescribe and provide for the payment and recovery of fees (or interest on overdue amounts) and provide for the waiver or refund of fees (or interest) in specified circumstances;
 - (k) prescribe forms;
 - (l) prescribe penalties not exceeding a division 8 fine for breach of, or failure to comply with, a regulation.
- (3) A fee prescribed for registration or renewal of registration may, on the recommendation of the Board, contain a fixed component and a differential component that varies according to factors determined by the Board.
- (4) Before making a recommendation for the purposes of subsection (3), the Board must consult, in such manner and to such extent as it thinks fit, with the persons who will be liable to pay the fees concerned.
- (5) The regulations may, by reference, adopt, wholly or partially and with or without modification—
- (a) a code relating to matters in respect of which regulations may be made under this section; or
 - (b) an amendment to such a code.
- (6) A regulation adopting a code or an amendment to a code may contain such incidental, supplementary or transitional provisions as appear to the Governor to be necessary.
- (7) The regulations or a code adopted by the regulations—
- (a) may refer to or incorporate, wholly or partially and with or without modification, a standard, code or other document prepared or published by a prescribed body either as in force at the time the regulations are made or as in force from time to time; and
 - (b) may be of general or limited application; and
 - (c) may make different provision according to the persons, things or circumstances to which they apply.
- (8) Where—
- (a) a code is adopted by the regulations; or
 - (b) the regulations, or a code adopted by the regulations, refers to a standard or other document prepared or published by a prescribed body,
- then—
- (c) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and

- (d) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard or other document; and
- (e) the code, standard or other document has effect as if it were a regulation made under this Act.

Schedule—Transitional provisions

2—Interpretation

In this Schedule—

the repealed Act means the *Citrus Industry Organisation Act 1965*.

3—Transfer of registration or licence

A person who was, immediately prior to the commencement of this Act, registered or licensed under the repealed Act as a grower, packer, processor, wholesaler or volume retailer will, on that commencement, be taken to be registered under this Act as a grower, packer, processor, wholesaler or volume retailer (as the case may require), for the balance of the term of that previous registration or licence.

4—Vacation of office

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

5—Contributions

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

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

Repeal of Act

The *Citrus Industry Act 1991* was repealed by Sch 1 cl 1 of the *Citrus Industry Act 2005* on 27.10.2005.

Legislation repealed by principal Act

The *Citrus Industry Act 1991* repealed the following:

Citrus Industry Organisation Act 1965

Principal Act and amendments

Year	No	Title	Assent	Commencement
1991	30	<i>Citrus Industry Act 1991</i>	24.4.1991	13.2.1992 (<i>Gazette 13.2.1992 p432</i>)
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 (<i>Gazette 13.11.2003 p4048</i>)

Provisions amended

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

Provision	How varied	Commencement
Long title	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
Pt 1		
s 2	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
Pt 5		
s 36		
s 36(1)	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
Sch		
heading	substituted by 44/2003 s 3(1) (Sch 1)	24.11.2003
Div 1	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
Div 2 heading	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>

Appendix—Divisional penalties and expiation fees

At the date of publication of this reprint 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	—

Division	Maximum imprisonment	Maximum fine	Expiation fee
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.