

South Australia

## **Citrus Industry Act 2005**

An Act to provide for the South Australian Citrus Industry Development Board and for administration by the Board of a fund for citrus industry purposes; and for other purposes.

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Citrus Industry Act 2005*.

### 3—Interpretation

In this Act—

**Board** means the South Australian Citrus Industry Development Board established under this Act;

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

**citrus fruit product** means a product derived wholly or in part from citrus fruit;

**citrus industry** includes the production, harvesting, packing, processing, storage, transporting and sale of citrus fruit and citrus fruit product;

**citrus industry participant** means—

- (a) a person who carries on the business of producing citrus fruit for sale (a **citrus grower**); or
- (b) a person who carries on the business of packing citrus fruit for sale by wholesale (a **citrus packer**); or
- (c) a person who carries on the business of processing citrus fruit into a citrus fruit product for sale by wholesale (a **citrus processor**); or
- (d) a person who carries on the business of selling citrus fruit or citrus fruit product by wholesale (a **citrus wholesaler**).

**Note—**

A person may be a citrus industry participant in more than 1 capacity. For example, a person who carries on the business of producing citrus fruit for sale and of selling citrus fruit by wholesale will be both a citrus grower and a citrus wholesaler.

The fact that a person carries on a business other than the business that results in the person being a citrus industry participant does not detract from that person being a citrus industry participant. For example, a person who carries on the business of selling citrus fruit or citrus fruit product both by retail and by wholesale will be a citrus wholesaler.

## **Part 2—South Australian Citrus Industry Development Board**

### **4—Establishment of Board**

- (1) The *South Australian Citrus Industry Development Board* is established.
- (2) The Board—
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) has the powers of a natural person and the functions and powers assigned or conferred under this or any other Act.
- (3) If a document appears to bear the common seal of the Board, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the Board.
- (4) The Board is to be taken to be the same body corporate as the Citrus Board of South Australia established under the *Citrus Industry Act 1991*.
- (5) A reference in an Act or instrument to the Citrus Board of South Australia is, so far as the context permits, to be taken to be a reference to the South Australian Citrus Industry Development Board established by this Act.

### **5—Functions of Board**

- (1) The Board has the following functions:
  - (a) to administer the Citrus Industry Fund established under this Act;
  - (b) to promote the citrus industry and its products;
  - (c) to plan, fund and facilitate research relevant to the citrus industry, including research relevant to the following:
    - (i) food safety in the citrus industry;
    - (ii) citrus pests and disease and prevention or control measures;
    - (iii) production of citrus fruit;
    - (iv) new citrus fruit products;
    - (v) marketing citrus fruit or citrus fruit products;
  - (d) to collect and analyse data relating to the citrus industry;
  - (e) to disseminate technical, scientific, economic and market information to the citrus industry;

- (f) to collect voluntary contributions on behalf of a citrus industry association under an arrangement with the association;
  - (g) to provide advice and other services to the citrus industry;
  - (h) to provide advice to the Minister responsible for the administration of the *Primary Produce (Food Safety Schemes) Act 2004* about the establishment of a food safety scheme for the citrus industry under that Act and to advise that Minister about the application and administration of the scheme and to undertake functions assigned to the Board by that Minister for the purposes of the scheme;
  - (i) to advise the Minister responsible for the administration of the *Plant Health Act 2009* about the application and administration of that Act in relation to the citrus industry;
  - (j) to monitor the citrus industry and provide advice to the Minister as appropriate;
  - (k) to undertake other functions assigned to the Board by this or any other Act.
- (2) The Board may, in addition to carrying out its functions under subsection (1), provide any other services that the Board thinks fit.
- (3) The Board may charge fees for services provided by the Board.

## **6—General directions by Minister**

- (1) The Minister may give general directions to the Board when it appears to the Minister to be necessary in the public interest.
- (2) The Minister must—
- (a) consult with the Board before giving it a direction; and
  - (b) within 3 sitting days after giving a direction, cause a copy of the direction to be laid before each House of Parliament.

## **7—Membership of Board**

- (1) The Board consists of 7 members appointed by the Governor of whom—
- (a) 1 will be a person nominated by the Minister, who will be the presiding member of the Board; and
  - (b) 6 will be persons appointed in accordance with the regulations.
- (2) At least 1 member of the Board must be a woman and 1 a man.

## **8—Terms and conditions of membership**

- (1) A member of the Board will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) The Governor may appoint a person to be the deputy of a member of the Board and the deputy may act as a member of the Board during any period of absence of the member.

- (3) The Governor may remove a member of the Board from office—
  - (a) for breach of, or non-compliance with, a condition of appointment; or
  - (b) for misconduct; or
  - (c) for failure or incapacity to carry out official duties satisfactorily.
- (4) The office of a member of the Board becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is removed from office under subsection (3).
- (5) On the office of a member becoming vacant, a person may be appointed in accordance with this Act to the vacant office.

## **9—Remuneration**

A member of the Board is entitled to remuneration, allowances and expenses determined by the Governor.

## **10—Conflict of interest under Public Sector (Honesty and Accountability) Act**

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

## **11—Procedures of Board**

- (1) A quorum of the Board consists of 4 members.
- (2) If the presiding member of the Board is absent from a meeting of the Board, a member chosen by the members present at the meeting will preside.
- (3) A decision carried by a majority of the votes cast by the members present at a meeting of the Board is a decision of the Board.
- (4) Each member present at a meeting of the Board has 1 vote on a question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (5) A conference by telephone or other electronic means between the members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by the Board for the purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.
- (6) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—
  - (a) notice of the proposed resolution is given to all members of the Board in accordance with procedures determined by the Board; and

- (b) a majority of the members express concurrence in the proposed resolution by letter, facsimile transmission, e-mail or other written communication setting out the terms of the resolution.
- (7) The Board must have accurate minutes kept of its meetings.
- (8) Subject to this Act, the Board may determine its own procedures.

## 12—Committees

- (1) The Board may establish committees—
  - (a) to advise the Board on any matter; or
  - (b) to carry out functions on behalf of the Board.
- (2) The membership of a committee may include persons who are not members of the Board.
- (3) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as determined by the Board;
  - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the relevant committee.

## 13—Delegation

- (1) The Board may delegate a function or power of the Board under this Act (except a prescribed function or power) to—
  - (a) a member of the Board; or
  - (b) a committee of the Board.
- (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.

## 14—Validity of acts of Board

An act or proceeding of the Board or a committee of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

## Part 3—Citrus Industry Fund

### 15—Establishment of Fund

- (1) The *Citrus Industry Fund* is established.
- (2) The Fund consists of—
  - (a) contributions from citrus industry participants paid or collected in accordance with the regulations; and
  - (b) income of the Fund from investment; and

- (c) other sums received by the Board.
- (3) If the regulations provide for a citrus industry participant to pay a contribution on behalf of another, the amount payable may be deducted from amounts owed by the citrus industry participant to the other.

## **16—Application of Fund**

- (1) The Fund may be applied by the Board (without further appropriation)—
  - (a) for the purposes of the performance of its functions; and
  - (b) for the payment to members of remuneration, allowances or expenses determined by the Governor; and
  - (c) for prescribed purposes.
- (2) The regulations may prescribe circumstances in which a citrus industry participant will be considered to be in default in relation to contributions to the Fund and consequently not entitled to receive direct benefits or services funded by payments from the Fund.

## **17—Management plan for Fund**

- (1) The Board must ensure that, in accordance with this section—
  - (a) management plans are prepared for the Fund; and
  - (b) the plans are presented at public meetings convened for the purpose.
- (2) The management plans must be prepared and presented as follows:
  - (a) the first plan must cover a 5 year period and be prepared and presented within 12 months after the commencement of this section;
  - (b) a revised plan must be prepared and presented at least once every 12 months after presentation of the first plan and must, in each case, cover the ensuing period of 5 years.
- (3) A management plan must contain—
  - (a) an estimate of the contributions to the Fund likely to be received over the relevant period;
  - (b) proposals for the investment of the Fund;
  - (c) proposals for the application of the Fund;
  - (d) other matters considered appropriate to be included by the Board.
- (4) The Board must ensure that industry members are consulted during preparation of a management plan.
- (5) The Board must ensure that, at least 2 weeks before the date of a public meeting to be convened under this section, a notice of the date, time, place and purpose of that meeting is published in a newspaper circulating generally throughout the State.
- (6) The Board may revise and update its management plan at any time.
- (7) The Board must cause a copy of its current management plan to be kept available for inspection by members of the public, without charge and during normal office hours, at a place determined by the Minister.

## **18—Audit of Fund**

- (1) The Board must cause proper accounts to be kept of all money received and dealt with under this Act, showing the purposes for which that money has been received or dealt with.
- (2) The Auditor-General may at any time, and must at least once in each year, audit the accounts.

## **19—Annual report for Fund**

- (1) The Board must ensure that, on or before 30 September in every year—
  - (a) a report is prepared on the operation of the Fund during the previous financial year; and
  - (b) the report is submitted to the Minister.
- (2) The report must incorporate—
  - (a) the audited statement of accounts of the Fund for the period to which the report relates; and
  - (b) the current management plan prepared for the Fund under this Act.
- (3) The Minister must cause copies of reports prepared under this section to be laid before each House of Parliament within 12 sitting days after receipt of the report.

## **Part 4—Information about citrus industry**

### **20—Notification of participation in citrus industry**

- (1) A citrus industry participant must, within 28 days of first carrying on business as a citrus industry participant, give written notice to the Board of—
  - (a) the person's name and business or registered address; and
  - (b) the address of the premises at which the person carries on the business; and
  - (c) the nature of the business.

Maximum penalty: \$7 500.

- (2) If a person is a citrus industry participant in more than 1 capacity (for example, a person who carries on the business of both producing and packing citrus fruit for sale), the notice must provide information relevant to each capacity in which the person is a citrus industry participant.
- (3) A citrus industry participant must, within 28 days of a change occurring in particulars of the kind referred to under subsection (1), give the Board written notice of the change.

Maximum penalty: \$5 000.

Expiation fee: \$315.



- (4) A person who ceases to carry on business as a citrus industry participant, or as a citrus industry participant in a particular capacity, must, within 28 days of ceasing to carry on the business, give the Board written notice of that fact.

Maximum penalty: \$5 000.

Expiation fee: \$315.

## **21—Powers of Board to gather information**

- (1) The Board may, by written notice to a citrus industry participant, require the participant to provide periodic returns of information reasonably required for the purposes of the Board.
- (2) The information required may include, for example—
- (a) particulars of citrus trees planted or removed or otherwise lost or destroyed, or of the area planted with citrus trees, by reference to age, type or variety, within a specified period or at a specified date;
  - (b) 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 specified period;
  - (c) an estimate of citrus fruit or citrus fruit product that a person expects to produce for marketing within a specified period;
  - (d) particulars relating to food safety, food safety arrangements and auditing of food safety arrangements;
  - (e) particulars relating to citrus pests and disease and prevention or control measures;
  - (f) particulars required to determine the amount of the participant's contributions to the Citrus Industry Fund.
- (3) The Board may—
- (a) by written notice to a citrus industry participant, require the participant to produce for inspection records (or copies of records) relevant to information provided, or that should have been provided, in a periodic return; and
  - (b) examine, copy or take extracts from records or copies so produced.
- (4) A notice under subsection (3)(a) may specify the person to whom the records or copies are to be produced, the date and time at which or the period within which they are to be produced, and the place at which they are to be produced.
- (5) A citrus industry participant who contravenes or fails to comply with a requirement of the Board under this section is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

## Part 5—Miscellaneous

### 22—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided under this Act.

Maximum penalty: \$10 000.

### 23—Service

- (1) A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may—
  - (a) be given to the person personally; or
  - (b) be posted in an envelope addressed to the person at the person's last known residential, business or (in the case of a corporation) registered address; or
  - (c) be left for the person at the person's last known residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
  - (d) be transmitted by facsimile transmission or electronic mail to a facsimile number or electronic mail address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

### 24—Liability of members of bodies corporate

- (1) If a body corporate commits an offence against this Act, each member of the body corporate is, subject to the general defence under this Part, guilty of an offence and liable to the same penalty as is fixed for the principal offence.
- (2) A member of a body corporate may be prosecuted and convicted of an offence under this section whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.

### 25—General defence

It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

### 26—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

- (2) Without limiting the generality of subsection (1), those regulations may make provision for or relating to—
  - (a) exemptions (conditional or unconditional) from specified provisions of this Act; and
  - (b) fees in respect of any matter under this Act and their payment, recovery or waiver; and
  - (c) fines, not exceeding \$5 000, for offences against the regulations; and
  - (d) facilitation of proof of the commission of offences against the regulations.
- (3) The regulations may—
  - (a) be of general application or vary in their application according to prescribed factors;
  - (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the Board.

## **27—Review of Act**

The Minister must, within 3 years after the commencement of section 4—

- (a) cause a report to be prepared on the operation of this Act; and
- (b) cause a copy of the report to be laid before each House of Parliament within 12 sitting days after receipt of the report.

## **Part 6—Winding up**

### **28—Winding up**

- (1) Despite the other provisions of this Act—
  - (a) the Board is constituted of an administrator appointed by the Minister (and accordingly the offices of all members of the Board are vacated); and
  - (b) the Board's only functions are to do all such things as are necessary for winding up its affairs and the Citrus Industry Fund; and
  - (c) no further contributions are payable to the Fund.
- (2) Any assets and money in the Fund remaining after the winding up are to be applied for the benefit of the citrus industry as directed by the Minister.
- (3) The Board must deliver to the Minister a winding up report on its operations since the period to which its last annual report relates (and the Board is not required to prepare an annual report in relation to the operations of the Board or the Fund during any period after 30 June 2012).
- (4) The report must include accounts presenting fairly the results of the Board's operations (including operations affecting the Fund), audited by the Auditor-General, for the period to which the report relates.
- (5) The Minister must, within 12 sitting days after receiving the winding up report, have copies of the report laid before both Houses of Parliament.

## Part 7—Powers of Minister to gather information

### 29—Powers of Minister to gather information

- (1) The Minister may, by written notice to a citrus industry participant, require the participant to provide a return or periodic returns of information relating to the citrus industry.
- (2) The information required may include, for example—
  - (a) particulars of citrus trees planted or removed or otherwise lost or destroyed, or of the area planted with citrus trees, by reference to age, type or variety, within a specified period or at a specified date;
  - (b) 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 specified period;
  - (c) an estimate of citrus fruit or citrus fruit product that a person expects to produce for marketing within a specified period.
- (3) The Minister may provide information provided in a return to a body that, in the opinion of the Minister, represents citrus industry participants or a class of citrus industry participants.
- (4) A citrus industry participant who contravenes or fails to comply with a requirement of the Minister under this section is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

## Part 8—Expiry of Act

### 30—Expiry of Act

- (1) The Governor may, by proclamation, fix a day on which this Act will expire.
- (2) The day fixed under subsection (1) must not be earlier than 1 January 2014.
- (3) If a proclamation is made under subsection (1)—
  - (a) this Act expires on the day fixed by the proclamation; and
  - (b) immediately before the expiry, any remaining liabilities of the Board vest in the Crown.

## Schedule 1—Transitional provisions

### Part 2—Transitional provisions—general

#### 4—Regulations

The regulations may make other provisions of a savings or transitional nature consequent on the enactment of this Act.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Expiry of Act

The *Citrus Industry Act 2005* will expire on a date to be fixed by proclamation: see s 30.

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2005	42	<i>Citrus Industry Act 2005</i>	21.7.2005	Sch 1 (Pt 3)—21.7.2005: s 2(2); Sch 1 (Pt 4)—taken not to have been enacted: Sch 1 (cl 16); ss 1—27 & Sch 1 (Pts 1 & 2)—27.10.2005 ( <i>Gazette</i> 20.10.2005 p3744)
2009	2	<i>Plant Health Act 2009</i>	12.2.2009	Sch 1 (cl 2)—1.8.2009 ( <i>Gazette</i> 30.7.2009 p3437)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 30 (s 57)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)
<b>2012</b>	<b>32</b>	<b><i>Citrus Industry (Winding Up) Amendment Act 2012</i></b>	<b>20.9.2012</b>	<b>20.9.2012 (<i>Gazette</i> 20.9.2012 p4489)</b>
2013	16	<i>Statutes Amendment (Directors' Liability) Act 2013</i>	23.5.2013	Pt 8 (s 12)—17.6.2013 ( <i>Gazette</i> 6.6.2013 p2498)

### Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.8.2009
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.8.2009
Pt 2		

## Citrus Industry Act 2005—20.9.2012 to 16.6.2013

### Legislative history

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s 5		
s 5(1)	amended by 2/2009 Sch 1 cl 2	1.8.2009
s 10	amended by 84/2009 s 57	1.2.2010
<b>Pts 6—8</b>	<b>inserted by 32/2012 s 4</b>	<b>20.9.2012</b>
Sch 1		
<i>Pt 1</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.8.2009
Pt 2		
<i>cl 2 and 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.8.2009
<i>Pt 3</i>	<i>expired: Sch 1 cl 13—omitted under Legislation Revision and Publication Act 2002</i>	(26.10.2005)
<i>Pt 4</i>	<i>taken not to have been enacted: Sch 1 cl 16—omitted under Legislation Revision and Publication Act 2002</i>	1.8.2009

### Historical versions

1.8.2009

1.2.2010