

SOUTH AUSTRALIA

CITRUS INDUSTRY ORGANIZATION ACT, 1965

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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APPENDIX LEGISLATIVE HISTORY

CITRUS INDUSTRY ORGANIZATION ACT, 1965

being

Citrus Industry Organization Act, 1965, No. 53 of 1965
[Assented to 23 December 1965]¹

as amended by

Citrus Industry Organization Act Amendment Act, 1967, No. 63 of 1967 [Assented to 16 November 1967]²

Citrus Industry Organization Act Amendment Act, 1969, No. 34 of 1969 [Assented to 6 November 1969]

Citrus Industry Organization Act Amendment Act, 1970, No. 44 of 1970 [Assented to 10 December 1970]³

Citrus Industry Organization Act Amendment Act, 1971, No. 63 of 1971 [Assented to 21 October 1971]

Citrus Industry Organization Act Amendment Act, 1972, No. 150 of 1972 [Assented to 7 December 1972]⁴

Citrus Industry Organization Act Amendment Act, 1984, No. 46 of 1984 [Assented to 24 May 1984]

Citrus Industry Organization Act Amendment Act, 1990, No. 77 of 1990 [Assented to 20 December 1990]

¹ Came into operation 23 December 1965: *Gaz.* 23 December 1965, p. 2162.

² Came into operation 14 August 1969: *Gaz.* 14 August 1969, p. 404.

³ Came into operation 14 January 1971: *Gaz.* 14 January 1971, p. 92.

⁴ Came into operation 7 December 1972: *Gaz.* 7 December 1972, p. 2538.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act relating to the organization of the citrus industry and the marketing of citrus fruit and matters incidental thereto.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Citrus Industry Organization Act, 1965*.

Commencement

2. This Act shall come into operation on a day to be fixed by the Governor by proclamation.

Validation of certain acts

2a. (1) Notwithstanding anything in section 2 of the 1967 amending Act all persons, things and circumstances appointed or created or purporting to be appointed or created and all acts or things done or purporting to have been done pursuant to this Act on or after the day upon which the 1967 amending Act was assented to shall be deemed to be and always to have been as validly and effectually appointed, created or done, as the case may be, as they would have been had the 1967 amending Act come into operation on the day upon which it was assented to.

(2) Without limiting the generality of subsection (1) of this section—

- (a) every order made or purporting to have been made pursuant to section 22 of this Act on or after the day upon which the 1967 amending Act was assented to shall be deemed to be and always to have been as validly and effectually made as it would have been had the 1967 amending Act come into operation on the day upon which it was assented to;
- (b) every regulation made or purporting to have been made pursuant to this Act on or after the day upon which the 1967 amending Act was assented to shall be deemed to be and always to have been as validly and effectually made as it would have been had the 1967 amending Act come into operation on the day upon which it was assented to.

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(3) For the purposes of this section "the 1967 amending Act" means the *Citrus Industry Organization Act Amendment Act, 1967*.

Arrangement

3. The provisions of this Act are arranged as follows:—

PART I—PRELIMINARY, ss. 1-7.

PART II—THE CITRUS BOARD OF SOUTH AUSTRALIA, ss. 8-25—

DIVISION I—THE BOARD, ss. 8-19;

DIVISION II—POWERS OF THE BOARD, ss. 20-25.

PART III—SUPPLEMENTARY AND MISCELLANEOUS, ss. 26-39.

3.

Repeal of Citrus Marketing Act, 1931

4. The *Citrus Marketing Act, 1931*, is hereby repealed.

Interpretation

5. In this Act, unless the context otherwise requires—

"citrus fruit" means citrons, lemons, limes, grapefruit, mandarins, oranges, sevilles and tangerines:

"count" includes size:

"grower"—

- (a) in Division I of Part II and in sections 34 and 36 of this Act, means any person who grows at least fifty trees for the production and sale of citrus fruit or is a party to a partnership or share-farming agreement under which at least fifty trees are grown for the production and sale of citrus fruit; and
- (b) in the other provisions of this Act, means any person who carries on the business of producing citrus fruit for sale or is a party to a partnership or share-farming agreement under which the business of producing citrus fruit for sale is carried on:

"licence" means a licence that has been granted and issued by the Board and is in force:

"licensee" means the holder of a licence:

"marketing", in relation to any citrus fruit or any product thereof, includes each step taken in relation to the harvesting, preparation, processing and packing of citrus fruit or any product thereof for sale by wholesale and the sale thereof by wholesale and the shipping, transporting, storing and handling of citrus fruit or any product thereof for the purpose of any such sale and the transmission thereof from the producer to any person selling by wholesale and all actions or things connected therewith or incidental thereto:

"member" means member of the Board and includes the Chairman:

"partnership" means partnership within the meaning of *The Partnership Act, 1891-1935*:

"product", in relation to citrus fruit, means any substance which, wholly or in part, is derived from any citrus fruit:

"quality", in relation to any citrus fruit, includes the grade, state, plight and condition of such citrus fruit and any other matter which might reasonably influence the mind of a person who purchases or intends to purchase citrus fruit:

"register of growers" means register of growers kept under section 13 of this Act:

"registered grower" means a person whose name at the relevant time was or is included in the register of growers pursuant to section 13 of this Act:

4.

"representative member", until the prescribed day, means a member appointed as a representative of growers under paragraph (b) of subsection (1) of section 9 of this Act and on and after the prescribed day means a member who has been appointed under paragraph (b) of subsection (1a) of section 9 of this Act:

* * * * *

"sell" includes barter, offer for sale, receive for sale, have in possession for sale, expose for sale, send forward or deliver for sale and cause, suffer or allow to be sold, offered or exposed for sale; and "sale" and "sold" have corresponding meanings:

"the Board" means the Citrus Board of South Australia continued in existence under section 8:

"the Chairman" means the Chairman of the Committee:

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"the prescribed day" means the day declared by proclamation to be the prescribed day for the purposes of section 9 of this Act.

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Application of this Act

6. Nothing in this Act, except section 22 of this Act, the powers conferred on the Board by that section and any order made by the Board pursuant to any of those powers, shall apply in relation to the harvesting by a grower of his own crop of citrus fruit.

Act to apply subject to Commonwealth Constitution

7. (1) If, by reason of the Constitution of the Commonwealth, a provision of this Act, or an order or notice under a provision of this Act, cannot validly apply in relation to any citrus fruit or any product thereof, that provision, order or notice shall be construed as intended to operate in relation to all citrus fruit or any product thereof, in relation to which it can validly apply and to which it purports to apply.

(2) Subsection (1) of this section is in addition to, and not in substitution for, any other provision relating to the construction of any law subject to the Constitution.

PART II

THE CITRUS BOARD OF SOUTH AUSTRALIA

DIVISION I—THE BOARD

The Citrus Board of South Australia

8. (1) The corporation known as "The Citrus Organization Committee of South Australia" shall continue in existence under the name "Citrus Board of South Australia", and the change of the name of the corporation shall not affect its rights or obligations.

(2) The Board—

- (a) shall be a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) shall be capable of acquiring, holding and disposing of real and personal property; and
- (d) may sue and be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall presume that it was duly affixed.

Constitution of the Board

9. * * * * *

(1a) On the prescribed day the members of the Board then in office shall vacate their respective offices and on and from the prescribed day the Board shall consist of seven members appointed by the Governor of whom—

- (a) one shall be a person appointed by the Governor to be the Chairman of the Board;
- (b) four shall be persons who have been duly elected by registered growers in accordance with this Act;

and

- (c) two shall be persons who, in the opinion of the Governor, have extensive knowledge of and experience in marketing.

* * * * *

(2) Where a vacancy occurs in the office of a member, other than a representative member, a member shall not be appointed to the vacant office unless the Minister has consulted with the representative members then in office.

(2a) If a casual vacancy occurs in the office of a member, the Governor may, subject to subsections (1) and (2) of this section and to section 11 of this Act, appoint a suitable person to the vacant office.

6.

(3) Subject to subsection (3b) of this section a person shall not be eligible for nomination or election under section 11 of this Act with a view to his appointment as a representative member unless he is a registered grower who grows at least three hundred trees for the production and sale of citrus fruit, or he is a registered grower who is a party to a partnership or share-farming agreement under which at least three hundred trees are grown for the production and sale of citrus fruit, or he is a registered grower whose name is included in the register of growers pursuant to section 12 of this Act as the nominee of a body corporate which grows at least three hundred trees for the production and sale of citrus fruit.

* * * * *

(3b) Except as in this subsection provided, not more than one party to any partnership or share-farming agreement under which trees are grown for the production and sale of citrus fruit shall at the same time be eligible to be nominated for election as, or to be appointed, a representative member; but, where the name of a person who grows at least three hundred trees is included in the register of growers both as a grower in his own right or as the nominee of a body corporate which grows at least three hundred trees for the production and sale of citrus fruit and as a party to a partnership or share-farming agreement under which at least three hundred trees are grown for the production and sale of citrus fruit, he shall be eligible to be nominated for election as and to be a representative member during the same or a part of the same period as any other party to that partnership or share-farming agreement is a representative member.

(4) The performance of the functions or the exercise of the powers of the Board shall not be affected by reason only of there being a vacancy in the membership of the Board.

(5) All acts and proceedings of the Board shall, notwithstanding any defect in the appointment of any member thereof, or that any member was disqualified or not entitled to act, be as valid and effectual as if the member had been duly appointed and was qualified and entitled to be, and to act as, a member of the Board, and as if the Board had been properly and fully constituted.

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Election of representative members

11.

* * * * *

(1a) Subject to this section, representative members shall be elected by registered growers, entitled to vote as provided by this Act, after nomination in writing signed by not less than twenty registered growers and furnished to the Returning Officer for the State not less than twenty-eight days before the election.

(1b) The Returning Officer for the State shall submit the names of all nominees in respect of any election to the Governor and, if in the opinion of the Governor, any nominee has commercial interests that may derogate from his impartiality as a representative of the whole body of registered growers, the nomination shall be cancelled.

(2) An election shall be held whenever a vacancy occurs in the office of a representative member by reason of effluxion of time or for any other cause.

7.

(3) Subject to this Act, each election shall be held and conducted by the Returning Officer for the State—

(a) by post;

and

(b) in such manner as the Returning Officer deems proper.

(3a) The Governor may, on the recommendation of the Returning Officer for the State or the Board, make regulations prescribing or providing for any matters necessary or convenient to be prescribed or provided for in relation to elections of representative members.

(4) For the purposes of an election under this section a registered grower shall, except as otherwise provided by this Act, be entitled to one vote at the election.

* * * * *

(4b) Not more than one party to any partnership or share-farming agreement under which trees are grown for the production and sale of citrus fruit shall be entitled, as a registered grower in his capacity of a party to that agreement, to vote at any election under this Act; but, where the name of a person is shown in the register of growers in any two or more of the following capacities, namely, in his capacity of the nominee of the parties to a partnership or share-farming agreement under subsection (4c) of this section, of a grower in his own right or of the nominee of a body corporate under section 12 of this Act, that person shall be entitled to one vote under this section in each of those capacities.

(4c) For the purposes of this section, the party to a partnership or share-farming agreement who is the nominee of the parties to the agreement and is entitled to vote at any election under this Act shall be the party to the agreement who is nominated by notice in writing given to the Board and signed by all the parties to the agreement but, if no such party to the agreement is so nominated, shall be the party to the agreement whose name as such party appears first in the register of growers.

(4d) Any such nomination may, by notice in writing given to the Board and signed by the parties to the agreement be revoked and thereupon the party previously nominated shall, for the purposes of this Act, cease to be the nominee of the parties to the agreement and to be eligible to vote at any election by virtue of such nomination.

(5) The expenses incurred in relation to any election shall be paid out of the funds of the Board.

(6) Where the number of growers nominated in respect of vacancies in the offices of representative members does not exceed the number of vacancies to be filled, a grower duly nominated under this Act whose nomination has not been cancelled may be appointed as if elected under this section.

Grower companies

12. (1) For the purposes of this Division and sections 34 and 36 of this Act, a grower that is a body corporate may as occasion requires, by notice in writing given to the Board, nominate a person whose name shall be included in the register of growers as the nominee of the body corporate.

(2) A person so nominated shall, until his nomination is revoked pursuant to this section, be deemed to be a grower for the purposes of this Division and sections 34 and 36 of this Act and, by virtue thereof, to be eligible, in place of the body corporate, for nomination, election or appointment as a representative member and entitled to exercise and enjoy such rights under this Act as the body corporate would have been entitled to if it were a grower who is a natural person.

(3) Any such nomination may, by notice in writing given to the Board, be revoked by the body corporate and thereupon the person nominated shall cease to be the nominee of the body corporate for the purposes of this Act and his name as such nominee shall be removed from the register of growers.

Register of growers

13. (1) For the purposes of this Act, the Board shall keep or cause to be kept a register of growers showing the names and addresses of growers each of whom grows at least fifty trees for the production and sale of citrus fruit or is a party to a partnership or share-farming agreement under which at least fifty trees are grown for the production and sale of citrus fruit and such other particulars as the Board thinks fit.

* * * * *

(3) There shall be shown in the register of growers in such manner as the Board thinks fit—

(a) in relation to each name of a grower included therein by virtue of his being a party to a partnership or share-farming agreement, the name and prescribed particulars of the person who for the time being is the nominee of the parties to that agreement for the purposes of this Act;

and

(b) in relation to each body corporate whose name is included therein as a grower, the name and prescribed particulars of the person who for the time being is the nominee of the body corporate for the purposes of this Act.

(4) The Board shall as occasion requires revise the register in accordance with the regulations so that, as far as practicable, the information shown therein is up to date.

Terms of office of members

14. (1) Except as otherwise provided in this Act, a representative member shall, unless his office becomes vacant earlier, hold office for a term of three years.

* * * * *

(3) A member, other than a representative member, shall, unless his office becomes vacant earlier, hold office for such period as is specified in the instrument of his appointment.

9.

(4) A member who fills a casual vacancy shall be appointed for the balance only of the term of office of the member in whose place he was appointed.

(5) A member whose term of office has expired before his successor is appointed shall, unless his office becomes vacant earlier, remain in office until his successor is appointed.

(6) Subject to this Act, a retiring member is eligible for re-appointment as a member.

Casual vacancies

15. The office of any member shall become vacant if—

- (a) he dies;
- (b) he resigns by written notice given to the Minister;
- (c) he is removed from his office by the Governor for neglect of his duties, misbehaviour or mental or physical incapacity to perform his duties as a member;
- (d) he is absent without leave granted by the Board from more than three consecutive meetings of the Board;
- (da) he acquires, being a representative member, commercial interests that may, in the opinion of the Governor, derogate from his impartiality as a representative of the whole body of registered growers;
- (e) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with his creditors for less than one hundred cents in the dollar;
- (f) he is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for three months or more; or
- (g) being a person whose name was, at the time of his election, included in the register of growers as the nominee of a body corporate pursuant to section 12 of this Act but not as a grower in his own right, he ceases to be the nominee of the body corporate pursuant to subsection (3) of that section.

Public Service Act not to apply to members of the Board

16. The provisions of the *Public Service Act, 1967*, shall not extend or apply to a person by reason only of his holding the office of a member of the Board.

Meetings of Board

17. (1) The Chairman may convene meetings of the Board and, subject to this Act, the business of the Board shall be conducted in such manner as the Board determines.

(2) The Chairman shall preside at all meetings of the Board at which he is present.

(3) If the Chairman is absent from a meeting of the Board, the members present shall elect one of their number to act as chairman at the meeting and while so acting such member shall have all the powers and duties of the Chairman.

10.

(4) At a meeting the Chairman shall not have a deliberative vote but, in the event of an equality of votes, may exercise a casting vote.

(5) Four members of the Board shall constitute a quorum thereof.

Remuneration of members

18. (1) The members of the Board shall be entitled to be paid such remuneration and expenses as are approved by the Governor.

(2) Such remuneration and expenses shall be paid out of the funds of the Board.

Board not to represent Crown

19. The Board shall not, except in relation to any matter in which the Board is specially authorized by the Governor to act on behalf of the Crown, be the agent or servant or the representative of the Crown.

DIVISION II—POWERS OF THE BOARD

Power to grant licences

20. (1) For the purposes of this Act but subject to section 6 of this Act, the Board may license suitable persons to do any act, matter or thing which is included in the marketing of citrus fruit and specified in the licence.

(2) Where an applicant for a licence under this section—

- (a) makes application to the Board in the prescribed form;
- (b) furnishes to the Board such information relevant to the application as the Board requires;
- (c) pays the prescribed fee (if any); and
- (d) satisfies the Board that he has suitable premises, facilities and equipment and complies with such other requirements (if any) as are prescribed,

the Board shall grant a licence in accordance with the application, but the Board may refuse the application if it is satisfied that in the interests of the citrus industry it is undesirable that the licence should be granted.

(3) A licence under this section—

- (a) may be subject to such terms and conditions relating to the marketing of citrus fruit as the Board thinks fit;
- (b) shall not be transferable;
- (c) shall, subject to paragraph (d) of this subsection, remain in force for a period of twelve months after the issue thereof, but shall, upon compliance with the provisions of subsection (2) of this section, be renewed for a further such period; and

(d) shall cease to be in force if surrendered or otherwise terminated or if the licensee dies or, in the case of a company, is dissolved.

(4) The Board may, by giving a licensee two weeks' notice in writing, cancel or suspend for such period as it thinks fit any licence granted under this section—

(a) if the licensee has failed in any way to comply with any provision of this Act or of an order made under this Act or if he has contravened any condition to which the licence is subject; or

(b) if the licensee has become bankrupt or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors or has compounded with his creditors for less than one hundred cents in the dollar or has assigned his remuneration for their benefit.

(5) The licensee may, according to the tenor of his licence, do any act, matter or thing included in the marketing of citrus fruit.

(6) A person whose application to be licensed has been refused under this section may, within one month after receiving notice of the refusal, appeal to the Supreme Court against the refusal, and the Court may refuse the appeal, or, if it is of the opinion that the application was refused without good and sufficient cause, allow the appeal and order the Board to grant him a licence.

(7) A licensee who contravenes or fails to comply with any term or condition to which his licence is subject shall be guilty of an offence against this Act and shall on conviction be liable—

(a) for a first offence, to a penalty not less than fifty dollars nor more than four hundred dollars;

and

(b) for any subsequent offence, to a penalty not less than one hundred dollars nor more than four hundred dollars.

General powers of the Board

21. (1) Subject to this Act, the Board may—

(a) undertake, arrange, regulate or control the marketing of citrus fruit or any product thereof;

(b) without limiting the generality of any of the other powers conferred by this subsection, undertake, arrange, regulate or control the harvesting, shipping, transporting, storing, handling, packing, buying, delivering and selling of citrus fruit or any product thereof, the processing of citrus fruit into any product derived therefrom and any matters or things connected with or incidental to all or any of the matters undertaken, arranged, regulated or controlled pursuant to this subsection;

(c) arrange for the export of citrus fruit or any product thereof from the State;

12.

- (d) permit payment in instalments, when and in whatever manner the Board thinks fit, of any moneys payable to the Board under this Act;
- (e) by order, exempt from the operation of this Act a grower who produces a small quantity of citrus fruit;
- (f) by means of advertising or other appropriate means, take any steps it thinks fit to encourage the consumption of citrus fruit or any product thereof and to create a greater demand therefor;
- (g) make payments, as the Board thinks fit, to any licensee for the purpose of enabling him to carry on any business pursuant to his licence;
- (h) appoint and employ a secretary to the Board and employ such officers, inspectors, agents, servants and other persons as may be required for the purposes of this Act;
- (i) make arrangements with any marketing authorities of citrus fruit or any product thereof (either within or outside Australia) for the transport, storing and handling of citrus fruit or any product thereof and for the sale or other disposal thereof;
- (j) undertake or arrange for research into the citrus industry and extension services associated therewith and make payments to any person therefor;
- (k) regulate and control the use of brands and trademarks in the marketing of citrus fruit and may have its own brands and trade-marks;
- (l) do any other act or thing or enter into and carry out any contract or transaction which is necessary or convenient to be done, entered into or carried out for giving effect to this Act or which is incidental to the exercise of the powers or the performance of the functions of the Board; and
- (m) delegate to any person, subject to any conditions specified in the instrument of delegation, any of its powers or functions under this Act (except this power of delegation and the powers conferred by paragraphs (d) and (h) of this section and by sections 20, 22 and 23 of this Act).

(2) Any power or function delegated under paragraph (m) of subsection (1) of this section may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) Any such delegation shall be revocable at will and shall not prevent the exercise of any power or the performance of any function by the Board.

Power to issue marketing orders

22. (1) The Board may, by order, do all or any of the following things—

- (a) fix the quantity of citrus fruit or the proportion of his crop of citrus fruit which a grower may deliver or sell at any time, within any period or at any place specified in the order and prohibit the delivery or sale of citrus fruit in contravention of that order;

- (b) prohibit, either absolutely or except as specified in the order, any person or persons of any class specified in the order from delivering citrus fruit to, or taking delivery of citrus fruit from or from selling citrus fruit to, or buying citrus fruit from, any person or from any class of persons other than the Board or the class of persons nominated by the Board in the order;
- (b1) prohibit, either absolutely or except as specified in the order, the harvesting of citrus fruit grown by growers;
- (c) give any directions to any grower or licensee which are necessary for the purpose of ensuring compliance with any order made under paragraph (a), (b) or (b1) of this subsection;
- (d) fix the prices or the minimum prices and the rate of commission at which any citrus fruit may be sold and prohibit the sale of any such citrus fruit except in accordance with such prices or the minimum prices and upon such rate of commission;
- (e) fix the terms and conditions on which citrus fruit may be sold by wholesale and prohibit the sale of citrus fruit otherwise than under those terms and conditions;
- (f) vary any order or revoke any order wholly or in part, or revoke any order wholly or in part and substitute any other order for that which has been so revoked.

(2) Any order made under this section—

- (a) may apply in relation to any product of citrus fruit in like manner as it may apply in relation to any citrus fruit;
- (b) may vary according to the place, time or conditions of sale of any citrus fruit or according to the type, variety, count, grade, quality or quantity thereof or according to any circumstances, rule or formula prescribed in the order;
- (c) may contain such terms and conditions as the Board thinks fit relating to—
 - (i) presentation for sale of citrus fruit and the containers thereof;
 - (ii) inspection of citrus fruit and the containers thereof;
 - (iii) practices which, in the opinion of the Board, are not in the best interests of the citrus industry; and
 - (iv) advertising, promotion of sales and encouragement of consumption of citrus fruit; and
- (d) may apply throughout the State or any part thereof or may apply only to persons or a class of persons named therein.

(3) If the order applies throughout the State or any part thereof, it shall be published in the *Gazette* or in a daily newspaper circulating throughout the State, or, if the order is applicable only to a person or class of persons named therein, it shall so apply only to the person or persons on whom a copy thereof is served personally or by registered post.

(4) A person who contravenes or fails to comply with any direction contained in any order made under this section which is applicable to him shall be guilty of an offence against this Act and shall on conviction be liable—

(a) for a first offence, to a penalty not less than fifty dollars nor more than four hundred dollars;

and

(b) for any subsequent offence, to a penalty not less than one hundred dollars nor more than four hundred dollars,

and in the case of a breach of an order made under paragraph (b) or (b1) of subsection (1) of this section, to an additional penalty of an amount equal to the value of the citrus fruit the subject of that breach ascertained in accordance with the provisions of subsection (5) of this section.

(5) For the purposes of ascertaining the additional penalty referred to in subsection (4) of this section, the value of the citrus fruit shall be calculated in accordance with the wholesale price obtained for citrus fruit of similar type and quality, either by the Board or a person licensed or authorized under this Act to sell citrus fruit, on the day on which that breach was committed, or if no wholesale price had been obtained for such fruit on that day, then the wholesale price obtained either by the Board or a person so licensed or authorized on a day not more than seven days before or after the day on which the breach was committed, and a certificate purporting to be signed by the secretary of the Board and certifying the wholesale price so obtained for citrus fruit of similar type and quality shall be *prima facie* evidence of that wholesale price.

Levy to meet expenses

23. (1) The Board may, with the approval of the Minister and subject to this section, from time to time require all growers to pay to the Board contributions towards the cost of the administration of this Act and the carrying out of the powers, functions and duties of the Board under this Act.

(2) The Board shall, before it requires payment of any contributions under this section—

(a) give notice, published on the same day in the *Gazette* and in a daily newspaper circulating generally in the State, of its intention to require payment of those contributions;

and

(b) specify in that notice the manner in which the contributions are to be computed, the period with respect to which they relate and such other information as the Board thinks fit.

(3) If within a period of thirty days after the publication of the notice the Board receives a petition signed by not less than one hundred growers requesting that a poll be conducted on the question whether payment of those contributions should be required, the Board shall forthwith transmit the register of growers to the Returning Officer for the State who, subject to this Act, shall, as soon as practicable after receiving that register, conduct in such manner as he thinks proper a poll of the growers whose names appear in that register.

(4) If no petition is received by the Board within the period of thirty days referred to in subsection (3) of this section or if a poll is conducted in accordance with that subsection and is in favour of the proposed payment of those contributions, the Board may publish a further notice on the same day in the *Gazette* and in a daily newspaper circulating generally in the State—

- (a) requiring payment of those contributions;
 - (b) specifying that the provisions of this section have been complied with;
 - (c) specifying the manner in which the contributions are computed and the period with respect to which they relate;
 - (d) specifying the day on which the contributions are due and payable to the Board;
- and
- (e) giving such other information as the Board thinks fit,

and, subject to this section, on the day so specified in that further notice all growers shall be liable to pay those contributions to the Board.

(5) The Board shall, as soon as practicable after the publication of the further notice referred to in subsection (4) of this section, either personally or by post, serve each person liable to contribute under this section a notice in writing stating the amount payable by him, the day on or before which that amount is due and payable and, if the Board has decided that payment may be made by instalments, the amount and time for payment of each such instalment.

(6) If any contribution or instalment thereof is not paid in full within a period of fourteen days, or such longer period as the Board may in any case allow, after the day on which it became due and payable, the Board or any officer authorized in writing in that behalf by the Board and acting on behalf of the Board may recover the amount owing as a debt, by action in any court of competent jurisdiction.

* * * * *

Power to borrow

23a. (1) The Board may, for the purposes of carrying out its duties and functions under this Act, borrow moneys from any person upon such security (if any), by way of mortgage or charge over any of the assets of the Board, as the Board may think fit to grant.

(2) The Treasurer may upon such terms and conditions as he thinks fit guarantee the repayment of any moneys borrowed by the Board under this section.

Power to require returns

24. (1) The Board may, by notice in writing—

- (a) published in the *Gazette* or in a daily newspaper circulating throughout the State; or
- (b) served either personally or by registered post on any person to whom the notice relates,

require all growers and licensees or any class of grower or licensee to whom the notice relates, as the case may be, to furnish in writing to the Board within the time specified in the notice such information or returns in relation to citrus fruit and any product thereof as is specified in the notice.

(2) Any such notice may require—

- (a) particulars of citrus fruit by reference to type, variety, count, grade, quality and quantity; and
- (b) in the case of a grower—
 - (i) particulars of the number of trees by reference to age, type and variety which he is growing for the production and sale of citrus fruit; and
 - (ii) an estimate of citrus fruit by reference to type, variety, count, grade, quality and quantity which he expects to produce for marketing within any period specified in the notice;

and

- (iii) the total acreage of citrus trees planted or grown by him for the production and sale of citrus fruit, as at the date or within the 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) furnishes to the Board any information which to his knowledge is false or misleading in a material particular,

shall be guilty of an offence against this Act and shall on conviction be liable—

- (c) for a first offence, to a penalty not less than fifty dollars nor more than two hundred dollars;

and

17.

- (d) for any subsequent offence, to a penalty not less than one hundred dollars nor more than two hundred dollars.

Board to act in best interests of industry

25. The Board, in exercising any powers or performing any functions under this Act, shall act to the best advantage of the citrus industry.

PART III

SUPPLEMENTARY AND MISCELLANEOUS

* * * * *

Powers of inspectors to enter upon lands, etc.

27. (1) For the purposes of this Act, an inspector may do all or any of the following things:—

- (a) at any reasonable time enter any land on which trees are grown for the production and sale of citrus fruit, or enter any premises used for the purpose of storing, handling, packing, buying, delivering or selling citrus fruit or any product thereof or processing citrus fruit into any product derived therefrom, and may—
- (i) inspect and take stock of such trees, citrus fruit or products;
 - (ii) inspect any accounts, books or documents relating to such trees, citrus fruit or products kept on such land or in such premises;
- and
- (iii) make copies of or take extracts from any such accounts, books or documents and retain those copies and extracts;
- (b) enter any vehicle by which citrus fruit or products of citrus fruit are being conveyed on any street or road or enter any place in or adjacent to a street or road where citrus fruit or products of citrus fruit are being sold, and may—
- (i) inspect and take stock of such citrus fruit or products;
 - (ii) inspect any accounts, books or documents relating to such citrus fruit or products;
- and
- (iii) make copies of or take extracts from any such accounts, books or documents and retain those copies and extracts;
- (c) open any package or other container containing any citrus fruit or products of citrus fruit found in or on any land, premises, vehicle or place referred to in paragraph (a) or (b) of this subsection but, if the owner or person for the time being in charge of such citrus fruit or products is present, only if such owner or person, when requested to do so by the inspector, fails or refuses to open such package or other container;
- (d) take samples of any citrus fruit or products found in or on any land, premises, vehicle, place, package or other container referred to in paragraph (a), (b) or (c) of this subsection;

- (e) detain for such time as is necessary to complete his inspection any citrus fruit or products of citrus fruit if he has reasonable grounds for suspecting that, with respect thereto, there is or has been a contravention of or failure to comply with any provision of this Act or any order made under this Act;
- (f) if any package or other container containing any citrus fruit or products of citrus fruit or any ticket or label on any accumulation, collection or display of citrus fruit or products of citrus fruit is falsely marked or contravenes or does not comply with any provision of this Act, or any order made under this Act, efface the false mark, or by such means as are at his disposal, prominently indicate that such package, container, accumulation, collection or display is falsely marked, or destroy the ticket or label;
- (g) where there is or has been any contravention of or failure to comply with any provision of this Act or any order made under this Act with respect to any citrus fruit or products of citrus fruit, direct the owner or the person for the time being in charge thereof to take all such measures and do all such acts, matters and things as are necessary to ensure that such provision is not contravened or is complied with, as the case may be.

(2) Where any citrus fruit or products of citrus fruit are detained by an inspector pursuant to paragraph (e) of subsection (1) of this section, the inspector shall give to the owner or to the person at the time of such detention in charge of such citrus fruit or products forthwith or as soon as he ascertains the address of such owner or person notice orally or by telegram or letter that such citrus fruit or products are being detained and of the place where they are being detained.

(3) Where an inspector has exercised any power pursuant to paragraph (f) of subsection (1) of this section, he shall give to the owner or person for the time being in charge of the citrus fruit or products concerned forthwith or as soon as he ascertains the address of such owner or person notice orally or by telegram or letter of the action he has taken in the exercise of such power.

(4) The occupier of land or premises referred to in paragraph (a) or of any place referred to in paragraph (b) of subsection (1) of this section shall at the request of any inspector, provide the inspector with all reasonable facilities and assistance within his power for the effective exercise of the inspector's powers under that subsection.

(5) The driver of any vehicle referred to in paragraph (b) of subsection (1) of this section shall, whenever requested by any inspector so to do—

- (a) stop the vehicle;

and

- (b) allow the inspector to exercise, and provide the inspector with all reasonable facilities and assistance within his power for the effective exercise of, the inspector's powers under that subsection.

(6) A person who is not an inspector shall not, without lawful excuse—

- (a) alter, deface or obliterate, either wholly or partially;

or

(b) cause to be altered, defaced or obliterated, either wholly or partially,

any mark in relation to any citrus fruit or any product of citrus fruit.

(7) A person shall not disobey or fail to comply with any direction lawfully given to him by an inspector pursuant to paragraph (g) of subsection (1) of this section.

(8) A person shall not obstruct, interfere with or hinder an inspector who is acting in the exercise of his powers under this section.

(9) In this section—

"inspector" means a member of the Board, a member of the police force or any person for the time being authorized by the Board to carry out the duties of an inspector for the purposes of this section pursuant to an instrument in writing.

(10) A person who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act and shall on conviction be liable—

(a) for a first offence, to a penalty not less than fifty dollars nor more than two hundred dollars;

and

(b) for any subsequent offence, to a penalty not less than one hundred dollars nor more than two hundred dollars.

Registration of brands and trade-marks

28. (1) For the purposes of this section, the Board shall keep a register of brands.

(2) A person who proposes to use any brand in the marketing of citrus fruit shall register such brand with the Board.

(3) The Board may in its discretion grant or refuse any application for registration of a brand under this section.

(4) In the marketing of citrus fruit, a person shall not, except with the approval in writing of the Board—

(a) use any brand which he has not registered under this section; or

(b) permit any brand which he has so registered to be used by some other person.

(4a) Any person who contravenes or fails to comply with any of the provisions of subsection (4) of this section shall be guilty of an offence against this Act and on conviction shall be liable—

(a) for a first offence, to a penalty not less than fifty dollars nor more than two hundred dollars;

and

- (b) for any subsequent offence, to a penalty not less than one hundred dollars nor more than two hundred dollars.

(5) In this section—

"brand" includes trade-mark.

Arrangements to evade Act

29. 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 shall be void and of no effect.

Offences in connection with the marketing of citrus fruit

30. (1) A person, who is not the holder of a licence authorizing him to do so, shall not, unless authorized in writing by the Board—

- (a) pack citrus fruit for sale by wholesale;
 - (b) sell citrus fruit by wholesale or offer citrus fruit for sale by wholesale;
- or
- (c) treat citrus fruit by any special process for the purpose of marketing any product thereof that is derived from such treatment.

(1a) The Governor may, on the recommendation of the Board, make regulations prohibiting any person, who is not the holder of a licence authorizing him to do so from doing any specific act or thing (not being an act or thing referred to in subsection (1) of this section) constituting or included in the marketing of citrus fruit or any product thereof, unless he is authorized in writing by the Board to do such act or thing, and prescribing a penalty not exceeding four hundred dollars for a contravention of any such regulation.

(2) A person shall not sell, attempt to sell or offer for sale any citrus fruit unless such citrus fruit has, pursuant to this Act, first been delivered or sold to a licensee, the Board or a person nominated by it.

(3) Notwithstanding the preceding provisions of this section, it shall be lawful for a grower to sell or attempt to sell or to offer for sale any citrus fruit or to do any other act, matter or thing in relation to citrus fruit if he is exempted from the operation of this Act pursuant to an order made under paragraph (e) of subsection (1) of section 21 of this Act.

(4) A person who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act and shall on conviction be liable—

- (a) for a first offence, to a penalty not less than fifty dollars nor more than four hundred dollars;

and

- (b) for any subsequent offence, to a penalty not less than one hundred dollars nor more than four hundred dollars.

Exoneration of members of the Board for acts done in good faith

31. A member of the Board shall not be personally liable for any act or default of the Board done or omitted to be done in good faith in the administration or in the intended administration of this Act.

Accounts, audit and annual report

32. (1) The Board shall keep full accounts of all moneys received and paid by or on account of the Board showing the purposes for which those moneys have been received or paid.

(2) The Board shall cause those accounts to be properly audited at least once a year by the Auditor-General and for this purpose the *Audit Act, 1921-1959*, shall apply and have effect as if the Board were a department of the Public Service.

(3) The Board shall pay to the Treasurer for each audit such reasonable sum as the Treasurer fixes.

(4) The Board shall, as soon as possible after the close of each financial year, prepare a report of its proceedings during that financial year, including a statement showing its receipts and expenditure during that year, and shall present the report and statement to the Minister.

(5) The Minister shall, as soon as possible after receiving the report, cause it to be laid before both Houses of Parliament.

Offences and penalties

33. (1) All proceedings for offences against this Act shall be disposed of summarily.

(2) Any such proceedings may, notwithstanding any other Act to the contrary, be commenced at any time within twelve months after the commission of the offence.

(3) Any legal proceedings under this Act may be taken on behalf of the Board by any officer of the Board authorized in writing in that behalf by the Board.

(4) In any legal 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;

(b) that an officer is authorized 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,

shall be conclusive proof of that appointment, authorization or authority, as the case may be.

(5) On the hearing of any complaint or summons containing an allegation that a person purchased or took delivery of citrus fruit contrary to the provisions of an order made by the Board under this Act, evidence—

(a) that the person charged was in possession or control of citrus fruit at a particular time;

and

(b) that the person charged on being requested by an inspector to produce to that inspector either a sales docket evidencing that the citrus fruit was purchased by that person or a delivery note evidencing that the citrus fruit was delivered to that person—

(i) failed or refused to produce such a sales docket or delivery note to the inspector;

or

(ii) produced to the inspector a sales docket or delivery note which did not purport to have been issued and in fact had not been issued by or on behalf of the Board or by a person licensed or authorized under this Act to sell citrus fruit,

shall be *prima facie* evidence of that allegation.

Regulations

34. (1) The Governor may, on the recommendation of the Board, make regulations prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and in particular but without limiting the generality of the foregoing powers, such regulations may provide for all or any of the following matters:—

(a) requiring growers to be registered, and to furnish the Board from time to time with such information and such returns as may be prescribed, and prescribing the forms to be used in connection with such registration and the procedure for determining disputed claims for registration;

(b) the manner of keeping the register of growers;

(c) polls of growers for the purposes of section 23 and section 36 of this Act;

(d) enabling the Minister to make alterations to the register of growers for the purposes of any such poll or of any election under section 11 of this Act;

(e) the manner of voting at any such poll or election;

(f) requiring licensees to keep accurate records and accounts of all citrus fruit, by reference to type, variety, count, grade, quality and quantity, and of any product of citrus fruit in their possession from time to time;

(g) the methods of keeping accounts by licensees and the form of such accounts;

(h) the inspection, supervision and regulation of packing sheds and stores of any licensee and the machinery, appliances, implements and utensils used in connection therewith and the conditions under which the same shall be conducted;

(i) regulating the removal of citrus fruit from packing sheds;

- (j) the manner of packing citrus fruit and presenting it for sale;
- (j1) the measures to be taken by any licensee or person who grows or has citrus fruit for sale for preventing deterioration, decay, contamination or infection in citrus fruit in his charge or custody;
- (k) the grading, sorting, classification and packing of citrus fruit in packing sheds;
- (l) the inspection of citrus fruit;
- (m) requiring persons or classes of persons by whom or on whose behalf or authority any citrus fruit is transported within the State to make out and produce on demand for inspection by members of the police force and persons authorized by the Board such documents containing such particulars relating to the citrus fruit as are prescribed and requiring any persons or classes of persons to answer questions put by members of the police force and persons authorized by the Board relating to citrus fruit and the source and destination thereof;
- (n) the conditions to be fulfilled in respect of citrus fruit intended for export from the State to a place outside Australia and the prohibition of such export unless such conditions are fulfilled;
- (o) keeping the register of brands and trade-marks;
- (p) the use of brands and trade-marks in the marketing of citrus fruit;
- (q) the terms and conditions under which citrus fruit may be bought by the Board.

(1a) The Governor may under this section make different regulations to apply in different localities and different regulations to apply at different periods of each year and any regulations under this section may be otherwise limited or may discriminate in their operation according to time, place or circumstance.

(2) Such regulations may prescribe penalties not exceeding two hundred dollars for any contravention thereof or failure to comply therewith.

Power of Treasurer to make advances

35. (1) The Treasurer may advance any moneys necessary for the purpose of establishing the Board, and such moneys shall be repaid by the Board to the Treasurer at such time together with such interest as the Treasurer shall appoint.

(2) The moneys necessary for the purpose of this section shall be paid out of moneys to be voted by Parliament for the purpose.

Polls on continuation of this Act

36. (1) Subject to subsection (2) of this section, if at any time after the thirty-first day of December, 1967, there is presented to the Minister a petition signed by not less than two hundred growers requesting that a poll of growers be taken on the question whether this Act shall continue in operation, the Returning Officer for the State shall, as soon as practicable after he receives the register of growers as provided by subsection (3) of this section, hold a poll of growers accordingly.

(2) A poll under this section shall not be held within two years after the holding of any previous poll under this section.

(3) The Minister shall, within three months after the presentation of the petition under this section, transmit the register of growers to the Returning Officer.

(4) Subject to this Act, a poll under this section shall be held and conducted by the Returning Officer for the State—

(a) by post;

and

(b) in such manner as the Returning Officer deems proper.

(4a) The Governor may, on the recommendation of the Returning Officer for the State or the Board, make regulations prescribing and providing for any matters necessary or convenient to be prescribed or provided for in relation to polls to be held under this section.

(4b) A person shall have the same rights of voting at any poll under this section as he would have if the poll were an election held and conducted under section 11 of this Act for the election of a representative member.

(5) If at least sixty per cent of all the growers who vote at the poll, being not less than thirty per cent of the growers whose names are then included in the register of growers, and who are entitled to vote at the poll, vote against the continuance of this Act, the Governor shall, by proclamation or by successive proclamations—

(a) declare that the Board shall be wound up and appoint a person to be liquidator of the Board;

(b) fix a day or days upon which the provisions of this Act will cease to have any force or effect and may so fix different days in respect of different provisions of this Act; and

(c) fix a day (not being earlier than any day fixed under paragraph (b) of this subsection) as the day upon which this Act shall expire.

(6) A poll under this section shall not be invalid by reason of any defect or any informality unless that defect or informality has affected the decision given on the question submitted at the poll.

Board may be wound up in accordance with Companies (South Australia) Code

37. The Board may be wound up in accordance with Division 6 of Part XII of the *Companies (South Australia) Code*.

Property of the Board to be realized and distributed

38. (1) The liquidator of the Board appointed pursuant to paragraph (a) of subsection (5) of section 36 of this Act shall get in and realize all the property of the Board and out of proceeds thereof shall pay in full those debts which, if the Board were a company, would under section 441 of the *Companies (South Australia) Code*, be payable in priority to all other debts.

(2) If the proceeds are insufficient to pay all such debts, they shall abate in equal proportions between themselves.

(3) Subject to subsection (1) of this section, the proceeds shall be applied in satisfaction of the debts of the Board *pari passu*.

Expiration of this Act

39. This Act shall expire upon the day (if any) fixed for the expiration of this Act under paragraph (c) of subsection (5) of section 36 of this Act.

Extension of Board members' terms of office

40. Notwithstanding any other provision of this Act, the terms of office of those members of the Board holding office as representative members immediately prior to the commencement of this section are extended by one year from the day on which they would otherwise expire.

APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 2 of The Public General Acts of South Australia 1837-1975 at page 150.

| | |
|---------------------------------------|---|
| Section 3: | amended by 46, 1984, s. 2 |
| Section 5: | definition of "licence" amended by 46, 1984, s. 3(a) definition of "member" amended by 46, 1984, s. 3(b) definition of "the Board" inserted by 46, 1984, s. 3(c) definition of "the Committee" repealed by 46, 1984, s. 3(d) |
| Section 6: | amended by 46, 1984, s. 4 |
| Headings preceding section 8: | substituted by 46, 1984, ss. 5, 6 |
| Section 8(1): | substituted by 46, 1984, s. 7(a) |
| Section 8(2) and (3): | amended by 46, 1984, s. 7(b) |
| Section 9(1): | repealed by 46, 1984, s. 8(a) |
| Section 9(1a), (4) and (5): | amended by 46, 1984, s. 8(b) |
| Section 11(1): | repealed by 46, 1984, s. 9(a) |
| Section 11(1a): | amended by 46, 1984, s. 9(b) |
| Section 11(3a), (4c) (4d) and (5): | amended by 46, 1984, s. 9(c) |
| Section 12(1) and (3): | amended by 46, 1984, s. 10 |
| Section 13(1), (3) and (4): | amended by 46, 1984, s. 11 |
| Section 15: | amended by 46, 1984, s. 12 |
| Section 16: | amended by 46, 1984, s. 13 |
| Section 17(1) - (3) and (5): | amended by 46, 1984, s. 14 |
| Section 18: | amended by 46, 1984, s. 15 |
| Section 19: | amended by 46, 1984, s. 16 |
| Heading preceding section 20: | amended by 46, 1984, s. 17 |
| Section 20(1) - (4) and (6): | amended by 46, 1984, s. 18 |
| Section 21(1) and (3): | amended by 46, 1984, s. 19 |
| Section 22(1), (2) and (5): | amended by 46, 1984, s. 20 |
| Section 23(1) - (6): | amended by 46, 1984, s. 21(a) |
| Section 23(7): | repealed by 46, 1984, s. 21(b) |
| Section 23a: | amended by 46, 1984, s. 22 |
| Section 24(1) and (3): | amended by 46, 1984, s. 23 |
| Section 25: | amended by 46, 1984, s. 24 |
| Section 27(9): | definition of "inspector" amended by 46, 1984, s. 25 |
| Section 28(1) - (4): | amended by 46, 1984, s. 26 |
| Section 30(1), (1a) and (2): | amended by 46, 1984, s. 27 |
| Section 31: | amended by 46, 1984, s. 28 |
| Section 32(1) - (4): | amended by 46, 1984, s. 29 |
| Section 33(3) - (5): | amended by 46, 1984, s. 30 |
| Section 34(1): | amended by 46, 1984, s. 31 |
| Section 35(1): | amended by 46, 1984, s. 32 |
| Section 36(1): | amended by 46, 1984, s. 33(a) |
| Section 36(4a) and (5): | amended by 46, 1984, s. 33(b) |
| Section 37: | substituted by 46, 1984, s. 34 |
| Section 38(1): | amended by 46, 1984, s. 35 |
| Section 38(3): | amended by 46, 1984, s. 35(a) |
| Section 40: | inserted by 77, 1990, s. 2 |