

South Australia

Citrus Industry Regulations 2005

under the *Citrus Industry Act 2005*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Citrus Industry Regulations 2005*.

2—Commencement

These regulations will come into operation on the day on which section 4 of the *Citrus Industry Act 2005* comes into operation.

3—Interpretation

In these regulations—

Act means the *Citrus Industry Act 2005*;

financial year means a period of 12 months commencing on 1 April;

selection committee means the Citrus Industry Development Board Selection Committee established under these regulations.

Part 2—Board membership

4—Selection of members of Board

- (1) For the purposes of section 7 of the Act, 6 persons must be appointed to the Board on the nomination of the selection committee—
 - (a) 3 being eligible citrus growers who have, in the opinion of the committee, extensive knowledge of and experience in the production of citrus fruit; and
 - (b) 3 being persons (other than citrus growers) 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) In this regulation—

eligible citrus grower means a citrus grower, or a director, manager or employee of a citrus grower—

- (a) who—
 - (i) has given the Board written notice under Part 4 of the Act; or
 - (ii) was registered under the *Citrus Industry Act 1991* immediately before the commencement of these regulations; and
- (b) who is not in default in relation to contributions to the Fund (see regulation 19).

5—Establishment and membership of selection committee

- (1) The *Citrus Industry Development Board Selection Committee* is established.
- (2) The committee consists of 5 members appointed by the Minister.
- (3) The Minister must appoint the members of the selection committee from a panel of 10 persons nominated in accordance with this section.
- (4) The Minister must invite organisations or other bodies that are, in the opinion of the Minister, representative of citrus industry participants and 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.

6—Term and conditions of membership of selection committee

- (1) A member of the selection committee will be appointed for a term of 3 years and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) The Minister may remove a member of the selection committee from office—
 - (a) for misconduct; or
 - (b) for failure or incapacity to carry out official duties satisfactorily.
- (3) The office of a member of the selection committee becomes vacant if the member—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice addressed to the Minister; or
 - (d) is removed from office under subregulation (2).
- (4) Subject to subregulation (5), on the office of a member becoming vacant, a person must be appointed in accordance with these regulations to the vacant office.
- (5) 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.

7—Allowances and expenses

- (1) A member of the selection committee is entitled to allowances and expenses determined by the Minister.
- (2) The allowances and expenses must be paid out of the Citrus Industry Fund.

8—Procedures of selection committee

- (1) Subject to regulation 9—
 - (a) all members of the committee must be present when the committee is making a nomination to the Board;
 - (b) 4 members of the committee constitute a quorum for the purpose of the transaction of other business by the committee.
- (2) If the member appointed to preside at meetings of the committee is absent from a meeting of the committee, 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 committee is a decision of the committee.
- (4) Each member present at a meeting of the committee (subject to regulation 9) 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 committee will, for the purposes of this regulation, be taken to be a meeting of the committee at which the participating members are present if—
 - (a) notice of the conference is given to all members in the manner determined by the committee 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 committee becomes a valid decision of the committee despite the fact that it is not voted on at a meeting of the committee if—
 - (a) notice of the proposed resolution is given to all members of the committee in accordance with procedures determined by the committee; 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 committee must have accurate minutes kept of its meetings.
- (8) Subject to these regulations, the Board may determine its own procedures.

9—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.
Maximum penalty: \$5 000.
- (2) A disclosure under subregulation (1) must be recorded in the minutes of the committee.
- (3) A member of the selection committee who is closely associated with a person under consideration by the committee for nomination to the Board—
 - (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.
Maximum penalty: \$5 000.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) In this regulation—
spouse includes putative spouse (whether or not a declaration of the relationship has been made under the *Family Relationships Act 1975*).

10—Validity of acts of selection committee

An act or proceeding of the selection committee is not invalid by reason only of a vacancy in its membership (but not more than 1) or a defect in the appointment of a member.

Part 3—Contributions to Citrus Industry Fund

11—Fixing and notification of contributions

- (1) Contributions payable to the Citrus Industry Fund by citrus industry participants are to be comprised of a flat component and a variable component.
- (2) The Board is to determine—
 - (a) the amount of the flat component for each financial year for citrus growers, citrus packers, citrus processors and citrus wholesalers (which may, in a particular case, be zero); and
 - (b) a rate per tonne of citrus fruit produced (the *citrus grower rate*) for the purposes of determining the variable component for citrus growers; and
 - (c) separate scales for the purposes of determining the variable component for citrus packers, citrus processors and citrus wholesalers.
- (3) The Board must give each citrus industry participant who has given the Board written notice under section 15 of the Act or who was registered under the *Citrus Industry Act 1991* immediately before the commencement of these regulations—
 - (a) written notice of the flat component for a financial year that is to apply to the participant at least 1 month before the commencement of the financial year; and
 - (b) prior written notice of the rate or scale that is to apply to the participant and at least 1 month's advance written notice of a change in that rate or scale.

12—Contributions payable by or on behalf of citrus growers

- (1) Contributions to the Citrus Industry Fund are payable by or on behalf of citrus growers as follows:
 - (a) **Flat component to be paid annually by grower**
on or before 30 April in each year, a citrus grower must pay the flat component applicable to citrus growers for the current financial year;

(b) **Variable component to be paid monthly by packer or processor on behalf of grower**

within 28 days after the commencement of each month—

- (i) a citrus packer must pay, on behalf of each citrus grower from whom citrus fruit has been directly obtained, the variable component for that month, being an amount calculated by multiplying the citrus grower rate by the number of tonnes of citrus fruit produced by the grower and packed by the citrus packer during the preceding month;
- (ii) a citrus processor must pay, on behalf of each citrus grower from whom citrus fruit has been directly obtained, the variable component for that month, being an amount calculated by multiplying the citrus grower rate by the number of tonnes of citrus fruit produced by the grower and processed by the citrus processor during the preceding month;

(c) **Variable component to be paid monthly by grower for fruit not delivered to packer or processor**

within 28 days after the commencement of each month, a citrus grower must pay the variable component for that month (if any), being an amount calculated by multiplying the citrus grower rate by the number of tonnes of citrus fruit produced by the grower and sold by the grower, by retail or wholesale, to a person who is not a citrus packer or citrus processor, during the preceding month.

- (2) For the purposes of subregulation (1), if a person, as a citrus packer or citrus processor, packs or processes citrus fruit grown by the person as a citrus grower, the person will be taken to have directly obtained the fruit from a citrus grower and, consequently, must pay a contribution in the capacity of packer or processor on behalf of himself or herself in the capacity of grower.

13—Contributions payable by citrus packers

- (1) Contributions to the Citrus Industry Fund are payable by citrus packers on or before 30 April in each year as follows:
- (a) the citrus packer must pay the flat component applicable to citrus packers for the current financial year; and
 - (b) the citrus packer must pay the variable component, being an amount calculated by applying the scale that is to apply to citrus packers to the number of tonnes of citrus fruit packed by the packer, or sold (without being packed by the packer) by retail or wholesale to a person who is not a citrus packer or citrus processor, during the preceding financial year.
- (2) A citrus packer must also pay contributions on behalf of citrus growers—see regulation 12(1)(b).

14—Contributions payable by citrus processors

- (1) Contributions to the Citrus Industry Fund are payable by citrus processors on or before 30 April in each year as follows:
 - (a) the citrus processor must pay the flat component applicable to citrus processors for the current financial year; and
 - (b) the citrus processor must pay the variable component, being an amount calculated by applying the scale that is to apply to citrus processors to the number of tonnes of citrus fruit processed by the processor, or sold (without being processed by the processor) by retail or wholesale to a person who is not a citrus packer or citrus processor, during the preceding financial year.
- (2) A citrus processor must also pay contributions on behalf of citrus growers—see regulation 12(1)(b).

15—Contributions payable by citrus wholesalers

Contributions to the Citrus Industry Fund are payable by citrus wholesalers on or before 30 April in each year as follows:

- (a) the citrus wholesaler must pay the flat component applicable to citrus wholesalers for the current financial year; and
- (b) the citrus wholesaler must pay the variable component, being an amount calculated by applying the scale that is to apply to citrus wholesalers to the number of tonnes of citrus fruit sold by wholesale by the citrus wholesaler during the preceding financial year.

16—Contribution may be payable in more than 1 capacity

A person may be liable to pay a contribution as a citrus industry participant in more than 1 capacity.

17—Contributions by new entrants to citrus industry

- (1) A person who commences a business that results in the person becoming a citrus industry participant in a particular capacity must, within 28 days after commencing the business, pay contributions to the Citrus Industry Fund as follows:
 - (a) in the case of a citrus grower, an amount calculated by multiplying—
 - (i) the flat component for citrus growers for the financial year in which the person became a citrus grower; and
 - (ii) the proportion that the number of whole months between the month during which the person became a citrus grower and the next 31 March bears to 12 months; and
 - (b) in the case of a citrus packer, citrus processor or citrus wholesaler—
 - (i) an amount calculated by multiplying—
 - (A) the flat component for citrus packers, citrus processors or citrus wholesalers (as the case requires) for the financial year in which the person became a citrus packer, citrus processor or citrus wholesaler; and

- (B) the proportion that the number of whole months between the month during which the person became a citrus packer, citrus processor or citrus wholesaler and the next 31 March bears to 12 months; and
- (ii) an amount calculated by multiplying—
 - (A) the variable component that would have been payable had the person been a citrus packer, citrus processor or citrus wholesaler at the last date for payment of the component by citrus packers, citrus processors or citrus wholesalers (as the case requires); and
 - (B) the proportion that the number of whole months between the month during which the person became a citrus packer, citrus processor or citrus wholesaler and the next 31 March bears to 12 months.
- (2) The variable component that would have been payable is to be calculated according to the Board's reasonable assumptions as to what would have been the participant's level of activity had the participant carried on business during the whole of the period relevant to the calculation of the component.

18—Refunds

- (1) Refunds of the variable component of contributions to the Citrus Industry Fund paid by a person under this regulation in a particular financial year may be claimed by the person by written notice to the Board given in April of the following financial year.
- (2) A person claiming a refund must supply the Board with—
 - (a) evidence acceptable to the Board of the contributions made by the claimant in respect of which the claim for refund is made; and
 - (b) verification of that evidence in the form of a statutory declaration.

19—Exclusion from benefits of persons in default in relation to contributions

For the purposes of section 16(2) of the Act and these regulations, a person is in default in relation to contributions to the Fund if, within the immediately preceding 2 financial years—

- (a) all or some of the contributions payable to the Fund by the person have not been paid; or
- (b) the person has been refunded contributions from the Fund; or
- (c) all or some of the contributions payable to the Board under the repealed *Citrus Industry Act 1991* by the person have not been paid.

Schedule 1—Revocation and transitional provisions

1—Revocation of *Citrus Industry Regulations 1992*

The *Citrus Industry Regulations 1992* are revoked.

2—Transitional provision—contributions

- (1) Regulation 11 does not apply to contributions payable on or before 30 April 2006.

- (2) For the purposes of determining the contributions payable on or before 30 April 2006—
- (a) the flat component is, in each case, 0;
 - (b) the citrus grower rate is—
 - (i) for oranges—\$3.20 per tonne;
 - (ii) for other citrus fruit—\$2.20 per tonne;
 - (c) the variable component for a citrus packer is to be determined according to the following scale:
 - (i) for 500 tonne or less—\$500;
 - (ii) for more than 500 tonne but not more than 1 000 tonne—\$1 000;
 - (iii) for more than 1 000 tonne but not more than 5 000 tonne—\$1 500;
 - (iv) for more than 5 000 tonne but not more than 15 000 tonne—\$2 000;
 - (v) for more than 15 000 tonne—\$2 500;
 - (d) the variable component for a citrus processor is to be determined according to the following scale:
 - (i) for 5 000 tonne or less—\$1 000;
 - (ii) for more than 5 000 tonne—\$2 000;
 - (e) the variable component for a citrus wholesaler is to be taken to be \$2 000 regardless of the number of tonnes of citrus fruit sold by the wholesaler;
 - (f) the preceding financial year is to be taken to be the period commencing on the day after the end of the period in respect of which contributions have been paid by the citrus packer, citrus processor or citrus wholesaler under the repealed Act and ending on 31 March 2006.

3—Transitional provision—membership of Board

A vacancy in the membership of the Board existing at the commencement of this clause may be filled by the appointment of the person nominated for appointment by the selection committee under Schedule 1 of the Act but who could not be appointed because, although the person would have been eligible for appointment had the appointment been made in accordance with these regulations, the person was not eligible for appointment in accordance with that Schedule.

Legislative history

Notes

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

Principal regulations

Year	No	Reference	Commencement
2005	222	<i>Gazette 20.10.2005 p3766</i>	27.10.2005: r 2