

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; to repeal the *Citrus Industry Act 1991*; 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*.

2—Commencement

- (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.
- (2) Schedule 1 Part 3 comes into operation on the day on which this Act is assented to by the Governor.

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 *Fruit and Plant Protection Act 1992* 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 Management 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 Management 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.

Schedule 1—Repeal, transitional and temporary provisions

Part 1—Repeal of *Citrus Industry Act 1991*

1—Repeal

The *Citrus Industry Act 1991* is repealed.

Part 2—Transitional provisions—general

2—Funds

Money held by the Citrus Board of South Australia at the commencement of this clause must be paid into the Citrus Industry Fund.

3—Audit and annual report

The first audit and annual report under the Act must, in accordance with directions of the Minister, take into account the funds and activities of the Citrus Board of South Australia under the *Citrus Industry Act 1991* for the period since the last audit and report under that Act.

4—Regulations

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

Part 3—Transitional provisions—Board

5—Selection of members of first Board

- (1) For the purposes of making the first appointments to the Board under this Act, section 7(1)(b) is to be read as if it required 6 persons to be appointed to the Board on the nomination of the selection committee established under this Part—
 - (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 clause—

eligible citrus grower means a citrus grower—

 - (a) who was registered under the *Citrus Industry Act 1991* immediately before the commencement of this clause; and
 - (b) who is not in default in relation to contributions under the *Citrus Industry Act 1991*.

6—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 clause.
- (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.

7—Term and conditions of membership of selection committee

- (1) A member of the selection committee will be appointed for a term ending when the committee has nominated 6 persons for appointment to the Board as contemplated by this Part.
- (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 subclause (2).
- (4) 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.

8—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 funds of the Board under the *Citrus Industry Act 1991* or reimbursed to the Minister by the Board after the commencement of section 15 out of the Citrus Industry Fund.

9—Procedures of selection committee

- (1) Subject to clause 10—
 - (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 clause 10) 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 clause, 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 this Part, the Board may determine its own procedures.

10—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 subclause (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 clause 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 clause 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 clause—

spouse includes putative spouse (whether or not a declaration of the relationship has been made under the *Family Relationships Act 1975*).

11—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.

12—When appointments to first Board take effect

On the commencement of section 7—

- (a) the members of the Board then in office vacate their offices; and
- (b) the appointments made to the Board pursuant to the *Acts Interpretation Act 1915* (following nomination by the selection committee under this Part) take effect despite section 14C(3) of the *Acts Interpretation Act 1915*.

13—Expiry of Part

This Part will expire on the commencement of section 7.

Part 4—Temporary provisions

14—Conflict of interest

- (1) A member of the Board who has a personal or a direct or indirect pecuniary interest in a matter under consideration by the Board—
 - (a) must, as soon as he or she becomes aware of the interest, disclose the nature and extent of the interest to the Board; and
 - (b) must not take part in any deliberations or decision of the Board on the matter.Maximum penalty: \$5 000.
- (2) A member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of this clause by reason only of the fact that the member has an interest in the matter that is shared in common with the citrus industry generally or a substantial section of the citrus industry in this State.
- (3) A disclosure under this clause must be recorded in the minutes of the Board.
- (4) If a member of the Board discloses an interest in a proposed contract under this clause and takes no part in any deliberations or decision of the Board on the contract—
 - (a) the contract is not liable to be avoided by the Board; and
 - (b) the member is not liable to account for profits derived from the contract.

15—Immunity of persons engaged in administration of Act

- (1) No personal liability attaches to a person engaged in the administration of this Act for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of official powers or functions.
- (2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

16—Expiry of Part

This Part will expire on the commencement of section 28 of the *Statutes Amendment (Honesty and Accountability in Government) Act 2003* or if that section has come into operation before the commencement of this clause, will be taken not to have been enacted.