

# **MURRAY VALLEY CITRUS MARKETING ACT 1989 No. 155**

## **NEW SOUTH WALES**



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**MURRAY VALLEY CITRUS MARKETING ACT 1989 No. 155**

**NEW SOUTH WALES**



**Act No. 155, 1989**

An Act to make provision for a joint New South Wales and Victorian scheme for marketing citrus fruit and for other purposes. [Assented to 8 December 1989]

**The Legislature of New South Wales enacts:**

**PART 1 - PRELIMINARY**

**Short title**

1. This Act may be cited as the Murray Valley Citrus Marketing Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. In this Act:

"**approved receiver**" means a person appointed by the Board as an approved receiver;

"**authorised officer**" means a person appointed or taken to be appointed under section 69 to be an authorised officer for the purposes of this Act;

"**Board**" means the Murray Valley Citrus Marketing Board constituted by this Act;

"**books**" includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored, and also includes any document;

"**citrus fruit**", except in the definition of "commodity", means:

- (a) oranges, grapefruit and mandarins; and
- (b) any other commodity declared by order under section 5 to be citrus fruit for the purposes of this Act,

but, if any order under section 5 declares a commodity not to be citrus fruit for the purposes of this Act, excludes that commodity;

"**commodity**" means oranges, grapefruit, mandarins, lemons, cumquats and any other variety of citrus fruit;

"**Directors**" means:

- (a) the person holding office as Director of Marketing in the New South Wales Department of Agriculture and Fisheries; and
- (b) the officer of the Department of Agriculture and Rural Affairs in Victoria nominated by the Victorian Director;

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**"district"** means one or more local government areas, a part of a local government area or a combination of one or more local government areas and a part or parts of one or more local government areas;

**"futures contract"** means a product futures contract, a currency futures contract or a financial futures contract;

**"futures market"** means a market, exchange or other place at which futures contracts are regularly made or traded;

**"marketing"** includes buying, selling, financing, collecting, cleaning, grading, packing, treating, carrying, storing, warehousing, re-handling, distributing (by wholesale or retail), delivering and promoting;

**"New South Wales Director"** means the Director-General of the Department of Agriculture and Fisheries;

**"New South Wales Minister"** means the Minister for the time being administering the provision of this Act in which the expression occurs;

**"New South Wales production area"** or **"production area"** means those parts of New South Wales for the time being specified in Schedule 1;

**"permitted period"** means:

- (a) until the expiration of 3 years after the members of the Board are first appointed to a term of office, the period beginning 18 months after the appointment of the members for that term and ending 6 months before the end of that term; and
- (b) after the expiration of that period of 3 years, the period beginning 6 months after the appointment of the members of the Board to a term of office and ending 6 months before the end of that term;

**"producer"** means:

- (a) a person by whom, or on whose behalf, citrus fruit is grown or produced for sale; and
- (b) if citrus fruit is grown or produced for sale by a partnership or under a share-farming agreement, each of the partners or each of the parties to that agreement;

**"public authority"** means a corporation or other body constituted or established by or under an Act for a public purpose;

**"registered producer"** means a producer who is registered by the Board;

**"Selection Committee"** means the Committee appointed under Part 2 for the purpose of nominating members for appointment to the Board;

**"sell"** includes:

- (a) agree to sell; and
- (b) offer or expose for sale; and
- (c) have in possession for the purpose of sale; and
- (d) barter or exchange; and
- (e) cause or permit to be done any act referred to in paragraph (a), (b), (c) or (d);

**"small producer"** means a producer with less than 150 citrus fruit-bearing trees under cultivation or such other number as is determined from time to time by the Board by notice published in a newspaper circulating generally in the New South Wales production area;

**"total production area"** means the combined New South Wales and Victorian production areas;

**"Victorian Act"** means the Murray Valley Citrus Marketing Act 1989 of Victoria as in force for the time being;

**"Victorian Director"** means the Chief Administrator of the Department of Agriculture and Rural Affairs in Victoria;

**"Victorian Minister"** means the Minister of Victoria for the time being administering the Victorian Act;

**"Victorian production area"** means the production area within the meaning of the Victorian Act;

**"Victorian Treasurer"** means the Treasurer of Victoria.

#### **Joint New South Wales and Victorian Scheme**

4. (1) It is declared that it is the intention of the New South Wales Parliament that this Act and the Victorian Act implement a joint New South Wales and Victorian Scheme for marketing citrus fruit grown in the Murray Valley.



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(2) It is also declared that it is the intention of the New South Wales Parliament that this Act should not be amended except in a manner that will substantially preserve the uniformity of the joint scheme.

**Declarations relating to citrus fruit**

5. (1) The Governor of New South Wales, on the recommendation of the New South Wales Minister under section 56 or 59, by order published in the Gazette:

- (a) may declare a commodity not to be citrus fruit for the purposes of this Act; and
- (b) may declare a commodity, other than lemons, to be citrus fruit for the purposes of this Act.

(2) The Governor of New South Wales may, on the recommendation of the New South Wales Minister and without a poll having been conducted under section 57 or 58, declare lemons to be citrus fruit for the purposes of this Act.

(3) An order under this section may include such savings and transitional provisions as the New South Wales Minister recommends.

**Declarations relating to the New South Wales production area**

6. (1) The Governor of New South Wales, on the recommendation of the New South Wales Minister under section 62 or 65, may, by order published in the Gazette, amend Schedule 1 by adding to, or omitting from, that Schedule the name or description of a district.

(2) An order under this section may include such savings and transitional provisions as the New South Wales Minister recommends.

**Act not to apply to certain citrus fruit**

7. This Act does not apply to:

- (a) citrus fruit grown by a producer for the producer's own use; or
- (b) citrus fruit grown by a small producer.

**Delegation by the New South Wales Minister**

8. The New South Wales Minister may, in writing, delegate to any person any of the Minister's functions under this Act, other than this power of delegation.

**PART 2 - MURRAY VALLEY CITRUS MARKETING  
BOARD AND SELECTION COMMITTEE**

**Murray Valley Citrus Marketing Board**

9. (1) There shall be a Murray Valley Citrus Marketing Board.
- (2) The Board:
- (a) is a body corporate with perpetual succession; and
  - (b) is to have a common seal; and
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may do and suffer all other acts and things that a body corporate may by law do and suffer.
- (3) The Board does not represent, and is not part of, the Crown.
- (4) The Board is subject to:
- (a) the general direction and control of the New South Wales and Victorian Ministers acting jointly; and
  - (b) any specific written directions given by those Ministers or by either of them acting with the consent of the other Minister.

**Common seal**

10. The common seal of the Board must be kept in such custody as the Board directs and may be used only as authorised by resolution of the Board.

**Constitution of the Board**

11. (1) The Board is to consist of 9 members appointed jointly by the Governors of New South Wales and Victoria of whom:
- (a) one is to be a person nominated by the New South Wales Minister;
  - (b) one is to be a person nominated by the Victorian Minister;
  - (c) four are to be persons who are producers representing the interests of producers, being persons nominated by the Selection Committee; and
  - (d) the remaining three are to be persons nominated by the Selection Committee.

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(2) In nominating persons for the purposes of subsection (1) (c) or (d), the Selection Committee:

- (a) must give written reasons for each nomination; and
- (b) so far as possible, must ensure that all regions of the total production area are represented.

(3) A member of the Board is not, in that capacity, subject to the Public Sector Management Act 1988.

(4) Schedule 2 has effect with respect to the constitution of the Board.

(5) Schedule 3 has effect with respect to meetings of the Board.

**Selection Committee**

12. (1) The Selection Committee is to consist of 5 persons appointed jointly by the New South Wales and Victorian Ministers of whom:

- (a) two are to be persons nominated by the Sunraysia Districts Citrus Co-operative Society Ltd or any other body that, in the opinion of the Ministers, has replaced that body; and
- (b) one is to be a person nominated by the Mid-Murray Citrus Growers Pty Ltd or any other body that, in the opinion of the Ministers, has replaced that body; and
- (c) one is to be a person nominated by the New South Wales Director; and
- (d) one is to be a person nominated by the Victorian Director.

(2) The members of the Selection Committee are to be appointed for such period and on such terms and conditions, including payment of allowances, as the New South Wales and Victorian Ministers jointly determine.

(3) The Directors must appoint one of the members to be chairperson for the purpose of convening, and presiding at, the first meeting of the Selection Committee.

(4) A decision may not be made at a meeting of the Selection Committee unless all members are present.

(5) Subject to this section, the procedure of the Selection Committee is in its discretion.

(6) The Board must pay the allowances payable to members of the Selection Committee.

### **PART 3 - FUNCTIONS AND POWERS OF THE BOARD**

#### **Goals of the Board**

13. The Board, in carrying out its functions, must use its best endeavours:

- (a) to promote the best interests of the citrus industry; and
- (b) to promote the orderly marketing of citrus fruit; and
- (c) to improve the competitiveness of the citrus industry; and
- (d) to promote measures to ensure the wholesomeness of citrus fruit in the interests of public health; and
- (e) to provide the services of the Board efficiently, effectively and economically.

#### **Functions of the Board**

14. (1) The functions of the Board are:

- (a) to promote the domestic and export marketing of citrus fruit and citrus products; and
- (b) to make arrangements for the marketing and processing of citrus fruit and citrus products; and
- (c) to develop and provide marketing services; and
- (d) to promote the sale and consumption of citrus fruit and citrus products; and
- (e) to develop and assist in the development of improved methods of producing, handling, marketing and processing citrus fruit and citrus products; and
- (f) to develop and maintain minimum quality standards for citrus fruit; and
- (g) to investigate, report on and make recommendations to producers, the citrus industry or the New South Wales and Victorian Ministers on issues relating to the marketing of citrus fruit and citrus products.

(2) In this section, "citrus fruit" means citrus fruit grown in the New South Wales production area.

#### **Powers of the Board**

15. (1) The Board may do all things necessary for the performance of its functions and, in particular, may:

- (a) purchase citrus fruit; and

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- (b) with the approval of the New South Wales and Victorian Ministers, establish and conduct processing or manufacturing facilities in connection with citrus fruit or citrus products; and
- (c) sell, or arrange for the sale outside Australia of, citrus fruit and citrus products; and
- (d) carry out or fund research and projects that will assist in the production, handling, processing, marketing or promotion of citrus fruit and citrus products; and
- (e) provide services to a producer outside the New South Wales production area; and
- (f) enter into agreements with any person in relation to the handling, processing or marketing of citrus fruit and citrus products; and
- (g) appoint, by notice in writing, agents to act on its behalf in the carrying out of any of its functions.

(2) In this section, except subsection (1) (f), "**citrus fruit**" means citrus fruit grown in the New South Wales production area.

**Horticulture levy**

16. Functions and powers may be conferred on the Board under an agreement entered into by the State of New South Wales and the Commonwealth under the Horticultural Levy Collection Act 1987, or the Horticultural Export Charge Collection Act 1987, of the Commonwealth.

**Delegation of the Board's functions**

17. The Board may, in writing, delegate to any member or to any employee of the Board any of its powers under this Act, other than this power of delegation.

**Staff of the Board**

18. (1) The Board may employ staff (including a chief executive) on such terms and conditions as it thinks fit and may make arrangements for using the services of any officers and employees of the New South Wales Public Service or any public authority.

(2) The chief executive of the Board is responsible for the administration of the Board's undertaking subject to its general direction and control.

**Joint ventures involving the Board**

- 19. (1)** Any of the functions of the Board may be exercised:
- (a) by the Board; or
  - (b) by an affiliate of the Board; or
  - (c) by the Board or an affiliate, or both, in a partnership, joint venture or other association with other persons or bodies.
- (2)** For the purpose of exercising its functions, the Board:
- (a) may join in the formation of a corporation to be incorporated; and
  - (b) may purchase, hold, dispose of or deal with shares in, or subscribe to the issue of shares by, a corporation.
- (3)** The Board must not do any of the things mentioned in subsection (2) otherwise than in accordance with such guidelines (if any) as are from time to time determined by the New South Wales and Victorian Ministers acting jointly.
- (4)** An affiliate of the Board must not, except with the joint approval of the New South Wales and Victorian Ministers, engage in any activities which the Board may not engage in.
- (5)** If any function of the Board may be exercised only with an approval under this Act, the function requires the same approval when exercised under an arrangement, or by a company, or in a partnership, joint venture or other association, as referred to in this section.
- (6)** In this section, "affiliate", in relation to the Board, means:
- (a) a corporation in which the Board has a controlling interest by virtue of its shareholding; or
  - (b) a corporation the memorandum and articles of association of which provide that any or all of the directors of the corporation must be persons who are, or who are nominated by, persons for the time being holding office as members of the Board.

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**Requirements to be observed where the Board has a controlling interest in a company**

**20. (1) If:**

(a) the Board is a member of, or forms or participates in the formation of, a limited company within the meaning of the Companies (New South Wales) Code; and

(b) the Board has a controlling interest in the company,  
the Board must:

(c) include in its annual report a copy of the accounts of the company in respect of the financial year ended during the period to which the Board's annual report relates; and

(d) within 14 days after lodging any report, statement or return in respect of the company with the National Companies and Securities Commission under the Companies (New South Wales) Code, submit a copy of the report, statement or return to the New South Wales Treasurer.

(2) For the purposes of this section, the Board has a controlling interest in a company if the Board is a substantial shareholder within the meaning of the Companies (New South Wales) Code as varied by subsection (3).

(3) For the purposes of determining whether the Board is a substantial shareholder in a company, the Companies (New South Wales) Code applies as if a reference in section 136 (9) of the Code to the prescribed percentage were a reference to 50 per cent.

(4) If the Board is a member of, or forms or participates in the formation of, a limited company to which subsection (1) applies, the accounts of the limited company must be audited annually by the New South Wales Auditor-General.

(5) The requirements of subsection (4) are in addition to the requirements of the Companies (New South Wales) Code.

(6) The Board must pay to the Consolidated Fund an amount to be determined by the New South Wales Auditor-General to defray the costs and expenses of an audit under subsection (4).

(7) The following provisions apply to such an annual audit:

(a) the New South Wales Auditor-General has, with respect to the accounts of the limited company, all the powers conferred on that Auditor-General by any law relating to the auditing of public accounts;

- (b) within 3 months after the end of each financial year within the meaning of section 37, the limited company must cause its accounts to be balanced to the end of that year and a statement of accounts to be prepared and submitted to that Auditor-General;
  - (c) the statement of accounts must be prepared in the manner and in the form approved by the New South Wales Treasurer and must present fairly the financial transactions of the limited company during the year and the financial position of the limited company at the end of the year;
  - (d) the limited company must forward a copy of the audited annual accounts to the New South Wales Minister and the New South Wales Treasurer.
- (8) Without limiting subsection (7), the New South Wales Auditor-General and each officer of that Auditor-General:
- (a) have the right of access at all times to the books of the limited company; and
  - (b) may require from the officers and employees of the limited company any information, assistance and explanations necessary for the performance of that Auditor-General's duties in relation to the audit.
- (9) Subsections (4) - (8) do not apply to a limited company of which the Board has ceased to be a member before the last preceding annual audit.

**Board may deal in other primary products**

21. (1) In this section, "other primary product" means a primary product, wherever grown, other than citrus fruit grown in the New South Wales production area.

(2) The Board, with the joint approval of the New South Wales and Victorian Ministers, and subject to any conditions for the time being determined by those Ministers:

- (a) may market and otherwise deal in any other primary product; and
- (b) may establish and conduct processing or manufacturing facilities for any other primary product, for use by the Board or by others; and



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- (c) may use facilities of the Board for any other primary product; and
- (d) may process any other primary product or manufacture products from, or based on, any other primary product; and
- (e) may market any of the products so processed or products so manufactured; and
- (f) may manufacture articles or things for use in connection with marketing citrus fruit, any other primary product or any other product; and
- (g) may market any of the articles or things so manufactured.

(3) The Board may not under this section deal in a primary product for which another board or a committee is constituted under an Act of New South Wales or Victoria, except with the consent of the other board or of the committee.

**Board may act as a marketing agent**

22. (1) The Board may, with the joint approval of the New South Wales and Victorian Ministers, act as agent for any person (including another board engaged in marketing primary produce) for the purpose of marketing:

- (a) any commodity which that person is entitled to sell; or
- (b) any other primary product which that person is entitled to sell, whether or not it was produced within the total production area, and may do all acts, matters and things necessary or expedient for that purpose.

(2) Without limiting its functions, the Board, when acting as agent under subsection (1), may enter into arrangements with respect to marketing the commodity or other primary product as if the Board were the principal.

(3) The Board must not, under this section, deal in a commodity for which another board or a committee is constituted or established by or under an Act of New South Wales or Victoria, except with the consent of that other board or that committee.

(4) The Board is not to be regarded as a farm produce seller within the meaning of the Farm Produce Act 1983 merely because the Board, in accordance with subsection (1), sells anything that is farm produce within the meaning of that Act.

(5) The Auctioneers and Agents Act 1941 does not apply to or in respect of anything that the Board does under this section.

**Board may act as a purchasing agent**

23. (1) The Board may, with the joint approval of the New South Wales and Victorian Ministers, act as agent for any person for the purpose of purchasing equipment, machinery, planting material, fertilizer or any other article or thing for use in the production of citrus fruit.

(2) Without limiting its functions, the Board may, when acting as agent under subsection (1), enter into arrangements with respect to any purchase referred to in subsection (1) as if the Board were the principal.

**Board may enter into futures contracts for certain purposes**

24. (1) Subject to subsection (2), in relation to:

- (a) a sale or proposed sale of citrus fruit by the Board; or
- (b) a borrowing or raising of money by the Board or a proposed borrowing or raising of money by the Board (including a borrowing or raising of money by the Board by dealing in securities),

the Board may enter into and deal in contracts for hedging purposes at a futures market or other market or with a person or institution.

(2) The Board must not enter into or deal in futures contracts except with the joint approval of the New South Wales and Victorian Ministers or otherwise than in accordance with such guidelines (if any) as are from time to time determined by those Ministers.

(3) A futures contract is to be taken to be entered into or dealt in for hedging purposes if, and only if, the contract is entered into or dealt in for the purpose of:

- (a) minimising the risks of variations in the price obtainable for citrus fruit under a contract for the sale of citrus fruit that has been, or is to be, entered into by the Board, including risks of fluctuations in exchange rates; or
- (b) minimising the risks of variations in the costs of the borrowing or raising of money by the Board or a proposed borrowing or raising of money, including risks of fluctuations in exchange rates.

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**Board to consult citrus industry representatives**

25. Before exercising its powers under section 22, 23 or 24, the Board must consult with such persons as it determines represent the interests of the citrus industry in the New South Wales production area.

**Board not to be concerned in party politics**

26. (1) It is not lawful for the Board to spend any of its funds in connection with the politics of a political party, nor is it lawful for the Board to become affiliated in any way whatever with any organisation whose objects include the support of the politics or program or aims of any political party.

(2) Without limiting section 50, if at any time the Governor of New South Wales is satisfied that the Board has acted in contravention of subsection (1), action may be taken under that section.

**Financial reserves**

27. The Board may, subject to and in accordance with any conditions for the time being jointly determined by the New South Wales and Victorian Ministers, create and use such financial reserves as it considers necessary for the purposes of this Act.

**Financial accommodation**

28. For the purpose of performing its functions or exercising its powers, the Board may obtain financial accommodation from a bank, financial institution or other person subject to and in accordance with guidelines jointly approved by the New South Wales and Victorian Ministers after consultation with the New South Wales and Victorian Treasurers.

**Investment**

29. The Board may invest any money held by it in any manner for the time being approved by the New South Wales and Victorian Ministers after consultation with the New South Wales and Victorian Treasurers.

## **PART 4 - MARKETING OF CITRUS FRUIT**

### **Approved receivers**

30. (1) The Board may, in writing, appoint a person as an approved receiver.

(2) The Board must cause a list of approved receivers to be published at least once in each year in a newspaper circulating generally in the New South Wales production area.

(3) The Board must keep a list of approved receivers available for inspection at its office or, if it has more than one office, at each of those offices.

### **Board may determine prices of citrus fruit etc.**

31. The Board may, in writing:

- (a) determine grades, classes or descriptions of citrus fruit and citrus products; and
- (b) recommend a minimum price for the sale by wholesale of a specified grade, class or description of citrus fruit grown in the New South Wales production area; and
- (c) fix a minimum price and terms and conditions of payment at which citrus fruit grown in the New South Wales production area may be sold for the purpose of processing into citrus products.

### **Offence to purchase citrus fruit below the minimum price**

32. (1) A person must not purchase citrus fruit grown in the New South Wales production area from a producer or approved receiver for the purpose of processing into citrus products at a price that is less than the minimum price fixed by the Board.

Maximum penalty: 50 penalty units.

(2) In proceedings against a person for an offence against subsection (1), it is a defence to prove that the person did not know, and could not reasonably have been expected to know, that the price was less than the minimum price fixed by the Board.

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**Delivery of citrus fruit to approved receivers**

33. (1) A producer must not, unless authorised in writing by the Board, sell or deliver citrus fruit grown in the New South Wales production area to a person other than an approved receiver.

Maximum penalty: 50 penalty units.

(2) A person, other than an approved receiver, must not purchase or receive citrus fruit grown in the New South Wales production area from a producer other than a producer who is authorised by the Board to sell or deliver citrus fruit to a person who is not an approved receiver.

Maximum penalty: 50 penalty units.

(3) In proceedings against a person for an offence against subsection (2), it is a defence to prove that the person did not know, and could not reasonably have been expected to know, that the citrus fruit was sold or delivered in contravention of subsection (1).

**Duties of approved receivers**

34. (1) An approved receiver:

- (a) must make payments to the Board of such amounts as the Board determines, being amounts deducted from the proceeds of sale of citrus fruit delivered to the approved receiver; and
- (b) in the case of citrus fruit sold for the purpose of processing into citrus products, must make payments to the producer for citrus fruit delivered to and accepted by the approved receiver on such terms and conditions as are determined by the Board; and
- (c) must comply with any instructions issued by the Board relating to the marketing or processing of citrus fruit.

(2) An approved receiver who fails to comply with subsection (1) is guilty of an offence.

Maximum penalty: 50 penalty units.

**Payments to the Board by approved receivers**

35. The Board must not increase any payment required to be made by an approved receiver to the Board unless the Board:

- (a) has given each registered producer at least 3 months' notice of the proposed increase; and

- (b) if any organisation of producers so requests, has convened a meeting of producers to discuss the proposed increase.

## **PART 5 - ACCOUNTS AND REPORTS**

### **Division 1 - Accounts and audit of accounts**

#### **Accounts and accounting records**

**36. (1)** The Board must ensure that there are kept proper accounts and records of its transactions and affairs and such other records as will sufficiently explain its financial operations and position.

**(2)** The Board must do all things necessary:

- (a) to ensure that all money payable to it is properly collected; and
- (b) to ensure that all money that it spends is properly spent and properly authorised; and
- (c) to ensure that adequate control is maintained over assets owned by it or in its custody; and
- (d) to ensure that all liabilities incurred by it are properly authorised; and
- (e) to ensure that efficiency and economy of operations are achieved and that waste and extravagance are avoided; and
- (f) to develop and maintain an adequate budgeting and accounting system; and
- (g) to develop and maintain an adequate internal audit system.

**(3)** The Board must comply with such financial and accounting standards as are jointly determined by the New South Wales and Victorian Ministers after consultation with the New South Wales and Victorian Treasurers.

#### **Annual reports**

**37. (1)** In this section, "financial year" means each 12 month period ending on the date jointly fixed by the New South Wales and Victorian Ministers.

**(2)** The Board must, in respect of each financial year, prepare an annual report containing:

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- (a) a report of its operations during the financial year; and
- (b) financial statements for the financial year,

and submit the report to the New South Wales and Victorian Ministers not later than 4 months after the end of the financial year, or by such later date as those Ministers approve.

(3) A report of the Board's operations must:

- (a) be prepared in a form and contain information determined by the Board to be appropriate; and
- (b) include a copy of any specific written directions given to the Board during the financial year by the New South Wales and Victorian Ministers; and
- (c) contain any further information jointly required by those Ministers.

(4) The financial statements:

- (a) must contain such information as is jointly determined by the New South Wales and Victorian Ministers, after consultation with the New South Wales and Victorian Treasurers, to be appropriate; and
- (b) if the New South Wales or Victorian Minister requires additional information to be included in the statements, must contain that additional information; and
- (c) must be prepared in a manner and form approved by the New South Wales and Victorian Ministers; and
- (d) must present fairly the results of the financial transactions of the Board during the financial year to which they relate and the financial position of the Board as at the end of that year; and
- (e) must be signed by the principal accounting officer (by whatever name called) of the Board and by its chairperson and another member of the Board who must:
  - (i) state whether in their opinion the financial statements present fairly the results of the financial transactions of the Board during the financial year to which they relate and whether they sufficiently explain the financial position of the Board as at the end of the financial year; and
  - (ii) state whether, at the date of signing the financial statements, they were aware of any circumstances that would render any particulars included in the statements

misleading or inaccurate and, if so, details of the circumstances; and

(f) must be audited as required by section 38.

(5) The New South Wales Minister must lay, or cause to be laid, before each House of the New South Wales Parliament a copy of the annual report of the Board and the report of the New South Wales or Victorian Auditor-General on the financial statements contained in that annual report within 14 sitting days of that House after the receipt by that Minister of those reports.

(6) If a House of Parliament is not sitting when the New South Wales Minister seeks to comply with the requirements of subsection (5), that Minister is required to present a copy of the relevant documents to the Clerk of the House concerned.

(7) A document presented under subsection (6) is:

- (a) on presentation and for all purposes, to be taken to have been laid before the House of Parliament concerned; and
- (b) required to be printed by authority of the Clerk of that House; and
- (c) for all purposes to be taken to be a document published by order or under the authority of that House; and
- (d) to be recorded in the Minutes, or Votes and Proceedings, of that House on the first sitting day of that House after receipt of the document by that Clerk.

(8) If the Board fails to submit an annual report to the New South Wales Minister within 4 months after the end of the financial year, or by any later date that the New South Wales and Victorian Ministers jointly approve, the New South Wales Minister must cause each House of the New South Wales Parliament to be advised of that failure and the reasons for it.

#### **Audit of accounts**

**38. (1)** The financial statements referred to in section 37 must be audited by the New South Wales Auditor-General or, with the agreement of the New South Wales Auditor-General, by the Victorian Auditor-General.



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**(2) The New South Wales Auditor-General:**

- (a) has, in respect of an audit of the Board's financial statements, all the powers conferred on that Auditor-General by any law relating to the audit of the public accounts; and
- (b) has right of access at all times to the books of the Board; and
- (c) may require from an employee of the Board any information, assistance and explanations necessary for the performance of the duties of auditor in relation to the audit.

**(3) The Board must pay the costs and expenses incurred by the New South Wales or Victorian Auditor-General in carrying out an audit under this section.**

**Division 2 - 5-year operational plans**

**Plans of the Board's operations**

**39. (1)** Before the first anniversary of the commencement of this section, the Board must submit to the New South Wales and Victorian Ministers a plan of its intended operations during the next following 5 years.

**(2)** Afterwards, with each annual report that it submits to the New South Wales and Victorian Ministers, the Board must also submit a plan of operations for the next following 5 years.

**(3)** Each plan of operations must include indicators against which the performance of the Board may be measured.

**(4)** The Board must, on request, provide to a producer copies of the annual report and plan of operations most recently submitted to the Minister.

**Division 3 - Management audits**

**Conduct of management audits**

**40. (1)** The Directors, as jointly approved or directed by the New South Wales and Victorian Ministers, must conduct management audits for the purpose of examining the activities of the Board and assessing the extent to which the activities are being carried on in an efficient, economical and proper manner.

**(2)** Except in so far as the New South Wales and Victorian Ministers otherwise jointly approve or direct:

- (a) the Directors must consult with the Board before commencing to conduct the management audit; and
  - (b) the Directors must give the Board an opportunity to nominate such number of members of the staff of the Board to participate in the conduct of the management audit as the Directors determine; and
  - (c) any members of the staff of the Board so nominated may participate in the conduct of the management audit.
- (3) Any of the functions of the Directors under this section may be exercised:
- (a) by either of them personally; or
  - (b) by a member of the staff of the New South Wales Department of Agriculture and Fisheries or of the Department of Agriculture and Rural Affairs in Victoria approved for the purpose by the Directors with the joint concurrence of the New South Wales and Victorian Ministers; or
  - (c) by consultants employed for the purpose with the concurrence of the New South Wales and Victorian Ministers.

**Powers of management auditors**

41. (1) The Directors, or any person approved or employed as referred to in section 40 in connection with and for the purposes of a management audit:

- (a) may enter the premises of the Board; and
  - (b) may require the production of and examine any documents in the custody of a member or an employee of the Board; and
  - (c) may require any such member or employee to answer questions.
- (2) A person who:
- (a) delays, obstructs or hinders a person in the exercise of any power conferred by this section; or
  - (b) fails or refuses to comply with a requirement made under this section; or
  - (c) provides, in answer to a question under this section, any information that is, to the person's knowledge, materially false or misleading,

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is guilty of an offence.

Maximum penalty: 50 penalty units.

**Reports of management auditors**

**42.** The Directors, as soon as practicable, must prepare a report on the conduct and findings, and any recommendations, of a management audit.

**Reports to be provided**

**43. (1)** The Directors must give the New South Wales and Victorian Ministers a copy of each report prepared under section 42.

**(2)** The Directors must give a copy of any such report to the Board, unless the New South Wales and Victorian Ministers are both satisfied that there are sufficient reasons for not doing so.

**Division 4 - Information generally**

**Information to be given by Board**

**44.** The Board must give to the New South Wales Minister such information, reports and documents relating to the Board's policies and activities as that Minister from time to time requests.

**PART 6 - REVIEW AND DISSOLUTION OF THE BOARD**

**Dissolution of the Board**

**45.** The Board may be dissolved in accordance with this Part:

- (a) on a poll taken under section 46 or 47; or
- (b) at the request of the Board under section 48; or
- (c) on the recommendation of the New South Wales Minister under section 49.

**Poll to be taken periodically to determine whether the Board should be dissolved**

**46. (1)** At the beginning of the last 6 months of the term for which the members of the Board are appointed:

- (a) on the second occasion after the commencement of this section; and

(b) on each alternate later occasion, the New South Wales Minister, by order published in the Gazette, must direct that a poll be taken of registered producers in the New South Wales production area on the question of whether the Board should be dissolved.

(2) Section 67 applies to the taking of a poll under this section.

#### **Petition and polls**

47. (1) The New South Wales Minister, by order published in the Gazette, must direct that a poll be taken of producers on the question of whether the Board should be dissolved:

- (a) if the New South Wales Minister is satisfied, on representations made during a permitted period by producers by petition to that Minister, that at least half the registered producers in the New South Wales production area desire the Board to be dissolved; or
- (b) if the New South Wales Minister has received a notice that representations have been made to the Victorian Minister under a provision of the Victorian Act corresponding to this section.

(2) If the New South Wales Minister receives a notice as referred to in subsection (1) (b), the poll must be held on the same day as the poll under the Victorian Act.

(3) Section 67 applies to the taking of a poll under this section.

#### **Board may request its own dissolution**

48. (1) The Board may, by instrument under its seal, request the New South Wales Minister to take action to dissolve the Board.

(2) The New South Wales Minister may refuse to consider such a request unless the request is confirmed by the Board, by a similar instrument, within such period as that Minister determines.

#### **Winding-up and dissolution of the Board**

49. (1) If the New South Wales Minister:

- (a) is satisfied:
  - (i) that more than one-half of the producers in the total production area are, at a poll conducted in accordance

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with section 67 and at a poll held on the same day under the Victorian Act, in favour of the dissolution of the Board; or

- (ii) that a request has been made, in accordance with section 48, by the Board; or
- (iii) that it is in the best interests of producers for the Board to be dissolved; and

- (b) in consequence of being so satisfied, recommends to the Governor of New South Wales that the Board's affairs should be wound-up,

the Governor may, by order published in the Gazette, direct the Board to wind-up its affairs.

(2) As soon as an order under subsection (1) takes effect, the Board must proceed to wind-up its affairs.

(3) The Governor of New South Wales may, either in an order directing the Board to wind-up its affairs or by another order published in the Gazette, appoint a person to be liquidator for the purpose of winding-up the Board's affairs.

(4) A liquidator appointed under this section has and may exercise such powers of the Board as may be necessary for the purpose of the winding-up.

(5) An order under subsection (3) may contain such provisions of a savings or transitional nature as the Governor of New South Wales thinks appropriate in consequence of the appointment of a liquidator under that subsection.

(6) The reasonable costs and expenses (including remuneration) incurred by or in connection with the appointment of, and exercise of the functions of, a liquidator appointed under this section, as certified from time to time by the New South Wales Minister, are payable from the funds of the Board.

(7) The members of the Board may not exercise any functions as members while a person holds office as liquidator of the Board.

(8) If the New South Wales Minister is of the opinion that the affairs of the Board have been wound-up and has notified that opinion to the Governor of New South Wales, the Governor may, by order published in the Gazette, dissolve the Board.

(9) On the publication of an order made under subsection (8), all money and other assets of the Board:

- (a) become the property of organisations representing citrus growers in the total production area in such proportions as are specified in the order; and
- (b) must be dealt with in such manner as the Governor of New South Wales directs.

(10) An order under subsection (1), (3) or (8) takes effect on the date on which it is made, but if a similar order has not then been made under the Victorian Act, it takes effect on the date on which the order is made under that Act.

(11) If the New South Wales Minister makes a recommendation under subsection (1) because that Minister is satisfied that it is in the best interests of producers that the Board should be dissolved, that Minister must cause a report on the making of the recommendation to be laid before each House of the New South Wales Parliament within 14 sitting days of that House after the recommendation is made.

#### **Dismissal of the Board**

50. (1) The Governor of New South Wales, if of the opinion that circumstances have arisen rendering it advisable to do so, may, by order published in the Gazette, remove all the members of the Board from office, but they or any of them are eligible (if otherwise qualified) for re-appointment.

(2) An order under subsection (1) takes effect on the date on which it is made, but if a corresponding order has not then been made under the Victorian Act, it takes effect on the date on which the order is made under that Act.

(3) The New South Wales Minister must cause a report of, and the reasons for, the removal of the members of the Board under this section to be laid before each House of the New South Wales Parliament within 14 sitting days of that House after the date of publication of the order under subsection (1).

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**Appointment of an administrator to administer the Board's affairs**

**51. (1)** The Governor of New South Wales may, by order published in the Gazette, appoint a person to be administrator of the Board if:

- (a) all the members of the Board have vacated their offices or have been removed from their offices; or
- (b) all or any of the members of the Board retain their offices and the New South Wales Minister has certified to the Governor that that Minister is satisfied that it would be in the best interests of the Board that an administrator be appointed.

**(2)** An administrator appointed under this section has all the functions and powers of the Board, and any act, matter or thing done or omitted to be done by the administrator has the same effect as if done or omitted by the Board.

**(3)** The Governor of New South Wales may, by order published in the Gazette:

- (a) remove from office any person appointed as administrator under this section; and
- (b) fill any vacancy in the office of administrator.

**(4)** The reasonable costs and expenses (including remuneration) incurred by or in connection with the appointment of, and exercise of the functions of the Board by, an administrator appointed under this section, as certified from time to time by the New South Wales Minister, are payable from the funds of the Board.

**(5)** Members of the Board must not exercise any functions as members while a person holds office as administrator of the Board.

**(6)** An order under subsection (1) or (3) takes effect on the date on which it is made, but if a corresponding order has not then been made under the Victorian Act, it takes effect on the date on which the order is made under that Act.

## **PART 7 - REGISTRATION AND POLLS**

### **Division 1 - Registration**

#### **Registration of producers**

**52. (1)** A person who carries on business in the New South Wales production area as a producer during any year ending on 30 June, otherwise than as a small producer, is guilty of an offence, unless the person, or another person with whom the person carries on that business, is registered with the Board in respect of that year.

Maximum penalty: 50 penalty units.

**(2)** An application for registration must:

- (a)** be made in a form approved by the Board; and
- (b)** contain particulars of each person who carries on business as a producer with the applicant; and
- (c)** contain particulars of each place where the applicant carries on business as a producer; and
- (d)** contain such other information as the Board requires; and
- (e)** except in the case of a first application - be made in the month of May immediately preceding the beginning of the year to which the registration relates.

**(3)** The Board must register a person who makes an application for registration in accordance with subsection (2).

**(4)** Registration in respect of a year has effect on and from 1 July in that year or, if the application for registration is made after that date, on and from the date of registration until the next 30 June.

**(5)** A person who carries on business in the New South Wales production area as a producer, otherwise than as a small producer, at a place that is not registered with the Board as a place of business of that person, or of another person with whom the person carries on that business, is guilty of an offence.

Maximum penalty (subsection (5)): 30 penalty units.

#### **Variation of a producer's registration**

**53.** The Board may, on the application of a registered producer made in a form approved by the Board, register a change in the place where the producer carries on business as a producer.



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**Division 2 - Polls**

**Petition for a poll to exclude a commodity from the definition of "citrus fruit"**

**54. (1)** The New South Wales Minister must, by order published in the Gazette, direct that a poll be held on the question that a commodity should cease to be citrus fruit for the purposes of this Act if that Minister:

- (a) has received within the permitted period a petition from registered producers in the New South Wales production area who produce that commodity; and
- (b) is satisfied that the petition represents the views of a majority of all such registered producers in that area.

**(2)** The New South Wales Minister must give notice in writing to the Victorian Minister of any such petition received from producers within the permitted period.

**Other producers may also be polled on a proposal to exclude a commodity from the definition of "citrus fruit"**

**55. (1)** In this section, a reference to other registered producers is a reference to registered producers other than registered producers from or in relation to whom a petition was received under section 54.

**(2)** If

- (a) the Board requests by instrument under its seal that a separate poll be taken of all other registered producers in the total production area; and
- (b) the New South Wales and Victorian Ministers agree that such a poll should be taken,

the New South Wales Minister must, by order published in the Gazette, direct that a separate poll be taken of those producers in the New South Wales production area on a question on which a poll is taken under section 54.

**(3)** A poll of other registered producers in the New South Wales production area to be taken under this section on a particular question must be held on the same day as the poll taken under section 54 on the same question.

**Recommendation that a commodity be excluded from the definition of "citrus fruit"**

56. If the New South Wales Minister is satisfied that:

- (a) a majority of all registered producers in the New South Wales production area who produce a commodity; or
- (b) where a separate poll was held under section 55, a majority of the registered producers who voted in the poll,

voted in favour of a proposal that the commodity not be citrus fruit, that Minister must make a recommendation to the Governor of New South Wales that an order be made declaring the commodity not be citrus fruit for the purposes of this Act.

**Petition for a poll to add a commodity to the definition of "citrus fruit"**

57. (1) The New South Wales Minister must, by order published in the Gazette, direct that a poll be held on the question of whether a commodity should be citrus fruit for the purposes of this Act if that Minister:

- (a) has received within the permitted period a petition from producers in the New South Wales production area who produce that commodity; and
- (b) is satisfied that the petition represents the views of a majority of all such producers in that area.

(2) The New South Wales Minister must give notice in writing to the Victorian Minister of any such petition received from producers within the permitted period.

**Other producers may also be polled on a proposal to add a commodity to the definition of "citrus fruit"**

58. (1) In this section, a reference to other producers is a reference to registered producers other than those (if any) from or in relation to whom a petition was received under section 57.

(2) If:

- (a) the Board requests by instrument under its seal that a separate poll be taken of other producers in the total production area; and
- (b) the New South Wales and Victorian Ministers agree that such a poll should be taken,

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the New South Wales Minister must, by order published in the Gazette, direct that a separate poll be taken of all other producers in the New South Wales production area on a question on which a poll is taken under section 57.

(3) A poll of other producers in the New South Wales production area to be taken under this section on a particular question must be held on the same day as the poll taken under section 57 on the same question.

**Recommendation that a commodity be added to the definition of "citrus fruit"**

59. If the New South Wales Minister is satisfied that:

- (a) a majority of all producers in the New South Wales production area who produce a commodity; or
- (b) where a separate poll was held under section 58 - a majority of the registered producers who voted in the poll,

voted in favour of a proposal that the commodity be citrus fruit, that Minister must make a recommendation to the Governor of New South Wales that an order be made declaring the commodity to be citrus fruit for the purposes of this Act.

**Petition for a poll to exclude a district from the New South Wales production area**

60. (1) The New South Wales Minister must, by order published in the Gazette, direct that a poll be held on the question of whether a district should be excluded from the New South Wales production area if that Minister:

- (a) has received within the permitted period a petition from registered producers in that district who produce citrus fruit; and
- (b) is satisfied that the petition represents the views of a majority of all such registered producers in that district.

(2) The New South Wales Minister must give notice in writing to the Victorian Minister of any such petition received from producers within the permitted period.

**Other producers may also be polled on a proposal to exclude a district from the New South Wales production area**

61. (1) In this section, a reference to other registered producers is a reference to registered producers other than those from or in relation to whom a petition was received under section 60.

(2) If:

- (a) the Board requests by instrument under its seal that a separate poll be taken of other registered producers in the total production area; and
- (b) the New South Wales and Victorian Ministers agree that such a poll should be taken,

the New South Wales Minister must, by order published in the Gazette, direct that a separate poll be held of other registered producers in the New South Wales production area on a question on which a poll is taken under section 60.

(3) A poll of other registered producers to be taken under this section on a particular question must be held on the same day as the poll taken under section 60 on the same question.

**Recommendation that a district be excluded from the New South Wales production area**

62. If the New South Wales Minister is satisfied that:

- (a) a majority of all registered producers in a district within the New South Wales production area who produce citrus fruit; or
- (b) where a separate poll was held under section 61 - a majority of the registered producers who voted in the poll,

voted in favour of a proposal to exclude the district, that Minister must make a recommendation to the Governor of New South Wales that an order be made declaring that district to be excluded from the New South Wales production area.

**Petition for a poll to add a district to the New South Wales production area**

63. (1) The New South Wales Minister must, by order published in the Gazette, direct that a poll be held on the question of whether a district should form part of the New South Wales production area if that Minister:

- (a) has received within the permitted period a petition from producers in the district who produce citrus fruit; and

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- (b) is satisfied that the petition represents the views of a majority of all such producers in the district.

(2) The New South Wales Minister must give notice in writing to the Victorian Minister of any such petition received from producers within the permitted period.

**Other producers may also be polled on a proposal to add a district to the New South Wales production area**

64. (1) In this section, a reference to other producers is a reference to registered producers other than those (if any) from or in relation to whom a petition was received under section 63.

(2) If

- (a) the Board requests by instrument under its seal that a separate poll be taken of other producers in the total production area; and
- (b) the New South Wales and Victorian Ministers agree that a separate poll should be taken,

the New South Wales Minister must, by order published in the Gazette, direct that a separate poll be taken of other producers in the New South Wales production area on a question on which a poll is taken under section 63.

(3) A poll of other producers to be taken under this section on a particular question must be held on the same day as the poll taken under section 63 on the same question.

**Recommendation that a district be added to the New South Wales production area**

65. If the New South Wales Minister is satisfied that:

- (a) a majority of all producers in a district within the New South Wales production area who produce citrus fruit; or
- (b) where a separate poll was held under section 64 - a majority of the producers who voted in the poll,

voted in favour of a proposal to include the district in that production area, that Minister must make a recommendation to the Governor of New South Wales that an order be made declaring the district to be part of the New South Wales production area.

**Report to be published in connection with a poll**

66. As soon as practicable after an order made under a provision of this Part is published in the Gazette directing that a poll be taken, and before the day fixed for the taking of the poll, the New South Wales Minister must publish a report relating to the proposal to which the poll relates in such manner as he or she considers appropriate.

**Power to make regulations for the conduct of polls**

67. (1) The regulations may make provision for or with respect to the conduct of polls under this Act.

(2) In particular, the regulations may:

- (a) make provision for or with respect to fixing or postponing the date for the taking of a poll under this Act; and
- (b) provide that it is compulsory for registered producers to vote at the poll.

(3) The Electoral Commissioner, or a person employed in the office of and nominated by the Electoral Commissioner:

- (a) is the returning officer for a poll under this Act; and
- (b) has the powers and functions conferred or imposed on the returning officer by the regulations in relation to the poll.

(4) The Board must prepare a roll of registered producers in accordance with the requirements (if any) prescribed by the regulations.

(5) If the regulations so provide, then, irrespective of anything to the contrary in this Act:

- (a) the producers entitled to vote in accordance with the regulations at a poll under this Act are the producers having such qualifications as may be prescribed by the regulations; and
- (b) only those producers may vote at the poll.

**Expenses of polls**

68. The Board is liable to pay the costs and expenses of a poll under this Act.

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**PART 8 - MISCELLANEOUS PROVISIONS**

**Authorised officers**

69. (1) The Board, with the joint approval of the New South Wales and Victorian Ministers, may appoint persons as authorised officers for the purposes of this Act.

(2) For the purposes of this Act, each member of the New South Wales Police Force is to be regarded as an authorised officer without being appointed under subsection (1).

**Powers of authorised officers**

70. An authorised officer may, at any reasonable time and with any necessary assistants:

- (a) enter and search any premises, other than premises used mainly as a residence, that the officer reasonably believes are used for or in connection with the storage or sale of citrus fruit or in which are kept any documents used in connection with the sale of citrus fruit grown in the New South Wales production area; or
- (b) search for and inspect citrus fruit grown in that production area; or
- (c) search for, inspect and make copies of any documents relating to the storage or sale of citrus fruit grown in that production area; or
- (d) require the occupier of premises entered and searched under this section to produce any documents relating to the sale of citrus fruit grown in that production area and answer questions concerning that sale.

**Offence to obstruct an authorised officer**

71. (1) A person who:

- (a) delays or obstructs an authorised officer in the exercise of a power conferred by this Act; or
- (b) without reasonable excuse, refuses or fails to comply with any requirement made under section 70 (d); or
- (c) gives information in response to a requirement made under section 70 (d) that is, to the person's knowledge, materially false or misleading,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) A person charged with an offence under subsection (1) is not guilty of the offence:

- (a) unless it is established by the prosecutor that, at the relevant time, the authorised officer concerned identified himself or herself as such an officer, or the person charged otherwise knew that the officer was such an officer, and:
  - (i) where the offence arises under subsection (1) (a) - that the person charged was informed by the officer, or otherwise knew, that the officer was empowered to exercise the particular power concerned; or
  - (ii) where the offence arises under subsection (1) (b) or (c) - that the officer warned the person charged that a failure or refusal to comply with the requirement was an offence; or
- (b) if, where the offence arises under subsection (1) (b) in relation to a failure or refusal to comply with a requirement to answer a question, the person charged satisfies the court concerned that that person did not know, and could not with reasonable diligence have ascertained, the answer to the question.

#### **Police may detain vehicles**

72. A member of the New South Wales Police Force may, for the purpose of exercising any of the powers of an authorised officer under section 70, stop and detain any motor vehicle in a public street or public place in which he or she believes on reasonable grounds that there is any citrus fruit grown in the total production area or any books relating to any such citrus fruit.

#### **Annual meeting of producers and approved receivers**

73. (1) Each year, the Board must hold at least one general meeting of registered producers and approved receivers.

(2) The Board must give not less than 42 days' notice in such manner as it determines and, in the notice, must invite the submission of items for discussion at the meeting.

(3) The Board must give to each registered producer and each approved receiver at least 14 days before the meeting a copy of:



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- (a) its latest annual report; and
- (b) its latest plan of operations.

**Registered producers and approved receivers to give information to the Board**

**74. (1)** The Board may, by notice in writing, require a registered producer or approved receiver:

- (a) to keep such records as the Board determines; and
- (b) to give the Board in writing within a period specified in the notice such information relating to the business of the producer or approved receiver as the Board requires.

**(2)** If a registered producer or approved receiver to whom a requirement under subsection (1) is made fails, without reasonable excuse, to comply with the requirement, the producer or receiver is guilty of an offence.

Maximum penalty: 50 penalty units.

**(3)** A registered producer or approved receiver who, in purporting to comply with subsection (1) (b), gives the Board any information which, is to the person's knowledge, materially false or misleading is guilty of an offence.

Maximum penalty: 50 penalty units.

**(4)** A person is not excused from giving information that the person is required to give under this section on the ground that the information might tend to incriminate the person or render the person liable to a penalty, but any information so given is not admissible in evidence against the person in proceedings, other than proceedings for an offence under subsection (3).

**Confidentiality and misuse of information**

**75. (1)** A member or former member, or an employee or former employee, of the Board must not disclose information acquired in that capacity except:

- (a) in the normal course of the business of the Board; or
  - (b) with the consent of the person to whom the information relates;
- or

(c) when authorised or required by law to do so.

(2) A member or former member, or an employee or former employee, of the Board who uses information acquired in that capacity to obtain directly or indirectly any pecuniary or other advantage for himself or herself or for any other person is guilty of an offence.

Maximum penalty: 50 penalty units.

### **Bribery**

76. (1) A member or employee of the Board who receives, or seeks to receive, directly or indirectly any payment or other consideration to act contrary to his or her duty is guilty of an offence.

Maximum penalty: 50 penalty units.

(2) A person who gives or offers to give a member or employee any payment or other consideration to act contrary to his or her duty is guilty of an offence.

Maximum penalty: 50 penalty units.

(3) For the purposes of this section, "employee" includes an officer or employee of the Public Service or a public authority whose services are made available to the Board in accordance with an arrangement made under section 18.

### **Members of a body corporate to be liable for offences committed by the body corporate**

77. (1) If a body corporate contravenes any provision of this Act or the regulations, each person who is a director or member of the body or who is concerned in its management is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the body corporate has been proceeded against or convicted under that provision.

(3) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act or the regulations.

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**Evidentiary provisions**

**78.** In proceedings under this Act or the regulations:

- (a) a statement by a person that he or she is an authorised officer is, in the absence of evidence to the contrary, proof of that fact; and
- (b) the production of a copy of the Gazette purporting to contain any order under this Act is conclusive evidence:
  - (i) of the matters contained in it; and
  - (ii) that all steps necessary to be taken before the making of the order have been duly taken; and
- (c) a certificate given by the Board and certifying that on a specified date or during the whole of a specified period any person was or was not a registered producer or an approved receiver is evidence of the matters specified in the certificate.

**Proceedings for offences**

**79.** Proceedings for an offence against this Act or the regulations may only be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Service of notices etc.**

**80. (1)** A notice or other document required or authorised by this Act or the regulations to be served on or given to a person is to be taken to have been duly served on or given to the person:

- (a) if it is delivered personally to or left with an adult at the last known place of residence or business of the person or, where no adult person is present, it is affixed to a conspicuous part of the premises; or
- (b) if it is sent to the person by post.

**(2)** This section is in addition to sections 528, 529 and 530 of the Companies (New South Wales) Code.

**Regulations**

**81. (1)** The Governor of New South Wales may, on the recommendation of the New South Wales Minister after consultation with the Victorian Minister, make regulations, not inconsistent with this Act, for or with respect to any matter that is required or permitted

to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation made for the purpose of this Act may create an offence punishable by a penalty not exceeding 5 penalty units.

**Savings and transitional provisions**

82. Schedule 4 has effect.

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**SCHEDULE 1 - NEW SOUTH WALES PRODUCTION AREA**  
(Secs. 3, 6)

Shire of Balranald  
Shire of Murray  
Shire of Wakool  
Shire of Wentworth

**SCHEDULE 2 - CONSTITUTION OF THE BOARD**  
(Sec. 11 (4))

**Age**

1. A person is not eligible to be appointed or continue as a member of the Board if the person has attained the age of 70 years.

**Chairperson and deputy chairperson**

2. (1) The New South Wales and Victorian Ministers, on the recommendation of the Board, must appoint a member of the Board as chairperson of the Board for such period as the Ministers determine.

(2) The New South Wales and Victorian Ministers, on the recommendation of the Board, must appoint a member of the Board as deputy chairperson of the Board for such period as the Ministers determine.

**Remuneration**

3. A member of the Board, unless an officer or employee of the New South Wales Public Service, is entitled to the remuneration and allowances (if any) fixed jointly by the New South Wales and Victorian Ministers.

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SCHEDULE 2 - CONSTITUTION OF THE BOARD - *continued*

**Term of office and re-appointment**

4. The term of office of a member of the Board is 3 years and a member is eligible for re-appointment if otherwise qualified.

**Vacancies, resignation, removal from office**

5. (1) The office of a member of the Board becomes vacant:

(a) if the member:

- (i) without the Board's approval, fails to attend 2 consecutive meetings; or
- (ii) becomes bankrupt; or
- (iii) is convicted of an offence punishable by penal servitude or imprisonment for 12 months or more; or

(b) when the member attains 70 years of age.

(2) A member of the Board may resign by writing delivered to the New South Wales or Victorian Minister.

(3) The New South Wales and Victorian Ministers acting jointly may remove a member of the Board from office if the member:

- (a) becomes incapable of performing his or her duties; or
- (b) is negligent in the performance of those duties; or
- (c) engages in improper conduct; or
- (d) fails to disclose a pecuniary interest as required by clause 6 of Schedule 3; or
- (e) is convicted of an offence against this Act.

**Casual vacancy**

6. (1) If the office of a member becomes vacant otherwise than because of the expiry of the term of office of the member, a person nominated for appointment to the office as provided by section 11 is to be appointed to fill the vacancy and to hold office, subject to this Act, for the remainder of the term.

**SCHEDULE 2 - CONSTITUTION OF THE BOARD - *continued***

(2) If the vacancy occurs within 6 months before the end of the term of office of the member, the office may be left vacant for the remainder of the term.

**SCHEDULE 3 - MEETINGS OF THE BOARD**

(Sec. 11(5))

**Chairperson**

1. The chairperson of the Board, or in his or her absence, the deputy chairperson, or in the absence of both the chairperson and the deputy chairperson a member appointed by the Board, must preside at a meeting of the Board.

**Quorum**

2. At a meeting of the Board, 5 members constitute a quorum of the Board.

**Frequency of meetings**

3. The Board must meet at least once every 3 months.

**Voting**

4. A question arising at a meeting is required to be determined by a majority of votes of members present and voting on that question, and if voting is equal, the person presiding has a casting, as well as a deliberative, vote.

**Minutes of meetings to be kept**

5. The Board must ensure that:

- (a) minutes are kept of each meeting; and
- (b) a copy of the unconfirmed minutes of each meeting is sent to the New South Wales and Victorian Ministers within 2 weeks after the meeting; and
- (c) a copy of the confirmed minutes of each meeting is sent to the New South Wales and Victorian Ministers within 2 weeks after the minutes are confirmed.

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**SCHEDULE 3 - MEETINGS OF THE BOARD - *continued***

**Pecuniary interests of members**

6. (1) A member who has a pecuniary interest in a matter being considered or about to be considered by the Board must, as soon as practicable after the relevant facts have come to his or her knowledge, declare the nature of the interest at a meeting.

(2) Subclause (1) does not apply in the case of a member who is engaged in the production of citrus fruit if the interest is no greater than that of any other person so engaged.

(3) The person presiding at a meeting at which a declaration is made must cause a record of the declaration to be made in the minutes of the meeting.

(4) After a declaration is made by a member:

- (a) the member must not be present during any deliberation with respect to that matter, unless the Board otherwise directs; and
- (b) the member is not entitled to vote on the matter; and
- (c) if the member does vote on the matter, the member's vote must be disallowed.

**Board to have general power to regulate its own proceedings**

7. Subject to this Act, the Board may regulate its own proceedings.

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 82)

**Part 1 - Regulations**

**Savings and transitional regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued***

- (a) to affect, in a manner prejudicial to any person (other than the State of New South Wales or an authority of that State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State of New South Wales or an authority of that State) in respect of anything done or omitted to be done before the date of its publication.

**Part 2 - Provisions relating to the dissolution  
of The Murray Valley (N.S.W.) Citrus Marketing Board**

**Definitions**

2. In this Schedule:

"**new Board**" means the Murray Valley Citrus Marketing Board constituted by this Act;

"**old Board**" means The Murray Valley (N.S.W.) Citrus Marketing Board;

"**relevant day**" is the day on which section 9 commences.

**Dissolution of the old Board**

3. On the relevant day:

- (a) the old Board is dissolved; and
- (b) all assets, rights, liabilities and obligations of the old Board become assets, rights, liabilities and obligations of the new Board; and
- (c) any act, matter or thing done or omitted to be done before that day by, to or in respect of the old Board is, to the extent that that act, matter or thing has any effect, to be taken to have been done or omitted to be done by, to or in respect of the new Board.

**Members of the old Board**

4. A person who, immediately before the relevant day, held office as a member of the old Board:



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**SCHEDULE 4 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued***

- (a) ceases to hold office as such on that day; and
- (b) is not entitled to any remuneration or compensation by virtue of having lost that office.

**Superseded references**

5. In any other Act, or in any instrument made under any Act or in any other document of any kind, a reference to the old Board is, on and after the relevant day, to be read as a reference to the new Board.

**Staff of the old Board**

6. Any person who, immediately before the relevant day, was employed by the old Board becomes, on that day, an employee of the new Board with the same rights and entitlements and subject to the same obligations as those applicable to the person immediately before that day.

**Pending legal proceedings**

7. Any legal proceedings brought by or against the old Board and pending immediately before the relevant day are, on that day, to be treated as legal proceedings brought by or against the new Board.

**Audit of old Board's accounts**

8. In relation to the accounts of the old Board for the Board's financial year that, but for this Act, would have ended on or after the relevant day:

- (a) the accounts are to be audited by the New South Wales Auditor-General in the same way as if this Act had not been enacted; and
- (b) the New South Wales Auditor-General has those powers and functions that he or she would have had but for the enactment of this Act; and
- (c) the New South Wales Auditor-General has, in relation to members and employees of the new Board, any powers or functions that he or she could have exercised or performed in relation to members and employees of the old Board but for the enactment of this Act.

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued***

**Repeal of certain Regulations**

9. On the relevant day, The Murray Valley (N.S.W.) Citrus Marketing Board Regulations are repealed.

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[*Minister's second reading speech made in -  
Legislative Assembly on 25 October 1989  
Legislative Council on 15 November 1989*]