

MURRAY VALLEY CITRUS MARKETING BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of the Bill is to dissolve The Murray Valley (N.S.W.) Citrus Marketing Board and to provide for the establishment of a new corporation, to be known as the Murray Valley Citrus Marketing Board, which will be responsible for the orderly marketing of citrus fruit grown on both the New South Wales and Victorian sides of the Murray Valley. The Victorian Parliament has enacted legislation which contains provisions complementary to this Bill.

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be proclaimed.

Clause 3 defines various terms used in the Bill. Of particular significance is the definition of "citrus fruit". Citrus fruit is defined to mean oranges, grapefruit and mandarins (unless excluded by a declaration under proposed section 5) and any other variety of citrus fruit declared to be citrus fruit under proposed section 5. Also of significance is the definition of "New South Wales production area" or "production area" which defines the New South Wales territorial jurisdiction of the Board. The New South Wales production area is defined to mean those local government areas for the time being listed in proposed Schedule 1.

Clause 4 declares that it is the intention of Parliament to implement a joint New South Wales and Victorian scheme for marketing citrus fruit grown in the Murray Valley. The clause also declares that it is the intention that the Act should not be amended in a manner that will substantially preserve the uniformity of the joint scheme.

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Clause 5 provides a mechanism for declaring an additional variety of citrus fruit to be citrus fruit for the purposes of the proposed Act or for declaring a variety not to be citrus fruit. (This clause should be read in conjunction with the provisions of Part 7 of the Bill relating to petitions for polls to exclude or include a commodity.)

Clause 6 provides a mechanism for declaring land to form part of the production area or declaring land to be excluded from the production area. (This clause should also be read in conjunction with the provisions of Part 7 of the Bill relating to petitions for polls to exclude a district from, or add a district to, the New South Wales production area.)

Clause 7 provides that the proposed Act will not apply to citrus fruit grown by a producer for the producer's own use or to citrus fruit grown by a small producer as defined in proposed section 3.

Clause 8 will enable the New South Wales Minister to delegate any of that Minister's powers under the proposed Act.

PART 2 - MURRAY VALLEY CITRUS MARKETING BOARD AND SELECTION COMMITTEE

Clause 9 constitutes a body corporate to be known as the Murray Valley Citrus Marketing Board. The Board will have the usual attributes of a body corporate but will not represent the Crown.

Clause 10 will require the common seal of the Board to be kept in the Board's custody and used only as authorised by the Board.

Clause 11 deals with the membership of the Board. It provides for the Board to consist of 9 members appointed jointly by the Governors of New South Wales and Victoria, of whom:

- * 1 is to be a person nominated by the New South Wales Minister;
- * 1 is to be a person nominated by the Victorian Minister;
- * 4 are to be producers representing the interests of producers and who are nominated by the Selection Committee (to be established under clause 12); and
- * the remaining 3 are to be persons nominated by the Selection Committee.

The Selection Committee will be required to give reasons in writing for nominations and to ensure that as far as possible all regions of the New South Wales and Victorian production areas are represented.

Clause 12 provides for the establishment of the Selection Committee. The Selection Committee will consist of 5 persons appointed jointly by the New South Wales and Victorian Ministers on the nomination of specified bodies or persons. The Committee will not be able to make a decision unless all members are present. Allowances payable to members are to be paid by the Board.

PART 3 - FUNCTIONS AND POWERS OF THE BOARD

Clause 13 sets out the goals of the Board in carrying out its functions under the proposed Act.

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Clause 14 sets out the functions of the Board. The principal functions of the Board will be to promote the marketing of citrus fruit grown in the Murray Valley and citrus products derived from that fruit and to make arrangements for the marketing and processing of that fruit and those fruit products.

Clause 15 sets out the general powers of the Board and some of its particular powers as well.

Clause 16 provides a mechanism to enable the Board to collect levies under the Commonwealth Horticultural Levy Collection Act 1987 and the Horticultural Export Charge Collection Act 1987. These levies finance the activities of the Australian Horticultural Corporation and the Horticultural Research and Development Corporation.

Clause 17 will enable the Board to delegate its powers to members or employees of the Board.

Clause 18 will enable the Board to employ staff (including a chief executive) and to arrange for the use of the services of officers and employees of the Public Service or any public authority. The chief executive will be responsible for the administration of the Board, subject to the Board's general direction and control.

Clause 19 will enable the Board to engage in joint ventures. The Board will be required to comply with any guidelines determined by the New South Wales and Victorian Ministers and certain other requirements which are specified in the clause.

Clause 20 contains special requirements relating to any limited company in which the Board has a controlling interest. The accounts of the company will be required to be audited by the New South Wales Auditor-General, the Board will have to include a copy of the company's accounts in its annual report and copies of certain documents will have to be provided to the New South Wales Treasurer.

Clause 21 will enable the Board to deal in primary products other than citrus fruit grown in the New South Wales production area with the approval of the New South Wales and Victorian Ministers and subject to any conditions determined by those Ministers. The Board will not be permitted to deal in a primary product for which another board or a committee is constituted, except with the consent of that board or committee.

Clause 22 will enable the Board, with the approval of the New South Wales and Victorian Ministers, to act as an agent for the purpose of marketing any commodity (as defined in proposed section 3) or any other primary product. The Board will not be allowed to act as an agent for a commodity for which another board or a committee is constituted, except with the consent of that board or committee.

Clause 23 will enable the Board, with the approval of the New South Wales and Victorian Ministers, to act as an agent and enter into arrangements for the purpose of purchasing equipment, machinery, planting material, fertilizer and other things for use in the production of citrus fruit.

Clause 24 will enable the Board to enter into and deal in futures contracts with the approval of the New South Wales and Victorian Ministers and in accordance with any guidelines determined by those Ministers.

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Clause 25 will require the Board to consult with representatives of the citrus industry before it exercises powers under proposed section 22, 23 or 24.

Clause 26 will prohibit the Board from using its funds in connection with the politics of a political party and from becoming affiliated with any body whose objects support the politics, program or aims of a political party. Any contravention of the provisions of the clause could result in the dismissal of the Board under proposed section 50.

Clause 27 will enable the Board to create financial reserves in accordance with any conditions determined by the New South Wales and Victorian Ministers.

Clause 28 will enable the Board to obtain financial accommodation in accordance with guidelines approved by the New South Wales and Victorian Ministers after consultation with the Treasurers of both States.

Clause 29 will enable the Board to invest money in any manner approved by the New South Wales and Victorian Ministers after consultation with the Treasurers of both States.

PART 4 - MARKETING OF CITRUS FRUIT

Clause 30 will enable the Board to appoint persons as approved receivers. The Board will be required to publish annually a list of approved receivers in a newspaper circulating in the New South Wales production area. The list is also to be available for inspection at the Board's office.

Clause 31 will empower the Board:

- * to determine grades, classes or descriptions of citrus fruit and citrus products;
- * to recommend minimum wholesale prices of citrus fruit grown in the New South Wales production area; and
- * to fix a minimum price and terms and conditions of payment for the sale of citrus fruit grown in that production area for processing into citrus products.

Clause 32 will make it an offence to purchase citrus fruit grown in the New South Wales production area from a producer or approved receiver for processing into citrus products at a price that is less than the minimum price fixed by the Board.

Clause 33 will make it an offence for a producer to sell citrus fruit grown in the New South Wales production area to anyone other than an approved receiver (unless the written consent of the Board has been obtained), or for a person (other than an approved receiver) to purchase citrus fruit grown in the production area from a producer who is not authorised by the Board to sell citrus fruit to a person other than an approved receiver.

Clause 34 deals with the duties of approved receivers. Approved receivers will be required to make payments to the Board in relation to citrus fruit received by them from producers of such amounts as the Board determines. In the case of citrus fruit sold for processing into citrus products, approved receivers will have to make payments to producers on such terms and conditions as are determined by the Board. Approved receivers will also be obliged to comply with any instructions of the Board relating to the marketing or processing of citrus fruit.

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Clause 35 provides that the Board will not be able to increase payments required to be made by approved receivers to the Board unless producers are given at least 3 months' notice, and, where a meeting of producers has been requested to consider the matter, the meeting has been convened.

PART 5 - ACCOUNTS AND REPORTS

Division 1 - Accounts and audit of accounts

Clause 36 will require the Board to keep proper accounts and records and sets out specific requirements which must be observed. The Board will also have to comply with such financial and accounting standards as are determined by the New South Wales and Victorian Ministers after consultation with the Treasurers of both States.

Clause 37 will require the Board to prepare and forward to the New South Wales and Victorian Ministers an annual report containing a report on its operations and audited financial statements. The New South Wales Minister will be required to lay each annual report before Parliament and to advise Parliament of any failure by the Board to submit a report.

Clause 38 will require financial statements to be audited by the New South Wales Auditor-General or, by arrangement, by the Victorian Auditor-General. The Auditor-General concerned will have the necessary powers to carry out such an audit. The costs of audits are to be borne by the Board.

Division 2 - 5-year operational plans

Clause 39 will require the Board to prepare 5-year operational plans. The first plan will be required to be submitted to the New South Wales and Victorian Ministers within 12 months after the commencement of the clause, and thereafter with each annual report. Each plan will have to include performance indicators and be provided to producers on request.

Division 3 - Management audits

Clause 40 will require management audits to be carried out, as approved or directed by the New South Wales and Victorian Ministers, for the purpose of assessing the extent to which the Board's activities are being carried on in an efficient, economical and proper manner.

Clause 41 sets out the powers of persons who undertake management audits. It will be an offence to obstruct those persons, to refuse to comply with lawful requirements of those persons or to provide any information that is false or misleading.

Clause 42 will require a report to be made on the conduct, findings and any recommendations of a management audit.

Clause 43 will require a copy of each report to be given to the New South Wales and Victorian Ministers and, unless the Ministers decide otherwise, to the Board.

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Division 4 - Information generally

Clause 44 will require the Board to give to the New South Wales Minister such information, reports and documents relating to the Board's policies and activities as that Minister requests.

PART 6 - REVIEW AND DISSOLUTION OF THE BOARD

Clause 45 specifies the circumstances in which it will be possible to dissolve the Board. The Board may be dissolved:

- as a result of a poll under proposed section 46 or 47; or
- * at the request of the Board under proposed section 48; or
- on the recommendation of the New South Wales Minister under proposed section 49.

Clause 46 will require the Minister to direct periodically that a poll be taken of registered producers on the question of whether the Board should be dissolved. A poll will have to be taken 6 months before the end of the Board's second term of office and 6 months before the end of each alternate term occurring subsequently.

Clause 47 will require the New South Wales Minister to direct that a poll be taken on the question of the dissolution of the Board if the Minister has received a petition during the permitted period (as defined in clause 3) which represents the views of at least half of the registered producers in the New South Wales production area, or if the Minister has received notice that a similar petition has been received in Victoria. A poll will be required to be held on the same day as that on which any corresponding poll is held in Victoria.

Clause 48 will enable the Board to request the New South Wales Minister to take action to dissolve the Board. The Minister will be able to refuse to consider such a request if it is not confirmed by the Board within a period determined by the Minister.

Clause 49 deals with the winding-up and dissolution of the Board. It will enable the Governor-in-Council to make an order to direct the Board to wind-up its affairs:

- * if the New South Wales Minister is satisfied that more than half the registered producers at polls in New South Wales and Victoria favour the dissolution of the Board; or
- if the Board has requested that it be dissolved; or
- * if the New South Wales Minister is satisfied that it is in the best interests of producers that the Board be dissolved.

Provision is made for the appointment of a liquidator for the purpose of the winding-up. If the New South Wales Minister is of the opinion that the affairs of the Board have been wound up, the Governor-in-Council will be empowered to make an order dissolving the Board. Money and assets of the Board are to be distributed among citrus grower organisations as the Governor-in-Council specifies and directs. An order will not take effect until a similar order is made in Victoria. In certain circumstances the New South Wales Minister will be required to report to the New South Wales Parliament on the dissolution of the Board.

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Clause 50 deals with the dismissal of the Board. The Governor-in-Council will be empowered to make an order removing all members from office. An order will not take effect until a similar order is made in Victoria. The Minister will be required to report to the New South Wales Parliament on the dismissal of the Board and the reasons for the dismissal.

Clause 51 provides a mechanism for appointing an administrator if all the members have vacated their offices or been removed from office, or if the New South Wales Minister is satisfied that it would be in the best interests of the Board to appoint an administrator. An order appointing an administrator will not take effect until a similar order is made in Victoria.

PART 7 - REGISTRATION AND POLLS

Division 1 - Registration

Clause 52 deals with the registration of producers. All producers (other than small producers as defined in proposed section 3) will have to be registered annually with the Board. In the case of a business which is run by more than one producer, it will be sufficient for only one of those producers to be registered. A producer will be prohibited from carrying on business at a place not registered as a place of business of the producer.

Clause 53 will empower the Board to register a change in the place where the producer carries on business as a producer.

Division 2 - Polls

Clause 54 will require the New South Wales Minister to direct a poll to be held on the question of whether a variety of citrus fruit should cease to be citrus fruit for the purposes of the proposed Act if a petition has been received within the permitted period (as defined in proposed section 3) from a majority of all registered producers of that commodity in the New South Wales production area. Notice of a petition will be required to be given to the Victorian Minister.

Clause 55 provides a mechanism for taking a concurrent separate poll of other producers on the same question on which a poll is taken under proposed section 54.

Clause 56 provides that, if the New South Wales Minister is satisfied that a majority of registered producers in the New South Wales production area who produce a specified commodity or, if a separate poll was held, a majority of registered producers who actually voted, voted in favour of a proposal that the commodity be declared not to be a citrus fruit, that Minister will be required to recommend to the Governor-in-Council that an order be made which will give effect to the proposal. The power to make that order is to be conferred by proposed section 5.

Clause 57 will require the New South Wales Minister to direct a poll to be held on the question of whether an additional variety of citrus fruit should be citrus fruit for the purposes of the proposed Act if a petition has been received within the permitted period (as defined in proposed section 3) from a majority of all registered producers in the New South Wales production area who produce that commodity. Notice of a petition will be required to be given to the Victorian Minister.

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Clause 58 provides a mechanism for taking a concurrent separate poll of other producers on the same question on which a poll is taken under proposed section 57.

Clause 59 provides that, if the New South Wales Minister is satisfied that a majority of registered producers in the New South Wales production area who produce a specified commodity or, if a separate poll was held, a majority of registered producers who actually voted, voted in favour of a proposal to declare a commodity grown within that area to be citrus fruit, that Minister will be required to recommend to the Governor-in-Council that an order be made which will give effect to the proposal. The power to make such an order is to be conferred by proposed section 5.

Clause 60 will require the New South Wales Minister to direct a poll to be held on the question of whether a district should be excluded from the New South Wales production area if a petition has been received within the permitted period (as defined in proposed section 3) from a majority of all registered producers in that district. Notice of the petition will be required to be given to the Victorian Minister.

Clause 61 provides a mechanism for taking a concurrent separate poll of other producers on the same question on which a poll is taken under proposed section 60.

Clause 62 provides that, if the New South Wales Minister is satisfied that a majority of registered producers in a specified district or, if a separate poll was held, a majority of registered producers who actually voted, voted in favour of a proposal to exclude the district from the New South Wales production area, that Minister will be required to recommend to the Governor-in-Council that an order be made which will give effect to the proposal. The power to make such an order is to be conferred by proposed section 6.

Clause 63 will require the New South Wales Minister to direct a poll to be held on the question of whether a specified district should form part of the New South Wales production area if a petition has been received within the permitted period (as defined in proposed section 3) from a majority of all producers in that district who produce citrus fruit. Notice of the petition will be required to be given to the Victorian Minister.

Clause 64 provides a mechanism for taking a concurrent separate poll of other producers on the same question on which a poll is taken under proposed section 63.

Clause 65 provides that, if the New South Wales Minister is satisfied that a majority of producers in a district or, if a separate poll was held, a majority of producers who actually voted, voted in favour of a proposal to include the district in the New South Wales production area, that Minister will be required to recommend to the Governor-in-Council that an order be made which will give effect to the proposal. The power to make such an order is to be conferred by proposed section 6.

Clause 66 will require the New South Wales Minister to publish a report of any proposal to which a poll relates before the date fixed for the taking of the poll.

Clause 67 contains provisions relating to the conduct of polls, the preparation of rolls and voting at polls.

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Clause 68 will require the Board to pay the costs and expenses of polls.

PART 8 - MISCELLANEOUS PROVISIONS

Clause 69 will enable the Board with the approval of the New South Wales and Victorian Ministers to appoint persons as authorised officers.

Clause 70 sets out the powers that authorised officers will have under the proposed Act. They will have the authority to enter and search premises (other than residential premises) used in connection with the storage or sale of citrus fruit grown in the New South Wales production area, and to exercise specified powers on those premises.

Clause 71 provides that it will be an offence:

- * to delay or obstruct an authorised officer; or
- * to refuse to comply with a lawful requirement; or
- * to give false or misleading information in response to a lawful requirement.

Clause 72 will empower members of the Police Force to stop and detain motor vehicles in which it is believed there is any citrus fruit or documents relating to citrus fruit grown in the total production area.

Clause 73 deals with annual general meetings. The clause will require the Board to hold at least one general meeting each year of registered producers and approved receivers. At least 42 days' notice of a meeting will be required to be given. It will be necessary for the notice to invite submission of items for discussion. Copies of the Board's latest annual report and plan of operations will be required to be given to registered producers and approved receivers before a meeting.

Clause 74 will enable the Board to require, by notice in writing, registered producers and approved receivers to keep such records and supply such information as the Board determines.

Clause 75 will prohibit a member or employee, or a former member or former employee, of the Board from disclosing official information except in the normal course of business of the Board or when authorised to do so. A member or employee of the Board will be prohibited from using such information for that person's or another person's advantage.

Clause 76 will prohibit a member or employee of the Board from receiving or being given any payment or consideration to act contrary to his or her duty.

Clause 77 provides that, where a body corporate contravenes a provision of the proposed Act, any person concerned in the management of the body who knowingly authorised or permitted the contravention is to be regarded as having contravened the same provision (and thus be guilty of an offence).

Clause 78 is an evidentiary provision relating to statements and documents that can be used in proceedings under the proposed Act.

Clause 79 provides for prosecutions for offences against the proposed Act to be dealt with before a Local Court constituted by a Magistrate sitting alone.

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Clause 80 contains provisions relating to the due service of notices and documents.

Clause 81 will confer on the Governor-in-Council power to make regulations. Such regulations will only be able to be made on the joint recommendation of the New South Wales and Victorian Ministers.

Clause 82 will give effect to Schedule 4, which contains savings and transitional provisions.

Schedule 1 lists the local government areas which will initially comprise the New South Wales production area as defined in proposed section 3.

Schedule 2 contains provisions relating to the constitution of the Board.

Schedule 3 contains provisions relating to meetings of the Board.

Schedule 4 contains savings and transitional provisions. Under the Schedule, The Murray Valley (N.S.W.) Citrus Marketing Board will be dissolved and The Murray Valley (N.S.W.) Citrus Marketing Board Regulations will be repealed. The assets and liabilities of the existing Board will be transferred to the new Board.
