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CITRUS INDUSTRY ACT 1991

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National Competition Policy Review

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Final Report

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The views expressed in this Report are the views of the Review Panel and do not necessarily represent the views of the South Australian Government. Any action taken in anticipation of the outcomes of the review process is at the risk of persons taking such action.

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INTRODUCTION

The Obligation to Review Legislation

This Consultation Paper concerns the review of the *Citrus Industry Act 1991* and *Citrus Industry Regulations 1992*. The review is conducted in accordance with the obligation upon the South Australian Government under clause 5 of the Competition Principles Agreement. The Competition Principles Agreement is one of three agreements signed by the Commonwealth, State and Territory Governments in April 1995. These three agreements give effect to the National Competition Policy.

The obligation contained in clause 5 of the Competition Principles Agreement concerns the review and, where appropriate, reform of existing legislation which restricts competition. The 'guiding principle' in undertaking this review is that legislation should not restrict competition unless:

a) the benefits of the restriction to the community as a whole outweigh the costs; and
b) the objectives of the legislation can only be achieved by restricting competition.

The Terms of Reference for this review reflect the requirements of the Competition Principles Agreement (see Appendix 1).

The Process of Reviewing Legislation

The process for reviewing legislation is set out in clause 5 of the Competition Principles Agreement. This process must be followed for this review to satisfy the obligation to review and, where appropriate, reform legislation which restricts competition.

Given the 'guiding principle' set out above, the underlying premise of this review is that competition should be unrestrained. That is, competition should be free from government regulation.

The Review Panel is bound by the obligation contained in clause 5 of the Competition Principles Agreement to review the legislation on the basis that, ideally, competition within markets should not be restricted by governments and where competition within markets is restricted, this should be justified by demonstrating that the public benefits of the restrictions outweigh the costs generated by the restrictions.

The inquiry undertaken by the Review Panel is narrow in compass. The review examines only the impact of legislative restrictions upon competition in markets. The review does not examine the policy behind the legislation, except to identify the objectives of the legislation and the public benefits which are to be achieved by restricting competition.

Sections referred to in this Report are sections of the *Citrus Industry Act, 1991* unless otherwise indicated. Regulations referred to in this Report are the *Citrus Industry Regulations 1992*, unless otherwise indicated.

Glossary

The following terms are defined for the purposes of this Report:

- "**Board**" means the Citrus Board of South Australia;
- "**citrus fruit**" means citrons, lemons, limes, grapefruit, mandarins, oranges, sevilles and tangerines or a hybrid on any of the these fruits;
- "**grower**" means a person who carries on the business of producing citrus fruit for sale;
- "**packer**" means a person who carries on the business of packing citrus fruit for sale by wholesale;
- **"processor"** means a person who carries on the business of processing citrus fruit into a citrus fruit product for sale by wholesale;
- **"product"** means in relation to citrus fruit, means a substance which is derived, wholly or in part , from citrus fruit;
- "**retailer**" means a person who carries in the business of selling citrus fruit by retail, but does not include a grower who sells citrus fruit by retail pursuant to a permit under the *Citrus Industry Act, 1991*;
- "**volume retailer**" means a retailer who, during the twelve months period ending 30 April each year, purchases more than 10,000 thirty litre cartons of citrus fruit (or equivalent) for the purpose of sale by retail; and
- "**wholesaler**" means a person who carries on the business of selling citrus fruit or a citrus fruit product by wholesale, but not as a packer.

PART 1: CENTRAL ISSUES

1.1. Objectives of the Act

The Second Reading Speech which was given in respect to the *Citrus Industry Bill* stated that the object of the Bill was to provide for the establishment of a new, restructured Citrus Board to:

b) organise and develop the citrus industry and the marketing of citrus fruit,

c) regulate the movement of citrus fruit from growers to wholesalers;

d) set grade and quality standards for fruit,

f) provide for powers to be used to set prices and terms of payment for processing fruit in the event of market failure; and

e) increase the flow of production and marketing information throughout the industry.[1]

The *Citrus Industry Act* established the existence of the Board with members appointed by the Governor having extensive experience in a knowledge in the production and marketing of citrus fruit or citrus fruit products or any other food stuff.

The *Citrus Industry Bill* achieved its stated objectives as outlined above. However, it is the view of the Review Panel that the objectives associated with the organisation and regulation of the Citrus industry are inappropriate in light of the Principles of National Competition Policy.

The objective of the Act should be in terms of those public benefits which may only be achieved through the application of legislation. The Review Panel endorses the promotion of awareness of plant health issues and facilitation of marketing and enhanced technological innovation in the industry, as the appropriate objectives of the Act. It is also foreseeable that the Board may also undertake the role of assisting with the implementation of the Quality Assurance scheme under the *Food Act* as well as the provision of industry strategic planning.

Section 13 of the *Citrus Industry Act* states that the Board has the following functions:

(a) To develop policies for -

(i) the orderly marketing of citrus fruit and citrus fruit products; and
(ii) achieving and maintaining minimum quality standards for citrus fruit and citrus fruit products;

[1] *Hansard*, 9 April 1991 at page 4159.

(b) To support and encourage the export of citrus fruit and citrus fruit products from the State;

(c) To collect information relating to the production and marketing of citrus fruit and citrus fruit products within Australia and overseas, including :-

(i) the current wholesale market price;
(ii) trends and production in marketing; and
(iii) the estimated future demand for, and production and price of, citrus fruit and citrus fruit products within Australia and overseas, and to provide that information to registered persons and to such other persons or classes of persons as the Board thinks fit.

(d) to undertake, assist or encourage the promotion of, and encourage the consumption of, citrus fruit and citrus fruit products;

(e) to undertake, assist or encourage-

(i) research into citrus fruit, citrus fruit products and the citrus industry generally; and
(ii) the development of citrus fruit, citrus fruit products and the citrus industry;

(f) to provide information, training, review of procedures or advice to assist growers, packers, processors and other persons involved in the citrus industry -

(i) to improve the production or marketing of citrus fruit or citrus fruit products; or
(ii) to comply with the *Citrus Industry Act* or a law of the Commonwealth or of another State or a Territory of the Commonwealth relating to the citrus industry;

(g) to perform the other functions assigned to the Board by or under this Act or by the Minister.

The *Citrus Industry Regulations 1992* impose specific requirements on packers and retailers of citrus fruit in respect of the premises, facilities and equipment used by a packer and in respect of the sale of citrus fruit. Much of the regulatory restrictions on processing and packing businesses are specified by reference to the *Export Control (Fresh Fruits and Vegetables) Orders* made under the *Commonwealth Export Control Act 1992.*

The Review Panel has determined that the functions outlined in subsection 13(a) of the Act relating to the orderly marketing of the citrus fruit and citrus fruit products and the setting of quality food standards should not be undertaken by the Board. Further, it is the view of the Review Panel that the functions of the Board need to reflect the desired objectives of the Act outlined above.

1.2. Markets

The purpose of legislation review is to analyse the impact of legislative restrictions upon competition in markets.

Markets are defined in relation to their four elements:

Product:
What product is the subject of the market and what products are substitutable for that product?

Functional Level:
Is the market at the production, wholesale or retail level?

Geographic Area:
Is the market regional, Australian or global?

Temporal:
What changes are likely to occur within the market over time?

The term "markets" is not synonymous with "industries". Indeed some "markets" may encompass several industries. For example, the beef production industry and the lamb production industry are arguably in the same markets (eg the production of meat for human and pet consumption market), as the products of these industries are generally substitutable, and the geographic area, temporal aspect and functional level are the same in relation to both industries.

The term "market" is also not synonymous with the "market place". The term "market" in the context of this Consultation Paper does not refer to physical locations or premises, but rather to the economic concept of a mechanism facilitating the exchange of goods and services.

Competition within markets is competition in the broad sense of the ability to enter and participate in a market, not in the sense of individual rights to participate in a market. Competition policy, therefore, is not concerned with marginal behaviour but, rather, is concerned with broader competitive outcomes. The potential impact of a legislated restriction upon an individual's participation in a market, therefore, is only relevant to legislation review where the impact on the individual is symptomatic of broader anti-competitive outcomes caused by the legislation. This is relevant where the subject of the review is legislation which requires the licensing of individuals to undertake certain activities.

The restrictions contained in the *Citrus Industry Act* have the potential to impact on markets in South Australia and any other markets which involve any activity that is regulated or prohibited by the *Citrus Industry Act*. The restrictions can be categorised generally under the following headings:

- the requirement to be registered (this applies to growers, packers, processors, wholesalers and volume retailers);

- restrictions on selling, purchasing and packing; and
- marketing orders in respect of citrus fruit sold for processing.

A market is that field of actual or potential transactions between buyers and sellers amongst whom there can be strong substitution at least in the long run, if given a sufficient price incentive.

This analysis is as follows:

Citrus Production

Product
Although citrus fruit production may operate in its own market the better view is that it operates in the wider fruit market. The individual fruits which constitute citrus fruit are unlikely to have supply substitutability due to the capital costs required to change and the time it would take. The demand substitutability although not beyond doubt is clearer as the individual components of citrus fruit are largely substitutable for each other and one fruit type is substitutable for another. If the cost of one type of fruit increased significantly then it is most likely that another could be used.

Functional Level
The market operates at the production stage and includes growers of fruit.

Geographical Area
The market operates world-wide.

Temporal
Immediate considerations are the only relevant factors to this market.

1.2.2 Wholesale Fruit

The wholesale fruit market exists as for production but operates in the wholesale arena. The geographic area in which it operates is once again global.

Retail Fruit

The retail fruit market also exist as for production except that the geographical area tends to be regional.

Processed Citrus Fruit

Product
Products which derive wholly or partly from citrus fruit exist primarily within the same market. For example citrus fruit concentrate is not substitutable with other fruit concentrates, and it is difficult to see in the event of a significant price rise of concentrate what would be substitutable for it.

Geographic Area
The geographic area of the processed citrus fruit market is global.

Functional Level
Wholesale

Temporal
There are no temporal issues which may affect the current status quo.

Retail Processed Citrus Fruit

Product
Processed citrus fruit operates as a small part of the numerous and separate processed foods markets e.g. tinned fruit, jams, drinks. Each are highly substitutable on both the demand and supply side.

Geographical Area
Global

Functional Level
Retail

Temporal
See above.

Citrus Fruit Packing Services Market

Product
The packers of citrus fruit operate in their own market as the electronic sophistication of the packing equipment means that they specialise in the citrus Fruit arena.

Geographical Area
The market operates at a regional level.

Functional Level
This market operates across the three functional areas of production, retail and wholesale.

Temporal
Immediate considerations are the only relevant factors to this market.

1.3. Restrictions

Restrictions upon competition are of three types:

a) barriers to entering (or re-entering) markets;

b) restrictions on competition within markets; and

c) discrimination between market participants.

Each of the restrictions identified in the course of this review has been identified in terms of these theoretical types of restrictions. Such categorisation is useful for analysing the impact of the restriction upon competition in the relevant market.

For the purposes of this review, legislative restrictions have been assessed as "trivial", "intermediate" or "serious".

A **"trivial"** restriction on competition imposes, at most, an insignificant cost upon the competitive process relative to the 'natural commercial cost of doing business in the relevant market'. At lowest level, it may be a restriction on competition simply because it fits an analytical pattern, but on examination, has no practical adverse impact on relevant markets. A categorisation as 'trivial' carries with it an intuitive cost-benefit analysis of net public benefit, given that relevant markets have been identified and the objectives of the legislation are known. However, if an Act contains administrative or reporting burdens that are not necessary to achieve the objects of the Act, the Government has required that they should be removed even if their cost is insignificant relative to the cost of doing business in the relevant market.

An **"intermediate"** restriction upon competitive imposes a cost upon the competitive process that is, at least, more than nominal or trivial. It has a measurable effect such that it is capable of altering, in an identifiable way, the dynamic characteristics of a market, or the level of economic activity in a market, or if there is a lack of countervailing power, it will be able to be identified that the cost is being passed on to consumers or suppliers.

A **"serious"** restriction upon competition imposes high costs on market participants and/or on consumers. This may occur because there are high barriers to entry or re-entry (such as numerical restrictions), because there is a prohibition on certain conduct that is commercially desirable, or by placing certain market participants in a highly advantageous position such that their market power is increased and they are able to demand a rent. Such a restriction will probably already be contentious and the subject of reaction by, at least, a segment of the public.

1.4. Alternatives to Legislation

In the context of the regulation of the citrus industry, alternative means of achieving the regulatory benefits can be looked at under three headings :

(i) No regulation;

(ii) Industry self regulation; and

(iii) Co-regulation.

Each of these alternatives need to be looked at in light of what the legislation itself sets out to achieve. The *Citrus Industry Act* addresses three areas:

(1) Standards which relate to the actual fruit being sold;

(2) The maintenance of an orderly market; and

(3) The collation and availability of information, the carrying out or encouraging of research and development and the provision of assistance to participants.

1.4.1. Standards relating to Citrus Fruit

The standards imposed under the *Citrus Industry Act* under this heading comprise two general components :

(i) Standards relating to food safety, such as hygiene standards and the construction and maintenance of premises, and the storage and use of potentially toxic chemicals; and

(ii) Standards relating to the consumption characteristics of citrus fruit products such as treatment and grading specifications.

Food Safety Standards

In respect of the standards relating to food safety, the standards imposed under the *Citrus Industry Act* largely duplicate public health laws and regulations of the State and local governments. The South Australian *Food Act 1985* obliges local councils to ensure proper observance, within their boundaries, of hygiene standards in relation to the sale, manufacture, transportation, storage and handling of food.

It is intended that the Food Act will adopt a unified national model for food safety management. Food producers will be assessed for risk and required to be part of HACCP-based[2] quality assurance (QA) programs implemented along the entire length of the value chain (from grower to retailer). The model will involve compliance with outcome-oriented standards, rather than inspection of inputs and production processes. The role of Government will be to assist each industry to set appropriate standards and to oversee the auditing of QA programs. It is unlikely that further industry-specific food safety regulation will be required.

The Board is assisting in accelerating HACCP's implementation by mandating it as a condition of registration for growers and packers from 1 May 2001.

Submissions received in response to the consultation process recognised both that the Board was assisting with the implementation of HCCCP's quality assurance programmes as well as the fact that the benefits provided by the Board will also be

[2] HACCP stands for Hazard Analysis Critical Control Point. It is an internationally accepted system for identification of and rapid response to food safety problems.

in the main provided through the operation of the Food Act. One submission suggested that the Board should continue to regulate food safety as it assists in the maintenance of consumer confidence in citrus products.

Standards relating to Other Quality Characteristics

The *Citrus Industry Act* imposes standards that relate to the consumption characteristics of citrus products. The maintenance of these standards is funded from levies and fees collected from producers and other market participants. In addition, some costs are incurred by Primary Industry & Resources South Australia and the Minister's office as part of the election of members to the Board. These costs can be regarded as the "transaction costs" of implementing the system of regulated standards, representing the cost of organisation and enforcement in the industry as opposed to the direct cost of production and packaging.

In theory the benefits of the Board exercising this power are that consumers would be assured of at least minimum quality fruit. In practice, the resources available to the Board do not allow it to adequately police a minimum quality standard scheme.

The growing momentum in the industry to adopt quality assurance systems requires cultural change across the whole industry and the recognition of the importance of providing a quality product, particularly in respect of exports. The setting of minimum quality standards may retard the process of cultural change and lead to greater confrontation between the Board and some sectors of the industry. It may also retard the industry's ability to respond to changing market demand, such as legitimate demand for fruit below the minimum quality. For example, parties may wish to develop markets for a particular type of fruit, such as that suitable for marmalade only, or for small fruit.

It has also been argued that the absence of regulation would lead to under-investment in product quality.

It was proposed in two of the submissions that if the Board did not maintain minimum quality standards then the market for citrus fruit may be at risk from substandard fruit deflating consumer confidence in the entire market. It was also suggested that the maintenance of quality standards promoted the use of growing techniques which produced high quality fruit and also allowed for ready access into overseas markets.

Other submissions, however argued that the costs incurred by the Board setting minimum standards outweigh the benefits and suggested that it should be the consumer who determined the acceptable minimum quality of citrus fruit. One submission pointed to the apple, pear and potato industries suggesting that even though these industries are not regulated there has been no apparent adverse affects.

Alternatives to government regulation as mechanisms for addressing problems of potential under-investment in product quality by individuals within the industry include:

(1) Investment in product quality and brand development by individual growers, packers and processors. This relies on consumer recognition of the improved quality and a consequent increase in brand reputation. The owners of the brand are then in a position to recoup their investment by charging a price premium. This alternative requires no regulation;

(2) Development of long-term "strategic alliance" contracts between individual firms along the value chain to define levels of product quality that meet the requirements of consumers. Pricing is structured in a way which compensates the firms adequately for investments in product quality. Under this approach it is not necessary for all of the firms (or even any of them) to build separate brands. The retailer's brand becomes paramount but, because that brand reputation depends crucially on the quality systems of the other firms in the alliance, the retailer is also locked into the alliance and has to continue paying the agreed price. As for the first alternative, no regulation is required;

(3) Industry co-operation for voluntary implementation of an industry-wide standard scheme (that is, industry self-regulation). Successful implementation generally occurs where there are a relatively small number of producers in the industry, products have a high degree of homogeneity, and any cheating or free-riding on the agreement is readily observable. For example, voluntary self-regulation works quite well for many of the professions in setting ethical standards. This is because one standard applies to all and because accusations of unethical behaviour travel fast and can be very damaging to a service-delivery business.

The relative effectiveness of each of these alternatives depends on characteristics of the industry including nature of the product, technology adopted, industry structure and the nature of the various markets.

1.4.1.1. Individual investment in product quality and brand development

There are significant economies of scale in brand building. Brands are expensive to develop and launch, so the greater the volume of produce using the brand, the lower the unit cost. Moreover, the more a firm spends on building its brand, the more careful it is likely to be in protecting its reputation, which is why people tend to trust well-known brands. Consequently, as a brand increases in market share, not only does the unit cost fall, but the effectiveness in extracting a price premium increases. This is the motivation behind brand leadership.

The citrus fruit industry in South Australia is characterised by a large number of growers, 41 packers and a smaller number of juice processors. The commercial reality is that only a few packers are ever going to achieve significant brand recognition or market penetration. Indeed, it is possible that the number of brands already existing in the market may be a source of confusion amongst consumers. The high number of brands in the local market may be partly the result of regulations under the Act requiring

labelling. This, in turn, may be impeding the development of "household name" citrus brands, such as Sunkist, Chiquita and CapeSpan.

There is also some argument that regulation reduces the need for packers to promote a quality image, encouraging instead a minimalist approach which delivers fruit just above the regulated standard.

Therefore in the absence of regulation this may increase. The general conclusion is that investment in product quality and brand development is being driven by market imperatives rather than by regulation and that larger firms will have a competitive advantage in recouping these investments. This is supported by the fact that it is the larger packers which have led the implementation of quality assurance systems in their businesses.

Notwithstanding the role of the Citrus Board in supporting the venture, the success of the RiverSun Group in the US market should also be seen not as the product of regulation but of adapting to market imperatives.

1.4.1.2. Contractual Specification of Quality Standards

Because of the commercial imperatives to capture scale economies in marketing, independent citrus growers will not be inclined to develop their own brands. Most packers and juice processors, on the other hand, will want to, but increasingly it may be efficient to pack under contract to supermarket chains or large fruit distribution companies using the brand labels of those customers. This is because large multinational firms are much better positioned to capture the scale economies in marketing.

These firms are being increasingly demanding in specifying product quality but, since many of the important quality characteristics are hard to measure at purchase, a long-term strategic alliance is an efficient way to get the quality that *their* customers demand. This allows a trial-and-error approach to getting the quality right and allows time for trust to be established between the two parties. For these reasons, strategic alliance contracting works very well in the relationship between grower and packer and between packer and distributor or retailer.

Strategic alliance contracting is rapidly becoming the hallmark of successful agricultural industries, particularly where the focus is on export. The trend is being led by the wine industry and is central to that industry's export success. In South Australia, most of the larger, export-oriented citrus packers have already implemented this arrangement, but other sections of the industry have not done so.

The submissions confirmed the importance of the development of strategic alliances to the future of the South Australian citrus fruit industry. However, it was also argued that the Board does not impede the formation of such alliances.

1.4.1.3. Voluntary Industry Co-operation

Industry-wide agreement on certain codes of practice, such as those involving chemical use, food safety standards and environmental management can be a valuable adjunct to legislation and to customer-specified standards. It can be particularly valuable in improving the public image and reputation of the industry as a whole. It is unlikely to be appropriate as the main method of quality specification, however, for the following reasons:

- the large number of growers (approximately 850 in SA) makes it difficult to reach the high level of unanimity required and, to be effective, such agreements really need to be national or, for citrus, at least covering the irrigated regions of SA, NSW, Victoria and Queensland;
- there is a great deal of variety in product specification and this is likely to increase. In short, oranges ain't just oranges!
- orchard management practices are difficult to monitor from the outside.

Submissions received agreed that the citrus industry was too fragmented to allow for voluntary self - regulation to operate effectively.

1.4.1.4. Co-Regulation

Co-regulation can be seen as a hybrid between voluntary industry co-operation and regulation. It can involve industry adoption of specific work practices aimed at achieving quality standards. Mandating of such standards by legislation can then ensure widespread compliance. The enforcement of these programs is implemented by trained employees knowledgeable in the area of quality assurance, rather than by inspectors.

The forthcoming national food safety code and the recently-adopted code for the SA meat industry are examples. They are based on industry-driven quality assurance schemes with formal audit requirements, but are backed up by legislation.

The submissions supported co-regulation of the citrus industry with some suggesting that the Board may have a role in the auditing of fruit standard compliance.

1.4.1.5 Standards relating to Citrus Fruit: Conclusions

On balance it is the view of the Review Panel that the costs associated with the Board engaging in the monitoring and enforcement of food quality standards outweigh any public benefits gained from the process. The minimum standard of quality of citrus fruit released on to South Australian market should be determined by the consumer and the quality of fruit should be maintained through investment in brand quality and development as well as through strategic alliances.

1.4.2. Maintenance of an orderly market

Currently the Board has the power to develop policies for the orderly marketing of citrus fruit products and to issue marketing orders.

As the Australian economy becomes increasingly open to international trade, prices and product specifications are being influenced much more by international supply and demand. It has been shown in other industries that regulatory intervention of any sort hampers the agility required to remain internationally competitive. Artificially set prices and/or specifications distort market signals and usually result in the wrong products and the wrong quantities being produced (usually too much). This causes long-term damage for which the wool industry's reserve price scheme provides a case in point.

The Board does not exercise its power to issue marketing orders. The National Competition Policy states that, unless a regulation generates a clear public benefit, it should be removed.

The submissions agreed that the Board should not have a role in the maintenance of an orderly market in the citrus industry. The Review Panel concurs with this view and has been unable to identify any significant public benefits to be derived from the Board engaging in such regulation of the market. References to the Board undertaking the regulation of an orderly market should be removed from the legislation.

1.4.3. Services to industry participants

The Board provides services to industry participants which include:

- the collection and dissemination of supply and demand information about Australian and international citrus markets; and
- the provision of technology transfer services to growers, usually in conjunction with other organisations.

1.4.3.1. Provision of Market Information

There are two issues relating to the Board's provision of market information which are relevant to this review:

- whether compulsory registration of industry participants is justified as a means of acquiring the data; and
- who should pay for it.

The second of these issues is addressed first.

The arguments for and against using compulsory levies to fund this service are discussed in *A National Competition Policy Review of the Murray Valley Citrus Marketing Act 1989 of Victoria and New South Wales* conducted by the Centre for International Economics (CIE) in July 1999. Since the information-providing role of the Murray Valley Citrus Marketing Board (MVCMB) is similar to that of

the CBSA, relevant sections of that discussion are quoted here. The Executive Summary from the CIE report is included as Appendix 5.

"The other citrus boards provide similar services. The Citrus Board of South Australia, for example, uses its powers to require all growers to provide relevant production data for it to prepare crop forecasts. Crop production and forecast data is coordinated at a national level by the Australian Citrus Growers. Forecasts of the national citrus crop provided by national organisations like the Australian Bureau of Agricultural Resource Economics (ABARE) also use the information collected by the boards."

"Given 60 per cent of the (MVCMB's) funds come from 19 per cent of growers, this implies the Board is prepared to use some of the levy funds from growers with large orchards to subsidise growers with small orchards. Using large growers to cross-subsidise small growers is likely to reduce the industry's competitiveness. It imposes a cost on what the AHC benchmarking study shows to be viable properties to support the small and generally less profitable ones. Disadvantaging viable properties cannot strengthen the industry. Further, cross-subsidising small packers adds to the problems of market fragmentation referred to by the Board."

"Governments both state and federal are winding back their statistical and market intelligence services but some services are being provided privately. The (MVCMB) noted that it uses the services of a private provider to obtain price monitoring information from domestic markets. It further added that market information is available from a variety of sources but it is able to provide a summary of information from a number of these. In the absence of the Board's activities it is likely that some statistics and market information would not be available. Crop forecast information, for example, may not become freely available. The key question, however, is whether the information now being supplied is used in decision making and has value which exceeds the proportion of the levy revenue spent on this activity and the costs to growers. There is no true market for the information and its true value cannot be determined. In the absence of the Board it is likely that:

- other commercial providers of market information would increase their activities;
- growers would make greater use of commercial services and pay more attention to information from packers;
- some services currently provided by the Board would not be provided by the private sector unless the information clearly had commercial value. If there was sufficient demand, the information market would supply it;
- some small growers, in particular, would be less capable or less inclined to purchase market information;

- but groups of growers may form to pool resources and share the information purchased or collected thereby lessening the costs to any individual; and
- the larger growers would benefit by not having to cross subsidise the smaller growers and packers via the levy and the Board providing market information.

The key question is whether statutory intervention is necessary to underpin a compulsory levy (or part there of) so that the Board can supply market information to the citrus industry. The main arguments in favour of this might be:

- *non excludability* or the 'free rider' issue which would apply particularly to radio dissemination; and
- *information asymmetry* and *imbalance in market power* whereby in the absence of the service, growers would be less knowledgeable about market conditions and in a weaker bargaining position than packers.

Each of these arguments is weak and there are other arguments that support a more commercial approach to provision of market information services. The 'free rider' argument is particularly weak. Detailed information can be provided to individuals or organisations on a subscription basis as is common in many other commercial fields. Several other statutory marketing authorities now provide detailed market information services on a subscription basis. This ensures that the information supplied has value. If it does not, subscriptions would fall.

There is no evidence of imbalance of market power in the citrus industry given the large number of packers and processors. Indeed, several packers interviewed commented that growers tended to play one packer off against another. Also, there are no reasons why groups of small growers could not form to jointly subscribe to market information services and share information."

"The consumption of market information is not related to scale of operation or output. But under current arrangements, there is significant cross subsidisation from large to small growers as well as packers who do not pay for the service.

Conclusions on market information

Statutory intervention and compulsory levies to support the assembly and provision of market information services is not fully justified. The Board could continue to provide these services but for most of them it could charge a subscription fee to growers and packers who use the services to at least recoup its costs, including the costs of undertaking crop forecasts. This would not preclude other private firms from providing similar services in open competition. To the extent that some activities were genuinely non excludable, such as radio market reports, a small component of the levy would be used to fund these activities."

It was argued by two of the submissions that the information provided by the Board was readily used by market participants and it was further argued that the information should be provided as a service to all industry participants as a part of the Board's registration fee. This view was not shared by all the submissions, with others suggesting that the provision of market information should be provided on a user pays basis so as to avoid cross subsidisation.

The above excerpt from the Victoria - NSW review emphasises the question of who pays for the information service but, in the case of supply forecasting, the question of how the data is collected is important too. Under the Citrus Industry Act, grower registration is compulsory and registered growers are required to supply information about their citrus plantings. This is not the case in other States.

No regulation In the absence of regulation, a number of survey options would exist, including private or government survey organisations. For example, the Australian Bureau of Agricultural and Resource Economics (ABARE) conducts surveys at government or industry behest and the Australian Bureau of Statistics (ABS) conducts five-yearly agricultural censuses (to which growers have a regulatory obligation to respond) and will conduct them more often at industry behest.

Industry Self- Regulation - An alternative to a legislative scheme is self-regulation. For example, existing industry associations could collate information from their members and disseminate it. For this to be effective, the participation rate of eligible members would need to be high. In reality, it is unlikely to be high enough to provide useful data.

Co-Regulation A system of co-regulation may involve the adoption by industry itself of practices aimed at achieving the objectives of the Act. In the instance of information gathering and flow of information it is difficult to see how industry is any better placed to achieve better results or at cheaper cost than a regulatory system would be.

It was argued in some of the submissions that the market information currently provided by the Board could not be collated without the backing of the Act and that alternatives provided by other sources are not as accurate. In contrast other submissions suggested that many growers have specific needs and would prefer to access "tailored" information services from sources other than the Board. It was further suggested that the costs associated with payment of the levy to the Board limited the ability of growers, especially those with a large annual production, to invest in information services.

The Review Panel recognises that there is a role for the Board in the provision of market information. The Review Panel considers that the Board should continue to provide industry statistics and marketing information on a general basis and that this should be funded from the Board's levies.

However, the amount charged as a component of the levies should be reduced as information provided by the Board which is designed to assist specific members or tiers within the market should be provided on a user-pays basis and in competition with other public or private providers.

[Alternatively, recommend that this role be taken over by CGSA and ACG.]

1.4.3.2. Technology Transfer

The Board undertakes technology transfer projects, usually in partnership with the HRDC and the State Government. The issues discussed under Section 1.4.3.1 relating to market information are relevant here as well. If not all growers use the service, there is a degree of cross subsidy occurring. On the other hand, if the service is valuable, will the growers who want it not be willing to pay for it on a fee for service basis?

The Role of the Board in the provision of technology transfer was supported by the submissions received with its provision seen as a benefit to the industry and, in particular, to those who attend the workshops. Concern was, however, raised in some submissions as to charging for it. Similar to the provision of information, it was suggested that this extension service should be provided on a user-pays basis where the technology generates private benefits to individual members of the industry (as opposed to that which generates public benefits to the industry, such as region-wide suppression of pests and diseases).

The Review Panel recognises that there is a role for the Board in the continued provision of technology transfer, but that a user-pays basis should be implemented.

[Again, does this really need specific legislation? Could not CGSA/ACG provide it, funded under the PI Funding Schemes Act?]

Conclusion

Consideration of the available non-legislative alternatives has lead to the Review Panel to conclude:

- that the maintenance of quality standards of fruit being sold is not required to be underpinned by legislation. Consumers should dictate the standard of fruit available in the market;
- that the original goal of “maintaining an orderly market” is inappropriate. The relevant provisions in the Act are not being used and should be it is recommended that they be removed;
- that some collation and provision of information and some technology transfer activities are usefully performed by the Board, but these should be funded by the user where possible; and
- that the Board has a role in funding research which has specific relevance to South Australia, but is not a national priority.

The *Citrus Industry Act* 1991 provides for funding of the Board. The Review Panel recognises that, where the benefits of its activities are of a general and public-good nature, a market-based approach will not usually provide adequate funding. This is

because, on the one hand, no individual industry participant will gain enough benefit to justify the expenditure and, on the other, even if they did, "free riders" will gain the same benefit without paying for it.

Suggested Amendment

The *Citrus Industry Act 1991* should continue to underpin the operations of the Board and that the functions of the Board which provide public benefits should continue to be funded through a statutory regime.

[Change to fit the above.]

a) Costs on participants within affected markets generated by complying with the restrictions contained in the Act. These costs may then be passed on to consumers.
b) Costs associated with efficiency losses or the sub-optimal allocation of resources that may result from direct intervention in an unrestricted market.
c) Costs to the public of administering the regulatory regime established by the Act.

1.5.1. Compliance Costs

These costs impact upon competition in the Australian domestic market if they are sufficient to dissuade participation in the market, or are substantial and passed on to consumers as an element of the price charged for goods. Increased costs of production can also impact upon the export market for certain goods and disadvantage South Australian producers. Detriment to the export market is a broader cost to the public which may be generated by the restrictions contained in the *Citrus Industry Act.*

It is the *net increase in total costs* which is relevant in this context. Costs which must in any event be borne by participants to maintain an economically viable business are not additional cost generated by the restrictions in the legislation.

Similarly, the costs associated with complying with industry- or consumer-generated standards voluntarily adhered to by the industry to maintain the economic viability of businesses are not costs generated by the restrictions contained in the legislation.

In assessing the costs of complying with the regulatory scheme established by the *Citrus Industry Act* the Review Panel is concerned to assess only those additional costs which are generated by the Act.

One example of a regulation which may cause inconvenience is the requirement that packers send a forwarding advice to the Board on dispatch of each shipment to a wholesaler and that the wholesaler direct payment to the packer via the Board.

1.5.2. Costs of Inefficient Resource Allocation

One area in which resource allocation may be inefficient is in the Board's role of monitoring food safety standards for citrus. It has been suggested in Section 1.4.1 above that some of the Board's powers and activities duplicate those of public health authorities. The Board requires packers to adopt its audit trail protocol, which is not currently a requirement of those authorities, but many packers have they own audit trail arrangements as part of their quality assurance (QA) systems. Moreover, the organisation of QA systems throughout the food industries is in the process of being bolstered by new legislation implementing a co-regulatory approach to food safety similar to that recently adopted by the meat industry.

A similar argument may be valid regarding the Board's involvement in other quality standards, given the increasing adoption of QA systems and the central role of QA systems in the forthcoming co-regulatory arrangements.

1.5.3. Costs of Administering the Citrus Industry Act

The cost to industry of administering the *Citrus Industry Act* for the year to 30/4/99 was $418,360. This covers salaries, Board remuneration and administration. Additional payments made by the Board included $98,038 to Australian Citrus Growers Incorporated, $201,929 to the National Promotion Fund and $55,098 towards research. These payments are made from funds collected as fees and levies from industry participants. The main item is the levy of $2.20 per tonne on growers. In 1998/99, the total crop was 192,000 tonnes.

Some of the submissions received voiced doubts as to whether the costs associated with the maintenance of the Act represented good value for money. It was suggested that, whilst it was assumed that the some of the services of the Board were necessary to generate benefits for all growers, a lack of accountability for demonstrable outcomes by the Board made it difficult to assess whether the operation of the Act represented good value for money. It was further suggested that a greater emphasis on user pays funding would be more cost efficient.

1.6. Public Benefits

1.6.1. Export/Economic

The Second Reading Speech concerning the *Citrus Industry Bill* identified the determination of standards for production, packing and marketing of high quality fruit in South Australia to meet the requirements of new export markets in Japan and the United States of America as something to be achieved by the *Citrus Industry Bill 1991*.[3]

[3] *Hansard*, 9 April 1991 at page 4160

Any improvement in the South Australian citrus industry's export performance that has occurred as a result of the passage of the Citrus Industry Act is likely to have come from either or both of two sources:

- the ability of the Board's former CEO, as the national industry's US market 'product champion', to negotiate directly with US government officials; and
- the improvement in product quality arising from the Board's minimum quality standards.

The former appears to have been important in overcoming problems in the US export program but is unlikely to be so in future as the US market 'product champion' is now the CEO of the MVCMB. The latter may well have been important in the early stages of that trade. In the light of the above discussions about alternative quality systems, the key issue is whether the industry has moved on (or is in the process of moving on) to a system which surpasses the regulated approach.

Submissions received agreed that the industry had moved on from the old style of the Board negotiating directly with overseas markets via a "product champion". However, it was suggested by some of the submissions that the Board may have an ongoing role in development of export markets provided that it could be shown that demonstrably beneficial outcomes were achieved.

It is the view of the Review Panel that the Board supported by the Act is in a good position to orchestrate the development of strategic plans designed to assist the South Australian citrus industry in the world commodity market.

[Why does legislation help in strategic planning? The evidence to date suggests it is probably an impediment!]

1.6.2. Long-term Planning of Supply

The rationale given in the *Citrus Industry Act* Second Reading Speech for the requirement that growers, packers, processors, wholesalers and volume retailers register is the compilation of statistics to enable the Board to monitor production, marketing and consumption trends. The Board would then undertake the function of ensuring that this and other information relating to Australian and world production and marketing is regularly received by growers.

Production and distribution statistics and crop forecasts are used in a number of ways:

(1) by buyers of fruit (i.e. packers, juice processors and retailers) to plan product development and marketing strategies as well as for shorter-term decisions such as fruit purchase quantities and pricing;

(2) by growers for their part in transactions and to inform planting decisions. This is especially important for citrus because of the long lead time before mature production is reached; and

(3) by governments and industry organisations to assist in policy formulation.

There is little dispute about the importance of having accurate information on citrus supply, distribution and consumption. However, given the alternative methods of data collection and dissemination discussed in Section 1.4.3.1, it is not clear whether the existing processes are cost-effective, whether compulsory registration is justified or whether it should be funded from compulsory levies. For the purposes of the current review, the issues are:

- whether the public benefits arising from the existing system outweigh the costs; and
- whether other, more pro-competitive means would be as effective.

According to the submissions received the information provided by the Board is of benefit to those in the citrus industry. It was, however, suggested in one submission that whilst the information currently provided was useful it was of limited scope. The submission also advocated a fee-for-service or subscription payment for the information suggesting that this would place a greater emphasis on meeting the needs of individual subscribers.

The Review Panel recognises that a public benefit of the Act and the Board is the provision of market information. The Panel, however, considers that the benefit that can be derived from this function is only in terms of the provision of generic information which can assist all participants within the industry.

Information which is designed to assist specific persons within the industry and does not benefit all industry participants should not be provided for as part of the levy enforceable under the Act. The Review Panel agrees that such information should only be funded on a fee for service basis, in competition with private providers and that the current levy should be reduced to reflect the associated reduction in costs.

[Change to fit above account.]

1.6.3. Product Quality

Whether in relation to food safety or other dimensions of product quality, it is clear that other, less regulatory methods exist for ensuring that customers receive citrus products of the standard they expect when they purchase them. For the minimum quality standards to remain, it must be demonstrated that the benefits to the public as a whole delivered by the existing system outweigh the costs. As discussed in Section 1.4.1 and Appendix 4, the evidence suggests that this is not the case. Even though minimum quality standards have been useful in the past, as suggested in Section 1.6.1, they may no longer be the best system.

The Review Panel is of the opinion that the standard of citrus fruit provided should be determined by the consumer through the operation of the market and not through the Board. The setting and enforcement of quality standards by the Board provides limited public benefit whilst restricting both supplier flexibility and consumer choice.

PART 2: ANALYSIS OF RESTRICTIONS UPON COMPETITION

The restrictions contained in the *Citrus Industry Act and the Citrus Industry Regulations* fall into the following categories:

a) restrictions relating to the requirement to be registered;

b) restrictions relating to selling, purchasing and packing;

c) marketing orders; and

d) miscellaneous other restrictions.

The provisions of the legislation which fall within each of these categories are discussed below.

2.1. Registration

2.1.1. Requirement to be Registered

Section 29 of the *Citrus Industry Act* requires persons carrying on a business as:

a) a grower;
b) a packer;
c) a processor;
d) a wholesaler; or
e) a volume retailer,

to be registered to undertake the specific activity.

In determining an application for registration, the Board must consider the criteria for registration specified in section 25. Where an applicant meets the specified criteria the Board must register the applicant.

To be registered as a grower the Board must be satisfied the applicant is, in fact, a grower.

To be registered as a packer or processor the Board must be satisfied:

a) that the applicant has sufficient business knowledge, experience and financial resources to properly carry on the business of packing or processing citrus fruit; and

b) that the applicant meets such requirements (as to the provisions or standard of premises, facilities, equipment or other matters) as are prescribed.

Processing and packing requirements are prescribed by regulation 7 of the *Citrus Industry Regulations*. To be registered as a processor or packer:

a) the premises, facilities and equipment of the applicant must comply with orders 11 and 12 of the Commonwealth Export Control Orders; and

b) the premises of the applicant must be so constructed as to provide for the storage and handling of sources of contamination in accordance with orders 18 and 19 of the Commonwealth Export Control Orders when the premises are used for the preparation and packing of citrus fruit.

The requirement to be registered to undertake the listed activities is a barrier to entering any market which involves the undertaking of these activities. This is an "intermediate" restriction upon competition. This restriction will be justified if the public benefits of the restrictions outweigh the costs and there is no alternative means to achieve the objectives of the legislation.

The costs associated with requiring persons undertaking the listed activities to register are compliance costs. If these compliance costs are large enough to discourage people from engaging in such activities, inefficient allocation of resources may result.

The costs in relation to the process of registration are set out in Appendix 6 and also detailed below.

Currently there is only one registered volume retailer.

Two of the submissions received suggested that registration was required to guarantee a whole-of-industry approach to quality and food safety and that registration was required to ensure that production data was collected from *all* producers.

The Review Panel considers that the monitoring and control and citrus product quality is an inappropriate activity for the Board to be involved in, the Review Panel however does support the collection of relevant market data from industry participants. Provided that a requirement to register does not prohibit participation in, or entry to, the market it should be retained for producers so as to assist the Board with the collation of relevant market information and the promotion of the industry.

Suggested Amendment

That registration for producers should be retained under the Act.

2.1.2 Process of Registration

Section 25 requires persons who wish to undertake the activities listed above to apply to the Board for registration. Applicants for registration are required to apply in the prescribed form, provide relevant information to the Board and pay the prescribed fee.

Fulfilling the requirements of registration is a barrier to entry into the market which generates compliance costs. This restriction is likely to be a "trivial" restriction upon competition unless:

a) the prescribed manner and form is unusual in its requirements;
b) the information to accompany the application is voluminous or otherwise difficult to compile; or
c) the fee is substantial.

Regulation 5 prescribes the form of application as that contained in Schedule 4 of the *Citrus Industry Regulations.* An application for registration as:

a) a grower must be made by completing Form 1;
b) a packer or processor must be made by completing Form 2; and
c) a wholesaler or volume retailer must made be by completing Form 3.

Fees are prescribed in Schedule 5 to the *Citrus Industry Regulations*. The registration fees are set out in Appendix 6 and must accompany an application for registration as a packer, processor, wholesaler or volume retailer. There is no fee for registration as a grower. Registration exists for twelve months.

The prescribed application forms for registration are not unusual, the information required is not voluminous and the associated fee is not substantial. The required process of registration represents a "trivial" restriction on competition.

Growers are currently not charged to register, submissions were however received in response to the question as to the relative cost of registration fees to packers, processors, wholesalers or volume retailers as compared to the running costs of their business. The relevant submissions stated that the cost of registration was minor compared to the overall operating costs.

Whist the cost of registration may be minor and the restriction on competition "trivial" the Review Panel is of the view that the Board should not be involved with the packer, processor, wholesaler or bulk retailer tiers of the citrus industry.

As will be discussed latter in the Report, it is proposed that the Board be funded on a per-hectare basis. Such a charge would apply only to producers. The Review Panel is of the view that running two separate revenue raising schemes for different tiers of the citrus industry would not be beneficial - and the costs of registering wholesalers and bulk retailers would be greater than the public benefits.

Suggested Amendment

That registration under the Act should be retained for producers. References in the Act to the registration of packers, processors, wholesalers and bulk retailers should be removed.

2.1.3. Renewal of Registration

Pursuant to sub-section 25(6) of the *Citrus Industry Act*, registration can be renewed for successive periods of twelve months. Persons wishing to renew their registration must apply in the prescribed form and pay the prescribed fee. Regulation 6 specifies that the form of application for the renewal of registration must be the form is contained in Schedule 4. Form 4, Schedule 4 is the form of application for renewal of registration. The relevant fee is again set out in Appendix 6. No fee is payable in respect of renewal of registration as a grower.

The costs associated with the renewal of registration is an insignificant cost within the market relative to the normal commercial costs of carrying on a business in the citrus industry. These costs represent a "trivial" restriction upon competition.

For the same reasons as given in regard to the continuation of registration, the Review Panel suggests that only the requirements for renewal of registration for producers should be retained in the Act.

Suggested Amendment

Only the requirements for renewal of registration of producers should be retained in the Act.

2.1.4 Requirements for Registration

Sub-section 25(4) provides that when a person applies for registration as a packer or processor the Board must register that person if it is satisfied that the applicant has sufficient business knowledge, experience and financial resources to properly carry on the business of packing or processing citrus fruit.

Pursuant to sub-section 25(5) where a person applies for registration as a wholesaler or volume retailer the Board is required to make a determination as to whether the applicants meet the requirements of registration in respect of their facilities, equipment and premises.

The Board under the above subsections is required to make a determination as to the ability of persons wishing to enter into the packing, processing, wholesale and bulk retail market. As a person would be unable to operate in the relevant field with out registration the ability of the Board to exclude persons from registration is a potential barrier to entry into the market. The Review Panel has assessed the associated restriction on competition as "serious".

It is not the role of the Board to determine the capacity of a person to enter into the

citrus market. No public benefits have been identified which can justify the Board retaining this restrictive power and in accordance with the principles of National Competition Policy the Review Panel has concluded that subsections 25(4) and 25(5) should be removed form the Act.

Suggested Amendment

That sub-sections 25(4) and 25(5) should be removed from the Act.

2.1.5. Conditions of Registration

Pursuant to sub-section 25(7), the Board may register the applicant on such conditions as the Board considers appropriate. These conditions can, pursuant to sub-section 25(8), be varied or revoked by the Board. A change in the condition attaching to registration under the *Citrus Industry Act* must be notified by the Board to the applicant at least six months prior to the change taking effect. The conditions imposed as at 1 May 1999 for each of the categories are as follows:

- **Citrus Processor**

  (a) prohibits delivery of fruit from other than registered persons;
  (b) requirements to enter into "terms of trade" agreement; and;
  (c) submission of weekly reports and importation of levy specified in Appendix 6.

- **Citrus Packer**

  as above plus a requirement to act in accordance with Packers Code of Practice.

- **Citrus Wholesaler**

  (a) restriction on location of premises from which products may be sold;
  (b) requirement to keep proper books and accounts and to be available for inspection;
  (c) specifies 14 day trade terms and obligations to pay not less than that agreed;
  (d) provision of $30,000 Bank Guarantee in favour of the Citrus Board as agent for suppliers of citrus fruits in the event that (c) is not complied with;
  (e) obligation to trade in citrus fruit not less than once per week.

- **Citrus Volume Retailer**

  (a) clarifies definition of volume retailers.
  (b) conditions equivalent to (b)-(e) with respect to citrus wholesalers above.

Two separate sanctions are created by the *Citrus Industry Act* in regard to the

breaching of conditions attaching to registration. First, a registered person's registration may be cancelled or suspended pursuant to section 26 of the Act. This is discussed below.[4] Secondly, a registered person may face a fine imposed pursuant to section 28 of the Act.

The Review Panel considers that the conditions placed on those who register under the Act impose costs upon the competitive process and have an affect on the economic activity within the citrus market. The restriction on competition associated with sub-section 25(7) and 25(8) has been assessed as "intermediate".

The response of the submissions concerning the imposition of conditions on registration was mixed. Two submissions suggesting that the conditions were not onerous or excessive, in contrast, another two submissions forwarded the view that the conditions represented an unjustified restriction upon competition.

The original stated purposes of the Act included organisation of the citrus industry, regulation of the movement of citrus fruit from growers to wholesalers and to set standards for citrus fruit quality. The conditions imposed on those registered under the Act assist the Board in achieving those aims by dictating the persons who may deal in citrus, as well as, to some extent the terms upon which those persons may transact.

The regulation of the citrus industry by the Board is not supported under national competition principles as insufficient public benefits can be identified. The maintenance of food quality will be achieved through the operation of the Food Act as well as by the operation of the free market and consumer preferences.

It is the view of the Review Panel that the discretionary powers bestowed upon the Board, pursuant to section 25, are not necessary to achieve the identified public benefits which can be derived from the future operation of the Act.

Suggested Amendment

Sub-sections 25(7) and 25(8) should be removed form the Act.

2.1.5. Cancellation or Suspension of Registration

Section 26 of the *Citrus Industry Act* enables the Board to cancel or suspend registration where a registered person has contravened the Act, or a condition of the person's registration. Where a registered person has failed to pay a fee or contribution required by the Act, the Board may suspend the person either until the outstanding amount is paid or satisfactory arrangements are made for the payment of the overdue amount.

The ability to cancel or suspend registration, if utilised in accordance with the *Citrus Industry Act,* will not have a significant effect on competition in the market. As

[4] See discussion of "Cancellation or Suspension of Registration".

stated above,[5] market analysis is not concerned with impacts upon individuals. As already discussed[6] market participants should not be able to gain a competitive advantage by contravening requirements of legislation or conditions of their registration. This restriction has been assessed as only having a "trivial" impact on competition in the overall citrus market.

Sub-section 26(3) requires the Board to give the registered person at least two weeks' notice of a proposed cancellation or suspension of that person's registration. A decision of the Board to cancel or suspend a person's registration is subject to a right of appeal under section 27 of the *Citrus Industry Act*.

The ability to suspend or cancel a persons registration under the Act provides the Board with a means to enforce its policies regarding the regulation of the citrus industry and the maintenance of the fruit quality standards. As discussed in Part 1 of this report, the Board should not continue with the regulation of the market or fruit quality and should confine its activities to areas which have a clear benefit to the industry and the public. Hence, the Review Panel is of the view that there is no justification for section 26 to be retained within the Act.

However, without the ability either to suspend or to cancel registration, the Board would be unable to enforce the payment of the levy required to cover the costs of running the Board. The Review Panel favours the imposition of fines on producers who fail, without reasonable excuse, to pay the per hectare fee. [John, expiation notice??]

Suggested Amendment

The Review Panel recommends that section 26 should be removed from the Act.

The Review Panel also recommends that a new provision be placed in the Act which sets up a regime of fines to be imposed on producers who fail, without reasonable excuse, to pay the fee levied on land used for citrus orchards.

Growers

Pursuant to sub-section 30(1) of the *Citrus Industry Act*, a grower must not sell citrus fruit except to a registered packer, a registered processor, a registered wholesaler or a registered volume retailer. This is a significant restriction upon conduct within the citrus production market as the range of persons to whom the grower may sell citrus is limited. For example, it prohibits growers from selling to retailers other than volume retailers. The purpose of registration articulated in the Second Reading Speech is to facilitate collection of supply and demand information, not to restrict trade. It is not clear whether the prohibition on grower sales to smaller retailers is an unintended impact of the Act.

[5] See discussion of "Markets".

[6] See discussion of "Conditions".

Two of the submissions received reiterated their arguments concerning the need for registration to ensure that the quality of citrus fruit sold was maintained and that it was safe for consumption. Opposing views where also voiced in the submissions suggesting that the regulation of the citrus market was not required to achieve these public benefit goals.

As discussed above, the Review Panel has reach the conclusion that the registration of producers, packers, wholesalers and bulk retailers is not required and accordingly sub-section 30(1) has no longer any practical affect and should therefore be removed.

Suggested Amendment

The Review Panel recommends that sub-section 30(1) should be removed from the Act.

However, a second question concerns the extent of the impediment to trade resulting from sub-section 30(1). Similar restrictions on other industry participants are discussed below.

The prohibition against selling to other than registered persons does not apply to fruit which is sold in accordance with a permit issued under the Act. Permits for a registered grower to retail citrus may be issued by the Board pursuant to section 31 of the *Citrus Industry Act.* A registered grower who wishes to retail citrus fruit must apply to the Board in the prescribed form, provide relevant information to the Board and pay the prescribed fee. The permit may be issued subject to such conditions as the Board thinks appropriate. Pursuant to section 9 of the Act, an application must be in the form prescribed in Schedule 4 to the *Citrus Industry Regulations* (Form 6). The prescribed fee as listed in Schedule 5 to the Regulations is $10 for a permit to sell for one day, or for periods greater than one day, $5 per day. In addition the levy set out in Appendix 6 will also be payable. Growers usually purchase an annual permit for $50.

As only producers will be registered under the proposed restructuring of the Board the restrictions imposed on growers, which are currently exempted by the permit, will no longer exist and accordingly the permit will have no practical effect.

One of the submissions argued that the permit system provided for a number of public benefits including;

- a reduction in fraud by persons pretending to be growers selling substandard fruit;
- improvement of road side safety, sellers on verges of roads causing traffic hazards;
- food handling concerns; fruit being sold in used plastic bags, fruit unprotected from road dust; and
- to stop the infringement of local government by-laws.

The public benefits outlined above can be achieved through existing consumer protection legislation and both road traffic laws and local council by-laws. It is also unlikely that the Board, once the restrictions on trade have been removed, would have the necessary authority or the necessary resources to police compliance with permits designed to achieve the above public benefits. It is therefore the view of the Review Panel that the permit system should be removed from the Act.

Suggested Amendment

The Review Panel recommends that section 31 should be removed from the Act.

Pursuant to sub-section 30(3) of the *Citrus Industry Act,* a grower must not sell citrus fruit to a registered wholesaler or a registered volume retailer unless the fruit has been prepared and packed in accordance with the regulations. The requirements for packing and processing are described above.[7] This is a significant barrier to conduct within the market for producing citrus as it restricts the form in which the fruit is sold. It, and most of the other restrictions discussed in Section 2.2, are part of the mechanism for ensuring that minimum quality standards are met. The issue of minimum quality standards has been raised at several points in Part 1.

Similar to the other restrictions under section 30, the requirement under sub-section 30(3) of the Act has no practical effect if wholesalers and volume retailers are not registered under the Act. In accordance with its previous recommendations the Review Panel is of the view that this requirement should be removed from the Act.

Suggested Amendment

The Review Panel recommends that sub-section 30(3) should be removed from the operation of the Act.

Processors

Sub-section 30(6) prohibits a processor from selling citrus fruit to persons other than another processor. This restriction is to ensure that fruit not suitable for fresh fruit marketing (blemished or not of an appropriate size) remains in the processed market and is not sold as fresh fruit. It is therefore implemented as a method by which quality is maintained, but it may have other, unintended ramifications.

By restricting to whom processors may sell goods sub-section 30(6) imposes a cost on processors which would have an affect on the market. This case is considered an “intermediate” restriction on competition.

[7] See discussion of “The Requirement to be Registered”.

The issue of maintaining fruit quality has already been discussed and it is the view of the Review Panel that this restriction is not justified on the basis of the public benefits outweighing the costs.

Suggested Amendment

The Review Panel recommends that sub-section 30(6) be removed from the Act.

Retailers

Regulation 12 prohibits any person offering citrus for retail sale except in accordance with the regulations. To be offered for retail sale, citrus fruit must have been prepared in accordance with regulation 10 and satisfy the minimum requirements as to quality, colouring and maturity specified in clauses 3.1, 3.3 and 3.4 of Schedule 13 of the Commonwealth Export Control Orders as modified by Schedule 1 to the Regulations.

The maturity of fruit is, pursuant to regulation 19, to be determined through the procedure specified in Schedule 3 of the Regulations. This a standard method of deriving the maturity of fruit and ensures that fruit of acceptable taste is available to consumers.

Further, where the citrus fruit offered for sale as fruit of a class specified in clause 4 of Schedule 13 of the Commonwealth Export Orders it must satisfy the requirements specified by that clause.

If citrus fruit is offered for sale packed, it must comply with both of the requirements detailed above and it must be packed and marked or labelled in accordance with regulation 10.[8] Sub-regulation 12(5) exempts registered growers who retail pursuant to a permit issued under section 31 from complying with these requirements.

A requirement on vendors of citrus fruit to ensure that the produce is sold in accordance with the regulations adds to the cost of engaging in the industry. Submissions received argued that the regulations where of a public benefit as they assisted in maintaining the quality of citrus fruit.

The benefits associated with the regulation of citrus fruit quality has been discussed above and accordingly it is the view of the Review Panel that the prohibition under regulation 12 represents an unjustifiable “intermediate” restriction on competition.

Suggested Amendment

The Review Panel recommends that regulations which prescribe standards and procedures concerned with the quality of citrus fruit should be removed.

[8] See discussion of “Restrictions on Preparing and Packing Citrus”.

Non-retail Sales

Regulation 13 prohibits the sale of citrus fruit, other than by retail sale unless the fruit has been prepared in accordance with regulation 10 and satisfies the minimum requirements as to quality, colouring and maturity specified in clauses 3.1, 3.3 and 3.4 of Schedule 13 of the Commonwealth Export Control Orders as modified by Schedule 1 to the Regulations. Further, where the citrus fruit offered for sale as fruit of a class specified in clause 4 of Schedule 13 of the Commonwealth Export Control Orders it must satisfy the requirements specified by that clause. If citrus fruit is offered for sale packed, it must comply with both of the requirements detailed above and it must be packed and marked or labelled in accordance with regulation 10.[9]

Sales of fruit to registered packers and registered processors or to persons located outside South Australia are not subject to the requirements of regulation 13.

One submission suggested that a benefit of Regulation 13 is that fresh fruit entering the wholesale market may be exported to overseas markets and they do not require a Commonwealth Export license or phytosanitary certificate. **[John is this statement correct.]** The submission further suggested that the regulations therefore facilitated opportunistic trade and greater market access in South Australia.

If market participants wish to capture overseas markets they will have to abide by Commonwealth Export Control orders irrespective of the Act. It is therefore the view of the Review Panel that Regulation 13 enforces the already exiting requirements under the Commonwealth Export Control orders and that it adds little public benefit to the South Australian community.

Suggested Amendment

The Review Panel recommends that Regulation 13 should be removed from the operation of the Act.

2.2.2 Restrictions on Preparing and Packing Citrus

Preparing and Packing

Sub-sections 30(4) to 30(6) of the *Citrus Industry Act* restrict the manner in which packers and processors can deal with, and dispose of, citrus fruit. Under sub-section 30(4), a packer must only pack citrus fruit in accordance with the requirements prescribed in the regulations. Sub-section 30(5) prohibits a packer

[9] See discussion of "Restrictions on Preparing and Packing Citrus".

from selling citrus fruit unless the fruit has been prepared and packed in accordance with the regulations. Similarly, sub-section 30(9) prohibits the purchase of citrus fruit for the purposes of resale by wholesalers and retailers unless the fruit has been prepared and packed in accordance with the regulations. Regulation 10 requires that prior to packing, citrus fruit must be:

a) washed clean, treated with fungicide suitable for the treatment of citrus fruit and waxed;
b) classified in accordance with clause 4 of Schedule 13 of the Commonwealth export Control Orders as modified by the regulations; and
c) graded by size in accordance with clause 6.1 of Schedule 13 of the Commonwealth Export Control Orders.

The packing of citrus fruit must occur in compliance with clauses 6, 7, 8, 9, 10, 11 and 12 of Schedule 13 and clause 8 and 9 of Schedule 1 of the Commonwealth Export Control Orders, as modified by the Regulations. The packages in which citrus fruit is packed and bulk consignments of citrus fruit must be labelled with a trade description of their content in accordance with clause 13, 14 and 15 of Schedule 13 and clauses 10 and 11 of Schedule 1 of the Commonwealth Export Control Orders, as modified by Schedule 1 of the Regulations.

These requirements do not, however, apply to the sale of citrus to a processor.

The above requirements for the preparing and packing of citrus fruit all add costs to those engaged in the packers and processors industry and represent an "intermediate" restriction upon competition.

One submission suggested that the conditions for preparing and packing citrus fruit were in place to meet consumer demands with respect to clean produce, being true to label and a 4-6 week shelf life. The Review Panel agrees that the above attributes are probably desired by most consumers however it is not in the Panel's view appropriate for the Board to regulate citrus fruit quality. If consumers demand certain standards of quality industry participants will need to meet those standards to effectively compete within the market.

Suggested Amendment

The Review Panel recommends that the above restrictions on the preparation and packing of citrus fruit be removed from the Act.

Maintenance of Premises and Equipment of Packer

Regulation 14 prohibits a packer from preparing, packing or storing citrus fruit unless the premises in which the fruit is prepared, packed or stored and the equipment used for that purpose are cleaned, maintained and operated in accordance with orders 11, 12, 14, 16, 20 and 22 of the Commonwealth Export Control Orders as modified by the regulations.

Storage and Handling of Contaminants and Toxic Substances by Packers

Regulation 15 requires packers to comply with the requirements of orders 18 and 19 of the Commonwealth Export Control Orders as to the storage and handling of sources of contamination and toxic substances.

The maintenance of equipment is likely to be a task that packers will need to undertake to ensure that they remain competitive within the market and is therefore considered a "trivial" restriction. Compliance with Commonwealth Control Orders also adds costs to entering into the packing market and is considered an "intermediate" restriction on competition.

Some of the submissions received suggested that Regulations 15 and 14 were essential to ensure that quality safe fresh fruit is presented to the domestic market. As discussed in detail above the Board should not be engaged in regulating the quality of citrus products.

It was further suggested that most packers export fresh citrus fruit and accordingly the regulations reduce confusion for packers in regard to complice with Commonwealth Export Control Orders. However, if most packers are already required under Commonwealth law to comply, the regulations merely represent a duplication of that law and the regulations restrict the activities of packers within the domestic market.

Suggested Amendment

Regulations 14 and 15 should be removed from the operation of the Act.

2.2.3. Restrictions on Purchasing Citrus Fruit

Sub-section 30(7) of the *Citrus Industry Act* contains various restrictions on the purchase of citrus fruit. The following restrictions are set out in this provisions:

a) a wholesaler must not purchase citrus fruit for the purpose of resale except from a registered grower or a registered packer;
b) a volume retailer must not purchase citrus fruit for the purpose of sale by retail except from a registered grower, a registered packer or a registered wholesaler; and
c) a retailer, other than a volume retailer, must not purchase citrus fruit for the purpose of sale by retail except from a registered wholesaler.

These restrictions prohibit a range of transactions including those between wholesalers and between retailers.

Sub-section 30(8) qualifies the prohibitions contained in sub-section 30(7) by indicating that the prohibitions do not prevent the purchase of citrus fruit from a person outside South Australia.

This is considered an "intermediate" restriction on competition.

As stated above it is the view of the Review Panel that the public benefits associated with the Board regulating the citrus market are not sufficient to justify the costs to the community. As the proposed structure of the Board will not include the registration of wholesalers or volume retailers sub-section 30(7) should be removed.

Suggested Amendment

The Review Panel recommends that sub-section 30(7) be removed from the Act.

2.2.4. Restrictions on Transporting Citrus Fruit

Regulations 11 of the *Citrus Industry Act* requires that prior to permitting the removal or delivery of citrus fruit, a registered packer must prepare a citrus forwarding advice prepared in accordance with the regulation. The information to be contained in the citrus forwarding advice is detailed in Schedule 2 to the regulations. This information relates to:

a) details of the registered packer;
b) details of the status of the consignee;
c) details in regard to the citrus fruit;
d) information relating to the identification of the consignment; and
e) the price payable for each item listed on the advice.

The citrus forwarding advice must have a distinguishing number and be signed by the registered packer.

Sub-regulation 11(3) requires the registered packer to deliver copies of the advice to persons listed in the provision. Sub-regulation 11(4) requires the packer to retain a copy of the citrus forwarding advice for a period of at least twelve months.

Submissions received have suggested that the above requirements placed on registered parkers are time consuming and are likely to add costs to the operation of a packer business. This is therefore considered an “intermediate” restriction on competition.

The public benefits forwarded included the collection of market information and the ability to trace back specific citrus fruit through the different tiers of the industry. It is the view of the Review Panel that the public benefits gained do not outweigh the costs associated with the requirement on packers to prepare forwarding advices.

Suggested Amendment

The Review Panel recommends that Regulation 11 be removed from the operation of the Act.

2.3. Marketing Orders

Section 32 of the *Citrus Industry Act* grants the Board power to issue marketing orders, in exceptional circumstances and subject to the approval of the Minister. The purpose of such marketing orders, as specified in sub-section 32, is to ensure the orderly marketing of citrus fruit sold for processing. The matters which may be included in such a marketing order include:

a) fixing the price or the minimum price at which citrus fruit may be sold or purchased for processing;
b) fixing the rate of commission of the sale of citrus fruit for processing; and
c) fixing the terms and conditions on which citrus fruit may be sold or purchased for processing.

Marketing orders may remain in force for a period up to twelve months, except in relation to orders fixing prices which may only remain in force for a period up to three months.

It has been 10 years since any price order was made.

Section 32 of the Act has the potential to impose high costs on market participants or to restrict entry into the market and accordingly represents a “serious” restriction on competition.

The submission identified no public benefits which could be derived from the Board exercising section 32 and accordingly the Review Panel recommends its removal from the Act.

Suggested Amendment

The Review Panel recommends that section 32 be removed from the Act.

2.4. Miscellaneous Restrictions

2.4.1. Contributions from Registered Persons

Pursuant to section 21 of the *Citrus Industry Act*, the Board may require all registered persons or registered persons of a particular class to pay a contribution to the Board towards costs incurred in carrying out functions under the Act. These

contributions are levied against growers, packers and processors details of which are set out in Appendix 6.

Submissions received suggested that the contributions levied against registered persons not excessive in comparison to operating costs. The requirement to pay contributions represents a “trivial” restriction on competition.

The proposed core functions of the Board focus on the development of the citrus industry at the production level. It is therefore intended that the Board will be funded on a charge per hectare basis with each producer contributing towards the costs of the Board relative to the size of their holdings. The Review Panel favours this approach as the charge per hectare remains independent of the level of production which provides an incentive for producers and also allows for the charge to be set in advance based on both the wants of the producers and the proposed activities of the Board.

It is the Review Panels view that the Board will be more accountable to its producer members if it is required to justify to them the charge placed per hectare in advance.

Suggested Amendment The Review Panel Recommends that section 21 be removed from the Act and that the Board should instead be funded on a fee per hectare basis.

2.4.2. Returns

Section 19 of the *Citrus Industry Act* empowers the Board to require a registered person to furnish, in writing, information to the Board in relation to citrus fruit or a citrus fruit product as is necessary for the administration of the Act. The information which may be required in such a return includes the types of information specified in sub-section 19(2) of the Act.

The issue of the Board's role in collecting and disseminating statistical information is discussed in Sections 1.4.3.1 and 1.6.2.

Submissions received suggested that the requirement to provide information to the Board was not an onerous burden on market participants, with one submission suggesting that it assisted growers to manage their business affairs. This requirement represents a “trivial” restriction upon competition.

PART 3: ADMINISTRATIVE REQUIREMENTS

Section 19(1)

A registered person may be required by the Board to furnish in writing in the time specified in the notice such information in relation to citrus food or a citrus food product as the Board thinks necessary for the administration of this Act and as specified in the notice.

Section 20

The Board must within 12 months after the commencement of the Act prepare a plan of a Board's proposed principle undertakings and activities for the next 5 years and convene a public meeting. Notice of that public meeting is to be provided in the newspaper and also a copy by post to each registered person.

That 5 year plan must be updated every 12 months.

Section 21

Contributions must be paid by registered persons to the Board towards the costs incurred or to be incurred by the Board in the carrying out of its functions under the Act.

Section 22

The Board must keep proper accounts of all the money received and paid by or on account of the Board.

Section 23

The Board must no later than 31 July in each year, submit to the Minister a report on its operations during the financial year of the Board ending on the preceding 30 April.

Section 25(1)

A person who is required to be registered under the *Citrus Industry Act* must apply to the Board for registration in the prescribed form together with information relevant to the application as the Board may require. It must also be accompanied by the prescribed fee.

Section 25(6)

A renewal of this application may also be made each 12 months in the prescribed form on payment of the prescribed fee and containing such information as is prescribed.

Section 31(1)

A registered grower may apply to the Board for a permit to sell by retail citrus fruit grown by that registered grower. This must be made in the prescribed form, on payment of the prescribed fee and must include such information relevant to the application as the Board may require.

Regulation 3

The Board must keep a copy of the Commonwealth Export Control Orders available for inspection by members of the public without charge and during the normal office hours.

Regulations 5 and 6

These regulations prescribe the form set out in Schedule 4 for the applications made pursuant to Sections 25(1) and 25(6) of the *Citrus Industry Act*.

Regulation 9

This regulation sets out the form set out in Schedule 4 of the Regulation for an application under Section 31(1).

Regulation 11

A registered packer must before causing to be removed citrus fruit from the premises of a packer or delivering or causing the delivery of citrus fruit to a carrier or any other person, prepare a citrus forwarding advice. This must comply with Schedule 2 of the Regulations. The citrus forwarding advice must be delivered to the carrier of the citrus fruit before the fruit is removed or delivered and deliver one copy of the advice to the consignee of the citrus fruit. Additionally, where the consignee is a registered wholesaler or a registered volume retailer, the packer must deliver one copy of the advice to the Board within 3 days from the day on which the advice is required to be prepared together with the additional information set out in clause 2 of Schedule 2 of the Regulations and the packer must also retain a copy of the citrus forwarding advice (and the additional information) for not less than 12 months from the day on which the advice was required to be prepared.

It is the view of the Review Panel that only the requirements under Regulation 11 fall within the meaning of being either unnecessary or imposing an unwarranted burden on market participants.

PART 4 : RECOMMENDATIONS

Retention of the Act

The review has concluded that there are net public benefits including product promotion, information services, fruit fly protection and local R&D which can justify the continuation of the Board and the retention of the *Citrus Industry Act 1991.*

Suggested Recommendation 1

The *Citrus Industry Act 1991* should continue to underpin the operations of the Board and those functions of the Board which provide public benefits should continue to be funded through a statutory regime.

Function of the Board

Review Panel recognises that a number of functions currently carried out by the Board are anti-competitive and do not provide sufficient public benefit to justify their continuation under National Competition Policy. The Review Panel is of the view that the functions of the Board prescribed under sub-section 13(a) of the Act, to develop policies for orderly marketing of citrus fruit and citrus products and to maintain minimum fruit quality standards, are anti-competitive.

The objective of the Act should be in terms of those public benefits which may only be achieved through the application of legislation. The Review Panel endorses the promotion of awareness of plant health issues and facilitation of marketing and enhancement technological innovation in the industry, as appropriate objectives of the Act. It is also foreseeable that the Board may undertake the role of assisting with the implementation of the Quality Assurance scheme under the *Food Act*, as well as, the provision of industry strategic planning.

Suggested Recommendation 2

The Review Panel recommends that the Act be amended so that the provision which outlines the functions of the Board includes the facilitation of marketing of the citrus industry, enhancement of technological innovation, the promotion of plant health awareness and the provision of market information.

Suggested Recommendation 3

The Review Panel recommends that the functions of the amended Act should not include any reference to the maintenance of minimum standards of fruit quality, public health nor the “orderly marketing” of the citrus industry.

Registration

Currently growers, packers, processors, wholesalers and volume retailers of citrus fruit are required to be registered under the Act. The functions of the Board which the Review Panel has identified as providing a net public benefit relate primarily to the production tier of the Citrus industry. The Review Panel has formed the view that the other tiers of the citrus industry do not need to be registered with the Board and that the free market should dictate the transactions which occur between the different functional levels of the citrus market.

Suggested Recommendation 4

Registration should be retained only for the producers of citrus products and references in the Act which refer to the registration of parkers, processors, wholesalers and volume retailers should be removed.

Funding of the Board

Currently the Board requires an application and annual registration fee from packers, processors, wholesalers and volume retailers. The Review Panel has been unable to identify a significant net public benefit to justify the continuation of charging these groups for the activities of the Board.

The proposed future functions of the Board focus on the protection and development of the citrus production industry. The Review Panel recognises that the Board will require contributions from producers to continue to perform its functions which provide a public benefit. Whilst the current levy does not represent an onerous burden on producers compared to overall running costs, the Review Panel favours a charge per hectare scheme with each producer contributing towards the costs of the Board relative to the size of their holdings.

The Review Panel favours this approach as the charge per hectare remains independent of the level of production, which provides a further incentive for producers to maximise the output achieved on their land. The fact that the charge can be set in advance and the estimated return on that charge known should also enhance the accountability of the Board. The Board would be more readily able to justify the specified amount charged in terms of its activities and services provided.

Suggested Recommendation 5

The Review Panel recommends that there is more accountability of the Board in respect of the setting of the charge per hectare on producers.

The charge for a year should be set in advance and should be approved by growers at the annual general meeting. The Board should be required to provide full

Maintenance of Citrus Fruit Quality

One of the prescribed functions of the Board is the development of policies for the maintenance of the standard of citrus fruit quality. As part of this function the Board also strove to ensure that the citrus fruit offered for sale met public health requirements.

The submissions which supported the retention of the Act and the Board in its current form relied heavily on this function to justify the regulation of the citrus industry from producers through to volume retailers. However, those submissions advocating change strongly argued that the setting of quality standards by the Board was a restriction on competition and an inappropriate role for the Board to undertake. It was also argued that the Board has insufficient resources to police the maintenance of quality standards.

In the assessment of the alternatives to legislation the Review Panel concluded that the market in concert with brand identification and strategic alliances would be likely to achieve the public benefit of ensuring that consumer expectations were met in regards to the quality of citrus fruit purchased.

Suggested Recommendation 6 The Review Panel recommends that references to the Board undertaking the role of setting and maintaining the standard of quality of citrus fruit sold should be removed from the Act.

Maintenance of an "Orderly Market"

A prescribed function of the Board is the development of policies for the "orderly marketing" of citrus fruit and citrus fruit products. Section 32 of the Act provides the Board with general powers to direct the citrus market. Whilst seldom used the

orders represent an unjustified, potentially “serious”, restriction on competition.

Suggested Recommendation 7

That all reference to the Board undertaking the role of seeking to develop policies for the “orderly marketing” of the citrus industry should be removed from the Act. Section 32 should be removed from the Act.

Promotion of plant health awareness

One of the current roles of the Board is the promotion of plant health awareness, specifically with respect to fruit fly protection. Both the submissions received and the conclusions reached by the Review Panel suggested that there was a net public benefit in the Board continuing in this role.

The Review Panel is of the view that plant health awareness programmes should be funded through a compulsory statutory mechanism given that the whole industry benefits and there are significant externalities involved in the event of an outbreak.

Suggested Recommendation 8

The Review Panel recommends that the role of the Board in the promotion of plant health awareness be recognised in the Act.

Promotion of the Citrus Fruit Industry

The Review Panel considers that the promotion of the citrus fruit industry is a legitimate role for the Board to undertake and one where a net public benefit can be derived. However the level and type of promotion undertaken by the Board are issues which should be decided by those registered contributors to the Board. One of the issues that growers should consider when granting their approval for the charge on their citrus growling land is the component of that charge going towards generic promotion and whether value for money is being achieved.

Technology transfer and innovation

One of the prescribed functions of the Board is to undertake, assist or encourage research into the citrus industry. This takes the form of both funding for general research as well as technology transfer programmes. The Review Panel has reached the conclusion that this function of the Board does derive a net public benefit. However, where the programmes only help certain growers it is suggested that the assistance should be provided on a user pays basis.

Suggested Recommendation 9

The Review Panel recommends that the Board should put a greater focus on the user pays principal and directly charge for services which provide a benefit to specific individuals. The charge per hectare should be reduced accordingly.

Market Information

The provision of market information to industry participants is of a net public benefit and is a role for the Board which should be retained under the Act. The Board should however provide non general information on a more user pays basis as this would allow for a tailored service which could operate in competition with private providers.

Suggested Recommendation 10

The Review Panel recommends that the Board should put a greater focus on the user pays principal and directly charge for services which provide a benefit to specific individuals. The charge per hectare should be reduced accordingly.

Contribution to the Citrus Growers of South Australia Inc.

It is the understanding of the Review Panel that at present the Board assists in the funding of the Citrus Growers of South Australia Inc by adding to the statutory levy an amount to cover the associations fees. It is inappropriate for the Board to assist in the funding of an independent industry body and accordingly the practice should be stopped.

Suggested Recommendation 11

The Review Panel recommends that the Board be directed to stop assisting in the funding of the Citrus Growers of South Australia Inc.

To assist with implementation of this recommendation the Review Panel suggests that a proposal is made to the Minister that the Association gain funding through the Primary Industries funding scheme.

PART 5: APPENDICES

Appendix 1 : Terms Of Reference

Preamble

Under the Competition Principles Agreement ("the Agreement') the State is required to review and, where appropriate, reform legislation which restricts competition by the end of 2000. In accordance with the State's legislation review timetable, the *Citrus Industry Act* and *Citrus Industry Regulations 1992* are to be reviewed by the end of 1999.

The Act and Regulations will be examined during the legislation review process in accordance with the obligation contained in clause 5 of the Agreement.

Review Panel

The review of the *Citrus Industry Act* will be undertaken by Review Panel including:

Mr Philip Saunders
Ministerial Liaison Officer
Office of the Minister of
Primary Industries & Resources

Mr John Cornish
Manager, Industry Development,
Grape Industries
Department of Primary Industries & Resources

Mr Simon Howlett
Solicitor
Crown Solicitor's Office
Attorney General's Department

Philip Taylor
Principal Economic Consultant
Grape & Citrus Industries
Department of Primary Industries & Resources

Objectives of the Review

When considering the appropriate form of regulation the Review Panel will consider the following objectives:

1. Regulation should only be retained if the benefits to the community as a whole outweigh the costs; and if the objectives of the regulation cannot be achieved more efficiently through other means, including non-legislative approaches.

2. Pursuant to clause 1(3) of the Agreement, in assessing the benefits of regulation regard shall be had, where relevant, to:

   a) effects on the environment;

   b) social welfare and equity;

c) occupational health and safety;

d) economic and regional development;

e) consumer interests, the competitiveness of business including small business; and

f) efficient resource allocation.

3. Compliance costs and the paper work burden on small business should be reduced where feasible.

Issues to be addressed

Clarify the objectives of the *Citrus Industry Act*, including the identification of the public benefits of the Act, and provide an assessment of the importance of these objectives to the community.

1. Identify the restrictions to competition contained in the Act, regulations made under the Act, and Codes of Practice applied by the Act and regulations:

   a) describe the theoretical nature of each restriction (eg barrier to entry, restriction on conduct etc);

   b) identify the markets upon which each restriction impacts; and

   c) provide an initial categorisation of each restriction (ie trivial, intermediate or serious).

2. Analyse and describe the likely effects of the restrictions on competition in the relevant markets, and on the economy generally:

   a) what are the practical effects of each restriction on the market;

   b) assign a weighting to the effect of each restriction in the market; and

   c) assess what is the relative importance of each restriction in a particular market to the economy as a whole.

3. Consider whether there are practical alternative means for achieving the objectives of the *Citrus Industry Act* , including non-legislative approaches.

4. Assess and balance the costs and benefits of the restriction.

5. Consider whether any licensing, reporting, or other administrative procedures, are unnecessary or impose an unwarranted burden on any person.

Consultation

The Review Panel will compile a list of interest groups and other affected persons, and will provide a copy of the draft legislation review report to these groups and persons for comment.

Report

The Review Panel will submit a report to the Minister detailing:

a) the Terms of Reference for the review;

b) the persons and groups consulted during the review;

c) the analysis of the *Citrus Industry Act* in accordance with these Terms of Reference; and

d) the recommendations of the Review Panel.

Appendix 2: Materials considered by the Review Panel

Documents

1. Government of South Australia: National Competition Policy: Review of the *Dried Fruits Act 1993* and *Dried Fruits Regulations 1993* - August 1999.

2. Code of Practice for Citrus Fruit Packers.

3. Memorandum dated 1 October, 1999 from Citrus Board of South Australia, incorporating:

   - Terms and conditions of Registration as a Citrus Packer as at 1 May 1999;
   - Terms and conditions of Registration as a Citrus Processor as at 1 May 1999;
   - Terms and conditions of Registration as a Citrus Wholesaler as at 1 May 1999;
   - Terms and conditions of Registration as a Citrus Volume Retailer as at 1 May 1999;
   - Application for a daily permit to sell citrus as listed below;
   - Application for annual permit.

4. Thirty-fourth Annual Report of the Citrus Board of South Australia for the year ended 30 April 1999.

5. Centre for International Economics, Review of legislative restrictions within the Victorian and New South Wales Murray Valley Citrus Marketing Act 1989: An issues paper. November 1998.

6. Centre for International Economics, Citrus in the Murray Valley: A National Competition Policy review of the Murray Citrus Marketing Act 1989 of Victoria and New South Wales. July 1999.

Submissions

1. **J.R. Lory, Loxton, Citrus Grower**
2. **Ron Gray, Loxton North**
3. **The Citrus Board of South Australia**
4. **Citrus Growers of South Australia Inc.**
5. **Citrus Reform Association (Inc.)**
6. **South Australian Farmers Federation**
7. **John Krix, Loxton**

Appendix 3: Level of Exports[10]

The level of exports from SA in the 1998/99 season were as follows:

	% of Total Crop Exported	Tonnes Exported
Navel Oranges	43.4%	22,698
Valencia Oranges	23.7%	27,305
Grapefruit	1.3%	46
Mandarins	13.4%	1,798
Lemons	16.0%	1,486
Tangelos	34.3%	865

In total, exports represent 26% of SA production by volume but 53% by farm-gate value of production.

[10] Memorandum dated 1 October 1998 from Citrus Board of South Australia.

Appendix 4: Executive Summary from *A National Competition Policy Review of the Murray Valley Citrus Marketing Act 1989 of Victoria and New South Wales*[11]

This review of the Murray Valley Citrus Marketing Act 1989 of Victoria and New South Wales has been conducted under the National Competition Policy (NCP) and in accordance with the *Guidelines — Review of Legislative Restrictions on Competition* (Victorian Department of Premier and Cabinet 1996). Under NCP, legislation must be reformed before 2001 unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

The legislation under review provides the legislative basis for the existence and operations of the Murray Valley Citrus Marketing Board (MVCMB or 'the Board').

The approach taken here has been to assess all available evidence of the benefits and costs of each restriction on competition in turn. In some cases the net public benefits of restrictions remain inconclusive. However, in such cases it has been possible to identify alternative ways of ensuring that the objectives of the legislation could be achieved by more pro-competitive approaches. The alternative approaches have been designed so that the objectives will only continue to be pursued if the public benefits exceed the costs. In particular, changes to voting procedures are recommended that will better reveal the benefits of Board activities and the level of support by growers.

Overview of review findings

A key finding of this review is that there are likely net public benefits of legislation that underpins the continuation of the Board and provides for compulsory levies to fund its core activities, particularly those that provide services of a 'public good' nature. However, there are several elements of the legislation which are highly anti-competitive and cannot be justified on any public benefit test. These relate primarily to the unused powers of the Board.

The compulsory levy, itself, is a restriction on competition but, where components of the levy are used to fund activities which potentially provide net public benefits, these components may be justified. These include activities such as fruit fly control, generic promotion, research and development (R&D), and others which potentially deliver benefits of a 'public good' nature.

There are other activities that are more appropriately funded through mechanisms that are based on user or beneficiary pays principles. These include activities such as some market information services and some extension activities such as

[11] Some sections of the Executive Summary are not relevant to the South Australian Citrus Industry Act and have not been reproduced here.

workshops or training courses that primarily benefit individuals. This raises the question of the most pro-competitive ways of setting the levy and funding the Board's activities. Related to this is the issue of industry voting procedures. Here, it is recommended that a more commercial approach be adopted so that the voting power of growers better reflects the stake they have in total levies collected[12].

Recommendation 1

The review team recommends that legislation should continue to underpin the operations of the Board and that its core functions which provide benefits of a 'public good' nature should continue to be funded by compulsory levy where growers vote this to be beneficial.

Clarifying the objectives of the legislation

The objectives of the legislation are to:

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

The review team finds that these are appropriate objectives but with two exceptions. 'Orderly marketing' is a term that commonly means that marketing boards become actively involved in the marketing of products or by their actions, directly influence the functioning of markets. The Board is not involved in direct marketing of citrus and neither is it appropriate for it to do so. The Board stated that it would never become directly involved in citrus marketing. And there is no market failure issue to be addressed by the Board's pursuit of this objective.

The second exception is that the Board is an inappropriate organisation to be held accountable for public health issues. It has limited power to police such issues that are more appropriately dealt with by public health authorities.

Recommendation 2

The review team recommends that in any future legislation, the wording of the purpose of that legislation be changed to better reflect the current and future activities of the Board in facilitating marketing and enhancing technological innovation in the Murray Valley citrus industry.

Recommendation 3

[12] Discussion of voting structure has been deleted as membership of the CBSA is not decided by voting.

The review team recommends that the objectives of any future legislation should not contain reference to the 'orderly marketing' of citrus fruit or to public health.

Restrictions to competition under the legislation

The legislation under review potentially gives the Board a great range of powers to restrict competition. However, the Board has chosen not to use the most restrictive of its powers. The Board uses its powers to charge a compulsory levy on growers which permits it to provide a range of services to growers.

The main services provided by the Board include:

- technology transfer, business skills, research and adoption of quality systems;
- market information;
- maintenance of fruit fly area freedom;
- promotion of Murray Valley fruit; and
- industry planning and representation.

The powers the Board does not actively use include:

- trading in citrus fruit or engaging in processing;
- entering into joint ventures;
- dealing in other primary products;
- acting as a marketing agent;
- setting minimum prices for processing fruit; and
- determining grades and setting minimum standards.

The unused powers represent potentially strong restrictions to competition. Active trading or the setting of minimum quality standards or prices by the Board could greatly restrict the competitive freedoms of companies in the industry. It could potentially restrict some firms entering the market, it could restrict their pricing, quality, marketing and production decisions, it could raise their costs and it could advantage some firms over others.

The Board's ability to compulsorily collect a levy from growers due to the legislation is a restriction on competition. It gives it an advantage to deliver services over alternative potential service providers, and the levy raises the costs of growers. The Board's advantage may restrict the competitiveness of alternative service providers and the cost of the levy may reduce the competitiveness of growers, particularly those who do not fully utilise the Board's services.

The restrictiveness of each of the Board's activities varies by service provided, but in general they are potentially much less restrictive to competition and much less obvious than the restrictions arising from unused powers. The restrictiveness depends on the extent to which the Board's involvement may be *crowding out* others

providing similar services and the extent to which it may unnecessarily raise growers', traders', processors' and marketers' costs.

The fact that the Board's most restrictive powers are not used reflects a judgement by the Board that the costs of using them are likely to outweigh the benefits. Moreover, experience in other industries is that such restrictions can and have imposed large net costs on the community.

Under national competition principles, legislative restrictions that cannot demonstratively pass the public benefit–cost test should be removed or reformed. No evidence was received to argue that the restrictions relating to unused powers helped the industry address contemporary economic problems. For legislative backing to be necessary, evidence of the market's failure to deliver desirable economic objectives would be needed — none was presented, although some growers regarded unused powers as a safety net should something go wrong. However, evidence was received that the reserve powers could pose problems if used.

Active trading

If the Board became actively involved in trading or processing, its other powers would provide it with an unfair advantage over other traders and processors. It could displace more competitive players reducing the long term viability of the industry. This would put the Board into conflict with packers and processors and retard the Board's aim of facilitating market reforms and innovations. The Board could also accumulate trading losses that would become the liability of growers, requiring increased levies.

Minimum quality standards

The evidence that the Board's powers to set minimum standards would be in the public interest has not been established and alternative, pro-competitive options exist to establish or meet quality standards.

Legislated minimum quality standards, if enforced, would be counter-productive and retard the process of increasing recognition and awareness of the importance of market driven and industry led total quality management systems. The Board may have a role in facilitating the adoption of industry driven guidelines for quality or grade standards.

Minimum prices for processing fruit

If the Board set minimum prices for processing fruit, were these ever to become effective, this is likely to see Murray Valley fruit being overlooked in preference for fruit from other regions. Ultimately, this could lead to fruit being left unsold or forcing growers to engage in black market sales to dispose of their crops. Many packers and local processors in the Murray Valley would also be disadvantaged. In any case, under current arrangements, directors of the Board would be liable to prosecution under the Trade Practices Act (TPA) if the Board were to set and attempt to enforce minimum prices for processing fruit. The only exception would be if the Board received specific authorisation from the Australian Competition and Consumer Council (ACCC) on public benefit grounds or the Act was changed to specifically authorise this activity and exempt the Board from the relevant provisions of the TPA.

Conclusion

While unused powers remain in legislation, potential restrictions continue to exist in the citrus industry business environment. Their presence, at very least, may represent a deterrent to investment and entrepreneurship — something much needed in Australian horticulture if it is to increase its global competitiveness. Consistent with national competition principles, that restrictions to competition be removed if the benefits cannot be demonstrated to exceed the costs, legislation relating to unused powers by the Board should be removed. This conclusion is further reinforced by the fact that pro-competitive alternatives already exist to achieve the objectives underlying the unused powers.

Recommendation 4

The review team recommends that the Act in each State be amended to exclude the powers noted above being given to the Board which enable it to become actively engaged in the marketing or processing of citrus fruit. Associated with this would be the removal of all penalties and other conditions directly associated with these powers.

Activities likely to require collective funding

Market mechanisms do not always exist to ensure resources, products or services used or produced by an industry are properly priced. This creates a situation in which individual producers may face incorrect incentives to invest in that product or service. When this occurs there may be legitimate grounds for collective action by the industry to overcome a problem of under-investment or over-investment. In the citrus industry, individual growers are unlikely to face correct incentives to invest in protecting the region from fruit fly, some general areas of local research and development, generic promotion and administration of their collective body. Without collective action and collective financing, they may under-invest in these activities.

Some local research and development

Given the potentially high spill-over benefits that might accrue to all growers from some forms of region specific R&D, there is a sound principle for the Board supporting such efforts through a compulsory levy. The main difficulty is in determining which projects provide a good benefit to cost return to the industry and which projects provide benefits primarily to individuals. This will vary by project and season, which raises the question of how much should the levy be in any one year. A mechanism for industry consultation and collective allocation is required as suggested earlier (recommendation 6). For those R&D projects which benefit the industry as a whole, and are likely to be cost effective, there is a case for funding these through a compulsory levy.

Generic promotion

Some forms of generic promotion can provide benefits in excess of costs. Without a compulsory levy, some growers could ‘free ride’ on the others who fund such activities. This establishes a *prima facie* case for a compulsory levy. However, generic promotion can also be ineffective or even counterproductive. It is very

difficult to coordinate generic promotions with other efforts of marketing. Too great an emphasis on generic promotion can crowd out better individual brand based promotions and more sophisticated marketing efforts. When this occurs large costs can be imposed.

Further, generic promotion in one region, if successful in increasing sales, can adversely impact on sales in another region in a mature market. This may invite retaliatory promotion from other regions. The net result may simply be an increase in costs to all regions. However, the Board is endeavouring to coordinate its generic promotions with other regional marketing boards. Nonetheless, generic promotion can represent a high risk investment for growers with uncertain indications of the real returns on investment. This raises the importance of finding a mechanism for industry consultation and collective agreement about the amount needed through a compulsory levy for generic promotion.

Recommendation 9[13]

Murray Valley levy payers should decide on the type and level of promotion, R&D and fruit fly activities with these activities being funded through the compulsory levy system. With the sale of its brands and strategy of undertaking joint generic promotions with the other boards/committees, the Board should give consideration to reducing the promotion component of the levy.

General administration

Maintaining an institutional structure (the Board) to facilitate collective industry action is costly and without a compulsory levy some growers could 'free ride' on others. Costs of administration therefore need to be bundled together with the costs of other collective activities. There needs to be good and transparent accountability to fund providers to ensure that administration costs are no greater than necessary relative to the services provided.

Activities suited to user pays funding

Although some of the Board's activities may pass the public net benefit test, if the benefits are not generally enjoyed across the industry, it is difficult to mount a commercial or pro-competitive case to collectively fund such activities by compulsory levy. A compulsory levy then becomes a mechanism to cross-subsidise one sector of the industry by another. This reduces the competitiveness of the cross-subsidising sector. To the extent that cross subsidisation is not an issue in certain cases, then growers should have no objection to paying for the service in question on a user pays basis and having the levy reduced accordingly.

Even if a social welfare case could be mounted to defend such cross-subsidisation where it exists, the Board's objective is to *promote the best interests of the industry* and the *competitiveness of the industry*. Cross-subsidisation which reduces the competitiveness of one sector to benefit a less advantaged sector is likely to make the whole industry less competitive and therefore to *demote*, rather than *promote*, the interests of the industry.

[13] Recommendations 5 to 8 relate to the voting structure of the MVCMB and have been excluded here.

On delivery of several of its services, the Board appears to be using growers with large orchards to cross-subsidise growers with small orchards. Four per cent of growers operate farms in excess of 50 hectares of citrus. This group of growers produces 27 per cent of production. A further 15 per cent of growers produce 32 per cent of production. In total, the larger orchards that represent only 19 per cent of the industry, produce nearly 60 per cent of production. So, about 60 per cent of the Board's funding comes from 19 per cent of the growers. Some of these growers are paying over $50 000 per year in levies to the Board. But it is some growers with larger orchards who have expressed concerns that they do not receive value for money for their investments and are not fully using the services of the Board. Some of the Board's services are not well used by all growers. For example, attendance at technology transfer meetings is usually restricted to between 3 and 10 per cent of growers at any one meeting. Several of these meetings are in the form of workshops and training courses where, in many cases, the benefits accrue to individuals rather than the industry in general.

Some owners of larger orchards believe they could achieve much more if they retained the money and invested it themselves. The implication is that the levies on growers with large orchards are being used to fund services to growers with small orchards who produce the minority of the industry output. Yet increasingly in horticultural industries in Australia and around the world, it is the larger, specialised growers who are gaining market share. For the industry to prosper and for its interests to be promoted, larger scale needs to be promoted, not smaller scale. The Board itself acknowledges that one of the industry's problems is its fragmented structure. And best practice studies show it is mostly only large orchards that are achieving a sustainable financial rate of return on investment.

Clearly, some growers are supporters of the Board providing cross-subsidised services and others are not. But in terms of competition policy principles, what is important is to ensure that the delivery of services does not restrict competition. This requires determining which services could be provided on a user pays basis. Such a mechanism will also provide a sound commercial test of the value of such services.

Technology transfer activities

These activities come under the Board's Best Practice Orchard Management and Business Skills Program and include technology transfer, bench-marking of business performance and adoption of quality systems.

Some of these activities, such as the adoption of quality systems have characteristics that probably benefit the whole industry and it is reasonable that they be considered for funding through the compulsory levy system. But other activities such as workshops and training courses provide benefits to individuals who attend rather than to growers generally. For example, it is difficult to argue that growers who attend a chainsaw users course will contribute to the overall technology transfer process and provide industry wide benefits. There is a strong case for applying the user pays principle and charging directly those individuals who utilise these types of services. This would enable the compulsory levy to be reduced and eliminate cross-subsidisation.

Research and development that is only likely to benefit a select sector of the industry should not be generally funded through a compulsory levy. Nonetheless, the Board

may be in a position to help facilitate such work being financed collectively by that select group if they are unable to organise themselves to arrange the funding. However, if the benefits of such a piece of work are expected to clearly exceed the costs, the select group is likely to be able to organise the financing itself.

Market information

The Board could provide most, but not all, of these services on the basis of subscriptions from growers and packers. This would not preclude any private firm from providing similar services. Funding these types of activities on a subscription basis is common across many areas of economic activity. It ensures that the information is focussed on commercial needs and that there is not cross-subsidisation between those who do not use the service and those who do.

Recommendation 10

The Board should place greater weight on the user pays principle and directly charge individuals for those services, the benefits of which clearly accrue to individuals rather than the industry collectively. The compulsory levy should be reduced accordingly.

Recommendation 11

The Board should give consideration to charging subscriptions for most of its market information services and reducing the size of the levy accordingly.

Activities not suited to the Board

Contributions to grower associations

The Board contributes around $62,000 to the Australian Citrus Growers (ACG), the national body representing citrus growers. This amount contributes to the core operating costs of ACG. There is no justification for compulsory levies to be spent on such contributions. They are not consistent with the Board's operations under the Act. Associations exist or are established to secure private benefits for members. And although not a political body, the ACG can become involved in the politics of issues. The Act prohibits the Board from becoming concerned with party politics. Regional grower representation on the ACG is best done through local grower associations and not a statutory authority.

Recommendation 12

The Board should cease being a member of and paying contributions to Australian Citrus Growers.

Conclusion

The outcomes of this more commercially accountable or pro-competitive approach are several. Growers may vote collectively to increase the levy if they felt that much was to be gained by more collective action. However, this is unlikely based on the

evidence presented to the review team by larger growers. Another possibility is that no activities are supported on a collective basis, providing no grounds for a compulsory levy and leaving the Board to offer all its services on a user pays or voluntary basis. The most likely outcome is a blend of the two. There is scope for significant reductions in the levy perhaps to levels more in line with other regional boards if several of the activities outlined above were to be more appropriately funded on a user or beneficiary pays basis. Expenditure on promotion could also be reduced so that Murray Valley grower contributions are in line with those in other citrus areas — given the new focus of the Board to coordinate generic promotion with other Boards.

Appendix 5: Fees Charged

	Application ($)	Throughput (tonnes[1)]	Annual Registration ($)	Levy
Packers	1000	Up to 500	- 500	
		500 - 999	- 1,000	
		1000 - 4,999	- 1,500	
		5000 – 14,999	- 2,000	
		Over 15,000	- 2,500	
Processors	1000	Up to 4,900	- 1,000	
		5,000 or more	- 2,000	
Wholesalers	1000	2,000		Provision of $30,000 Bank Guarantee
Volume Retailers	1000	3,000		
Grower	-	-	-	$3.20 per tonne of oranges [2] $2.20 per tonne for other varieties

1 based on fruit handled

2 based on fruit produced ($2.20 per tonne for costs incurred by the Board in carrying out its Functions and $1.00 for National Promotion Fund