

TASMANIA

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**FRUIT AND NUT INDUSTRY (RESEARCH,  
DEVELOPMENT AND EXTENSION TRUST FUND)  
BILL 2011**

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**FRUIT AND NUT INDUSTRY (RESEARCH,  
DEVELOPMENT AND EXTENSION TRUST FUND)  
BILL 2011**

*(Brought in by the Minister for Primary Industries and Water,  
the Honourable Bryan Alexander Green)*

**A BILL FOR**

**An Act to continue the Apple and Pear Industry Research and Development Account as the Fruit and Nut Research, Development and Extension Trust Fund, to provide for a Board of Management to administer that Fund, to repeal the *Apple and Pear Industry (Crop Insurance) Amendment and Repeal Act 1999* and for related purposes**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

**1. Short title**

This Act may be cited as the *Fruit and Nut Industry (Research, Development and Extension Trust Fund) Act 2011*.

**2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

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### 3. Interpretation

In this Act, unless the contrary intention appears –

“**APIRD Account**” means the Apple and Pear Industry Research and Development Account established under section 5 of the Repealed Act;

“**Board of Management**” means the Board of Management continued by section 5(1);

“**FNRDE Account**” means the account in the Special Deposits and Trust Fund continued by section 4(1) as the Fruit and Nut Research, Development and Extension Trust Fund;

“**Fruit Growers Tasmania Inc**” means the association incorporated under the *Associations Incorporation Act 1964* as Fruit Growers Tasmania Inc with the Incorporation Number IA09057;

“**Repealed Act**” means the *Apple and Pear Industry (Crop Insurance) Amendment and Repeal Act 1999* as in force immediately before the commencement of this Act.

### 4. FNRDE Account

- (1) The account established in the Special Deposits and Trust Fund as the Apple and Pear Industry

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Research and Development Account, by section 5 of the Repealed Act, is continued as the Fruit and Nut Research, Development and Extension Trust Fund.

- (2) There is to be paid into the FNRDE Account all interest arising from the investment of the money in the FNRDE Account.
- (3) Any money standing to the credit of the FNRDE Account is to be applied by the Board of Management for –
  - (a) the benefit of Tasmania's fruit and nut industry by funding the following activities:
    - (i) research;
    - (ii) development of the industry;
    - (iii) extension of the industry;
    - (iv) marketing and promotion;
    - (v) the establishment of access to markets;
    - (vi) the development of protocols relating to quarantine;
    - (vii) the improvement or acquisition of land, buildings, plant or equipment; and

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- (b) the recovery of any costs arising from the administration of this Act or the Repealed Act; and
  - (c) any other purposes recommended by the Board of Management and approved by the Minister.
- (4) For the purposes of subsection (3)(a)(iii) –
- “extension”**, in relation to the fruit and nut industry, includes the exchange of information and the teaching of skills.
- (5) In carrying out its duties under subsection (3), the Board of Management must undertake such consultation as it considers appropriate with any persons engaged in the fruit and nut industry and any body or organisation representing those persons.
- (6) The Board of Management may determine the terms and conditions of any payment of money from the FNRDE Account.

**5. Board of Management**

- (1) The Board of Management established under section 6 of the Repealed Act is continued for the purpose of distributing the FNRDE Account.
- (2) The Board of Management consists of 5 members comprising –

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- (a) 4 persons appointed by the executive committee of Fruit Growers Tasmania Inc, one of whom is the chairperson; and
  - (b) one person appointed by the Minister to represent the interests of the Government of Tasmania.
- (3) The Board of Management –
  - (a) is to recommend to the Minister rules and procedures for carrying out its duties; and
  - (b) may recommend an amendment to the rules and procedures or the substitution of the rules and procedures.
- (4) The Minister may approve or reject the rules and procedures, or the amendment or substitution of the rules and procedures, recommended by the Board of Management.
- (5) Schedule 1 has effect with respect to membership of the Board of Management.
- (6) Schedule 2 has effect with respect to meetings of the Board of Management.
- (7) If the Governor is satisfied, on the recommendation of the Board of Management, that the organisation specified in subsection (2)(a) has changed its name or has ceased to represent the interests of Tasmania's fruit and nut industry, the Governor may make an order that amends that subsection and any

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other section which mentions that organisation by amending the name of that organisation or substituting the name of another organisation that represents the interests of that industry.

**6. Protection from liability**

- (1) A member of the Board of Management, or a person acting under the direction of the Board of Management, does not incur any personal liability in respect of any act done or omitted to be done by the member or person in good faith in the performance or exercise, or purported performance or exercise, of any function or power of the Board of Management or in the administration or execution, or purported administration or execution, of this Act.
- (2) Subsection (1) does not preclude the Crown or the Board of Management from incurring liability that a member of the Board of Management or another person would, but for that subsection, incur.

**7. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may –



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- (a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation; and
- (b) provide for any of those savings or transitional matters to take effect when this Act commences or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

**8. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Primary Industries and Water; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Primary Industries, Parks, Water and Environment.

**9. Transitional and savings provisions**

The transitional and savings provisions set out in Schedule 3 have effect.

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**10. Legislation repealed**

The legislation specified in Schedule 4 is repealed.

**SCHEDULE 1 – MEMBERSHIP OF BOARD OF  
MANAGEMENT**

Section 5(5)

**1. Interpretation**

In this Schedule –

“**member**” means a member of the Board of  
Management.

**2. Term of office**

- (1) The term of office of a member is 3 years.
- (2) A member may hold office for more than one term.

**3. Holding other office**

The holder of an office who is required by the terms of his or her employment to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

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**4. State Service Act**

- (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.
- (2) A person may hold the office of member in conjunction with State Service employment.

**5. Allowances**

- (1) A member is entitled to be paid such allowances as the Minister determines.
- (2) A member who is a State Service employee or State Service officer is not entitled to allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

**6. Vacation of office**

- (1) A member vacates office if he or she –
  - (a) dies while holding office; or
  - (b) resigns by written notice given to the Minister; or

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- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the creditors of the member, or makes an assignment of the member's remuneration or estate for their benefit; or
  - (d) is absent from 3 consecutive meetings of the Board of Management, of which reasonable notice has been given to the member, either personally or in the ordinary course of post, and the member is not excused by the Board of Management from attendance at any of those meetings; or
  - (e) is convicted in Tasmania of an offence which is punishable by imprisonment for a period of not less than 12 months, or if the member is convicted elsewhere than in Tasmania of an offence which, if committed in Tasmania, would be an offence so punishable; or
  - (f) is removed from office under subclause (2).
- (2) The Minister may remove a member from office if the Minister is satisfied that the member –
- (a) is incapable, whether by reason of ill-health or otherwise, of performing adequately the duties of that office; or

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- (b) has voted at any meeting of the Board of Management in contravention of the rules relating to disclosure of interest set out in clause 5 of Schedule 2.
- (3) If the office of a member appointed under section 5(2)(a) is vacant, the executive committee of Fruit Growers Tasmania Inc may appoint a person to the vacant office for the balance of the term of office of that member.
- (4) If the office of a member appointed under section 5(2)(b) is vacant, the Minister may appoint a person to the vacant office for the balance of the term of office of that member.

**7. Validity of proceedings, &c.**

- (1) An act or proceeding of the Board of Management or of a person acting under a direction of the Board of Management is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member.
- (2) All acts and proceedings of the Board of Management or of a person acting under a direction of the Board of Management are, despite the subsequent discovery of any defect in the appointment of a member or that any other person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was

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qualified to act as, or capable of being, a member, and as if the Board of Management had been fully constituted.

**8. Presumptions**

In any proceeding by or against the Board of Management, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Board of Management; or
- (b) the appointment of any member.

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**SCHEDULE 2 – MEETINGS OF BOARD OF  
MANAGEMENT**

Section 5(6)

**1. Interpretation**

In this Schedule –

**“member”** means member of the Board of  
Management.

**2. Convening of meetings**

The members may hold such meetings as they consider necessary for the administration of the Board of Management.

**3. Quorum**

- (1) The Board of Management may not conduct any business at a meeting unless –
  - (a) at least 2 members appointed under section 5(2)(a) are present; and
  - (b) the member appointed under section 5(2)(b) is present.
- (2) Subject to the rules and procedures approved under section 5(4), a meeting of the Board of Management at which a quorum is present is



competent to transact any business of the Board of Management.

#### **4. Voting**

- (1) A resolution carried by at least 3 of the votes of the members at a meeting is a resolution of the Board of Management.
- (2) Each member is entitled to one vote on a matter arising for resolution by the Board of Management.

#### **5. Disclosure of interests**

- (1) If a member has a direct or indirect pecuniary interest, otherwise than in common with all other persons engaged in the fruit and nut industry, in a matter being considered or about to be considered by the Board of Management, the member is to, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of that interest at a meeting of the Board of Management.
- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting and the member must not, unless the Board of Management otherwise determines –
  - (a) be present during any deliberation of the Board of Management with respect to that matter; or

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- (b) take part in any decision of the Board of Management with respect to that matter.
- (3) For the purpose of making a determination under subclause (2), the member to whom the disclosure relates must not –
  - (a) be present during any deliberation of the Board of Management for the purpose of making that determination; or
  - (b) take part in making the determination.

**6. Minutes of meetings**

The Board of Management is to cause accurate minutes to be kept of the business conducted at meetings of the Board of Management.

**7. General procedure**

The procedure for the calling of, and for the conduct of business at, meetings of the Board of Management is subject to the rules and procedures approved by the Minister under section 5(4).

**8. Presumptions**

In any proceeding by or against the Board of Management, unless evidence is given to the contrary, proof is not required of –

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- (a) any resolution of the Board of Management; or
- (b) the presence of a quorum at any meeting of the Board of Management.

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**SCHEDULE 3 – TRANSITIONAL AND SAVINGS  
PROVISIONS**

Section 9

**1. Members of Board of Management**

A member of the Board of Management appointed under the Repealed Act and holding office as such a member immediately before the day on which this Act commences is taken to have been appointed as a member of the Board of Management under section 5(2) of this Act.

**2. Construction of documents**

- (1) A reference in a document to the Fruit Crop Insurance Board appointed and holding office under Part II of the *Apple and Pear Industry (Crop Insurance) Act 1982* is taken, if appropriate, to be or to include a reference to the Crown.
- (2) A reference in a document to the APIRD Account is taken, if appropriate, to be or to include a reference to the FNRDE Account.

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**SCHEDULE 4 – LEGISLATION REPEALED**

Section 10

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Repeal Act 1999 (No. 79 of 1999)*