



New South Wales

Banana Industry Amendment Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Banana Industry Act 1987*:

- (a) to alter the regulatory functions of the Banana Industry Committee (“the Committee”) constituted under that Act to remove anti-competitive aspects consistently with National Competition Policy, and
- (b) to remove the power of the Committee to give directions as to the transportation of bananas, and
- (c) to clarify the provisions of the Act relating to the voting entitlements of banana growers in respect of the election of regional members of the Committee.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Banana Industry Act 1987* set out in Schedule 1.

Schedule 1 Amendments

Confining functions of the Committee

The proposed Act confines the functions of the Committee under the *Banana Industry Act 1987* to the provision of services to voluntary participants in any system established under the Act for the quality control of bananas and limits the regulatory functions of the Committee to matters such as pest and disease control. In particular, the proposed Act alters the functions of the Committee as follows:

- (a) the Committee's existing power under section 5 (b) to establish a system of quality control is confined to voluntary participants (Schedule 1 [1]),
- (b) the Committee's existing power under section 5 (c) to regulate and supervise the marketing of bananas is removed (Schedule 1 [2]),
- (c) the Committee's existing power under section 5 (f) to control or develop means for controlling pests and diseases that may affect the quality or volume of bananas is limited to pests and diseases that, in the opinion of the Committee, pose a threat to the commercial viability of banana growers in this State (Schedule 1 [4]),
- (d) the Committee's existing power under section 5 (l) to establish systems of inspection for the quality control or pest and disease control of bananas is confined to pest and disease control (Schedule 1 [5]),
- (e) the Committee's existing power under section 5 (m) to establish systems to facilitate inspection of the ripening, weighing, grading, packaging and storage of bananas is removed (Schedule 1 [6]),
- (f) the Committee's existing power under section 5 (n) to promote or operate schemes to assist the orderly marketing of bananas is removed (Schedule 1 [6]),

- (g) the Committee's existing power under section 6 (a) to compulsorily buy, acquire, sell or supply bananas is replaced with a power that is confined to voluntary agreements to do so (Schedule 1 [7]),
- (h) the Committee's existing power under section 6 (b) to buy or acquire equipment and supplies to sell or supply to banana growers or other persons for use in relation to the production or marketing of bananas is removed (Schedule 1 [8]),
- (i) the Committee's existing power under section 6 (c) to trade in, for cash or on terms, equipment and supplies for use in relation to the production or marketing of bananas is removed (Schedule 1 [8]),
- (j) the Committee's existing power under section 6 (d) to inspect bananas at any stage of their production or marketing and enter for that purpose any land on which bananas are grown, stored or handled is confined to purposes associated with pest and disease control (Schedule 1 [9]),
- (k) the Committee's existing power under section 6 (e) to treat, withhold, remove, destroy or withdraw from the market bananas that, in the Committee's opinion, are damaged, overripe or otherwise unfit or inappropriate for sale is confined to purposes associated with pest and disease control (Schedule 1 [10]),
- (l) the Committee's existing power under section 6 (g) to spray or otherwise treat bananas is removed because the power in section 6 (e), as amended, will deal with the treatment of bananas for the purposes of pest or disease control (Schedule 1 [11]),
- (m) the Committee's existing power under section 6 (h) to inspect ripening rooms and other premises that are used for the storage, handling or ripening of bananas is removed because section 6 (d), as amended, will deal with the inspection of bananas and the power to enter land or premises for purposes associated with pest and disease control (Schedule 1 [12]),
- (n) the Committee's existing power under section 6 (i) to declare localities in which bananas are grown is confined to certain purposes (Schedule 1 [13]),
- (o) the Committee's existing power under section 6 (l) to erect, maintain, repair, operate, regulate, use and regulate the use of buildings, and all machinery and plant used in connection with such buildings is clarified by:
 - (i) confining that power to buildings, machinery and plant of the Committee, and
 - (ii) providing for a similar power in relation to buildings, machinery and plant belonging to others, but only for purposes associated with pest and disease control (Schedule 1 [14]),

- (p) the Committee's existing power under section 6 (p) to make such arrangements as it deems necessary with regard to the sale of bananas for export or for consignment to other countries or States for overseas ships' stores is confined to voluntary participants (Schedule 1 [15]).

Abolition of Committee's power to issue transport directions

Schedule 1 [3] removes the current power of the Committee under section 5 (d) of the Act to regulate the transportation of bananas from a plantation to a railhead or market.

Schedule 1 [18] replaces section 9 of the Act relating to the power of the Committee to give directions in respect of the services it provides. The new section will limit the giving of directions to the carrying out of the Committee's functions under the Act in respect of which the Committee has a power of compulsion (namely, pest and disease control).

The consequence of this combination of amendments is that the Committee will cease to have the power to issue directions regarding the transportation of bananas.

Requirements for Ministerial approval of charges and alternative use of funds abolished

Schedule 1 [16] amends section 7 of the Act to remove the present requirement that the Minister approve charges that the Committee wishes to impose on banana growers in relation to the provision of services to them.

Schedule 1 [17] amends section 7 of the Act to remove the present requirement that the approval of the Minister (or a person nominated by the Minister) must be obtained by the Committee before it can use funds it raised by means of a charge for a particular service for a purpose other than that for which the funds were originally raised.

Clarification of voting entitlements of banana growers

Schedule 1 [21] amends section 16E to ensure that if two or more persons are banana growers in relation to more than one plantation, only one of them will be entitled to vote in an election for the Committee and that, accordingly, one of them will need to be nominated (either by agreement or by the Chairperson of the Committee) to exercise the vote.

The new provisions also make it clear that sections 16B, 16C and 16D of the Act will apply to the nominated voter as if he or she were the only banana grower in respect of all the banana plantations concerned. Sections 16B and 16C of the Act

are concerned with the nomination of a single voting region for the purposes of an election in cases where a banana plantation is situated in more than one voting region. Section 16D is concerned with the voting entitlements of regional banana growers in an election.

Schedule 1 [20] makes a consequential amendment to section 16D.

Other amendments

Schedule 1 [19] replaces section 11 of the Act relating to the Committee's power to request information. The new section will limit the Committee's power to request information to matters connected with its regulatory functions under the Act. It also inserts section 11A in the Act to enable the Committee to request information to assist it in ascertaining the voting entitlements of banana growers under Part 4 of the Act.

Schedule 1 [22] amends clause 1 of Schedule 3 to the Act to enable the making of regulations containing provisions of a savings or transitional nature if such provisions are required.



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No , 2000

A Bill for

An Act to amend the *Banana Industry Act 1987* to alter the functions of the Banana Industry Committee to remove anti-competitive aspects consistently with National Competition Policy; to clarify the voting entitlements of banana growers in respect of elections for the Committee; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Banana Industry Amendment Act 2000</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Banana Industry Act 1987 No 66	7
The <i>Banana Industry Act 1987</i> is amended as set out in Schedule 1.	8

Schedule 1 Amendments

	1
(Section 3)	2
[1] Section 5 Functions of Committee	3
Insert “in which persons may voluntarily participate” after “bananas” in section 5 (b).	4 5
[2] Section 5 (c)	6
Omit the paragraph.	7
[3] Section 5 (d)	8
Omit the paragraph.	9
[4] Section 5 (f)	10
Omit the paragraph. Insert instead:	11
(f) control, or develop means for controlling, pests or diseases if, in the Committee’s opinion, the pests or diseases pose a threat to the commercial viability of banana growers in the State,	12 13 14 15
[5] Section 5 (l)	16
Omit “quality control or pest and disease control”.	17
Insert instead “pest or disease control if, in the Committee’s opinion, the pest or disease poses a threat to the commercial viability of banana growers in the State”.	18 19 20
[6] Section 5 (m) and (n)	21
Omit the paragraphs.	22
[7] Section 6 Further functions of the Committee	23
Omit section 6 (a). Insert instead:	24
(a) enter into and carry out agreements to buy, acquire, sell or supply bananas, whether grown in New South Wales or otherwise,	25 26 27

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Schedule 1 Amendments

[8] Section 6 (b) and (c)	1
Omit the paragraphs.	2
[9] Section 6 (d)	3
Omit the paragraph. Insert instead:	4
(d) by its agents and servants (but only in connection with	5
the exercise of the Committee's functions, under section	6
5 or 6, in relation to pest or disease control):	7
(i) inspect bananas at any stage of their production	8
or marketing, and	9
(ii) enter for that purpose at any reasonable time any	10
land or premises (not being a dwelling-house) on	11
which bananas are grown, stored, ripened or	12
handled on production of the prescribed written	13
evidence of the agent's or servant's authority,	14
[10] Section 6 (e)	15
Omit "damaged, overripe or otherwise unfit or inappropriate for sale".	16
Insert instead "infested by a pest, or infected with a disease, that poses a	17
threat to the commercial viability of banana growers in the State".	18
[11] Section 6 (g)	19
Omit the paragraph.	20
[12] Section 6 (h)	21
Omit the paragraph.	22
[13] Section 6 (i)	23
Omit the paragraph. Insert instead:	24
(i) by advertisement, declare localities in which bananas	25
are grown for the purpose of facilitating the exercise of:	26
(i) the Committee's functions under section 5 or 6	27
relating to pest or disease control, or	28
(ii) the Committee's functions under section 7 (2)	29
(a) or section 9 (2) (b), or	30

	(iii) any other of the Committee's administrative functions under this Act,	1 2
[14]	Section 6 (l) and (la)	3
	Omit section 6 (l). Insert instead:	4
	(l) erect, maintain, repair, operate and use buildings and all machinery connected with any such buildings,	5 6
	(la) regulate the use of buildings of any banana grower and all machinery connected with any such buildings for the purpose of controlling pests or diseases in bananas,	7 8 9
[15]	Section 6 (p)	10
	Insert "for persons who voluntarily participate in the arrangements" after "stores".	11 12
[16]	Section 7 Power to impose charges in relation to services	13
	Omit ", and, with the approval of the Minister," from section 7 (1). Insert instead "and".	14 15
[17]	Section 7 (6) (b)	16
	Omit "with the approval of the Minister or a person nominated by the Minister,".	17 18
[18]	Section 9	19
	Omit the section. Insert instead:	20
	9 Power of Committee to give directions	21
	(1) For the purposes of exercising any function of the Committee in relation to pest or disease control, the Committee may give a direction concerning the treatment, handling, packing or marketing of bananas that are or may be infested or infected by any pest or disease.	22 23 24 25 26

-
- (2) A direction: 1
- (a) may extend to all pests and diseases infesting or 2
infecting bananas or to a specified class, or to specified 3
classes, of pests or diseases infesting or infecting 4
bananas or to all bananas or a specified class of 5
bananas, and 6
 - (b) may extend throughout the State or to any specified part 7
or locality within specified boundaries, and 8
 - (c) may extend to the method of treatment of land or 9
bananas for any pest or disease or any other matter 10
necessary to be specified in relation to the control of the 11
pest or disease, and 12
 - (d) may specify the circumstances in which, and the terms 13
and conditions on which, the direction does not apply, 14
and 15
 - (e) must specify the period for which the direction is to 16
remain in force. 17
- (3) The Committee may, at any time by notice in writing to any 18
banana grower, exempt the grower from the operation of a 19
direction or revoke the exemption of that grower. 20
- (4) The Committee must not give a direction under this section 21
unless: 22
- (a) it has published an advertisement giving notice of its 23
intention to give the direction, setting forth the proposed 24
direction, and specifying the period for which the 25
direction is proposed to remain in force, and 26
 - (b) it has taken a poll on the question of whether the 27
direction should be given, if it is requested to do so by 28
a petition, lodged with the Committee within 30 days 29
after the publication of the advertisement, of not less 30
than 100 banana growers, and 31
 - (c) the poll is in favour of the direction being given. 32
- (5) Subject to subsections (1) and (2), the Committee may give the 33
direction specified in the advertisement under subsection (4) by 34
publishing, not earlier than 30 days after publication of that 35
advertisement, a further advertisement: 36

(a)	specifying that the provisions of this section have been complied with in respect of the direction, and	1 2
(b)	setting forth the direction, and	3
(c)	specifying the day (being a day not earlier than the day of publication of the further advertisement) on and from which the direction is to take effect, and	4 5 6
(d)	specifying the period for which the direction is to remain in force.	7 8
(6)	Any of the following persons must comply with the provisions of a direction:	9 10
(a)	a banana grower (other than a person exempted from the direction),	11 12
(b)	any other person associated with the marketing of bananas on whom the Committee has, by post, served a copy of the advertisement by which the direction was given.	13 14 15 16
	Maximum penalty: 20 penalty units.	17
(7)	A direction may be revoked by the Committee by advertisement.	18 19
(8)	A decision of the Committee as to whether a particular person, thing or activity falls within the limits of any circumstance referred to in subsection (2) (d) is final.	20 21 22
[19] Sections 11 and 11A		23
	Omit section 11. Insert instead:	24
11 Power to require information for the purposes of pest or disease control		25 26
(1)	For the purposes of exercising any function of the Committee in relation to pest or disease control or the calculation of associated charges, the Committee:	27 28 29
(a)	may, by advertisement, require all banana growers, or a specified class or classes of banana growers, whose crop, in the Committee's opinion, is or may be infested	30 31 32

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- or infected by a pest or disease to furnish it in writing
(within a time specified in the advertisement) with such
information in relation to bananas and banana products
as is specified in the advertisement, or
- (b) may, by notice sent by post, require a person associated
with the marketing of bananas that, in the Committee's
opinion, are or may be infested or infected by the pest
or disease (whether or not the person is a banana
grower) to furnish it in writing (within a time specified
in the notice) with such information in relation to
bananas and banana products as is specified in the
notice.
- (2) An advertisement or notice may require any one or more of the
following classes of information to be furnished:
- (a) particulars of bananas that are or may be affected by the
pest or disease by reference to type, age, variety, grade,
quality, quantity, the locality in which they were grown
and the identity of the banana grower or supplier,
- (b) particulars of the area of land on which the bananas that
are or may be affected by the pest or disease are grown
by or on behalf of the person to whom the
advertisement or notice is directed,
- (c) in the case of a banana grower, an estimate, as far as is
practicable, of bananas that are or may be affected by
the pest or disease by reference to type, age, variety,
grade, quality and quantity that the grower expects to
produce for the purpose of sale within any period
specified in the advertisement or notice.
- (3) A person:
- (a) must not, without reasonable excuse, refuse or fail to
comply with a requirement under this section, or
- (b) must not furnish to the Committee under this section
any information that, to the person's knowledge, is false
or misleading in a material particular.
- Maximum penalty: 20 penalty units.

11A	Power to require information for the purposes of ascertaining voting entitlements	1
		2
(1)	For the purposes of ascertaining the voting entitlement of banana growers under Part 4, the Committee:	3
		4
(a)	may, by advertisement, require all banana growers, or a specified class or classes of banana growers, to furnish it in writing (within a time specified in the advertisement) with such information in relation to the area of any plantation on which bananas are grown by or on behalf of the growers to whom the advertisement is directed as is specified in the advertisement, or	5
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(b)	may, by notice sent by post, require a person who, in the Committee's opinion, is a banana grower to furnish it in writing (within a time specified in the notice) with such information in relation to the area of any plantation on which bananas are or may be grown by or on behalf the person as is specified in the notice.	12
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		16
		17
(2)	A person:	18
(a)	must not, without reasonable excuse, refuse or fail to comply with a requirement under this section, or	19
		20
(b)	must not furnish to the Committee under this section any information that, to the person's knowledge, is false or misleading in a material particular.	21
		22
		23
	Maximum penalty: 20 penalty units.	24
[20]	Section 16D Voting entitlements of regional banana growers in election	25
	Omit section 16D (3).	26
[21]	Section 16E One banana grower to vote per plantation	27
	Omit section 16E (2). Insert instead:	28
(2)	If the same two or more persons are banana growers in relation to more than one plantation (whether or not in the same region):	29
		30
		31
(a)	only one of them is entitled to vote in respect of all the plantations, and	32
		33

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(b)	both or all of them may, by agreement, nominate in writing addressed to the Chairperson who of them is entitled to vote in respect of all the plantations, and	1 2 3
(c)	if a nomination is not made under paragraph (b), the Chairperson is to determine the person who is entitled to vote, and	4 5 6
(d)	sections 16B–16D apply to any such banana grower who is entitled to vote as if the banana grower were the only banana grower in respect of all the plantations.	7 8 9
[22]	Schedule 3 Savings, transitional and other provisions	10
	Insert “ <i>Banana Industry Amendment Act 2000</i> ” at the end of clause 1 (1).	11