

[STATE ARMS]

New South Wales

## **Banana Industry Amendment Bill 1998**

### **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 from the date of assent to the proposed Act, 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, and
- (d) to make consequential amendments and other amendments in the nature of statute law revision.

### **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 (other than Schedule 1 [3], [22] and [23]) on a day or days to be appointed by proclamation. It commences Schedule 1 [3], [22] and [23] on the date of assent to the proposed Act.

**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 amendments to be made by the proposed Act confine 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 limit 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 or to human health (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 or premises 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 sales 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 on date of assent 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.

The provisions to be inserted in Schedule 3 to the Act by Schedule 1 [23] to the proposed Act will ensure that the power to issue such directions ceases on the date of assent to the proposed Act even if section 9 (as substituted by the proposed Act) is commenced after that date. Clause 2 (2) of the proposed Act provides that Schedule 1 [3] and [23] commence on the date of assent to the proposed Act.

#### **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 a 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. Schedule 1 [23] inserts provisions of a savings and transitional nature in Schedule 3 to the Act.