



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.
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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.

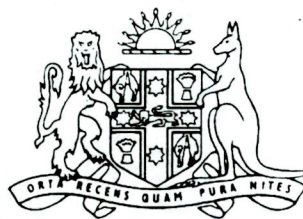
Schedule 1 [20] makes a consequential amendment to section 16D.

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.

First print



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New South Wales

Banana Industry Amendment Bill 1998

No. , 1998

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 Name of Act

This Act is the *Banana Industry Amendment Act 1998*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2). 5
- (2) Schedule 1 [3], [22] and [23] commence on the date of assent to this Act.

3 Amendment of Banana Industry Act 1987 No 66

The *Banana Industry Act 1987* is amended as set out in Schedule 1. 10

Schedule 1 Amendments

(Section 3)

- [1] **Section 5 Functions of Committee**
Insert "in which persons may voluntarily participate" after "bananas" in section 5 (b). 5
- [2] **Section 5 (c)**
Omit the paragraph.
- [3] **Section 5 (d)**
Omit the paragraph.
- [4] **Section 5 (f)** 10
Omit the paragraph. Insert instead:
(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 or to human health, 15
- [5] **Section 5 (l)**
Omit "quality control or pest and disease control".
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 or to human health". 20
- [6] **Section 5 (m) and (n)**
Omit the paragraphs.
- [7] **Section 6 Further functions of Committee**
Omit section 6 (a). Insert instead: 25
(a) enter into and carry out agreements to buy, acquire, sell or supply bananas, whether grown in New South Wales or otherwise.

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[8] Section 6 (b) and (c)

Omit the paragraphs.

[9] Section 6 (d)

Omit the paragraph. Insert instead:

- (d) by its agents and servants (but only in connection with the exercise of the Committee's functions in relation to pest or disease control):
 - (i) inspect bananas at any stage of their production or marketing, and
 - (ii) enter for that purpose at any reasonable time any land or premises (not being a dwelling-house) on which bananas are grown, stored, ripened or handled on production of the prescribed written evidence of the agent's or servant's authority,

[10] Section 6 (e)

Omit "damaged, overripe or otherwise unfit or inappropriate for sale".

Insert instead "infested by a pest, or infected with a disease, that poses a threat to the commercial viability of banana growers in the State or to human health".

[11] Section 6 (g)

Omit the paragraph.

[12] Section 6 (h)

Omit the paragraph.

[13] Section 6 (i)

Omit the paragraph. Insert instead:

- (i) by advertisement, declare localities in which bananas are grown for the purpose of exercising:

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- (i) the Committee's functions in relation to pest or disease control, or
- (ii) the Committee's functions under section 7 (2) (a) or 9 (2) (b), or
- (iii) any other of the Committee's administrative functions under this Act. 5
- [14] Section 6 (l) and (la)**
- Omit section 6 (l). Insert instead:
- (l) erect, maintain, repair, operate and use buildings and all machinery connected with any such buildings, 10
- (la) regulate the use of buildings of any banana grower and all machinery connected with any such buildings for the purpose of exercising the Committee's functions in relation to pest or disease control, 15
- [15] Section 6 (p)**
- Insert "for persons who voluntarily participate in the arrangements" after "stores".
- [16] Section 7 Power to impose charges in relation to services** 20
- Omit ", and, with the approval of the Minister," from section 7 (1). Insert instead "and".
- [17] Section 7 (6) (b)**
- Omit "with the approval of the Minister or a person nominated by the Minister,". 25
- [18] Section 9**
- Omit the section. Insert instead:
- 9 Power of Committee to give directions**
- (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. 30

- (2) A direction:
- (a) may extend to all pests and diseases infesting or infecting bananas or to a specified class, or to specified classes, of pests or diseases infesting or infecting bananas or to all bananas or a specified class of bananas so infested or infected, and 5
 - (b) may extend throughout the State or to any specified part or locality within specified boundaries, and
 - (c) may extend to the method of treatment of land or bananas for any pest or disease or any other matter necessary to be specified in relation to the control of the pest or disease, and 10
 - (d) may specify the circumstances in which, and the terms and conditions on which, the direction does not apply, and 15
 - (e) must specify the period for which the direction is to remain in force.
- (3) The Committee may, at any time by notice in writing to any banana grower, exempt the grower from the operation of a direction or revoke the exemption of that grower. 20
- (4) The Committee must not give a direction under this section unless:
- (a) it has published an advertisement giving notice of its intention to give the direction, setting forth the proposed direction, and specifying the period for which the direction is proposed to remain in force, and 25
 - (b) it has taken a poll on the question of whether the direction should be given, if it is requested to do so by a petition, lodged with the Committee within 30 days after the publication of the advertisement, of not less than 100 banana growers, and 30
 - (c) the poll is in favour of the direction being given. 35

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- (5) Subject to subsections (1) and (2), the Committee may give the direction specified in the advertisement under subsection (4) by publishing, not earlier than 30 days after publication of that advertisement, a further advertisement: 5
- (a) specifying that the provisions of this section have been complied with in respect of the direction, and
 - (b) setting forth the direction, and
 - (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 10
 - (d) specifying the period for which the direction is to remain in force.
- (6) Any of the following persons must comply with the provisions of a direction: 15
- (a) a banana grower (other than a person exempted from a direction),
 - (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. 20
- Maximum penalty: 20 penalty units.
- (7) A direction may be revoked by the Committee by advertisement.
- (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. 25

[19] Sections 11 and 11A

Omit section 11. Insert instead:

11 Power to require information for the purposes of pest or disease control 30

- (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:

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- (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 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 5
- (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. 10 15
- (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, 20
- (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, 25
- (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. 30
- (3) A person: 35
- (a) must not, without reasonable excuse, refuse or fail to comply with a requirement under this section, or

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- (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 (subsection (3)): 20 penalty units. 5

11A Power to require information for the purposes of ascertaining voting entitlements

- (1) For the purposes of ascertaining the voting entitlement of banana growers under Part 4, the Committee:
 - (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 10
 - (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 of the person as is specified in the advertisement. 15
- (2) A person: 25
 - (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. 30

Maximum penalty (subsection (2)): 20 penalty units.

- [20] **Section 16D Voting entitlements of regional banana growers in election**
Omit section 16D (3).
- [21] **Section 16E One banana grower to vote per plantation**
Omit section 16E (2). Insert instead: 5
- (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):
 - (a) only one of them is entitled to vote in respect of all the plantations, and 10
 - (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
 - (c) if a nomination is not made under paragraph (b), the Chairperson is to determine the person who is entitled to vote, and 15
 - (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. 20
- [22] **Schedule 3 Savings, transitional and other provisions**
Insert “*Banana Industry Amendment Act 1998*” at the end of clause 1 (1).
- [23] **Schedule 3, Part 4** 25
Insert after Part 3:
- Part 4 Provisions relating to Banana Industry Amendment Act 1998**
- 16 Definitions**
- In this Part: 30
- amending Act* means the *Banana Industry Amendment Act 1998*.
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existing transport direction means any direction given by the Committee under section 9 of the Act before its amendment by Schedule 1 [18] to the amending Act in relation to the transportation of bananas.

17 Power to issue transport directions to cease on relevant date 5

Despite anything contained in section 9 of the Act (as in force immediately before the date of assent to the amending Act), on and from that date:

- (a) any existing transport direction in force on that date ceases to have effect, and 10
- (b) the Committee is taken not to be authorised by the Act to issue directions in respect of the transportation of bananas.

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Schedule of the amendments referred to in the Legislative Council's Message of 22 September 1998.

No. 1 Page 11, Schedule 1 [23], lines 1-4. Omit all words on those lines. Insert instead:

existing transport direction means any direction given by the Committee in relation to the transportation of bananas under section 9 of the Act before the commencement of Schedule 1 [18] to the amending Act and that was in force immediately before that commencement.

No. 2 Page 11, Schedule 1 [23], lines 5-14. Omit all words on those lines. Insert instead:

17 Preservation of existing transport directions

- (1) Any existing transport direction continues in force until it expires or is revoked (but, in any event, ceases to be in force on 15 June 2000).
- (2) Section 9 (as in force immediately before its substitution by Schedule 1 [18] to the amending Act) continues to apply to any such direction.

18 Trade Practices exemption for existing transport directions

- (1) The giving of an existing transport direction and any conduct engaged in that is in compliance with any such direction is specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code* of New South Wales.
 - (2) The authorisation given by subclause (1) expires on 15 June 2000.
 - (3) Nothing in this clause prevents the revocation of any such direction before the expiration of the authorisation given by this clause.
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