

BANANA INDUSTRY BILL.

*Schedule of Amendments referred to in Legislative Council's
Message of 2 April, 1969.*

- No. 1.—Page 6, clause 7, line 27. *Omit* “two officers”, *insert* “**one officer**”.
- No. 2.—Page 6, clause 7, line 31. *Omit* “and”.
- No. 3.—Page 6, clause 7. *After* line 31 *insert*—
“**(b) one person appointed by the Minister to represent the interests of consumers; and**”.
- No. 4.—Page 7, clause 7, line 11. *After* “service” *insert* “**or such other person referred to in paragraph (b) of subsection two of this section, as the case may be,**”.

THE [illegible]

[The following text is extremely faint and largely illegible. It appears to be a formal document or report, possibly containing a list of names or a detailed account of events. The text is mirrored across the page, suggesting it may be bleed-through from the reverse side.]

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 2 April, 1969, A.M.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

J. R. STEVENSON,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 2 April, 1969.*

New South Wales



ANNO OCTAVO DECIMO

ELIZABETHÆ II REGINÆ

Act No. , 1969.

An Act to provide for the constitution of a Banana Marketing Control Committee and to define its powers, authorities, duties and functions; to provide for the taking of polls of banana growers prior to the formation and dissolution of the Committee; to provide for the issue of directions by the Committee relating to the marketing of bananas and for the imposition by it of certain charges; to provide for the taking of polls of banana growers prior to the issue of those directions or the imposition of those charges; and for purposes connected therewith.

BE

70729 260—A

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Banana Industry Act, 1969". Short title and commencement.

10 (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. This Act shall be read and construed as operating to the full extent of, but so as not to exceed, the legislative powers of the State, to the intent that where any provision of this Act or the application of any such provision to any person, subject-matter or circumstance would, but for this section have been construed as being in excess of those powers, it shall be a valid provision to the extent to which it is not in excess of those powers, and the remainder of the Act and the application of the provision to other persons, subject-matters or circumstances shall not be affected. Construction of Act.

3. This Act is divided into Parts as follows :— Division into Parts.

PART I.—PRELIMINARY—ss. 1-4.

25 PART II.—POLLS OF BANANA GROWERS—ss. 5, 6.

PART III.—CONSTITUTION OF THE COMMITTEE—ss. 7-9.

PART IV.—POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF THE COMMITTEE—ss. 10-13.

30 PART V.—FINANCE—ss. 14, 15.

PART VI.—GENERAL—ss. 16-27.

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4. In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation.

“advertisement” means advertisement published in the official journal of the Federation;

5 “bananas” means bananas grown in New South Wales;

“banana grower” or “grower” means any person by whom or on whose behalf bananas are grown on not less than one acre of land, whether or not the bananas are grown or produced pursuant to a share-farming agreement or partnership agreement, oral or written, but does not include a person engaged as an employee on wages or salary or at piece-work rates;

10
15 “Committee” means the Banana Marketing Control Committee constituted under section seven of this Act;

20 “Federation” means Banana Growers Federation Co-operative Limited, a society registered under the Co-operation, Community Settlement, and Credit Act, 1923, as subsequently amended;

25 “marketing”, in relation to bananas or any product thereof, means the harvesting, preparation, processing and packing of bananas or any product thereof for sale by wholesale and the sale thereof by wholesale and the shipping, transporting, storing and handling of bananas or any product thereof for the purpose of any such sale and the transmission thereof from the grower to any person selling by wholesale and all actions or things connected therewith or incidental thereto;

30 “prescribed” means prescribed by this Act or by the regulations;

“proclamation” means proclamation published in the Gazette;

35 “regulations” means regulations made under this Act;

“sell”

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“sell” includes barter and exchange; and “sale” has a corresponding meaning;

“this Act” includes regulations made under this Act.

PART II.

5 POLLS OF BANANA GROWERS.

5. (1) A poll for the purposes of this Act shall be a poll Polls. taken, as prescribed, among banana growers.

(2) A poll for the purposes of Part III of this Act—

10 (a) shall be taken, where the question to be decided is whether the Committee should be constituted, only at the request, by petition to the Governor, of not less than one hundred persons certified by the Federation to be banana growers;

15 (b) shall be taken, where the question to be decided is whether the Committee should be dissolved, only at the request, by petition to the Governor lodged not earlier than five years after the constitution of the Committee, of not less than one hundred persons certified by the Committee to be banana growers;

20 (c) shall, where so requested, be taken on a day notified by the Governor for the purpose by proclamation, being a day not earlier than thirty days after publication of the proclamation or, where the Governor by a subsequent proclamation notifies a later day for the purpose, on that later day;

25 (d) shall be deemed not to be in favour of the question to be decided at the poll unless—

(i) not less than three-fifths of the persons required to vote at the poll have so voted; and

30 (ii) a majority of the votes at the poll is in favour of the question; and

(e)

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5 (e) shall not, where the poll is required to be taken by a person other than the Federation or the Committee, be taken unless the Federation or the Committee has first made provision, as prescribed, for the costs and expenses of the poll.

(3) A poll for the purposes of section eleven or twelve of this Act—

10 (a) shall be taken by the Committee and shall be so taken on a day notified by the Committee by advertisement for the purpose or, where the Committee by a subsequent advertisement notifies a later day for the purpose, on that later day;

15 (b) shall be deemed not to be in favour of the question to be decided at the poll unless a majority of votes at the poll is in favour of the question.

(4) The regulations may make provision for and with respect to—

20 (a) the payment to the Federation by the Committee; and
(b) the recovery by the Federation from the Committee, of costs and expenses paid by the Federation in respect of a poll.

6. (1) For the purposes of a poll, the Minister shall cause a list to be compiled, as prescribed, of banana growers. List of banana growers.

25 (2) Where, after application made, as prescribed, for the purpose, the name of a person is not included in the list compiled under subsection one of this section, that person may apply as prescribed to a court of petty sessions holden before a stipendiary magistrate for an order that his name be
30 included in that list.

(3)

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(3) A court to which application is made under subsection two of this section shall have jurisdiction to hear and determine the matter of the application and may—

- 5 (a) order that the name of the applicant be included in the list compiled under subsection one of this section; or
- (b) dismiss the application,

and upon any order being made under paragraph (a) of this subsection, the name of the applicant shall be included in
10 that list.

(4) Where the name of a person appears on the list compiled under subsection one of this section for a poll and that person fails to vote at the poll, he shall be liable to a penalty not exceeding four dollars.

- 15 (5) Where the name of a person does not appear on the list compiled under subsection one of this section for a poll and he votes at the poll, he shall be guilty of an offence against this Act.

PART III.

20 **CONSTITUTION OF THE COMMITTEE.**

7. (1) Subject to a poll being taken and being in favour of the Committee being constituted, the Governor may, by proclamation, appoint a day for the constitution of the Committee and, on that day, the Committee shall be deemed to
25 have been constituted in accordance with this Part.

(2) The Committee shall consist of—

- (a) ~~two officers~~ **one officer** of the public service appointed by the Governor on the nomination of the Minister for such term, not exceeding five years,
30 as may be specified in the instrument of appointment; ~~and~~
- (b) **one person appointed by the Minister to represent the interests of consumers; and**

(c) ~~(b)~~

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(c) ~~(b)~~ the persons for the time being holding office as members of the Board of Directors of the Federation.

5 (3) A person appointed as a member of the Committee on the nomination of the Minister shall, on the expiration of his term of office, be eligible for reappointment.

10 (4) Where a person appointed as a member of the Committee on the nomination of the Minister vacates his office otherwise than on the expiration of his term of office, the Governor may, on the nomination of the Minister, appoint an officer of the public service **or such other person referred to in paragraph (b) of subsection two of this section, as the case may be**, to the vacant office for the unexpired portion of the term of office of his predecessor.

15 (5) Each member of the Committee, other than officers of the public service, shall receive such remuneration, and each member of the Committee shall receive such allowances, as the Committee may, with the approval of the Minister, from time to time determine.

20 (6) Where by or under any Act provision is made requiring the holder of an office specified therein to devote the whole of his time to the duties of his office, or prohibiting him from engaging in employment outside the duties of his office, that provision shall not operate to disqualify him from
25 holding that office and also the office of a member of the Committee.

(7) The office of a member of the Committee shall not for the purposes of any Act be deemed to be an office or place of profit under the Crown.

30 (8) The provisions of the Public Service Act, 1902, as subsequently amended, shall not apply to or in respect of the appointment by the Governor of any member of the Committee and any member so appointed shall not, in his capacity as such a member, be subject to the provisions of that Act,
35 as so amended, during his term of office.

(9)

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(9) A member of the Committee appointed on the nomination of the Minister shall be deemed to have vacated his office—

- (a) if he dies;
- 5 (b) if he becomes bankrupt, compounds with his creditors, or makes any assignment of his salary, remuneration, allowances or estate for their benefit;
- 10 (c) if he is absent from four consecutive ordinary meetings of the Committee of which reasonable notice has been given him either personally or in the ordinary course of post unless on leave granted by the Committee or unless he is before the expiration of four weeks after the last of those meetings excused by the Committee for his absence from such meetings;
- 15 (d) if he becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, as subsequently amended;
- 20 (e) if he is convicted in New South Wales of a felony or of a misdemeanour which is punishable by imprisonment for twelve months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour which is punishable as aforesaid;
- 25 (f) if he resigns his office by writing under his hand addressed to the Minister;
- 30 (g) if he is removed from office by the Governor;
- (h) if he ceases to be an officer of the public service.

(10) The Governor may, for any cause which appears to him sufficient, remove from office any member of the Committee appointed on the nomination of the Minister.

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8. (1) The Committee shall be a body corporate, with perpetual succession and a common seal, and may sue or be sued in its corporate name, and shall, subject to this Act, be capable of purchasing, holding, granting, demising, disposing of or otherwise dealing with real and personal property, and of doing and suffering all such acts and things as bodies corporate may by law do and suffer.

Committee
to be body
corporate—
proceedings
of
Committee.

(2) The corporate name of the Committee shall be "Banana Marketing Control Committee".

10 (3) The common seal shall be kept in the custody of the Chairman of the Committee and shall not be affixed to any instrument except in pursuance of a resolution of the Committee.

Any instrument executed in pursuance of any such
15 resolution shall be attested by the signature of any two members.

(4) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Act and any regulations in relation
20 thereto, be as determined by the Committee.

(5) The members of the Committee present at the first meeting of the Committee shall elect a member to be Chairman and, where he, or any succeeding Chairman, ceases to be a member of the Committee or resigns his office as Chairman,
25 the members of the Committee shall elect some other member to be Chairman.

(6) The Chairman, or in the absence of the Chairman, a member chosen by the members present at the meeting to act as Chairman, shall preside at any meeting of the
30 Committee.

(7) A majority of the members of the Committee for the time being shall form a quorum and any duly convened meeting of the Committee at which a quorum is present shall
be

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be competent to transact any business of the Committee and shall have and may exercise and discharge all the powers, authorities, duties and functions of the Committee.

(8) The Chairman or member acting as Chairman at
5 any meeting of the Committee shall, in the event of an equality of votes, have in addition to a deliberative vote a second or casting vote.

(9) A decision of the majority of the members present
at a meeting of the Committee shall be the decision of the
10 Committee.

(10) The Committee shall cause full and accurate minutes to be kept of its proceedings at meetings, and shall submit to the Minister a copy of the minutes of each meeting within two weeks after the day on which it is held.

15 (11) No act or proceeding of the Committee shall be invalidated or prejudiced by reason only of the fact that at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the office of a member.

(12) No matter or thing done, and no contract entered
20 into by the Committee, and no matter or thing done by any member or by any other person whomsoever acting under the direction of the Committee shall, if the matter or thing was done or the contract was entered into bona fide for the purpose of executing this Act, subject them or any of them personally
25 to any action, liability, claim or demand whatsoever.

(13) The Committee shall not, for any purpose, be a statutory body representing the Crown.

9. (1) Subject to a poll being taken and being in favour
of the dissolution of the Committee, the Committee shall, on
30 and from a day appointed by the Governor for the purpose
by proclamation, being a day not later than six months after
the taking of the poll, proceed to wind up its affairs unless

by
Dissolution
of
Committee.

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by the same or a subsequent proclamation, the Governor appoints a person to be liquidator to wind up the affairs of the Committee.

(2) Upon the appointment of a liquidator under subsection one of this section, the members of the Committee shall cease to act as such members and the liquidator may, for the purpose of winding up the affairs of the Committee, in the name and as the act and, where necessary, under the seal of the Committee—

- 10 (a) exercise and perform such of the powers, authorities, duties and functions of the Committee;
- (b) bring and defend such proceedings; and
- (c) do and execute such other acts and things, as he thinks fit.

15 (3) A liquidator appointed under subsection one of this section shall receive such remuneration as the Governor determines.

(4) The Governor may, at any time after the day appointed under subsection one of this section, declare by
20 proclamation that the Committee is dissolved and thereupon—

- (a) the dissolution of the Committee shall be deemed to have been effected; and
- (b) all moneys and other assets of the Committee—
- 25 (i) shall vest in Her Majesty; and
- (ii) shall be dealt with and disposed of as the Governor may direct.

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PART IV.

POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF THE
COMMITTEE.

- 10.** (1) For the purposes of and subject to this Act, the Powers, authorities, duties and functions of Committee.
5 Committee may—
- (a) arrange for the marketing of bananas or of any product thereof;
 - (b) by order, exempt from the operation of this Act a
10 banana grower who produces a small quantity of bananas;
 - (c) establish a system of inspection of bananas;
 - (d) arrange for the supervision of the marketing of bananas;
 - (e) enter into any agreements and give guarantees and
15 indemnities in favour of any person who contracts with the Committee or enters into any agreements at the request of or under the authority or direction of the Committee;
 - (f) enter upon and carry into execution the marketing
20 and transporting of bananas from any plantation to rail head or markets;
 - (g) support, with or without grant of financial aid and whether or not initiated by the Committee, any
25 scheme or activity which, in the opinion of the Committee, is capable of assisting in the promotion of the sale of bananas;
 - (h) acquire land, machinery (including refrigerating machinery and machinery suitable for the ripening of bananas) plant, goods, chattels and effects;
 - (i) erect, maintain, repair, operate, regulate, use and
30 regulate the use of buildings (including buildings for cold storage and the inspection, sorting and ripening of bananas) and all machinery and plant used in connection therewith;
- (j)

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- (j) charge a fee whenever the Committee supplies any service, product or commodity or gives any permission;
- 5 (k) enter into and carry out such contracts and do and suffer all such other acts and things as may be necessary and convenient for the purposes of this Act;
- (l) appoint, employ, or authorise agents, officers, servants and other persons;
- 10 (m) arrange for financial accommodation with any bank, or with any other institution or person approved by the Governor, and give such securities therefor as may be required;
- 15 (n) as far as practicable, provide bananas for consumption in New South Wales, and for their supply to those places within New South Wales wherein a shortage of bananas is experienced;
- 20 (o) make such arrangements as it deems necessary with regard to sales of bananas for export or for consignment to other countries or States or for oversea ships' stores;
- 25 (p) do such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise or discharge of its powers, authorities, duties and functions under this Act.

(2) If at any time any question or dispute arises between the Committee and any banana grower as to whether or not any matter with regard to which the Committee is exercising or performing or proposes to exercise or perform
30 any of the powers, authorities, duties or functions conferred or imposed upon it by this Act ought to be made the subject of a direction under section twelve of this Act before the exercise or performance thereof, the question or dispute shall be referred by the Committee to the Minister, who shall
35 consider the matter and determine the question or dispute, and his determination thereon shall be final and without appeal to any tribunal.

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- 11.** (1) Subject to this section, the Committee may, with Power to impose charge on bananas. the prior approval of the Minister, impose on all banana growers a charge, not exceeding ten cents per bushel, in respect of all bananas produced by them for sale.
- 5 (2) The Committee shall not impose a charge under subsection one of this section unless—
- (a) it has given notice by advertisement of its intention so to do and has specified in the advertisement the amount of the proposed charge;
- 10 (b) it has taken a poll on the question whether the charge should be imposed, if it is requested so to do by a petition lodged with the Committee not more than thirty days after publication of the advertisement, by not less than one hundred banana
- 15 growers; and
- (c) any poll so taken is in favour of the imposition of the charge.
- (3) Subject to subsections one and two of this section, the Committee may impose the charge specified in an
- 20 advertisement under subsection two of this section by publishing, not earlier than thirty days after publication of that advertisement, a further advertisement specifying—
- (a) that the provisions of this section have been complied with;
- 25 (b) the amount of the charge; and
- (c) the day (being a day not earlier than the day of publication of the further advertisement) as on and from which the charge is imposed.
- (4) The proceeds of all fees collected and charges
- 30 imposed by the Committee under this Act shall be applied—
- (a) in defraying the proper costs and expenses of the Committee incurred in the exercise or performance of the powers, authorities, duties and functions conferred or imposed upon it by this Act;
- (b)

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- 5 (b) in establishing and maintaining a fund for the purposes of effecting or providing for the orderly marketing and marketing development of bananas and for research into, and development of, the processing of banana by-products for the benefit of banana growers generally; and
- 10 (c) in establishing and maintaining such other funds for effecting any other special object which the Committee considers to be of advantage to, and in the common interest of, banana growers generally.

(5) Any amount payable by a banana grower in respect of a charge imposed under this section, shall become due and payable by him fourteen days after the receipt by him of a notice from the Committee notifying him that the charge has been imposed.

12. (1) Subject to this section, the Committee may give a direction—

Power of Committee to issue directions.

- 20 (a) that all or any of the things included in the marketing of bananas shall be done only by the Committee, its agents and servants, or only by a specified person or specified persons or a specified class of persons;
- 25 (b) that all bananas that, during a specified period, are in the possession of or come into the possession of any person in the course, or for the purpose, of the marketing thereof shall be handled and dealt with only under the instructions and with the authority of the Committee, or shall be consigned or delivered only to specified persons or a specified class, or specified classes, of persons.
- 30

(2) A direction given under subsection one of this section—

- (a) may be expressed to extend to all bananas or to a specified class, or to specified classes, of bananas;

(b)

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(b) may be expressed to extend throughout the State or to any specified part thereof, or locality therein, within specified boundaries;

5 (c) may be expressed to extend to the complete marketing of bananas or only to specified phases of such marketing;

(d) shall specify the length of the period for which the direction is to remain in force.

(3) A direction issued under this section may specify 10 the circumstances in which and the terms and conditions on which, the direction shall not apply to or in respect of—

(a) growers of bananas who, in the opinion of the Committee, produce a small quantity of bananas;

15 (b) sales of bananas direct to local consumers or to retail vendors; or

(c) such other sales, purchases or receipts of bananas as may be specified,

and the Committee's decision as to whether any particular person or sale, purchase or receipt of bananas falls within the 20 limits of any such exemption shall be final.

The Committee may, at any time by notice in writing to a banana grower exempted from the operation of a direction, revoke the exemption of that grower.

(4) The Committee shall not give a direction under 25 subsection one of this section unless—

30 (a) it has published an advertisement giving notice of its intention to give the direction, setting forth the proposed direction, and specifying the length of the period for which the direction would remain in force;

(b) it has taken a poll on the question whether the direction should be given, if it is requested so to do by a petition, lodged with the Committee within thirty days after publication of the advertisement, 35 by not less than one hundred banana growers; and

(c)

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(c) any poll so taken is in favour of the direction being given.

(5) Subject to subsections one, two and three of this section the Committee may give the direction specified in the
5 advertisement under subsection four of this section by publishing, not earlier than thirty days after publication of that advertisement, a further advertisement—

- (a) specifying that the provisions of this section have been complied with;
- 10 (b) setting forth the direction;
- (c) specifying the day (being a day not earlier than the day of publication of the further advertisement) as on and from which the direction is to take effect; and
- 15 (d) specifying the length of the period for which the direction is to remain in force.

(6) A person who—

- (a) fails to comply with or contravenes any provision of a direction given under this section;
- 20 (b) buys or accepts delivery of bananas from any person who sells or delivers those bananas in contravention of such a direction; or
- (c) offers by advertisement (in any manner) or otherwise to buy or to accept delivery of bananas
25 from any person who upon accepting that offer by selling or delivering those bananas would contravene such a direction,

shall, if he is a banana grower or a person, not being a banana grower, upon whom the Committee by certified mail has
30 served a copy of the advertisement by which the direction was given, be guilty of an offence against this Act unless he is a person exempted from the operation of the direction.

(7) A direction given under this section may be revoked by the Committee by a notice published in the official
35 journal of the Federation.

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13. (1) The Committee may—

Power to
require
returns.

(a) by advertisement require all banana growers or a specified class or specified classes of banana growers; or

5 (b) by notice sent by certified mail, require a person, whether or not he is a banana grower, associated with the marketing of bananas,

to furnish in writing to the Committee within a time specified for the purpose in the advertisement or notice, as the case
10 may be, such information in relation to bananas and any product thereof as is specified in the advertisement or notice, as the case may be.

(2) An advertisement or notice referred to in subsection one of this section may require—

15 (a) particulars of bananas by reference to type, variety, grade, quality and quantity;

(b) in the case of a banana grower—

20 (i) particulars of the number of plants by reference to age, type and variety which he is growing for the purpose of the production and sale of bananas; and

25 (ii) an estimate, as far as is practicable, of bananas by reference to type, variety, grade, quality and quantity which he expects to produce for the purpose of marketing within any period specified in the notice.

(3) Any person who—

(a) without reasonable excuse refuses or fails to comply with a requirement under this section; or

30 (b) furnishes to the Committee under this section any information which to his knowledge is false or misleading in a material particular,

shall be guilty of an offence against this Act.

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PART V.

FINANCE.

14. The Committee shall cause to be kept proper books of account in relation to all of its operations, and shall, as soon as practicable after the thirtieth day of June in each year or, where some other day is prescribed for the purposes of this section, as soon as practicable after the day so prescribed, prepare and transmit to the Minister a statement of accounts in a form approved by the Auditor-General showing a true and correct view of the financial position and transactions of the Committee and each such statement of accounts shall be exhibited in such manner and at such times as may be prescribed.

Accounts
to be kept
by the
Committee.

15. (1) The accounts of the Committee shall be audited by the Auditor-General who shall have, in respect thereof, all the powers conferred on him by any law for the time being in force relating to the audit of public accounts, and the Audit Act, 1902, as subsequently amended, shall apply to the members of the Committee and its servants in the same manner as it applies to accounting officers of Public Departments.

Audit of
accounts.

(2) The Auditor-General shall report to the Minister and the Committee—

(a) whether or not in his opinion—

- 25 (i) the expenditure incurred has been duly authorised, vouched and supervised;
- (ii) any of the moneys or other property of the Committee has been misappropriated or improperly or irregularly dealt with; and
- 30 (b) as to any other matters which in his judgment call for special notice or which are prescribed.

(3) Towards defraying the costs and expenses of an audit under this section, the Committee shall pay to the Consolidated Revenue Fund such sums, at such times, as the Treasurer may decide.

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PART VI.

GENERAL.

16. As soon as practicable after the thirtieth day of June in each year or, where some other day is prescribed for the purposes of this section, as soon as practicable after the day so prescribed, the Committee shall prepare and furnish to the Minister a report on the operations and activities of the Committee during the next preceding year ending on the thirtieth day of June or the next preceding year ending on the day so prescribed, as the case may be.

Annual report.

The Minister shall lay such report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receipt by him of the report.

17. The Committee shall, in addition to any other report it may be required to prepare and furnish under this Act, furnish to the Minister, within a time specified by him, such reports on the operations of the Committee as the Minister may direct.

Minister may require further reports.

18. It shall not be lawful for the Committee to expend any of its funds for any purpose whatsoever in connection with the politics of any political party, nor shall the Committee become affiliated in any way whatsoever with any body, association or organisation having for its object or any of its objects the support of the politics or programme or aims of any political party.

Board not to be concerned in party politics.

19. All courts and persons having by law or consent of parties authority to hear, receive and examine evidence—

Judicial notice of the seal of the Committee.

- (a) shall take judicial notice of the seal of the Committee affixed to any document; and
- (b) shall until the contrary is proved presume that the seal was properly affixed thereto.

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20. (1) Any notice, summons, writ or other proceeding required to be served on the Committee under this Act or the regulations may be served by being left at the office of the Committee, or, in the case of a notice, by post. Service of notices of proceedings.

5 (2) Except where this Act or the regulations otherwise provide, any notice that is required to be given or that may be given by the Committee under this Act or the regulations shall be deemed to have been duly given if sent by post in a letter addressed to the person to be served at his place
10 of abode or business in New South Wales last known to the Committee, and the notice shall be deemed to have been given at the time when a letter so posted should in the ordinary course be delivered.

21. Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions. Recovery of penalty.

22. (1) Any charge, fee, remuneration or money due to the Committee under the provisions of this Act or the regulations may be recovered as a debt in a court of competent
20 jurisdiction. Recovery of charges, etc.

(2) Proceedings for the recovery of any charge, fee or money so due to the Committee shall be deemed to be for the recovery of a debt or liquidated demand within the meaning of—

- 25 (a) section twenty-four of the Common Law Procedure Act, 1899, as subsequently amended;
- (b) section sixty-four of the District Courts Act, 1912, as subsequently amended;
- 30 (c) section twenty-five of the Small Debts Recovery Act, 1912, as subsequently amended.

(3) Where any matter or thing is by or under this Act directed or forbidden to be done, and that matter or thing if so directed to be done remains undone, or if so
forbidden

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forbidden to be done is done, a person offending against the direction or prohibition shall be guilty of an offence against this Act.

(4) The institution of criminal proceedings against a person or the conviction of a person for any offence against this Act shall not affect any remedy to which any other person (including the Committee) aggrieved may be entitled to in any civil proceeding.

23. In any proceedings, whether at law or in equity— Evidence.

- 10 (a) no proof shall be required, until evidence is given to the contrary, of—
- (i) the constitution of the Committee;
 - (ii) any resolution of the Committee;
 - 15 (iii) the appointment of any member or any servant of the Committee;
 - (iv) the presence of a quorum at any meeting at which any determination is made or any act is done by the Committee;
- 20 (b) any notification, requisition, demand, order, or other document in writing, purporting to be signed or made or sent by the Committee or the Chairman or Secretary thereof or the Minister shall be judicially noticed;
- 25 (c) the production of a copy of the Gazette purporting to contain any proclamation, or a copy of the official journal of the Federation purporting to contain a copy of an advertisement or notice published by the Committee under this Act shall, until the contrary is proved, be evidence of the matters contained in the proclamation, advertisement or notice and that all steps necessary to be taken prior to the making of the proclamation or publication of the advertisement or notice were duly taken;
- 30 (d)

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- 5 (d) the averment on behalf of the Committee that any bananas were or are bananas to which the provisions of this Act apply, or were or are bananas to which a direction in force under this Act applies, or that any place is a place in New South Wales, or that any person was or is a banana grower shall, until the contrary is proved, be evidence of that fact;
- 10 (e) a certificate purporting to be signed by the prescribed officer of the Committee and to certify that on a specified day or during the whole of a specified period any person was or was not included in the list of banana growers compiled under this Act shall, without proof of the signature of the person purporting to sign the certificate or that he is the prescribed officer, be prima facie evidence of the matters certified in and by the certificate.
- 15

24. Except where otherwise expressly provided by this Act, any person guilty of an offence against this Act shall be liable to a penalty not exceeding four hundred dollars.

25. The provisions of section thirty-two of the Marketing of Primary Products Act, 1927, as subsequently amended, shall apply to and in respect of offences against this Act.

Offences by companies and joint offenders.

26. A power, authority, duty or function conferred or imposed on the Federation or its directors or officers by or under this Act may, to the extent that but for this section the exercise or performance thereof would not be authorised by the rules of the Federation, be exercised or performed by the Federation as if it had been so authorised.

Authority of Federation.

27. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to—

Regulations.

- (a) any of the powers, authorities, duties and functions of the Minister or the Committee under this Act;

(b)

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- (b) the taking of any poll, including the method of voting thereat;
- (c) matters concerning the compilation and revision of lists of banana growers required to vote at any poll;
- 5 (d) matters concerning the method of determining the qualification of banana growers eligible to vote at any poll;
- (e) the manner in which the results of a poll taken under this Act shall be notified;
- 10 (f) prescribing forms to be used for the purposes of this Act;
- (g) all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or
15 giving effect to this Act.

(2) The regulations may prescribe a penalty not exceeding two hundred dollars for any contravention of, or failure to comply with any provision of, the regulations, or any instruction, order or requirement given, or made under,
20 or in force by virtue of, the regulations.

(3) A regulation may be of general operation or specially limited application according to time, place, circumstances or cases, and may be general or restricted to any specified class of subject matter.

25 The power to make regulations with respect to any matter or thing shall include the powers to make regulations prohibiting that matter or thing either generally or to meet particular cases.

(4) The regulations shall—

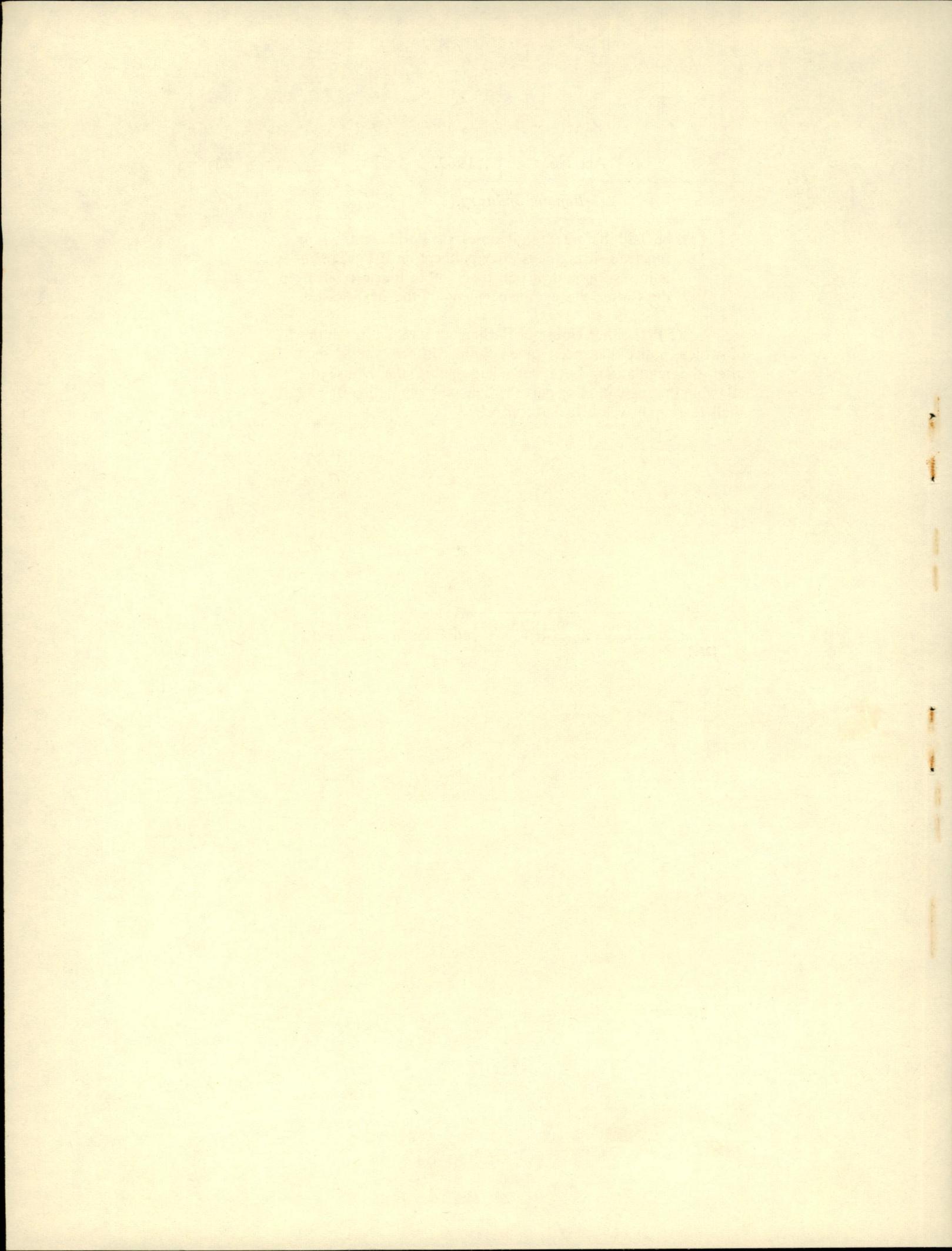
- 30 (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c)

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- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session and, if not, then within fourteen sitting days after the commencement of the next session.
- 5 (5) If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after the regulations have been laid before the House disallowing the regulation or part thereof, such regulation or part shall thereupon cease to have effect.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1969
[25c]



This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 2 April, 1969, A.M.*

New South Wales



ANNO OCTAVO DECIMO

ELIZABETHÆ II REGINÆ

Act No. , 1969.

An Act to provide for the constitution of a Banana Marketing Control Committee and to define its powers, authorities, duties and functions; to provide for the taking of polls of banana growers prior to the formation and dissolution of the Committee; to provide for the issue of directions by the Committee relating to the marketing of bananas and for the imposition by it of certain charges; to provide for the taking of polls of banana growers prior to the issue of those directions or the imposition of those charges; and for purposes connected therewith.

BE

Banana Industry.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Banana Industry Act, 1969". Short title and commencement.

10 (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. This Act shall be read and construed as operating to the full extent of, but so as not to exceed, the legislative powers of the State, to the intent that where any provision of this Act or the application of any such provision to any person, subject-matter or circumstance would, but for this section have been construed as being in excess of those powers, it shall be a valid provision to the extent to which it is not in excess of those powers, and the remainder of the Act and the application of the provision to other persons, subject-matters or circumstances shall not be affected. Construction of Act.

3. This Act is divided into Parts as follows :— Division into Parts.

PART I.—PRELIMINARY—ss. 1-4.

25 PART II.—POLLS OF BANANA GROWERS—ss. 5, 6.

PART III.—CONSTITUTION OF THE COMMITTEE—ss. 7-9.

PART IV.—POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF THE COMMITTEE—ss. 10-13.

30 PART V.—FINANCE—ss. 14, 15.

PART VI.—GENERAL—ss. 16-27.

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4. In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation.

“advertisement” means advertisement published in the official journal of the Federation;

5 “bananas” means bananas grown in New South Wales;

“banana grower” or “grower” means any person by whom or on whose behalf bananas are grown on not less than one acre of land, whether or not the bananas are grown or produced pursuant to a
10 share-farming agreement or partnership agreement, oral or written, but does not include a person engaged as an employee on wages or salary or at piece-work rates;

15 “Committee” means the Banana Marketing Control Committee constituted under section seven of this Act;

20 “Federation” means Banana Growers Federation Co-operative Limited, a society registered under the Co-operation, Community Settlement, and Credit Act, 1923, as subsequently amended;

25 “marketing”, in relation to bananas or any product thereof, means the harvesting, preparation, processing and packing of bananas or any product thereof for sale by wholesale and the sale thereof by wholesale and the shipping, transporting, storing and handling of bananas or any product thereof for the purpose of any such sale and the transmission thereof from the grower to any person selling by
30 wholesale and all actions or things connected therewith or incidental thereto;

“prescribed” means prescribed by this Act or by the regulations;

“proclamation” means proclamation published in the Gazette;

35 “regulations” means regulations made under this Act;

“sell”

Banana Industry.

“sell” includes barter and exchange; and “sale” has a corresponding meaning;

“this Act” includes regulations made under this Act.

PART II.

5

POLLS OF BANANA GROWERS.

5. (1) A poll for the purposes of this Act shall be a poll taken, as prescribed, among banana growers.

(2) A poll for the purposes of Part III of this Act—

10 (a) shall be taken, where the question to be decided is whether the Committee should be constituted, only at the request, by petition to the Governor, of not less than one hundred persons certified by the Federation to be banana growers;

15 (b) shall be taken, where the question to be decided is whether the Committee should be dissolved, only at the request, by petition to the Governor lodged not earlier than five years after the constitution of the Committee, of not less than one hundred persons certified by the Committee to be banana growers;

20 (c) shall, where so requested, be taken on a day notified by the Governor for the purpose by proclamation, being a day not earlier than thirty days after publication of the proclamation or, where the Governor by a subsequent proclamation notifies a later day for the purpose, on that later day;

25 (d) shall be deemed not to be in favour of the question to be decided at the poll unless—

30 (i) not less than three-fifths of the persons required to vote at the poll have so voted; and

(ii) a majority of the votes at the poll is in favour of the question; and

(e)

Banana Industry.

5 (e) shall not, where the poll is required to be taken by a person other than the Federation or the Committee, be taken unless the Federation or the Committee has first made provision, as prescribed, for the costs and expenses of the poll.

(3) A poll for the purposes of section eleven or twelve of this Act—

10 (a) shall be taken by the Committee and shall be so taken on a day notified by the Committee by advertisement for the purpose or, where the Committee by a subsequent advertisement notifies a later day for the purpose, on that later day;

15 (b) shall be deemed not to be in favour of the question to be decided at the poll unless a majority of votes at the poll is in favour of the question.

(4) The regulations may make provision for and with respect to—

(a) the payment to the Federation by the Committee; and

20 (b) the recovery by the Federation from the Committee, of costs and expenses paid by the Federation in respect of a poll.

6. (1) For the purposes of a poll, the Minister shall cause a list to be compiled, as prescribed, of banana growers. List of banana growers.

25 (2) Where, after application made, as prescribed, for the purpose, the name of a person is not included in the list compiled under subsection one of this section, that person may apply as prescribed to a court of petty sessions holden before a stipendiary magistrate for an order that his name be
30 included in that list.

(3)

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(3) A court to which application is made under subsection two of this section shall have jurisdiction to hear and determine the matter of the application and may—

5 (a) order that the name of the applicant be included in the list compiled under subsection one of this section; or

(b) dismiss the application.

and upon any order being made under paragraph (a) of this subsection, the name of the applicant shall be included in
10 that list.

(4) Where the name of a person appears on the list compiled under subsection one of this section for a poll and that person fails to vote at the poll, he shall be liable to a penalty not exceeding four dollars.

15 (5) Where the name of a person does not appear on the list compiled under subsection one of this section for a poll and he votes at the poll, he shall be guilty of an offence against this Act.

PART III.

20 **CONSTITUTION OF THE COMMITTEE.**

7. (1) Subject to a poll being taken and being in favour of the Committee being constituted, the Governor may, by proclamation, appoint a day for the constitution of the Committee and, on that day, the Committee shall be deemed to
25 have been constituted in accordance with this Part.

(2) The Committee shall consist of—

(a) two officers of the public service appointed by the Governor on the nomination of the Minister for such term, not exceeding five years, as may be
30 specified in the instrument of appointment; and

(b)

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- (b) the persons for the time being holding office as members of the Board of Directors of the Federation.
- (3) A person appointed as a member of the Committee on the nomination of the Minister shall, on the expiration of his term of office, be eligible for reappointment.
- (4) Where a person appointed as a member of the Committee on the nomination of the Minister vacates his office otherwise than on the expiration of his term of office, the Governor may, on the nomination of the Minister, appoint an officer of the public service to the vacant office for the unexpired portion of the term of office of his predecessor.
- (5) Each member of the Committee, other than officers of the public service, shall receive such remuneration, and each member of the Committee shall receive such allowances, as the Committee may, with the approval of the Minister, from time to time determine.
- (6) Where by or under any Act provision is made requiring the holder of an office specified therein to devote the whole of his time to the duties of his office, or prohibiting him from engaging in employment outside the duties of his office, that provision shall not operate to disqualify him from holding that office and also the office of a member of the Committee.
- (7) The office of a member of the Committee shall not for the purposes of any Act be deemed to be an office or place of profit under the Crown.
- (8) The provisions of the Public Service Act, 1902, as subsequently amended, shall not apply to or in respect of the appointment by the Governor of any member of the Committee and any member so appointed shall not, in his capacity as such a member, be subject to the provisions of that Act, as so amended, during his term of office.

(9)

Banana Industry.

(9) A member of the Committee appointed on the nomination of the Minister shall be deemed to have vacated his office—

- (a) if he dies;
- 5 (b) if he becomes bankrupt, compounds with his creditors, or makes any assignment of his salary, remuneration, allowances or estate for their benefit;
- 10 (c) if he is absent from four consecutive ordinary meetings of the Committee of which reasonable notice has been given him either personally or in the ordinary course of post unless on leave granted by the Committee or unless he is before the expiration of four weeks after the last of those meetings excused by the Committee for his absence from such meetings;
- 15 (d) if he becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, as subsequently amended;
- 20 (e) if he is convicted in New South Wales of a felony or of a misdemeanour which is punishable by imprisonment for twelve months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour which is punishable as aforesaid;
- 25 (f) if he resigns his office by writing under his hand addressed to the Minister;
- 30 (g) if he is removed from office by the Governor;
- (h) if he ceases to be an officer of the public service.

(10) The Governor may, for any cause which appears to him sufficient, remove from office any member of the Committee appointed on the nomination of the Minister.

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8. (1) The Committee shall be a body corporate, with perpetual succession and a common seal, and may sue or be sued in its corporate name, and shall, subject to this Act, be capable of purchasing, holding, granting, demising, disposing of or otherwise dealing with real and personal property, and of doing and suffering all such acts and things as bodies corporate may by law do and suffer.

Committee
to be body
corporate—
proceedings
of
Committee.

(2) The corporate name of the Committee shall be "Banana Marketing Control Committee".

10 (3) The common seal shall be kept in the custody of the Chairman of the Committee and shall not be affixed to any instrument except in pursuance of a resolution of the Committee.

15 Any instrument executed in pursuance of any such resolution shall be attested by the signature of any two members.

(4) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Act and any regulations in relation thereto, be as determined by the Committee.

(5) The members of the Committee present at the first meeting of the Committee shall elect a member to be Chairman and, where he, or any succeeding Chairman, ceases to be a member of the Committee or resigns his office as Chairman, the members of the Committee shall elect some other member to be Chairman.

(6) The Chairman, or in the absence of the Chairman, a member chosen by the members present at the meeting to act as Chairman, shall preside at any meeting of the Committee.

(7) A majority of the members of the Committee for the time being shall form a quorum and any duly convened meeting of the Committee at which a quorum is present shall be

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be competent to transact any business of the Committee and shall have and may exercise and discharge all the powers, authorities, duties and functions of the Committee.

5 (8) The Chairman or member acting as Chairman at any meeting of the Committee shall, in the event of an equality of votes, have in addition to a deliberative vote a second or casting vote.

10 (9) A decision of the majority of the members present at a meeting of the Committee shall be the decision of the Committee.

(10) The Committee shall cause full and accurate minutes to be kept of its proceedings at meetings, and shall submit to the Minister a copy of the minutes of each meeting within two weeks after the day on which it is held.

15 (11) No act or proceeding of the Committee shall be invalidated or prejudiced by reason only of the fact that at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the office of a member.

20 (12) No matter or thing done, and no contract entered into by the Committee, and no matter or thing done by any member or by any other person whomsoever acting under the direction of the Committee shall, if the matter or thing was done or the contract was entered into bona fide for the purpose of executing this Act, subject them or any of them personally
25 to any action, liability, claim or demand whatsoever.

(13) The Committee shall not, for any purpose, be a statutory body representing the Crown.

9. (1) Subject to a poll being taken and being in favour of the dissolution of the Committee, the Committee shall, on
30 and from a day appointed by the Governor for the purpose by proclamation, being a day not later than six months after the taking of the poll, proceed to wind up its affairs unless

by

Banana Industry.

by the same or a subsequent proclamation, the Governor appoints a person to be liquidator to wind up the affairs of the Committee.

(2) Upon the appointment of a liquidator under subsection one of this section, the members of the Committee shall cease to act as such members and the liquidator may, for the purpose of winding up the affairs of the Committee, in the name and as the act and, where necessary, under the seal of the Committee—

- 10 (a) exercise and perform such of the powers, authorities, duties and functions of the Committee ;
- (b) bring and defend such proceedings; and
- (c) do and execute such other acts and things, as he thinks fit.

15 (3) A liquidator appointed under subsection one of this section shall receive such remuneration as the Governor determines.

(4) The Governor may, at any time after the day appointed under subsection one of this section, declare by 20 proclamation that the Committee is dissolved and thereupon—

- (a) the dissolution of the Committee shall be deemed to have been effected; and
- (b) all moneys and other assets of the Committee—
- (i) shall vest in Her Majesty; and
- 25 (ii) shall be dealt with and disposed of as the Governor may direct.

PART

Banana Industry.

PART IV.

POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF THE
COMMITTEE.

10. (1) For the purposes of and subject to this Act, the Committee may—
- 5 Committee may—
- (a) arrange for the marketing of bananas or of any product thereof;
- (b) by order, exempt from the operation of this Act a banana grower who produces a small quantity of bananas;
- 10 (c) establish a system of inspection of bananas;
- (d) arrange for the supervision of the marketing of bananas;
- (e) enter into any agreements and give guarantees and indemnities in favour of any person who contracts with the Committee or enters into any agreements at the request of or under the authority or direction of the Committee;
- 15 (f) enter upon and carry into execution the marketing and transporting of bananas from any plantation to rail head or markets;
- 20 (g) support, with or without grant of financial aid and whether or not initiated by the Committee, any scheme or activity which, in the opinion of the Committee, is capable of assisting in the promotion of the sale of bananas;
- 25 (h) acquire land, machinery (including refrigerating machinery and machinery suitable for the ripening of bananas) plant, goods, chattels and effects;
- 30 (i) erect, maintain, repair, operate, regulate, use and regulate the use of buildings (including buildings for cold storage and the inspection, sorting and ripening of bananas) and all machinery and plant used in connection therewith;

Powers,
authorities,
duties and
functions of
Committee.

(j)

Banana Industry.

- (j) charge a fee whenever the Committee supplies any service, product or commodity or gives any permission;
- 5 (k) enter into and carry out such contracts and do and suffer all such other acts and things as may be necessary and convenient for the purposes of this Act;
- (l) appoint, employ, or authorise agents, officers, servants and other persons;
- 10 (m) arrange for financial accommodation with any bank, or with any other institution or person approved by the Governor, and give such securities therefor as may be required;
- 15 (n) as far as practicable, provide bananas for consumption in New South Wales, and for their supply to those places within New South Wales wherein a shortage of bananas is experienced;
- 20 (o) make such arrangements as it deems necessary with regard to sales of bananas for export or for consignment to other countries or States or for oversea ships' stores;
- 25 (p) do such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise or discharge of its powers, authorities, duties and functions under this Act.

(2) If at any time any question or dispute arises between the Committee and any banana grower as to whether or not any matter with regard to which the Committee is exercising or performing or proposes to exercise or perform
30 any of the powers, authorities, duties or functions conferred or imposed upon it by this Act ought to be made the subject of a direction under section twelve of this Act before the exercise or performance thereof, the question or dispute shall be referred by the Committee to the Minister, who shall
35 consider the matter and determine the question or dispute, and his determination thereon shall be final and without appeal to any tribunal.

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11. (1) Subject to this section, the Committee may, with the prior approval of the Minister, impose on all banana growers a charge, not exceeding ten cents per bushel, in respect of all bananas produced by them for sale. Power to impose charge on bananas.

5 (2) The Committee shall not impose a charge under subsection one of this section unless—

- (a) it has given notice by advertisement of its intention so to do and has specified in the advertisement the amount of the proposed charge;
- 10 (b) it has taken a poll on the question whether the charge should be imposed, if it is requested so to do by a petition lodged with the Committee not more than thirty days after publication of the advertisement, by not less than one hundred banana growers; and
- 15 (c) any poll so taken is in favour of the imposition of the charge.

(3) Subject to subsections one and two of this section, the Committee may impose the charge specified in an advertisement under subsection two of this section by publishing, not earlier than thirty days after publication of that advertisement, a further advertisement specifying—

- (a) that the provisions of this section have been complied with;
- 25 (b) the amount of the charge; and
- (c) the day (being a day not earlier than the day of publication of the further advertisement) as on and from which the charge is imposed.

(4) The proceeds of all fees collected and charges imposed by the Committee under this Act shall be applied—

- 30 (a) in defraying the proper costs and expenses of the Committee incurred in the exercise or performance of the powers, authorities, duties and functions conferred or imposed upon it by this Act;

(b)

Banana Industry.

5 (b) in establishing and maintaining a fund for the purposes of effecting or providing for the orderly marketing and marketing development of bananas and for research into, and development of, the processing of banana by-products for the benefit of banana growers generally; and

10 (c) in establishing and maintaining such other funds for effecting any other special object which the Committee considers to be of advantage to, and in the common interest of, banana growers generally.

(5) Any amount payable by a banana grower in respect of a charge imposed under this section, shall become due and payable by him fourteen days after the receipt by him of a notice from the Committee notifying him that the 15 charge has been imposed.

12. (1) Subject to this section, the Committee may give a direction—

Power of Committee to issue directions.

20 (a) that all or any of the things included in the marketing of bananas shall be done only by the Committee, its agents and servants, or only by a specified person or specified persons or a specified class of persons;

25 (b) that all bananas that, during a specified period, are in the possession of or come into the possession of any person in the course, or for the purpose, of the marketing thereof shall be handled and dealt with only under the instructions and with the authority of the Committee, or shall be consigned or delivered only to specified persons or a specified 30 class, or specified classes, of persons.

(2) A direction given under subsection one of this section—

(a) may be expressed to extend to all bananas or to a specified class, or to specified classes, of bananas;

(b)

Banana Industry.

- (b) may be expressed to extend throughout the State or to any specified part thereof, or locality therein, within specified boundaries;
- 5 (c) may be expressed to extend to the complete marketing of bananas or only to specified phases of such marketing;
- (d) shall specify the length of the period for which the direction is to remain in force.

(3) A direction issued under this section may specify
10 the circumstances in which and the terms and conditions on which, the direction shall not apply to or in respect of—

- (a) growers of bananas who, in the opinion of the Committee, produce a small quantity of bananas;
- 15 (b) sales of bananas direct to local consumers or to retail vendors; or
- (c) such other sales, purchases or receipts of bananas as may be specified,

and the Committee's decision as to whether any particular person or sale, purchase or receipt of bananas falls within the
20 limits of any such exemption shall be final.

The Committee may, at any time by notice in writing to a banana grower exempted from the operation of a direction, revoke the exemption of that grower.

(4) The Committee shall not give a direction under
25 subsection one of 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 length of the period for which the direction would remain in force;
- 30 (b) it has taken a poll on the question whether the direction should be given, if it is requested so to do by a petition, lodged with the Committee within thirty days after publication of the advertisement,
- 35 by not less than one hundred banana growers; and
- (c)

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(c) any poll so taken is in favour of the direction being given.

(5) Subject to subsections one, two and three of this section the Committee may give the direction specified in the advertisement under subsection four of this section by publishing, not earlier than thirty days after publication of that advertisement, a further advertisement—

- (a) specifying that the provisions of this section have been complied with;
- 10 (b) setting forth the direction;
- (c) specifying the day (being a day not earlier than the day of publication of the further advertisement) as on and from which the direction is to take effect; and
- 15 (d) specifying the length of the period for which the direction is to remain in force.

(6) A person who—

- (a) fails to comply with or contravenes any provision of a direction given under this section;
- 20 (b) buys or accepts delivery of bananas from any person who sells or delivers those bananas in contravention of such a direction; or
- (c) offers by advertisement (in any manner) or otherwise to buy or to accept delivery of bananas from any person who upon accepting that offer by selling or delivering those bananas would contravene such a direction,
- 25

shall, if he is a banana grower or a person, not being a banana grower, upon whom the Committee by certified mail has served a copy of the advertisement by which the direction was given, be guilty of an offence against this Act unless he is a person exempted from the operation of the direction.

(7) A direction given under this section may be revoked by the Committee by a notice published in the official journal of the Federation.

Banana Industry.

13. (1) The Committee may—

Power to
require
returns.

(a) by advertisement require all banana growers or a specified class or specified classes of banana growers; or

5 (b) by notice sent by certified mail, require a person, whether or not he is a banana grower, associated with the marketing of bananas,

to furnish in writing to the Committee within a time specified for the purpose in the advertisement or notice, as the case
10 may be, such information in relation to bananas and any product thereof as is specified in the advertisement or notice, as the case may be.

(2) An advertisement or notice referred to in subsection one of this section may require—

15 (a) particulars of bananas by reference to type, variety, grade, quality and quantity;

(b) in the case of a banana grower—

20 (i) particulars of the number of plants by reference to age, type and variety which he is growing for the purpose of the production and sale of bananas; and

25 (ii) an estimate, as far as is practicable, of bananas by reference to type, variety, grade, quality and quantity which he expects to produce for the purpose of marketing within any period specified in the notice.

(3) Any person who—

(a) without reasonable excuse refuses or fails to comply with a requirement under this section; or

30 (b) furnishes to the Committee under this section any information which to his knowledge is false or misleading in a material particular,

shall be guilty of an offence against this Act.

PART

Banana Industry.

PART V.

FINANCE.

14. The Committee shall cause to be kept proper books of account in relation to all of its operations, and shall, as soon as practicable after the thirtieth day of June in each year or, where some other day is prescribed for the purposes of this section, as soon as practicable after the day so prescribed, prepare and transmit to the Minister a statement of accounts in a form approved by the Auditor-General showing a true and correct view of the financial position and transactions of the Committee and each such statement of accounts shall be exhibited in such manner and at such times as may be prescribed.

Accounts
to be kept
by the
Committee.

15. (1) The accounts of the Committee shall be audited by the Auditor-General who shall have, in respect thereof, all the powers conferred on him by any law for the time being in force relating to the audit of public accounts, and the Audit Act, 1902, as subsequently amended, shall apply to the members of the Committee and its servants in the same manner as it applies to accounting officers of Public Departments.

Audit of
accounts.

(2) The Auditor-General shall report to the Minister and the Committee—

(a) whether or not in his opinion—

25 (i) the expenditure incurred has been duly authorised, vouched and supervised;

(ii) any of the moneys or other property of the Committee has been misappropriated or improperly or irregularly dealt with; and

30 (b) as to any other matters which in his judgment call for special notice or which are prescribed.

(3) Towards defraying the costs and expenses of an audit under this section, the Committee shall pay to the Consolidated Revenue Fund such sums, at such times, as the Treasurer may decide.

PART

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PART VI.

GENERAL.

16. As soon as practicable after the thirtieth day of June ^{Annual} in each year or, where some other day is prescribed for the ^{report.} purposes of this section, as soon as practicable after the day so prescribed, the Committee shall prepare and furnish to the Minister a report on the operations and activities of the Committee during the next preceding year ending on the thirtieth day of June or the next preceding year ending on the day so prescribed, as the case may be.

The Minister shall lay such report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receipt by him of the report.

17. The Committee shall, in addition to any other report ^{Minister} it may be required to prepare and furnish under this Act, ^{may require} furnish to the Minister, within a time specified by him, such ^{further} reports on the operations of the Committee as the Minister may direct.

18. It shall not be lawful for the Committee to expend ^{Board not} any of its funds for any purpose whatsoever in connection ^{to be con-} with the politics of any political party, nor shall the Committee ^{cerned in} become affiliated in any way whatsoever with any body, ^{party} association or organisation having for its object or any of its ^{politics.} objects the support of the politics or programme or aims of any political party.

19. All courts and persons having by law or consent of ^{Judicial} parties authority to hear, receive and examine evidence— ^{notice of}

- (a) shall take judicial notice of the seal of the Com- ^{the seal} mittee affixed to any document; and ^{of the}
- 30 (b) shall until the contrary is proved presume that the ^{Committee.} seal was properly affixed thereto.

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20. (1) Any notice, summons, writ or other proceeding required to be served on the Committee under this Act or the regulations may be served by being left at the office of the Committee, or, in the case of a notice, by post. Service of notices of proceedings.

5 (2) Except where this Act or the regulations otherwise provide, any notice that is required to be given or that may be given by the Committee under this Act or the regulations shall be deemed to have been duly given if sent by post in a letter addressed to the person to be served at his place
10 of abode or business in New South Wales last known to the Committee, and the notice shall be deemed to have been given at the time when a letter so posted should in the ordinary course be delivered.

21. Any penalty imposed by this Act or the regulations Recovery of penalty.
15 may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions.

22. (1) Any charge, fee, remuneration or money due to the Committee under the provisions of this Act or the regulations may be recovered as a debt in a court of competent
20 jurisdiction. Recovery of charges, etc.

(2) Proceedings for the recovery of any charge, fee or money so due to the Committee shall be deemed to be for the recovery of a debt or liquidated demand within the meaning of—

- 25 (a) section twenty-four of the Common Law Procedure Act, 1899, as subsequently amended;
- (b) section sixty-four of the District Courts Act, 1912, as subsequently amended;
- 30 (c) section twenty-five of the Small Debts Recovery Act, 1912, as subsequently amended.

(3) Where any matter or thing is by or under this Act directed or forbidden to be done, and that matter or thing if so directed to be done remains undone, or if so
forbidden

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forbidden to be done is done, a person offending against the direction or prohibition shall be guilty of an offence against this Act.

(4) The institution of criminal proceedings against
5 a person or the conviction of a person for any offence against this Act shall not affect any remedy to which any other person (including the Committee) aggrieved may be entitled to in any civil proceeding.

23. In any proceedings, whether at law or in equity— Evidence.

- 10 (a) no proof shall be required, until evidence is given to the contrary, of—
- (i) the constitution of the Committee;
 - (ii) any resolution of the Committee;
 - 15 (iii) the appointment of any member or any servant of the Committee;
 - (iv) the presence of a quorum at any meeting at which any determination is made or any act is done by the Committee;
- 20 (b) any notification, requisition, demand, order, or other document in writing, purporting to be signed or made or sent by the Committee or the Chairman or Secretary thereof or the Minister shall be judicially noticed;
- 25 (c) the production of a copy of the Gazette purporting to contain any proclamation, or a copy of the official journal of the Federation purporting to contain a copy of an advertisement or notice published by the Committee under this Act shall, until the contrary is proved, be evidence of the matters
30 contained in the proclamation, advertisement or notice and that all steps necessary to be taken prior to the making of the proclamation or publication of the advertisement or notice were duly taken;
- (d)

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- (d) the averment on behalf of the Committee that any bananas were or are bananas to which the provisions of this Act apply, or were or are bananas to which a direction in force under this Act applies, or that any place is a place in New South Wales, or that any person was or is a banana grower shall, until the contrary is proved, be evidence of that fact;
- (e) a certificate purporting to be signed by the prescribed officer of the Committee and to certify that on a specified day or during the whole of a specified period any person was or was not included in the list of banana growers compiled under this Act shall, without proof of the signature of the person purporting to sign the certificate or that he is the prescribed officer, be prima facie evidence of the matters certified in and by the certificate.
- 24.** Except where otherwise expressly provided by this Act, any person guilty of an offence against this Act shall be liable to a penalty not exceeding four hundred dollars. Penalty.
- 25.** The provisions of section thirty-two of the Marketing of Primary Products Act, 1927, as subsequently amended, shall apply to and in respect of offences against this Act. Offences by companies and joint offenders.
- 26.** A power, authority, duty or function conferred or imposed on the Federation or its directors or officers by or under this Act may, to the extent that but for this section the exercise or performance thereof would not be authorised by the rules of the Federation, be exercised or performed by the Federation as if it had been so authorised. Authority of Federation.
- 27.** (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to— Regulations.
- (a) any of the powers, authorities, duties and functions of the Minister or the Committee under this Act;
- (b)

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- (b) the taking of any poll, including the method of voting thereat;
- (c) matters concerning the compilation and revision of lists of banana growers required to vote at any poll;
- 5 (d) matters concerning the method of determining the qualification of banana growers eligible to vote at any poll;
- (e) the manner in which the results of a poll taken under this Act shall be notified;
- 10 (f) prescribing forms to be used for the purposes of this Act;
- (g) all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or
15 giving effect to this Act.

(2) The regulations may prescribe a penalty not exceeding two hundred dollars for any contravention of, or failure to comply with any provision of, the regulations, or any instruction, order or requirement given, or made under,
20 or in force by virtue of, the regulations.

(3) A regulation may be of general operation or specially limited application according to time, place, circumstances or cases, and may be general or restricted to any specified class of subject matter.

25 The power to make regulations with respect to any matter or thing shall include the powers to make regulations prohibiting that matter or thing either generally or to meet particular cases.

(4) The regulations shall—

- 30 (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c)

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(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session and, if not, then within fourteen sitting days after the commencement of the next session.

5 (5) If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after the regulations have been laid before the House disallowing the regulation or part thereof, such regulation or part shall thereupon cease to have effect.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1969
[25c]

This Bureau has conducted a comprehensive investigation into the activities of the Communist Party in the United States during the past several years. The results of this investigation are set forth in the following report.

The Communist Party has been found to be a highly organized and active organization in the United States. It has a large membership and has been successful in carrying out its program of subversion and sabotage. The Party has been found to be a threat to the national security of the United States and to the stability of our government.

Summary of Findings

The Communist Party has been found to be a threat to the national security of the United States and to the stability of our government. It has a large membership and has been successful in carrying out its program of subversion and sabotage.

No. , 1969.

A BILL

To provide for the constitution of a Banana Marketing Control Committee and to define its powers, authorities, duties and functions; to provide for the taking of polls of banana growers prior to the formation and dissolution of the Committee; to provide for the issue of directions by the Committee relating to the marketing of bananas and for the imposition by it of certain charges; to provide for the taking of polls of banana growers prior to the issue of those directions or the imposition of those charges; and for purposes connected therewith.

[MR CRAWFORD—26 March, 1969.]

BE

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Banana Industry Act, 1969". Short title and commencement.

10 (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. This Act shall be read and construed as operating to the full extent of, but so as not to exceed, the legislative powers of the State, to the intent that where any provision of this Act or the application of any such provision to any person, subject-matter or circumstance would, but for this section have been construed as being in excess of those powers, it shall be a valid provision to the extent to which it is not in excess of those powers, and the remainder of the Act and the application of the provision to other persons, subject-matters or circumstances shall not be affected. Construction of Act.

3. This Act is divided into Parts as follows:—

Division into Parts.

PART I.—PRELIMINARY—ss. 1-4.

25 PART II.—POLLS OF BANANA GROWERS—ss. 5, 6.

PART III.—CONSTITUTION OF THE COMMITTEE—ss. 7-9.

PART IV.—POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF THE COMMITTEE—ss. 10-13.

30 PART V.—FINANCE—ss. 14, 15.

PART VI.—GENERAL—ss. 16-27.

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4. In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation.

“advertisement” means advertisement published in the official journal of the Federation;

5 “bananas” means bananas grown in New South Wales;

“banana grower” or “grower” means any person by whom or on whose behalf bananas are grown on not less than one acre of land, whether or not the bananas are grown or produced pursuant to a share-farming agreement or partnership agreement, oral or written, but does not include a person engaged as an employee on wages or salary or at piece-work rates;

10
15 “Committee” means the Banana Marketing Control Committee constituted under section seven of this Act;

20 “Federation” means Banana Growers Federation Co-operative Limited, a society registered under the Co-operation, Community Settlement, and Credit Act, 1923, as subsequently amended;

25 “marketing”, in relation to bananas or any product thereof, means the harvesting, preparation, processing and packing of bananas or any product thereof for sale by wholesale and the sale thereof by wholesale and the shipping, transporting, storing and handling of bananas or any product thereof for the purpose of any such sale and the transmission thereof from the grower to any person selling by wholesale and all actions or things connected therewith or incidental thereto;

30 “prescribed” means prescribed by this Act or by the regulations;

“proclamation” means proclamation published in the Gazette;

35 “regulations” means regulations made under this Act;

“sell”

Banana Industry.

“sell” includes barter and exchange; and “sale” has a corresponding meaning;

“this Act” includes regulations made under this Act.

PART II.

5 POLLS OF BANANA GROWERS.

5. (1) A poll for the purposes of this Act shall be a poll taken, as prescribed, among banana growers.

(2) A poll for the purposes of Part III of this Act—

10 (a) shall be taken, where the question to be decided is whether the Committee should be constituted, only at the request, by petition to the Governor, of not less than one hundred persons certified by the Federation to be banana growers;

15 (b) shall be taken, where the question to be decided is whether the Committee should be dissolved, only at the request, by petition to the Governor lodged not earlier than five years after the constitution of the Committee, of not less than one hundred persons certified by the Committee to be banana growers;

20 (c) shall, where so requested, be taken on a day notified by the Governor for the purpose by proclamation, being a day not earlier than thirty days after publication of the proclamation or, where the Governor by a subsequent proclamation notifies a later day for the purpose, on that later day;

25 (d) shall be deemed not to be in favour of the question to be decided at the poll unless—

30 (i) not less than three-fifths of the persons required to vote at the poll have so voted; and

(ii) a majority of the votes at the poll is in favour of the question; and

(e)

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5 (e) shall not, where the poll is required to be taken by a person other than the Federation or the Committee, be taken unless the Federation or the Committee has first made provision, as prescribed, for the costs and expenses of the poll.

(3) A poll for the purposes of section eleven or twelve of this Act—

10 (a) shall be taken by the Committee and shall be so taken on a day notified by the Committee by advertisement for the purpose or, where the Committee by a subsequent advertisement notifies a later day for the purpose, on that later day;

15 (b) shall be deemed not to be in favour of the question to be decided at the poll unless a majority of votes at the poll is in favour of the question.

(4) The regulations may make provision for and with respect to—

(a) the payment to the Federation by the Committee; and

20 (b) the recovery by the Federation from the Committee, of costs and expenses paid by the Federation in respect of a poll.

6. (1) For the purposes of a poll, the Minister shall cause a list to be compiled, as prescribed, of banana growers. List of banana growers.

25 (2) Where, after application made, as prescribed, for the purpose, the name of a person is not included in the list compiled under subsection one of this section, that person may apply as prescribed to a court of petty sessions holden before a stipendiary magistrate for an order that his name be
30 included in that list.

(3)

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(3) A court to which application is made under subsection two of this section shall have jurisdiction to hear and determine the matter of the application and may—

- 5 (a) order that the name of the applicant be included in the list compiled under subsection one of this section; or
- (b) dismiss the application.

and upon any order being made under paragraph (a) of this subsection, the name of the applicant shall be included in
10 that list.

(4) Where the name of a person appears on the list compiled under subsection one of this section for a poll and that person fails to vote at the poll, he shall be liable to a penalty not exceeding four dollars.

- 15 (5) Where the name of a person does not appear on the list compiled under subsection one of this section for a poll and he votes at the poll, he shall be guilty of an offence against this Act.

PART III.

20 **CONSTITUTION OF THE COMMITTEE.**

7. (1) Subject to a poll being taken and being in favour of the Committee being constituted, the Governor may, by proclamation, appoint a day for the constitution of the Committee and, on that day, the Committee shall be deemed to
25 have been constituted in accordance with this Part.

(2) The Committee shall consist of—

- (a) two officers of the public service appointed by the Governor on the nomination of the Minister for such term, not exceeding five years, as may be
30 specified in the instrument of appointment; and

(b)

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- (b) the persons for the time being holding office as members of the Board of Directors of the Federation.
- (3) A person appointed as a member of the Committee on the nomination of the Minister shall, on the expiration of his term of office, be eligible for reappointment.
- (4) Where a person appointed as a member of the Committee on the nomination of the Minister vacates his office otherwise than on the expiration of his term of office, the Governor may, on the nomination of the Minister, appoint an officer of the public service to the vacant office for the unexpired portion of the term of office of his predecessor.
- (5) Each member of the Committee, other than officers of the public service, shall receive such remuneration, and each member of the Committee shall receive such allowances, as the Committee may, with the approval of the Minister, from time to time determine.
- (6) Where by or under any Act provision is made requiring the holder of an office specified therein to devote the whole of his time to the duties of his office, or prohibiting him from engaging in employment outside the duties of his office, that provision shall not operate to disqualify him from holding that office and also the office of a member of the Committee.
- (7) The office of a member of the Committee shall not for the purposes of any Act be deemed to be an office or place of profit under the Crown.
- (8) The provisions of the Public Service Act, 1902, as subsequently amended, shall not apply to or in respect of the appointment by the Governor of any member of the Committee and any member so appointed shall not, in his capacity as such a member, be subject to the provisions of that Act, as so amended, during his term of office.

(9)

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(9) A member of the Committee appointed on the nomination of the Minister shall be deemed to have vacated his office—

- (a) if he dies;
- 5 (b) if he becomes bankrupt, compounds with his creditors, or makes any assignment of his salary, remuneration, allowances or estate for their benefit;
- 10 (c) if he is absent from four consecutive ordinary meetings of the Committee of which reasonable notice has been given him either personally or in the ordinary course of post unless on leave granted by the Committee or unless he is before the expiration of four weeks after the last of those meetings excused by the Committee for his absence from such meetings;
- 15 (d) if he becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, as subsequently amended;
- 20 (e) if he is convicted in New South Wales of a felony or of a misdemeanour which is punishable by imprisonment for twelve months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour which is punishable as aforesaid;
- 25 (f) if he resigns his office by writing under his hand addressed to the Minister;
- 30 (g) if he is removed from office by the Governor;
- (h) if he ceases to be an officer of the public service.

(10) The Governor may, for any cause which appears to him sufficient, remove from office any member of the Committee appointed on the nomination of the Minister.

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8. (1) The Committee shall be a body corporate, with perpetual succession and a common seal, and may sue or be sued in its corporate name, and shall, subject to this Act, be capable of purchasing, holding, granting, demising, disposing of or otherwise dealing with real and personal property, and of doing and suffering all such acts and things as bodies corporate may by law do and suffer.

Committee
to be body
corporate—
proceedings
of
Committee.

(2) The corporate name of the Committee shall be "Banana Marketing Control Committee".

10 (3) The common seal shall be kept in the custody of the Chairman of the Committee and shall not be affixed to any instrument except in pursuance of a resolution of the Committee.

Any instrument executed in pursuance of any such resolution shall be attested by the signature of any two members.

(4) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Act and any regulations in relation thereto, be as determined by the Committee.

(5) The members of the Committee present at the first meeting of the Committee shall elect a member to be Chairman and, where he, or any succeeding Chairman, ceases to be a member of the Committee or resigns his office as Chairman, the members of the Committee shall elect some other member to be Chairman.

(6) The Chairman, or in the absence of the Chairman, a member chosen by the members present at the meeting to act as Chairman, shall preside at any meeting of the Committee.

(7) A majority of the members of the Committee for the time being shall form a quorum and any duly convened meeting of the Committee at which a quorum is present shall be

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be competent to transact any business of the Committee and shall have and may exercise and discharge all the powers, authorities, duties and functions of the Committee.

5 (8) The Chairman or member acting as Chairman at any meeting of the Committee shall, in the event of an equality of votes, have in addition to a deliberative vote a second or casting vote.

10 (9) A decision of the majority of the members present at a meeting of the Committee shall be the decision of the Committee.

(10) The Committee shall cause full and accurate minutes to be kept of its proceedings at meetings, and shall submit to the Minister a copy of the minutes of each meeting within two weeks after the day on which it is held.

15 (11) No act or proceeding of the Committee shall be invalidated or prejudiced by reason only of the fact that at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the office of a member.

20 (12) No matter or thing done, and no contract entered into by the Committee, and no matter or thing done by any member or by any other person whomsoever acting under the direction of the Committee shall, if the matter or thing was done or the contract was entered into bona fide for the purpose of executing this Act, subject them or any of them personally 25 to any action, liability, claim or demand whatsoever.

(13) The Committee shall not, for any purpose, be a statutory body representing the Crown.

9. (1) Subject to a poll being taken and being in favour of the dissolution of the Committee, the Committee shall, on 30 and from a day appointed by the Governor for the purpose by proclamation, being a day not later than six months after the taking of the poll, proceed to wind up its affairs unless

by

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by the same or a subsequent proclamation, the Governor appoints a person to be liquidator to wind up the affairs of the Committee.

(2) Upon the appointment of a liquidator under subsection one of this section, the members of the Committee shall cease to act as such members and the liquidator may, for the purpose of winding up the affairs of the Committee, in the name and as the act and, where necessary, under the seal of the Committee—

- 10 (a) exercise and perform such of the powers, authorities, duties and functions of the Committee ;
- (b) bring and defend such proceedings ; and
- (c) do and execute such other acts and things, as he thinks fit.

15 (3) A liquidator appointed under subsection one of this section shall receive such remuneration as the Governor determines.

(4) The Governor may, at any time after the day appointed under subsection one of this section, declare by 20 proclamation that the Committee is dissolved and thereupon—

- (a) the dissolution of the Committee shall be deemed to have been effected ; and
- (b) all moneys and other assets of the Committee—
- (i) shall vest in Her Majesty ; and
- 25 (ii) shall be dealt with and disposed of as the Governor may direct.

PART

Banana Industry.

PART IV.

POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF THE
COMMITTEE.

- 10.** (1) For the purposes of and subject to this Act, the
5 Committee may—
- (a) arrange for the marketing of bananas or of any
product thereof;
- (b) by order, exempt from the operation of this Act a
10 banana grower who produces a small quantity of
bananas;
- (c) establish a system of inspection of bananas;
- (d) arrange for the supervision of the marketing of
bananas;
- (e) enter into any agreements and give guarantees and
15 indemnities in favour of any person who contracts
with the Committee or enters into any agreements
at the request of or under the authority or direction
of the Committee;
- (f) enter upon and carry into execution the marketing
20 and transporting of bananas from any plantation
to rail head or markets;
- (g) support, with or without grant of financial aid and
whether or not initiated by the Committee, any
25 scheme or activity which, in the opinion of the
Committee, is capable of assisting in the promotion
of the sale of bananas;
- (h) acquire land, machinery (including refrigerating
machinery and machinery suitable for the ripening
of bananas) plant, goods, chattels and effects;
- 30 (i) erect, maintain, repair, operate, regulate, use and
regulate the use of buildings (including buildings
for cold storage and the inspection, sorting and
ripening of bananas) and all machinery and plant
used in connection therewith;

Powers,
authorities,
duties and
functions of
Committee.

(j)

Banana Industry.

- (j) charge a fee whenever the Committee supplies any service, product or commodity or gives any permission;
- 5 (k) enter into and carry out such contracts and do and suffer all such other acts and things as may be necessary and convenient for the purposes of this Act;
- (l) appoint, employ, or authorise agents, officers, servants and other persons;
- 10 (m) arrange for financial accommodation with any bank, or with any other institution or person approved by the Governor, and give such securities therefor as may be required;
- 15 (n) as far as practicable, provide bananas for consumption in New South Wales, and for their supply to those places within New South Wales wherein a shortage of bananas is experienced;
- 20 (o) make such arrangements as it deems necessary with regard to sales of bananas for export or for consignment to other countries or States or for oversea ships' stores;
- 25 (p) do such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise or discharge of its powers, authorities, duties and functions under this Act.

(2) If at any time any question or dispute arises between the Committee and any banana grower as to whether or not any matter with regard to which the Committee is exercising or performing or proposes to exercise or perform
30 any of the powers, authorities, duties or functions conferred or imposed upon it by this Act ought to be made the subject of a direction under section twelve of this Act before the exercise or performance thereof, the question or dispute shall be referred by the Committee to the Minister, who shall
35 consider the matter and determine the question or dispute, and his determination thereon shall be final and without appeal to any tribunal.

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11. (1) Subject to this section, the Committee may, with the prior approval of the Minister, impose on all banana growers a charge, not exceeding ten cents per bushel, in respect of all bananas produced by them for sale. Power to impose charge on bananas.

5 (2) The Committee shall not impose a charge under subsection one of this section unless—

- (a) it has given notice by advertisement of its intention so to do and has specified in the advertisement the amount of the proposed charge;
- 10 (b) it has taken a poll on the question whether the charge should be imposed, if it is requested so to do by a petition lodged with the Committee not more than thirty days after publication of the advertisement, by not less than one hundred banana growers; and
- 15 (c) any poll so taken is in favour of the imposition of the charge.

(3) Subject to subsections one and two of this section, the Committee may impose the charge specified in an advertisement under subsection two of this section by publishing, not earlier than thirty days after publication of that advertisement, a further advertisement specifying—

- (a) that the provisions of this section have been complied with;
- 25 (b) the amount of the charge; and
- (c) the day (being a day not earlier than the day of publication of the further advertisement) as on and from which the charge is imposed.

(4) The proceeds of all fees collected and charges imposed by the Committee under this Act shall be applied—

- 30 (a) in defraying the proper costs and expenses of the Committee incurred in the exercise or performance of the powers, authorities, duties and functions conferred or imposed upon it by this Act;

(b)

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- 5 (b) in establishing and maintaining a fund for the purposes of effecting or providing for the orderly marketing and marketing development of bananas and for research into, and development of, the processing of banana by-products for the benefit of banana growers generally; and
- 10 (c) in establishing and maintaining such other funds for effecting any other special object which the Committee considers to be of advantage to, and in the common interest of, banana growers generally.

15 (5) Any amount payable by a banana grower in respect of a charge imposed under this section, shall become due and payable by him fourteen days after the receipt by him of a notice from the Committee notifying him that the charge has been imposed.

12. (1) Subject to this section, the Committee may give a direction—

Power of Committee to issue directions.

- 20 (a) that all or any of the things included in the marketing of bananas shall be done only by the Committee, its agents and servants, or only by a specified person or specified persons or a specified class of persons;
- 25 (b) that all bananas that, during a specified period, are in the possession of or come into the possession of any person in the course, or for the purpose, of the marketing thereof shall be handled and dealt with only under the instructions and with the authority of the Committee, or shall be consigned or delivered only to specified persons or a specified class, or specified classes, of persons.
- 30

(2) A direction given under subsection one of this section—

- (a) may be expressed to extend to all bananas or to a specified class, or to specified classes, of bananas;

(b)

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(b) may be expressed to extend throughout the State or to any specified part thereof, or locality therein, within specified boundaries;

5 (c) may be expressed to extend to the complete marketing of bananas or only to specified phases of such marketing;

(d) shall specify the length of the period for which the direction is to remain in force.

(3) A direction issued under this section may specify 10 the circumstances in which and the terms and conditions on which, the direction shall not apply to or in respect of—

(a) growers of bananas who, in the opinion of the Committee, produce a small quantity of bananas;

15 (b) sales of bananas direct to local consumers or to retail vendors; or

(c) such other sales, purchases or receipts of bananas as may be specified,

and the Committee's decision as to whether any particular person or sale, purchase or receipt of bananas falls within the 20 limits of any such exemption shall be final.

The Committee may, at any time by notice in writing to a banana grower exempted from the operation of a direction, revoke the exemption of that grower.

(4) The Committee shall not give a direction under 25 subsection one of this section unless—

30 (a) it has published an advertisement giving notice of its intention to give the direction, setting forth the proposed direction, and specifying the length of the period for which the direction would remain in force;

(b) it has taken a poll on the question whether the direction should be given, if it is requested so to do by a petition, lodged with the Committee within thirty days after publication of the advertisement, 35 by not less than one hundred banana growers; and

(c)

Banana Industry.

(c) any poll so taken is in favour of the direction being given.

(5) Subject to subsections one, two and three of this section the Committee may give the direction specified in the 5 advertisement under subsection four of this section by publishing, not earlier than thirty days after publication of that advertisement, a further advertisement—

- (a) specifying that the provisions of this section have been complied with;
- 10 (b) setting forth the direction;
- (c) specifying the day (being a day not earlier than the day of publication of the further advertisement) as on and from which the direction is to take effect; and
- 15 (d) specifying the length of the period for which the direction is to remain in force.

(6) A person who—

- (a) fails to comply with or contravenes any provision of a direction given under this section;
- 20 (b) buys or accepts delivery of bananas from any person who sells or delivers those bananas in contravention of such a direction; or
- (c) offers by advertisement (in any manner) or otherwise to buy or to accept delivery of bananas from any person who upon accepting that offer by 25 selling or delivering those bananas would contravene such a direction,

shall, if he is a banana grower or a person, not being a banana grower, upon whom the Committee by certified mail has served a copy of the advertisement by which the direction was 30 given, be guilty of an offence against this Act unless he is a person exempted from the operation of the direction.

(7) A direction given under this section may be revoked by the Committee by a notice published in the official journal of the Federation.

Banana Industry.

13. (1) The Committee may—

Power to
require
returns.

(a) by advertisement require all banana growers or a specified class or specified classes of banana growers; or

5 (b) by notice sent by certified mail, require a person, whether or not he is a banana grower, associated with the marketing of bananas,

to furnish in writing to the Committee within a time specified for the purpose in the advertisement or notice, as the case
10 may be, such information in relation to bananas and any product thereof as is specified in the advertisement or notice, as the case may be.

(2) An advertisement or notice referred to in subsection one of this section may require—

15 (a) particulars of bananas by reference to type, variety, grade, quality and quantity;

(b) in the case of a banana grower—

20 (i) particulars of the number of plants by reference to age, type and variety which he is growing for the purpose of the production and sale of bananas; and

25 (ii) an estimate, as far as is practicable, of bananas by reference to type, variety, grade, quality and quantity which he expects to produce for the purpose of marketing within any period specified in the notice.

(3) Any person who—

(a) without reasonable excuse refuses or fails to comply with a requirement under this section; or

30 (b) furnishes to the Committee under this section any information which to his knowledge is false or misleading in a material particular,

shall be guilty of an offence against this Act.

PART

Banana Industry.

PART V.

FINANCE.

14. The Committee shall cause to be kept proper books of account in relation to all of its operations, and shall, as soon as practicable after the thirtieth day of June in each year or, where some other day is prescribed for the purposes of this section, as soon as practicable after the day so prescribed, prepare and transmit to the Minister a statement of accounts in a form approved by the Auditor-General showing a true and correct view of the financial position and transactions of the Committee and each such statement of accounts shall be exhibited in such manner and at such times as may be prescribed.

Accounts
to be kept
by the
Committee.

15. (1) The accounts of the Committee shall be audited by the Auditor-General who shall have, in respect thereof, all the powers conferred on him by any law for the time being in force relating to the audit of public accounts, and the Audit Act, 1902, as subsequently amended, shall apply to the members of the Committee and its servants in the same manner as it applies to accounting officers of Public Departments.

Audit of
accounts.

(2) The Auditor-General shall report to the Minister and the Committee—

(a) whether or not in his opinion—

25 (i) the expenditure incurred has been duly authorised, vouched and supervised;

(ii) any of the moneys or other property of the Committee has been misappropriated or improperly or irregularly dealt with; and

30 (b) as to any other matters which in his judgment call for special notice or which are prescribed.

(3) Towards defraying the costs and expenses of an audit under this section, the Committee shall pay to the Consolidated Revenue Fund such sums, at such times, as the Treasurer may decide.

PART

Banana Industry.

PART VI.

GENERAL.

16. As soon as practicable after the thirtieth day of June in each year or, where some other day is prescribed for the purposes of this section, as soon as practicable after the day so prescribed, the Committee shall prepare and furnish to the Minister a report on the operations and activities of the Committee during the next preceding year ending on the thirtieth day of June or the next preceding year ending on the day so prescribed, as the case may be.

Annual report.

The Minister shall lay such report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receipt by him of the report.

17. The Committee shall, in addition to any other report it may be required to prepare and furnish under this Act, furnish to the Minister, within a time specified by him, such reports on the operations of the Committee as the Minister may direct.

Minister may require further reports.

18. It shall not be lawful for the Committee to expend any of its funds for any purpose whatsoever in connection with the politics of any political party, nor shall the Committee become affiliated in any way whatsoever with any body, association or organisation having for its object or any of its objects the support of the politics or programme or aims of any political party.

Board not to be concerned in party politics.

19. All courts and persons having by law or consent of parties authority to hear, receive and examine evidence—

Judicial notice of the seal of the Committee.

- (a) shall take judicial notice of the seal of the Committee affixed to any document; and
- (b) shall until the contrary is proved presume that the seal was properly affixed thereto.

Banana Industry.

20. (1) Any notice, summons, writ or other proceeding required to be served on the Committee under this Act or the regulations may be served by being left at the office of the Committee, or, in the case of a notice, by post. Service of notices of proceedings.

5 (2) Except where this Act or the regulations otherwise provide, any notice that is required to be given or that may be given by the Committee under this Act or the regulations shall be deemed to have been duly given if sent by post in a letter addressed to the person to be served at his place
10 of abode or business in New South Wales last known to the Committee, and the notice shall be deemed to have been given at the time when a letter so posted should in the ordinary course be delivered.

21. Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions. Recovery of penalty.

22. (1) Any charge, fee, remuneration or money due to the Committee under the provisions of this Act or the regulations may be recovered as a debt in a court of competent
20 jurisdiction. Recovery of charges, etc.

(2) Proceedings for the recovery of any charge, fee or money so due to the Committee shall be deemed to be for the recovery of a debt or liquidated demand within the meaning of—

- 25 (a) section twenty-four of the Common Law Procedure Act, 1899, as subsequently amended;
- (b) section sixty-four of the District Courts Act, 1912, as subsequently amended;
- 30 (c) section twenty-five of the Small Debts Recovery Act, 1912, as subsequently amended.

(3) Where any matter or thing is by or under this Act directed or forbidden to be done, and that matter or thing if so directed to be done remains undone, or if so
forbidden

Banana Industry.

forbidden to be done is done, a person offending against the direction or prohibition shall be guilty of an offence against this Act.

(4) The institution of criminal proceedings against a person or the conviction of a person for any offence against this Act shall not affect any remedy to which any other person (including the Committee) aggrieved may be entitled to in any civil proceeding.

23. In any proceedings, whether at law or in equity— Evidence.

- 10 (a) no proof shall be required, until evidence is given to the contrary, of—
- (i) the constitution of the Committee;
 - (ii) any resolution of the Committee;
 - 15 (iii) the appointment of any member or any servant of the Committee;
 - (iv) the presence of a quorum at any meeting at which any determination is made or any act is done by the Committee;
- 20 (b) any notification, requisition, demand, order, or other document in writing, purporting to be signed or made or sent by the Committee or the Chairman or Secretary thereof or the Minister shall be judicially noticed;
- 25 (c) the production of a copy of the Gazette purporting to contain any proclamation, or a copy of the official journal of the Federation purporting to contain a copy of an advertisement or notice published by the Committee under this Act shall, until the contrary is proved, be evidence of the matters contained in the proclamation, advertisement or
- 30 notice and that all steps necessary to be taken prior to the making of the proclamation or publication of the advertisement or notice were duly taken;
- (d)

Banana Industry.

- 5 (d) the averment on behalf of the Committee that any bananas were or are bananas to which the provisions of this Act apply, or were or are bananas to which a direction in force under this Act applies, or that any place is a place in New South Wales, or that any person was or is a banana grower shall, until the contrary is proved, be evidence of that fact;
- 10 (e) a certificate purporting to be signed by the prescribed officer of the Committee and to certify that on a specified day or during the whole of a specified period any person was or was not included in the list of banana growers compiled under this Act shall, without proof of the signature of the person purporting to sign the certificate or that he is the prescribed officer, be prima facie evidence of the matters certified in and by the certificate.
- 15
24. Except where otherwise expressly provided by this Act, any person guilty of an offence against this Act shall be liable to a penalty not exceeding four hundred dollars. Penalty.
25. The provisions of section thirty-two of the Marketing of Primary Products Act, 1927, as subsequently amended, shall apply to and in respect of offences against this Act. Offences by companies and joint offenders.
26. A power, authority, duty or function conferred or imposed on the Federation or its directors or officers by or under this Act may, to the extent that but for this section the exercise or performance thereof would not be authorised by the rules of the Federation, be exercised or performed by the Federation as if it had been so authorised. Authority of Federation.
27. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to— Regulations.
- (a) any of the powers, authorities, duties and functions of the Minister or the Committee under this Act;
- (b)

Banana Industry.

- (b) the taking of any poll, including the method of voting thereat;
- (c) matters concerning the compilation and revision of lists of banana growers required to vote at any poll;
- 5 (d) matters concerning the method of determining the qualification of banana growers eligible to vote at any poll;
- (e) the manner in which the results of a poll taken under this Act shall be notified;
- 10 (f) prescribing forms to be used for the purposes of this Act;
- (g) all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or
15 giving effect to this Act.

(2) The regulations may prescribe a penalty not exceeding two hundred dollars for any contravention of, or failure to comply with any provision of, the regulations, or any instruction, order or requirement given, or made under,
20 or in force by virtue of, the regulations.

(3) A regulation may be of general operation or specially limited application according to time, place, circumstances or cases, and may be general or restricted to any specified class of subject matter.

25 The power to make regulations with respect to any matter or thing shall include the powers to make regulations prohibiting that matter or thing either generally or to meet particular cases.

(4) The regulations shall—

- 30 (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c)

Banana Industry.

- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session and, if not, then within fourteen sitting days after the commencement of the next session.
- 5 (5) If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after the regulations have been laid before the House disallowing the regulation or part thereof, such regulation or part shall thereupon cease to have effect.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1969
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BANANA INDUSTRY BILL, 1969

EXPLANATORY NOTE

THE objects of this Bill are—

- (a) to provide for the taking of a poll of banana growers on the question of whether a Banana Marketing Control Committee should be constituted and to provide for the constitution of the Committee if the result of the poll is in favour of its constitution;
- (b) to require a poll of banana growers to be taken before the Committee may be dissolved and to prevent the taking of such a poll before the expiration of a period of five years after the date of the constitution of the Committee;
- (c) to define the powers, authorities, duties and functions of the Committee;
- (d) to empower the Committee to impose certain charges on the production of bananas and to issue certain directions relating to the marketing of bananas unless a poll of banana growers, called for and taken as prescribed, rejects the Committee's proposals;
- (e) to penalise contravention of a direction duly given by the Committee;
- (f) to empower the Committee to require returns from banana growers and other persons associated with the marketing of bananas of particulars of banana production and other ancillary matters;
- (g) to require the Committee to keep proper accounts and to provide for the auditing of those accounts by the Auditor-General;
- (h) to require the Committee to forward to the Minister an annual and other reports;
- (i) to make it unlawful for the Committee to expend its funds for any political purpose;
- (j) to provide for compulsory voting at a poll;
- (k) to make other provisions consequential upon and ancillary to the foregoing.

BANANA INDUSTRY BILL 1960

INDUSTRY

The Government of India, in pursuance of the powers conferred by clause (i) of sub-section (1) of section 19 of the Industries Act, 1947, hereby enacts the following provisions, namely:—

1. Short title and commencement.

2. Definitions.

3. Establishment of the Banana Industry Corporation.

4. Powers and functions of the Corporation.

5. Finance.

6. Officers and employees.

7. Miscellaneous.

8. Transitional provisions.

9. Repeal and savings.

10. Application of Act.

11. Amendment of Act.

12. Amendment of Constitution.

13. Amendment of State Act.

14. Amendment of State Regulation.

15. Amendment of State Ordinance.

16. Amendment of State Order.

17. Amendment of State Rules.

18. Amendment of State Bye-laws.

19. Amendment of State Notifications.

20. Amendment of State Orders-in-Council.

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200. Amendment of State Orders-in-Council.

No. , 1969.

A BILL

To provide for the constitution of a Banana Marketing Control Committee and to define its powers, authorities, duties and functions; to provide for the taking of polls of banana growers prior to the formation and dissolution of the Committee; to provide for the issue of directions by the Committee relating to the marketing of bananas and for the imposition by it of certain charges; to provide for the taking of polls of banana growers prior to the issue of those directions or the imposition of those charges; and for purposes connected therewith.

[MR CRAWFORD—26 March, 1969.]

BE

Banana Industry.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Banana Industry Act, 1969". Short title and commencement.

10 (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

15 2. This Act shall be read and construed as operating to the full extent of, but so as not to exceed, the legislative powers of the State, to the intent that where any provision of this Act or the application of any such provision to any person, subject-matter or circumstance would, but for this section have been construed as being in excess of those powers, it shall be a valid provision to the extent to which it is not in excess of those powers, and the remainder of the Act and the application of the provision to other persons, subject-matters or circumstances shall not be affected. Construction of Act.

3. This Act is divided into Parts as follows :— Division into Parts.

PART I.—PRELIMINARY—ss. 1-4.

25 PART II.—POLLS OF BANANA GROWERS—ss. 5, 6.

PART III.—CONSTITUTION OF THE COMMITTEE—ss. 7-9.

PART IV.—POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF THE COMMITTEE—ss. 10-13.

30 PART V.—FINANCE—ss. 14, 15.

PART VI.—GENERAL—ss. 16-27.

Banana Industry.

4. In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation.

“advertisement” means advertisement published in the official journal of the Federation;

5 “bananas” means bananas grown in New South Wales;

“banana grower” or “grower” means any person by whom or on whose behalf bananas are grown on not less than one acre of land, whether or not the bananas are grown or produced pursuant to a share-farming agreement or partnership agreement, oral or written, but does not include a person engaged as an employee on wages or salary or at piece-work rates;

10 “Committee” means the Banana Marketing Control Committee constituted under section seven of this Act;

15 “Federation” means Banana Growers Federation Co-operative Limited, a society registered under the Co-operation, Community Settlement, and Credit Act, 1923, as subsequently amended;

20 “marketing”, in relation to bananas or any product thereof, means the harvesting, preparation, processing and packing of bananas or any product thereof for sale by wholesale and the sale thereof by wholesale and the shipping, transporting, storing and handling of bananas or any product thereof for the purpose of any such sale and the transmission thereof from the grower to any person selling by wholesale and all actions or things connected therewith or incidental thereto;

25 “prescribed” means prescribed by this Act or by the regulations;

“proclamation” means proclamation published in the Gazette;

30 “regulations” means regulations made under this Act;

“sell”

Banana Industry.

“sell” includes barter and exchange; and “sale” has a corresponding meaning;

“this Act” includes regulations made under this Act.

PART II.

5 POLLS OF BANANA GROWERS.

5. (1) A poll for the purposes of this Act shall be a poll Polls.
taken, as prescribed, among banana growers.

(2) A poll for the purposes of Part III of this Act—

10 (a) shall be taken, where the question to be decided is whether the Committee should be constituted, only at the request, by petition to the Governor, of not less than one hundred persons certified by the Federation to be banana growers;

15 (b) shall be taken, where the question to be decided is whether the Committee should be dissolved, only at the request, by petition to the Governor lodged not earlier than five years after the constitution of the Committee, of not less than one hundred persons certified by the Committee to be banana growers;

20 (c) shall, where so requested, be taken on a day notified by the Governor for the purpose by proclamation, being a day not earlier than thirty days after publication of the proclamation or, where the Governor by a subsequent proclamation notifies a later day for the purpose, on that later day;

25 (d) shall be deemed not to be in favour of the question to be decided at the poll unless—

30 (i) not less than three-fifths of the persons required to vote at the poll have so voted; and

(ii) a majority of the votes at the poll is in favour of the question; and

(e)

Banana Industry.

5 (e) shall not, where the poll is required to be taken by a person other than the Federation or the Committee, be taken unless the Federation or the Committee has first made provision, as prescribed, for the costs and expenses of the poll.

(3) A poll for the purposes of section eleven or twelve of this Act—

10 (a) shall be taken by the Committee and shall be so taken on a day notified by the Committee by advertisement for the purpose or, where the Committee by a subsequent advertisement notifies a later day for the purpose, on that later day;

15 (b) shall be deemed not to be in favour of the question to be decided at the poll unless a majority of votes at the poll is in favour of the question.

(4) The regulations may make provision for and with respect to—

(a) the payment to the Federation by the Committee; and

20 (b) the recovery by the Federation from the Committee, of costs and expenses paid by the Federation in respect of a poll.

6. (1) For the purposes of a poll, the Minister shall cause a list to be compiled, as prescribed, of banana growers. List of banana growers.

25 (2) Where, after application made, as prescribed, for the purpose, the name of a person is not included in the list compiled under subsection one of this section, that person may apply as prescribed to a court of petty sessions holden before a stipendiary magistrate for an order that his name be
30 included in that list.

(3)

Banana Industry.

(3) A court to which application is made under subsection two of this section shall have jurisdiction to hear and determine the matter of the application and may—

5 (a) order that the name of the applicant be included in the list compiled under subsection one of this section; or

(b) dismiss the application,

10 and upon any order being made under paragraph (a) of this subsection, the name of the applicant shall be included in that list.

(4) Where the name of a person appears on the list compiled under subsection one of this section for a poll and that person fails to vote at the poll, he shall be liable to a penalty not exceeding four dollars.

15 (5) Where the name of a person does not appear on the list compiled under subsection one of this section for a poll and he votes at the poll, he shall be guilty of an offence against this Act.

PART III.

20 CONSTITUTION OF THE COMMITTEE.

7. (1) Subject to a poll being taken and being in favour of the Committee being constituted, the Governor may, by proclamation, appoint a day for the constitution of the Committee and, on that day, the Committee shall be deemed to have been constituted in accordance with this Part.

(2) The Committee shall consist of—

30 (a) two officers of the public service appointed by the Governor on the nomination of the Minister for such term, not exceeding five years, as may be specified in the instrument of appointment; and

(b)

Banana Industry.

(b) the persons for the time being holding office as members of the Board of Directors of the Federation.

(3) A person appointed as a member of the Committee on the nomination of the Minister shall, on the expiration of his term of office, be eligible for reappointment.

(4) Where a person appointed as a member of the Committee on the nomination of the Minister vacates his office otherwise than on the expiration of his term of office, the Governor may, on the nomination of the Minister, appoint an officer of the public service to the vacant office for the unexpired portion of the term of office of his predecessor.

(5) Each member of the Committee, other than officers of the public service, shall receive such remuneration, and each member of the Committee shall receive such allowances, as the Committee may, with the approval of the Minister, from time to time determine.

(6) Where by or under any Act provision is made requiring the holder of an office specified therein to devote the whole of his time to the duties of his office, or prohibiting him from engaging in employment outside the duties of his office, that provision shall not operate to disqualify him from holding that office and also the office of a member of the Committee.

(7) The office of a member of the Committee shall not for the purposes of any Act be deemed to be an office or place of profit under the Crown.

(8) The provisions of the Public Service Act, 1902, as subsequently amended, shall not apply to or in respect of the appointment by the Governor of any member of the Committee and any member so appointed shall not, in his capacity as such a member, be subject to the provisions of that Act, as so amended, during his term of office.

(9)

Banana Industry.

(9) A member of the Committee appointed on the nomination of the Minister shall be deemed to have vacated his office—

- (a) if he dies;
- 5 (b) if he becomes bankrupt, compounds with his creditors, or makes any assignment of his salary, remuneration, allowances or estate for their benefit;
- 10 (c) if he is absent from four consecutive ordinary meetings of the Committee of which reasonable notice has been given him either personally or in the ordinary course of post unless on leave granted by the Committee or unless he is before the expiration of four weeks after the last of those meetings excused by the Committee for his absence from such meetings;
- 15 (d) if he becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, as subsequently amended;
- 20 (e) if he is convicted in New South Wales of a felony or of a misdemeanour which is punishable by imprisonment for twelve months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour which is punishable as aforesaid;
- 25 (f) if he resigns his office by writing under his hand addressed to the Minister;
- 30 (g) if he is removed from office by the Governor;
- (h) if he ceases to be an officer of the public service.

(10) The Governor may, for any cause which appears to him sufficient, remove from office any member of the Committee appointed on the nomination of the Minister.

Banana Industry.

8. (1) The Committee shall be a body corporate, with perpetual succession and a common seal, and may sue or be sued in its corporate name, and shall, subject to this Act, be capable of purchasing, holding, granting, demising, disposing of or otherwise dealing with real and personal property, and of doing and suffering all such acts and things as bodies corporate may by law do and suffer.

Committee
to be body
corporate—
proceedings
of
Committee.

(2) The corporate name of the Committee shall be "Banana Marketing Control Committee".

10 (3) The common seal shall be kept in the custody of the Chairman of the Committee and shall not be affixed to any instrument except in pursuance of a resolution of the Committee.

15 Any instrument executed in pursuance of any such resolution shall be attested by the signature of any two members.

(4) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Act and any regulations in relation thereto, be as determined by the Committee.

(5) The members of the Committee present at the first meeting of the Committee shall elect a member to be Chairman and, where he, or any succeeding Chairman, ceases to be a member of the Committee or resigns his office as Chairman, 25 the members of the Committee shall elect some other member to be Chairman.

(6) The Chairman, or in the absence of the Chairman, a member chosen by the members present at the meeting to act as Chairman, shall preside at any meeting of the 30 Committee.

(7) A majority of the members of the Committee for the time being shall form a quorum and any duly convened meeting of the Committee at which a quorum is present shall be

Banana Industry.

be competent to transact any business of the Committee and shall have and may exercise and discharge all the powers, authorities, duties and functions of the Committee.

5 (8) The Chairman or member acting as Chairman at any meeting of the Committee shall, in the event of an equality of votes, have in addition to a deliberative vote a second or casting vote.

10 (9) A decision of the majority of the members present at a meeting of the Committee shall be the decision of the Committee.

(10) The Committee shall cause full and accurate minutes to be kept of its proceedings at meetings, and shall submit to the Minister a copy of the minutes of each meeting within two weeks after the day on which it is held.

15 (11) No act or proceeding of the Committee shall be invalidated or prejudiced by reason only of the fact that at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the office of a member.

20 (12) No matter or thing done, and no contract entered into by the Committee, and no matter or thing done by any member or by any other person whomsoever acting under the direction of the Committee shall, if the matter or thing was done or the contract was entered into bona fide for the purpose of executing this Act, subject them or any of them personally 25 to any action, liability, claim or demand whatsoever.

(13) The Committee shall not, for any purpose, be a statutory body representing the Crown.

9. (1) Subject to a poll being taken and being in favour of the dissolution of the Committee, the Committee shall, on 30 and from a day appointed by the Governor for the purpose by proclamation, being a day not later than six months after the taking of the poll, proceed to wind up its affairs unless

by

Dissolution
of
Committee.

Banana Industry.

by the same or a subsequent proclamation, the Governor appoints a person to be liquidator to wind up the affairs of the Committee.

(2) Upon the appointment of a liquidator under subsection one of this section, the members of the Committee shall cease to act as such members and the liquidator may, for the purpose of winding up the affairs of the Committee, in the name and as the act and, where necessary, under the seal of the Committee—

- 10 (a) exercise and perform such of the powers, authorities, duties and functions of the Committee;
- (b) bring and defend such proceedings; and
- (c) do and execute such other acts and things, as he thinks fit.

15 (3) A liquidator appointed under subsection one of this section shall receive such remuneration as the Governor determines.

(4) The Governor may, at any time after the day appointed under subsection one of this section, declare by 20 proclamation that the Committee is dissolved and thereupon—

- (a) the dissolution of the Committee shall be deemed to have been effected; and
- (b) all moneys and other assets of the Committee—
- 25 (i) shall vest in Her Majesty; and
- (ii) shall be dealt with and disposed of as the Governor may direct.
-

PART

Banana Industry.

PART IV.

POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF THE
COMMITTEE.

- 10.** (1) For the purposes of and subject to this Act, the
5 Committee may—
- (a) arrange for the marketing of bananas or of any
product thereof;
- (b) by order, exempt from the operation of this Act a
10 banana grower who produces a small quantity of
bananas;
- (c) establish a system of inspection of bananas;
- (d) arrange for the supervision of the marketing of
bananas;
- (e) enter into any agreements and give guarantees and
15 indemnities in favour of any person who contracts
with the Committee or enters into any agreements
at the request of or under the authority or direction
of the Committee;
- (f) enter upon and carry into execution the marketing
20 and transporting of bananas from any plantation
to rail head or markets;
- (g) support, with or without grant of financial aid and
whether or not initiated by the Committee, any
25 scheme or activity which, in the opinion of the
Committee, is capable of assisting in the promotion
of the sale of bananas;
- (h) acquire land, machinery (including refrigerating
machinery and machinery suitable for the ripening
of bananas) plant, goods, chattels and effects;
- 30 (i) erect, maintain, repair, operate, regulate, use and
regulate the use of buildings (including buildings
for cold storage and the inspection, sorting and
ripening of bananas) and all machinery and plant
used in connection therewith;

(j)

Banana Industry.

- (j) charge a fee whenever the Committee supplies any service, product or commodity or gives any permission;
- 5 (k) enter into and carry out such contracts and do and suffer all such other acts and things as may be necessary and convenient for the purposes of this Act;
- (l) appoint, employ, or authorise agents, officers, servants and other persons;
- 10 (m) arrange for financial accommodation with any bank, or with any other institution or person approved by the Governor, and give such securities therefor as may be required;
- 15 (n) as far as practicable, provide bananas for consumption in New South Wales, and for their supply to those places within New South Wales wherein a shortage of bananas is experienced;
- (o) make such arrangements as it deems necessary with regard to sales of bananas for export or for consignment to other countries or States or for oversea ships' stores;
- 20 (p) do such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise or discharge of its powers, authorities, duties and functions under this Act.
- 25

(2) If at any time any question or dispute arises between the Committee and any banana grower as to whether or not any matter with regard to which the Committee is exercising or performing or proposes to exercise or perform
30 any of the powers, authorities, duties or functions conferred or imposed upon it by this Act ought to be made the subject of a direction under section twelve of this Act before the exercise or performance thereof, the question or dispute shall be referred by the Committee to the Minister, who shall
35 consider the matter and determine the question or dispute, and his determination thereon shall be final and without appeal to any tribunal.

Banana Industry.

11. (1) Subject to this section, the Committee may, with the prior approval of the Minister, impose on all banana growers a charge, not exceeding ten cents per bushel, in respect of all bananas produced by them for sale. Power to impose charge on bananas.

5 (2) The Committee shall not impose a charge under subsection one of this section unless—

- (a) it has given notice by advertisement of its intention so to do and has specified in the advertisement the amount of the proposed charge;
- 10 (b) it has taken a poll on the question whether the charge should be imposed, if it is requested so to do by a petition lodged with the Committee not more than thirty days after publication of the advertisement, by not less than one hundred banana growers; and
- 15 (c) any poll so taken is in favour of the imposition of the charge.

(3) Subject to subsections one and two of this section, the Committee may impose the charge specified in an advertisement under subsection two of this section by publishing, not earlier than thirty days after publication of that advertisement, a further advertisement specifying—

- (a) that the provisions of this section have been complied with;
- 25 (b) the amount of the charge; and
- (c) the day (being a day not earlier than the day of publication of the further advertisement) as on and from which the charge is imposed.

(4) The proceeds of all fees collected and charges imposed by the Committee under this Act shall be applied—

- (a) in defraying the proper costs and expenses of the Committee incurred in the exercise or performance of the powers, authorities, duties and functions conferred or imposed upon it by this Act;

(b)

Banana Industry.

5 (b) in establishing and maintaining a fund for the purposes of effecting or providing for the orderly marketing and marketing development of bananas and for research into, and development of, the processing of banana by-products for the benefit of banana growers generally; and

10 (c) in establishing and maintaining such other funds for effecting any other special object which the Committee considers to be of advantage to, and in the common interest of, banana growers generally.

(5) Any amount payable by a banana grower in respect of a charge imposed under this section, shall become due and payable by him fourteen days after the receipt by him of a notice from the Committee notifying him that the charge has been imposed.

12. (1) Subject to this section, the Committee may give a direction—

Power of Committee to issue directions.

20 (a) that all or any of the things included in the marketing of bananas shall be done only by the Committee, its agents and servants, or only by a specified person or specified persons or a specified class of persons;

25 (b) that all bananas that, during a specified period, are in the possession of or come into the possession of any person in the course, or for the purpose, of the marketing thereof shall be handled and dealt with only under the instructions and with the authority of the Committee, or shall be consigned or delivered only to specified persons or a specified class, or specified classes, of persons.

(2) A direction given under subsection one of this section—

(a) may be expressed to extend to all bananas or to a specified class, or to specified classes, of bananas;

(b)

Banana Industry.

- (b) may be expressed to extend throughout the State or to any specified part thereof, or locality therein, within specified boundaries;
- 5 (c) may be expressed to extend to the complete marketing of bananas or only to specified phases of such marketing;
- (d) shall specify the length of the period for which the direction is to remain in force.

10 (3) A direction issued under this section may specify the circumstances in which and the terms and conditions on which, the direction shall not apply to or in respect of—

- (a) growers of bananas who, in the opinion of the Committee, produce a small quantity of bananas;
- 15 (b) sales of bananas direct to local consumers or to retail vendors; or
- (c) such other sales, purchases or receipts of bananas as may be specified,

and the Committee's decision as to whether any particular person or sale, purchase or receipt of bananas falls within the 20 limits of any such exemption shall be final.

The Committee may, at any time by notice in writing to a banana grower exempted from the operation of a direction, revoke the exemption of that grower.

25 (4) The Committee shall not give a direction under subsection one of this section unless—

- 30 (a) it has published an advertisement giving notice of its intention to give the direction, setting forth the proposed direction, and specifying the length of the period for which the direction would remain in force;
- (b) it has taken a poll on the question whether the direction should be given, if it is requested so to do by a petition, lodged with the Committee within thirty days after publication of the advertisement, 35 by not less than one hundred banana growers; and
- (c)

Banana Industry.

(c) any poll so taken is in favour of the direction being given.

(5) Subject to subsections one, two and three of this section the Committee may give the direction specified in the advertisement under subsection four of this section by publishing, not earlier than thirty days after publication of that advertisement, a further advertisement—

- (a) specifying that the provisions of this section have been complied with;
- 10 (b) setting forth the direction;
- (c) specifying the day (being a day not earlier than the day of publication of the further advertisement) as on and from which the direction is to take effect; and
- 15 (d) specifying the length of the period for which the direction is to remain in force.

(6) A person who—

- (a) fails to comply with or contravenes any provision of a direction given under this section;
- 20 (b) buys or accepts delivery of bananas from any person who sells or delivers those bananas in contravention of such a direction; or
- (c) offers by advertisement (in any manner) or otherwise to buy or to accept delivery of bananas from any person who upon accepting that offer by selling or delivering those bananas would contravene such a direction,
- 25

shall, if he is a banana grower or a person, not being a banana grower, upon whom the Committee by certified mail has served a copy of the advertisement by which the direction was given, be guilty of an offence against this Act unless he is a person exempted from the operation of the direction.

(7) A direction given under this section may be revoked by the Committee by a notice published in the official journal of the Federation.

Banana Industry.

13. (1) The Committee may—

Power to
require
returns.

- (a) by advertisement require all banana growers or a specified class or specified classes of banana growers; or
- 5 (b) by notice sent by certified mail, require a person, whether or not he is a banana grower, associated with the marketing of bananas,

to furnish in writing to the Committee within a time specified for the purpose in the advertisement or notice, as the case
10 may be, such information in relation to bananas and any product thereof as is specified in the advertisement or notice, as the case may be.

(2) An advertisement or notice referred to in subsection one of this section may require—

- 15 (a) particulars of bananas by reference to type, variety, grade, quality and quantity;
- (b) in the case of a banana grower—
- (i) particulars of the number of plants by reference to age, type and variety which he
20 is growing for the purpose of the production and sale of bananas; and
- (ii) an estimate, as far as is practicable, of bananas by reference to type, variety, grade,
25 quality and quantity which he expects to produce for the purpose of marketing within any period specified in the notice.

(3) Any person who—

- (a) without reasonable excuse refuses or fails to comply with a requirement under this section; or
- 30 (b) furnishes to the Committee under this section any information which to his knowledge is false or misleading in a material particular,

shall be guilty of an offence against this Act.

PART

Banana Industry.

PART V.

FINANCE.

14. The Committee shall cause to be kept proper books of account in relation to all of its operations, and shall, as soon as practicable after the thirtieth day of June in each year or, where some other day is prescribed for the purposes of this section, as soon as practicable after the day so prescribed, prepare and transmit to the Minister a statement of accounts in a form approved by the Auditor-General showing a true and correct view of the financial position and transactions of the Committee and each such statement of accounts shall be exhibited in such manner and at such times as may be prescribed.

Accounts
to be kept
by the
Committee.

15. (1) The accounts of the Committee shall be audited by the Auditor-General who shall have, in respect thereof, all the powers conferred on him by any law for the time being in force relating to the audit of public accounts, and the Audit Act, 1902, as subsequently amended, shall apply to the members of the Committee and its servants in the same manner as it applies to accounting officers of Public Departments.

Audit of
accounts.

(2) The Auditor-General shall report to the Minister and the Committee—

(a) whether or not in his opinion—

25 (i) the expenditure incurred has been duly authorised, vouched and supervised;

(ii) any of the moneys or other property of the Committee has been misappropriated or improperly or irregularly dealt with; and

30 (b) as to any other matters which in his judgment call for special notice or which are prescribed.

(3) Towards defraying the costs and expenses of an audit under this section, the Committee shall pay to the Consolidated Revenue Fund such sums, at such times, as the Treasurer may decide.

PART

Banana Industry.

PART VI.

GENERAL.

16. As soon as practicable after the thirtieth day of June in each year or, where some other day is prescribed for the purposes of this section, as soon as practicable after the day so prescribed, the Committee shall prepare and furnish to the Minister a report on the operations and activities of the Committee during the next preceding year ending on the thirtieth day of June or the next preceding year ending on the day so prescribed, as the case may be.

Annual
report.

The Minister shall lay such report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receipt by him of the report.

17. The Committee shall, in addition to any other report it may be required to prepare and furnish under this Act, furnish to the Minister, within a time specified by him, such reports on the operations of the Committee as the Minister may direct.

Minister
may require
further
reports.

18. It shall not be lawful for the Committee to expend any of its funds for any purpose whatsoever in connection with the politics of any political party, nor shall the Committee become affiliated in any way whatsoever with any body, association or organisation having for its object or any of its objects the support of the politics or programme or aims of any political party.

Board not
to be con-
cerned in
party
politics.

19. All courts and persons having by law or consent of parties authority to hear, receive and examine evidence—

Judicial
notice of
the seal
of the
Committee.

- (a) shall take judicial notice of the seal of the Committee affixed to any document; and
- (b) shall until the contrary is proved presume that the seal was properly affixed thereto.

Banana Industry.

20. (1) Any notice, summons, writ or other proceeding required to be served on the Committee under this Act or the regulations may be served by being left at the office of the Committee, or, in the case of a notice, by post. Service of notices of proceedings.

5 (2) Except where this Act or the regulations otherwise provide, any notice that is required to be given or that may be given by the Committee under this Act or the regulations shall be deemed to have been duly given if sent by post in a letter addressed to the person to be served at his place
10 of abode or business in New South Wales last known to the Committee, and the notice shall be deemed to have been given at the time when a letter so posted should in the ordinary course be delivered.

21. Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions. Recovery of penalty.

22. (1) Any charge, fee, remuneration or money due to the Committee under the provisions of this Act or the regulations may be recovered as a debt in a court of competent
20 jurisdiction. Recovery of charges, etc.

(2) Proceedings for the recovery of any charge, fee or money so due to the Committee shall be deemed to be for the recovery of a debt or liquidated demand within the meaning of—

- 25 (a) section twenty-four of the Common Law Procedure Act, 1899, as subsequently amended;
- (b) section sixty-four of the District Courts Act, 1912, as subsequently amended;
- 30 (c) section twenty-five of the Small Debts Recovery Act, 1912, as subsequently amended.

(3) Where any matter or thing is by or under this Act directed or forbidden to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden

Banana Industry.

forbidden to be done is done, a person offending against the direction or prohibition shall be guilty of an offence against this Act.

(4) The institution of criminal proceedings against a person or the conviction of a person for any offence against this Act shall not affect any remedy to which any other person (including the Committee) aggrieved may be entitled to in any civil proceeding.

23. In any proceedings, whether at law or in equity— Evidence.

- 10 (a) no proof shall be required, until evidence is given to the contrary, of—
- (i) the constitution of the Committee;
 - (ii) any resolution of the Committee;
 - 15 (iii) the appointment of any member or any servant of the Committee;
 - (iv) the presence of a quorum at any meeting at which any determination is made or any act is done by the Committee;
- 20 (b) any notification, requisition, demand, order, or other document in writing, purporting to be signed or made or sent by the Committee or the Chairman or Secretary thereof or the Minister shall be judicially noticed;
- 25 (c) the production of a copy of the Gazette purporting to contain any proclamation, or a copy of the official journal of the Federation purporting to contain a copy of an advertisement or notice published by the Committee under this Act shall, until the contrary is proved, be evidence of the matters contained in the proclamation, advertisement or notice and that all steps necessary to be taken prior to the making of the proclamation or publication of the advertisement or notice were duly taken;
- 30
- (d)

Banana Industry.

- 5 (d) the averment on behalf of the Committee that any bananas were or are bananas to which the provisions of this Act apply, or were or are bananas to which a direction in force under this Act applies, or that any place is a place in New South Wales, or that any person was or is a banana grower shall, until the contrary is proved, be evidence of that fact;
- 10 (e) a certificate purporting to be signed by the prescribed officer of the Committee and to certify that on a specified day or during the whole of a specified period any person was or was not included in the list of banana growers compiled under this Act shall, without proof of the signature of the person purporting to sign the certificate or that he is the prescribed officer, be prima facie evidence of the matters certified in and by the certificate.
- 15
24. Except where otherwise expressly provided by this Act, any person guilty of an offence against this Act shall be liable to a penalty not exceeding four hundred dollars. **Penalty.**
25. The provisions of section thirty-two of the Marketing of Primary Products Act, 1927, as subsequently amended, shall apply to and in respect of offences against this Act. **Offences by companies and joint offenders.**
26. A power, authority, duty or function conferred or imposed on the Federation or its directors or officers by or under this Act may, to the extent that but for this section the exercise or performance thereof would not be authorised by the rules of the Federation, be exercised or performed by the Federation as if it had been so authorised. **Authority of Federation.**
- 30 27. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to— **Regulations.**
- (a) any of the powers, authorities, duties and functions of the Minister or the Committee under this Act;
- (b)

Banana Industry.

- (b) the taking of any poll, including the method of voting thereat;
- (c) matters concerning the compilation and revision of lists of banana growers required to vote at any poll;
- 5 (d) matters concerning the method of determining the qualification of banana growers eligible to vote at any poll;
- (e) the manner in which the results of a poll taken under this Act shall be notified;
- 10 (f) prescribing forms to be used for the purposes of this Act;
- (g) all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or
15 giving effect to this Act.

(2) The regulations may prescribe a penalty not exceeding two hundred dollars for any contravention of, or failure to comply with any provision of, the regulations, or any instruction, order or requirement given, or made under,
20 or in force by virtue of, the regulations.

(3) A regulation may be of general operation or specially limited application according to time, place, circumstances or cases, and may be general or restricted to any specified class of subject matter.

25 The power to make regulations with respect to any matter or thing shall include the powers to make regulations prohibiting that matter or thing either generally or to meet particular cases.

(4) The regulations shall—

- 30 (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c)

Banana Industry.

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session and, if not, then within fourteen sitting days after the commencement of the next session.

5 (5) If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after the regulations have been laid before the House disallowing the regulation or part thereof, such regulation or part shall thereupon cease to have effect.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1969

1900

...

(1) The first part of the report...

(2) The second part of the report...

(3) The third part of the report...

(4) The fourth part of the report...

(5) The fifth part of the report...

(6) The sixth part of the report...

(7) The seventh part of the report...

(8) The eighth part of the report...

(9) The ninth part of the report...

(10) The tenth part of the report...

New South Wales



ANNO OCTAVO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 38, 1969.

An Act to provide for the constitution of a Banana Marketing Control Committee and to define its powers, authorities, duties and functions; to provide for the taking of polls of banana growers prior to the formation and dissolution of the Committee; to provide for the issue of directions by the Committee relating to the marketing of bananas and for the imposition by it of certain charges; to provide for the taking of polls of banana growers prior to the issue of those directions or the imposition of those charges; and for purposes connected therewith. [Assented to, 17th April, 1969.]

Banana Industry.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.**PRELIMINARY.**

Short title
and com-
mencement.

1. (1) This Act may be cited as the "Banana Industry Act, 1969".

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Construction
of Act.

2. This Act shall be read and construed as operating to the full extent of, but so as not to exceed, the legislative powers of the State, to the intent that where any provision of this Act or the application of any such provision to any person, subject-matter or circumstance would, but for this section have been construed as being in excess of those powers, it shall be a valid provision to the extent to which it is not in excess of those powers, and the remainder of the Act and the application of the provision to other persons, subject-matters or circumstances shall not be affected.

Division
into Parts.

3. This Act is divided into Parts as follows :—

PART I.—PRELIMINARY—*ss.* 1-4.

PART II.—POLLS OF BANANA GROWERS—*ss.* 5, 6.

PART III.—CONSTITUTION OF THE COMMITTEE—*ss.* 7-9.

PART IV.—POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF THE COMMITTEE—*ss.* 10-13.

PART V.—FINANCE—*ss.* 14, 15.

PART VI.—GENERAL—*ss.* 16-27.

Banana Industry.

4. In this Act, except in so far as the context or subject-matter otherwise indicates or requires— **Interpretation.**

“advertisement” means advertisement published in the official journal of the Federation;

“bananas” means bananas grown in New South Wales;

“banana grower” or “grower” means any person by whom or on whose behalf bananas are grown on not less than one acre of land, whether or not the bananas are grown or produced pursuant to a share-farming agreement or partnership agreement, oral or written, but does not include a person engaged as an employee on wages or salary or at piece-work rates;

“Committee” means the Banana Marketing Control Committee constituted under section seven of this Act;

“Federation” means Banana Growers Federation Co-operative Limited, a society registered under the Co-operation, Community Settlement, and Credit Act, 1923, as subsequently amended;

“marketing”, in relation to bananas or any product thereof, means the harvesting, preparation, processing and packing of bananas or any product thereof for sale by wholesale and the sale thereof by wholesale and the shipping, transporting, storing and handling of bananas or any product thereof for the purpose of any such sale and the transmission thereof from the grower to any person selling by wholesale and all actions or things connected therewith or incidental thereto;

“prescribed” means prescribed by this Act or by the regulations;

“proclamation” means proclamation published in the Gazette;

“regulations” means regulations made under this Act;

“sell”

Banana Industry.

“sell” includes barter and exchange; and “sale” has a corresponding meaning;

“this Act” includes regulations made under this Act.

PART II.**POLLS OF BANANA GROWERS.****Polls.**

5. (1) A poll for the purposes of this Act shall be a poll taken, as prescribed, among banana growers.

(2) A poll for the purposes of Part III of this Act—

- (a) shall be taken, where the question to be decided is whether the Committee should be constituted, only at the request, by petition to the Governor, of not less than one hundred persons certified by the Federation to be banana growers;
- (b) shall be taken, where the question to be decided is whether the Committee should be dissolved, only at the request, by petition to the Governor lodged not earlier than five years after the constitution of the Committee, of not less than one hundred persons certified by the Committee to be banana growers;
- (c) shall, where so requested, be taken on a day notified by the Governor for the purpose by proclamation, being a day not earlier than thirty days after publication of the proclamation or, where the Governor by a subsequent proclamation notifies a later day for the purpose, on that later day;
- (d) shall be deemed not to be in favour of the question to be decided at the poll unless—
 - (i) not less than three-fifths of the persons required to vote at the poll have so voted; and
 - (ii) a majority of the votes at the poll is in favour of the question; and

(e)

Banana Industry.

- (e) shall not, where the poll is required to be taken by a person other than the Federation or the Committee, be taken unless the Federation or the Committee has first made provision, as prescribed, for the costs and expenses of the poll.

(3) A poll for the purposes of section eleven or twelve of this Act—

- (a) shall be taken by the Committee and shall be so taken on a day notified by the Committee by advertisement for the purpose or, where the Committee by a subsequent advertisement notifies a later day for the purpose, on that later day;
- (b) shall be deemed not to be in favour of the question to be decided at the poll unless a majority of votes at the poll is in favour of the question.

(4) The regulations may make provision for and with respect to—

- (a) the payment to the Federation by the Committee; and
- (b) the recovery by the Federation from the Committee, of costs and expenses paid by the Federation in respect of a poll.

6. (1) For the purposes of a poll, the Minister shall cause a list to be compiled, as prescribed, of banana growers. List of banana growers

(2) Where, after application made, as prescribed, for the purpose, the name of a person is not included in the list compiled under subsection one of this section, that person may apply as prescribed to a court of petty sessions holden before a stipendiary magistrate for an order that his name be included in that list.

(3)

Banana Industry.

(3) A court to which application is made under subsection two of this section shall have jurisdiction to hear and determine the matter of the application and may—

- (a) order that the name of the applicant be included in the list compiled under subsection one of this section; or
- (b) dismiss the application,

and upon any order being made under paragraph (a) of this subsection, the name of the applicant shall be included in that list.

(4) Where the name of a person appears on the list compiled under subsection one of this section for a poll and that person fails to vote at the poll, he shall be liable to a penalty not exceeding four dollars.

(5) Where the name of a person does not appear on the list compiled under subsection one of this section for a poll and he votes at the poll, he shall be guilty of an offence against this Act.

PART III.

CONSTITUTION OF THE COMMITTEE.

**Constitution
of
Committee.**

7. (1) Subject to a poll being taken and being in favour of the Committee being constituted, the Governor may, by proclamation, appoint a day for the constitution of the Committee and, on that day, the Committee shall be deemed to have been constituted in accordance with this Part.

(2) The Committee shall consist of—

- (a) one officer of the public service appointed by the Governor on the nomination of the Minister for such term, not exceeding five years, as may be specified in the instrument of appointment;
- (b) one person appointed by the Minister to represent the interests of consumers; and

(c)

Banana Industry.

(c) the persons for the time being holding office as members of the Board of Directors of the Federation.

(3) A person appointed as a member of the Committee on the nomination of the Minister shall, on the expiration of his term of office, be eligible for reappointment.

(4) Where a person appointed as a member of the Committee on the nomination of the Minister vacates his office otherwise than on the expiration of his term of office, the Governor may, on the nomination of the Minister, appoint an officer of the public service or such other person referred to in paragraph (b) of subsection two of this section, as the case may be, to the vacant office for the unexpired portion of the term of office of his predecessor.

(5) Each member of the Committee, other than officers of the public service, shall receive such remuneration, and each member of the Committee shall receive such allowances, as the Committee may, with the approval of the Minister, from time to time determine.

(6) Where by or under any Act provision is made requiring the holder of an office specified therein to devote the whole of his time to the duties of his office, or prohibiting him from engaging in employment outside the duties of his office, that provision shall not operate to disqualify him from holding that office and also the office of a member of the Committee.

(7) The office of a member of the Committee shall not for the purposes of any Act be deemed to be an office or place of profit under the Crown.

(8) The provisions of the Public Service Act, 1902, as subsequently amended, shall not apply to or in respect of the appointment by the Governor of any member of the Committee and any member so appointed shall not, in his capacity as such a member, be subject to the provisions of that Act as so amended, during his term of office.

(9)

Banana Industry.

(9) A member of the Committee appointed on the nomination of the Minister shall be deemed to have vacated his office—

- (a) if he dies;
- (b) if he becomes bankrupt, compounds with his creditors, or makes any assignment of his salary, remuneration, allowances or estate for their benefit;
- (c) if he is absent from four consecutive ordinary meetings of the Committee of which reasonable notice has been given him either personally or in the ordinary course of post unless on leave granted by the Committee or unless he is before the expiration of four weeks after the last of those meetings excused by the Committee for his absence from such meetings;
- (d) if he becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, as subsequently amended;
- (e) if he is convicted in New South Wales of a felony or of a misdemeanour which is punishable by imprisonment for twelve months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour which is punishable as aforesaid;
- (f) if he resigns his office by writing under his hand addressed to the Minister;
- (g) if he is removed from office by the Governor;
- (h) if he ceases to be an officer of the public service.

(10) The Governor may, for any cause which appears to him sufficient, remove from office any member of the Committee appointed on the nomination of the Minister.

Banana Industry.

8. (1) The Committee shall be a body corporate, with perpetual succession and a common seal, and may sue or be sued in its corporate name, and shall, subject to this Act, be capable of purchasing, holding, granting, demising, disposing of or otherwise dealing with real and personal property, and of doing and suffering all such acts and things as bodies corporate may by law do and suffer.

Committee
to be body
corporate—
proceedings
of
Committee.

(2) The corporate name of the Committee shall be "Banana Marketing Control Committee".

(3) The common seal shall be kept in the custody of the Chairman of the Committee and shall not be affixed to any instrument except in pursuance of a resolution of the Committee.

Any instrument executed in pursuance of any such resolution shall be attested by the signature of any two members.

(4) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Act and any regulations in relation thereto, be as determined by the Committee.

(5) The members of the Committee present at the first meeting of the Committee shall elect a member to be Chairman and, where he, or any succeeding Chairman, ceases to be a member of the Committee or resigns his office as Chairman, the members of the Committee shall elect some other member to be Chairman.

(6) The Chairman, or in the absence of the Chairman, a member chosen by the members present at the meeting to act as Chairman, shall preside at any meeting of the Committee.

(7) A majority of the members of the Committee for the time being shall form a quorum and any duly convened meeting of the Committee at which a quorum is present shall
be

Banana Industry.

be competent to transact any business of the Committee and shall have and may exercise and discharge all the powers, authorities, duties and functions of the Committee.

(8) The Chairman or member acting as Chairman at any meeting of the Committee shall, in the event of an equality of votes, have in addition to a deliberative vote a second or casting vote.

(9) A decision of the majority of the members present at a meeting of the Committee shall be the decision of the Committee.

(10) The Committee shall cause full and accurate minutes to be kept of its proceedings at meetings, and shall submit to the Minister a copy of the minutes of each meeting within two weeks after the day on which it is held.

(11) No act or proceeding of the Committee shall be invalidated or prejudiced by reason only of the fact that at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the office of a member.

(12) No matter or thing done, and no contract entered into by the Committee, and no matter or thing done by any member or by any other person whomsoever acting under the direction of the Committee shall, if the matter or thing was done or the contract was entered into bona fide for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim or demand whatsoever.

(13) The Committee shall not, for any purpose, be a statutory body representing the Crown.

Dissolution
of
Committee.

9. (1) Subject to a poll being taken and being in favour of the dissolution of the Committee, the Committee shall, on and from a day appointed by the Governor for the purpose by proclamation, being a day not later than six months after the taking of the poll, proceed to wind up its affairs unless

by

Banana Industry.

by the same or a subsequent proclamation, the Governor appoints a person to be liquidator to wind up the affairs of the Committee.

(2) Upon the appointment of a liquidator under subsection one of this section, the members of the Committee shall cease to act as such members and the liquidator may, for the purpose of winding up the affairs of the Committee, in the name and as the act and, where necessary, under the seal of the Committee—

- (a) exercise and perform such of the powers, authorities, duties and functions of the Committee;
- (b) bring and defend such proceedings; and
- (c) do and execute such other acts and things, as he thinks fit.

(3) A liquidator appointed under subsection one of this section shall receive such remuneration as the Governor determines.

(4) The Governor may, at any time after the day appointed under subsection one of this section, declare by proclamation that the Committee is dissolved and thereupon—

- (a) the dissolution of the Committee shall be deemed to have been effected; and
- (b) all moneys and other assets of the Committee—
 - (i) shall vest in Her Majesty; and
 - (ii) shall be dealt with and disposed of as the Governor may direct.

Banana Industry.

PART IV.

POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF THE COMMITTEE.

Powers,
authorities,
duties and
functions of
Committee.

10. (1) For the purposes of and subject to this Act, the Committee may—

- (a) arrange for the marketing of bananas or of any product thereof;
- (b) by order, exempt from the operation of this Act a banana grower who produces a small quantity of bananas;
- (c) establish a system of inspection of bananas;
- (d) arrange for the supervision of the marketing of bananas;
- (e) enter into any agreements and give guarantees and indemnities in favour of any person who contracts with the Committee or enters into any agreements at the request of or under the authority or direction of the Committee;
- (f) enter upon and carry into execution the marketing and transporting of bananas from any plantation to rail head or markets;
- (g) support, with or without grant of financial aid and whether or not initiated by the Committee, any scheme or activity which, in the opinion of the Committee, is capable of assisting in the promotion of the sale of bananas;
- (h) acquire land, machinery (including refrigerating machinery and machinery suitable for the ripening of bananas) plant, goods, chattels and effects;
- (i) erect, maintain, repair, operate, regulate, use and regulate the use of buildings (including buildings for cold storage and the inspection, sorting and ripening of bananas) and all machinery and plant used in connection therewith;

(j)

Banana Industry.

- (j) charge a fee whenever the Committee supplies any service, product or commodity or gives any permission ;
- (k) enter into and carry out such contracts and do and suffer all such other acts and things as may be necessary and convenient for the purposes of this Act ;
- (l) appoint, employ, or authorise agents, officers, servants and other persons ;
- (m) arrange for financial accommodation with any bank, or with any other institution or person approved by the Governor, and give such securities therefor as may be required ;
- (n) as far as practicable, provide bananas for consumption in New South Wales, and for their supply to those places within New South Wales wherein a shortage of bananas is experienced ;
- (o) make such arrangements as it deems necessary with regard to sales of bananas for export or for consignment to other countries or States or for oversea ships' stores ;
- (p) do such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise or discharge of its powers, authorities, duties and functions under this Act.

(2) If at any time any question or dispute arises between the Committee and any banana grower as to whether or not any matter with regard to which the Committee is exercising or performing or proposes to exercise or perform any of the powers, authorities, duties or functions conferred or imposed upon it by this Act ought to be made the subject of a direction under section twelve of this Act before the exercise or performance thereof, the question or dispute shall be referred by the Committee to the Minister, who shall consider the matter and determine the question or dispute, and his determination thereon shall be final and without appeal to any tribunal.

Banana Industry.

Power to
impose
charge on
bananas.

11. (1) Subject to this section, the Committee may, with the prior approval of the Minister, impose on all banana growers a charge, not exceeding ten cents per bushel, in respect of all bananas produced by them for sale.

(2) The Committee shall not impose a charge under subsection one of this section unless—

- (a) it has given notice by advertisement of its intention so to do and has specified in the advertisement the amount of the proposed charge;
- (b) it has taken a poll on the question whether the charge should be imposed, if it is requested so to do by a petition lodged with the Committee not more than thirty days after publication of the advertisement, by not less than one hundred banana growers; and
- (c) any poll so taken is in favour of the imposition of the charge.

(3) Subject to subsections one and two of this section, the Committee may impose the charge specified in an advertisement under subsection two of this section by publishing, not earlier than thirty days after publication of that advertisement, a further advertisement specifying—

- (a) that the provisions of this section have been complied with;
- (b) the amount of the charge; and
- (c) the day (being a day not earlier than the day of publication of the further advertisement) as on and from which the charge is imposed.

(4) The proceeds of all fees collected and charges imposed by the Committee under this Act shall be applied—

- (a) in defraying the proper costs and expenses of the Committee incurred in the exercise or performance of the powers, authorities, duties and functions conferred or imposed upon it by this Act;

(b)

Banana Industry.

- (b) in establishing and maintaining a fund for the purposes of effecting or providing for the orderly marketing and marketing development of bananas and for research into, and development of, the processing of banana by-products for the benefit of banana growers generally; and
 - (c) in establishing and maintaining such other funds for effecting any other special object which the Committee considers to be of advantage to, and in the common interest of, banana growers generally.
- (5) Any amount payable by a banana grower in respect of a charge imposed under this section, shall become due and payable by him fourteen days after the receipt by him of a notice from the Committee notifying him that the charge has been imposed.

12. (1) Subject to this section, the Committee may give a direction—

Power of
Committee
to issue
directions.

- (a) that all or any of the things included in the marketing of bananas shall be done only by the Committee, its agents and servants, or only by a specified person or specified persons or a specified class of persons;
- (b) that all bananas that, during a specified period, are in the possession of or come into the possession of any person in the course, or for the purpose, of the marketing thereof shall be handled and dealt with only under the instructions and with the authority of the Committee, or shall be consigned or delivered only to specified persons or a specified class, or specified classes, of persons.

(2) A direction given under subsection one of this section—

- (a) may be expressed to extend to all bananas or to a specified class, or to specified classes, of bananas;

(b)

Banana Industry.

- (b) may be expressed to extend throughout the State or to any specified part thereof, or locality therein, within specified boundaries;
- (c) may be expressed to extend to the complete marketing of bananas or only to specified phases of such marketing;
- (d) shall specify the length of the period for which the direction is to remain in force.

(3) A direction issued under this section may specify the circumstances in which and the terms and conditions on which, the direction shall not apply to or in respect of—

- (a) growers of bananas who, in the opinion of the Committee, produce a small quantity of bananas;
- (b) sales of bananas direct to local consumers or to retail vendors; or
- (c) such other sales, purchases or receipts of bananas as may be specified,

and the Committee's decision as to whether any particular person or sale, purchase or receipt of bananas falls within the limits of any such exemption shall be final.

The Committee may, at any time by notice in writing to a banana grower exempted from the operation of a direction, revoke the exemption of that grower.

(4) The Committee shall not give a direction under subsection one of 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 length of the period for which the direction would remain in force;
- (b) it has taken a poll on the question whether the direction should be given, if it is requested so to do by a petition, lodged with the Committee within thirty days after publication of the advertisement, by not less than one hundred banana growers; and
- (c)

Banana Industry.

(c) any poll so taken is in favour of the direction being given.

(5) Subject to subsections one, two and three of this section the Committee may give the direction specified in the advertisement under subsection four of this section by publishing, not earlier than thirty days after publication of that advertisement, a further advertisement—

- (a) specifying that the provisions of this section have been complied with;
- (b) setting forth the direction;
- (c) specifying the day (being a day not earlier than the day of publication of the further advertisement) as on and from which the direction is to take effect; and
- (d) specifying the length of the period for which the direction is to remain in force.

(6) A person who—

- (a) fails to comply with or contravenes any provision of a direction given under this section;
- (b) buys or accepts delivery of bananas from any person who sells or delivers those bananas in contravention of such a direction; or
- (c) offers by advertisement (in any manner) or otherwise to buy or to accept delivery of bananas from any person who upon accepting that offer by selling or delivering those bananas would contravene such a direction,

shall, if he is a banana grower or a person, not being a banana grower, upon whom the Committee by certified mail has served a copy of the advertisement by which the direction was given, be guilty of an offence against this Act unless he is a person exempted from the operation of the direction.

(7) A direction given under this section may be revoked by the Committee by a notice published in the official journal of the Federation.

Banana Industry.

Power to
require
returns.

13. (1) The Committee may—

- (a) by advertisement require all banana growers or a specified class or specified classes of banana growers; or
- (b) by notice sent by certified mail, require a person, whether or not he is a banana grower, associated with the marketing of bananas,

to furnish in writing to the Committee within a time specified for the purpose in the advertisement or notice, as the case may be, such information in relation to bananas and any product thereof as is specified in the advertisement or notice, as the case may be.

(2) An advertisement or notice referred to in subsection one of this section may require—

- (a) particulars of bananas by reference to type, variety, grade, quality and quantity;
- (b) in the case of a banana grower—
 - (i) particulars of the number of plants by reference to age, type and variety which he is growing for the purpose of the production and sale of bananas; and
 - (ii) an estimate, as far as is practicable, of bananas by reference to type, variety, grade, quality and quantity which he expects to produce for the purpose of marketing within any period specified in the notice.

(3) Any person who—

- (a) without reasonable excuse refuses or fails to comply with a requirement under this section; or
- (b) furnishes to the Committee under this section any information which to his knowledge is false or misleading in a material particular,

shall be guilty of an offence against this Act.

PART

Banana Industry.

PART V.

FINANCE.

14. The Committee shall cause to be kept proper books of account in relation to all of its operations, and shall, as soon as practicable after the thirtieth day of June in each year or, where some other day is prescribed for the purposes of this section, as soon as practicable after the day so prescribed, prepare and transmit to the Minister a statement of accounts in a form approved by the Auditor-General showing a true and correct view of the financial position and transactions of the Committee and each such statement of accounts shall be exhibited in such manner and at such times as may be prescribed.

Accounts
to be kept
by the
Committee.

15. (1) The accounts of the Committee shall be audited by the Auditor-General who shall have, in respect thereof, all the powers conferred on him by any law for the time being in force relating to the audit of public accounts, and the Audit Act, 1902, as subsequently amended, shall apply to the members of the Committee and its servants in the same manner as it applies to accounting officers of Public Departments.

Audit of
accounts.

(2) The Auditor-General shall report to the Minister and the Committee—

(a) whether or not in his opinion—

- (i) the expenditure incurred has been duly authorised, vouched and supervised;
- (ii) any of the moneys or other property of the Committee has been misappropriated or improperly or irregularly dealt with; and

(b) as to any other matters which in his judgment call for special notice or which are prescribed.

(3) Towards defraying the costs and expenses of an audit under this section, the Committee shall pay to the Consolidated Revenue Fund such sums, at such times, as the Treasurer may decide.

Banana Industry.

PART VI.

GENERAL.

Annual
report.

16. As soon as practicable after the thirtieth day of June in each year or, where some other day is prescribed for the purposes of this section, as soon as practicable after the day so prescribed, the Committee shall prepare and furnish to the Minister a report on the operations and activities of the Committee during the next preceding year ending on the thirtieth day of June or the next preceding year ending on the day so prescribed, as the case may be.

The Minister shall lay such report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receipt by him of the report.

Minister
may require
further
reports.

17. The Committee shall, in addition to any other report it may be required to prepare and furnish under this Act, furnish to the Minister, within a time specified by him, such reports on the operations of the Committee as the Minister may direct.

Board not
to be con-
cerned in
party
politics.

18. It shall not be lawful for the Committee to expend any of its funds for any purpose whatsoever in connection with the politics of any political party, nor shall the Committee become affiliated in any way whatsoever with any body, association or organisation having for its object or any of its objects the support of the politics or programme or aims of any political party.

Judicial
notice of
the seal
of the
Committee.

19. All courts and persons having by law or consent of parties authority to hear, receive and examine evidence—

- (a) shall take judicial notice of the seal of the Committee affixed to any document; and
- (b) shall until the contrary is proved presume that the seal was properly affixed thereto.

Banana Industry.

20. (1) Any notice, summons, writ or other proceeding required to be served on the Committee under this Act or the regulations may be served by being left at the office of the Committee, or, in the case of a notice, by post. Service of notices of proceedings.

(2) Except where this Act or the regulations otherwise provide, any notice that is required to be given or that may be given by the Committee under this Act or the regulations shall be deemed to have been duly given if sent by post in a letter addressed to the person to be served at his place of abode or business in New South Wales last known to the Committee, and the notice shall be deemed to have been given at the time when a letter so posted should in the ordinary course be delivered. 1969/1/17

21. Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions. Recovery of penalty.

22. (1) Any charge, fee, remuneration or money due to the Committee under the provisions of this Act or the regulations may be recovered as a debt in a court of competent jurisdiction. Recovery of charges, etc.

(2) Proceedings for the recovery of any charge, fee or money so due to the Committee shall be deemed to be for the recovery of a debt or liquidated demand within the meaning of—

- (a) section twenty-four of the Common Law Procedure Act, 1899, as subsequently amended;
- (b) section sixty-four of the District Courts Act, 1912, as subsequently amended;
- (c) section twenty-five of the Small Debts Recovery Act, 1912, as subsequently amended.

(3) Where any matter or thing is by or under this Act directed or forbidden to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden

Banana Industry.

forbidden to be done is done, a person offending against the direction or prohibition shall be guilty of an offence against this Act.

(4) The institution of criminal proceedings against a person or the conviction of a person for any offence against this Act shall not affect any remedy to which any other person (including the Committee) aggrieved may be entitled to in any civil proceeding.

Evidence.

23. In any proceedings, whether at law or in equity—

- (a) no proof shall be required, until evidence is given to the contrary, of—
 - (i) the constitution of the Committee;
 - (ii) any resolution of the Committee;
 - (iii) the appointment of any member or any servant of the Committee;
 - (iv) the presence of a quorum at any meeting at which any determination is made or any act is done by the Committee;
- (b) any notification, requisition, demand, order, or other document in writing, purporting to be signed or made or sent by the Committee or the Chairman or Secretary thereof or the Minister shall be judicially noticed;
- (c) the production of a copy of the Gazette purporting to contain any proclamation, or a copy of the official journal of the Federation purporting to contain a copy of an advertisement or notice published by the Committee under this Act shall, until the contrary is proved, be evidence of the matters contained in the proclamation, advertisement or notice and that all steps necessary to be taken prior to the making of the proclamation or publication of the advertisement or notice were duly taken;

(d)

Banana Industry.

- (d) the averment on behalf of the Committee that any bananas were or are bananas to which the provisions of this Act apply, or were or are bananas to which a direction in force under this Act applies, or that any place is a place in New South Wales, or that any person was or is a banana grower shall, until the contrary is proved, be evidence of that fact;
- (e) a certificate purporting to be signed by the prescribed officer of the Committee and to certify that on a specified day or during the whole of a specified period any person was or was not included in the list of banana growers compiled under this Act shall, without proof of the signature of the person purporting to sign the certificate or that he is the prescribed officer, be prima facie evidence of the matters certified in and by the certificate.

24. Except where otherwise expressly provided by this Act, any person guilty of an offence against this Act shall be liable to a penalty not exceeding four hundred dollars. Penalty.

25. The provisions of section thirty-two of the Marketing of Primary Products Act, 1927, as subsequently amended, shall apply to and in respect of offences against this Act. Offences by companies and joint offenders.

26. A power, authority, duty or function conferred or imposed on the Federation or its directors or officers by or under this Act may, to the extent that but for this section the exercise or performance thereof would not be authorised by the rules of the Federation, be exercised or performed by the Federation as if it had been so authorised. Authority of Federation.

27. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to— Regulations.

- (a) any of the powers, authorities, duties and functions of the Minister or the Committee under this Act;
- (b)

Banana Industry.

- (b) the taking of any poll, including the method of voting thereat;
- (c) matters concerning the compilation and revision of lists of banana growers required to vote at any poll;
- (d) matters concerning the method of determining the qualification of banana growers eligible to vote at any poll;
- (e) the manner in which the results of a poll taken under this Act shall be notified;
- (f) prescribing forms to be used for the purposes of this Act;
- (g) all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may prescribe a penalty not exceeding two hundred dollars for any contravention of, or failure to comply with any provision of, the regulations, or any instruction, order or requirement given, or made under, or in force by virtue of, the regulations.

(3) A regulation may be of general operation or specially limited application according to time, place, circumstances or cases, and may be general or restricted to any specified class of subject matter.

The power to make regulations with respect to any matter or thing shall include the powers to make regulations prohibiting that matter or thing either generally or to meet particular cases.

(4) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c)

Banana Industry.

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session and, if not, then within fourteen sitting days after the commencement of the next session.

(5) If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after the regulations have been laid before the House disallowing the regulation or part thereof, such regulation or part shall thereupon cease to have effect.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1969

Notes on the ...

Appendix

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of New South Wales.

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 2 April, 1969.*

New South Wales



ANNO OCTAVO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 38, 1969.

An Act to provide for the constitution of a Banana Marketing Control Committee and to define its powers, authorities, duties and functions; to provide for the taking of polls of banana growers prior to the formation and dissolution of the Committee; to provide for the issue of directions by the Committee relating to the marketing of bananas and for the imposition by it of certain charges; to provide for the taking of polls of banana growers prior to the issue of those directions or the imposition of those charges; and for purposes connected therewith. [Assented to, 17th April, 1969.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

L. A. PUNCH,
Chairman of Committees of the Legislative Assembly.

Banana Industry.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title
and com-
mencement.

1. (1) This Act may be cited as the "Banana Industry Act, 1969".

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Construction
of Act.

2. This Act shall be read and construed as operating to the full extent of, but so as not to exceed, the legislative powers of the State, to the intent that where any provision of this Act or the application of any such provision to any person, subject-matter or circumstance would, but for this section have been construed as being in excess of those powers, it shall be a valid provision to the extent to which it is not in excess of those powers, and the remainder of the Act and the application of the provision to other persons, subject-matters or circumstances shall not be affected.

Division
into Parts.

3. This Act is divided into Parts as follows :—

PART I.—PRELIMINARY—ss. 1-4.

PART II.—POLLS OF BANANA GROWERS—ss. 5, 6.

PART III.—CONSTITUTION OF THE COMMITTEE—ss. 7-9.

PART IV.—POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF THE COMMITTEE—ss. 10-13.

PART V.—FINANCE—ss. 14, 15.

PART VI.—GENERAL—ss. 16-27.

4.

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4. In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation.

“advertisement” means advertisement published in the official journal of the Federation;

“bananas” means bananas grown in New South Wales;

“banana grower” or “grower” means any person by whom or on whose behalf bananas are grown on not less than one acre of land, whether or not the bananas are grown or produced pursuant to a share-farming agreement or partnership agreement, oral or written, but does not include a person engaged as an employee on wages or salary or at piece-work rates;

“Committee” means the Banana Marketing Control Committee constituted under section seven of this Act;

“Federation” means Banana Growers Federation Co-operative Limited, a society registered under the Co-operation, Community Settlement, and Credit Act, 1923, as subsequently amended;

“marketing”, in relation to bananas or any product thereof, means the harvesting, preparation, processing and packing of bananas or any product thereof for sale by wholesale and the sale thereof by wholesale and the shipping, transporting, storing and handling of bananas or any product thereof for the purpose of any such sale and the transmission thereof from the grower to any person selling by wholesale and all actions or things connected therewith or incidental thereto;

“prescribed” means prescribed by this Act or by the regulations;

“proclamation” means proclamation published in the Gazette;

“regulations” means regulations made under this Act;

“sell”

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“sell” includes barter and exchange; and “sale” has a corresponding meaning;

“this Act” includes regulations made under this Act.

PART II.

POLLS OF BANANA GROWERS.

Polls.

5. (1) A poll for the purposes of this Act shall be a poll taken, as prescribed, among banana growers.

(2) A poll for the purposes of Part III of this Act—

- (a) shall be taken, where the question to be decided is whether the Committee should be constituted, only at the request, by petition to the Governor, of not less than one hundred persons certified by the Federation to be banana growers;
- (b) shall be taken, where the question to be decided is whether the Committee should be dissolved, only at the request, by petition to the Governor lodged not earlier than five years after the constitution of the Committee, of not less than one hundred persons certified by the Committee to be banana growers;
- (c) shall, where so requested, be taken on a day notified by the Governor for the purpose by proclamation, being a day not earlier than thirty days after publication of the proclamation or, where the Governor by a subsequent proclamation notifies a later day for the purpose, on that later day;
- (d) shall be deemed not to be in favour of the question to be decided at the poll unless—
 - (i) not less than three-fifths of the persons required to vote at the poll have so voted; and
 - (ii) a majority of the votes at the poll is in favour of the question; and

(e)

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- (e) shall not, where the poll is required to be taken by a person other than the Federation or the Committee, be taken unless the Federation or the Committee has first made provision, as prescribed, for the costs and expenses of the poll.

(3) A poll for the purposes of section eleven or twelve of this Act—

- (a) shall be taken by the Committee and shall be so taken on a day notified by the Committee by advertisement for the purpose or, where the Committee by a subsequent advertisement notifies a later day for the purpose, on that later day;
- (b) shall be deemed not to be in favour of the question to be decided at the poll unless a majority of votes at the poll is in favour of the question.

(4) The regulations may make provision for and with respect to—

- (a) the payment to the Federation by the Committee; and
- (b) the recovery by the Federation from the Committee, of costs and expenses paid by the Federation in respect of a poll.

6. (1) For the purposes of a poll, the Minister shall cause a list to be compiled, as prescribed, of banana growers. List of banana growers.

(2) Where, after application made, as prescribed, for the purpose, the name of a person is not included in the list compiled under subsection one of this section, that person may apply as prescribed to a court of petty sessions holden before a stipendiary magistrate for an order that his name be included in that list.

(3)

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(3) A court to which application is made under subsection two of this section shall have jurisdiction to hear and determine the matter of the application and may—

- (a) order that the name of the applicant be included in the list compiled under subsection one of this section; or
- (b) dismiss the application,

and upon any order being made under paragraph (a) of this subsection, the name of the applicant shall be included in that list.

(4) Where the name of a person appears on the list compiled under subsection one of this section for a poll and that person fails to vote at the poll, he shall be liable to a penalty not exceeding four dollars.

(5) Where the name of a person does not appear on the list compiled under subsection one of this section for a poll and he votes at the poll, he shall be guilty of an offence against this Act.

PART III.

CONSTITUTION OF THE COMMITTEE.

Constitution
of
Committee.

7. (1) Subject to a poll being taken and being in favour of the Committee being constituted, the Governor may, by proclamation, appoint a day for the constitution of the Committee and, on that day, the Committee shall be deemed to have been constituted in accordance with this Part.

(2) The Committee shall consist of—

- (a) one officer of the public service appointed by the Governor on the nomination of the Minister for such term, not exceeding five years, as may be specified in the instrument of appointment;
- (b) one person appointed by the Minister to represent the interests of consumers; and

(c)

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(c) the persons for the time being holding office as members of the Board of Directors of the Federation.

(3) A person appointed as a member of the Committee on the nomination of the Minister shall, on the expiration of his term of office, be eligible for reappointment.

(4) Where a person appointed as a member of the Committee on the nomination of the Minister vacates his office otherwise than on the expiration of his term of office, the Governor may, on the nomination of the Minister, appoint an officer of the public service or such other person referred to in paragraph (b) of subsection two of this section, as the case may be, to the vacant office for the unexpired portion of the term of office of his predecessor.

(5) Each member of the Committee, other than officers of the public service, shall receive such remuneration, and each member of the Committee shall receive such allowances, as the Committee may, with the approval of the Minister, from time to time determine.

(6) Where by or under any Act provision is made requiring the holder of an office specified therein to devote the whole of his time to the duties of his office, or prohibiting him from engaging in employment outside the duties of his office, that provision shall not operate to disqualify him from holding that office and also the office of a member of the Committee.

(7) The office of a member of the Committee shall not for the purposes of any Act be deemed to be an office or place of profit under the Crown.

(8) The provisions of the Public Service Act, 1902, as subsequently amended, shall not apply to or in respect of the appointment by the Governor of any member of the Committee and any member so appointed shall not, in his capacity as such a member, be subject to the provisions of that Act as so amended, during his term of office.

(9)

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(9) A member of the Committee appointed on the nomination of the Minister shall be deemed to have vacated his office—

- (a) if he dies;
- (b) if he becomes bankrupt, compounds with his creditors, or makes any assignment of his salary, remuneration, allowances or estate for their benefit;
- (c) if he is absent from four consecutive ordinary meetings of the Committee of which reasonable notice has been given him either personally or in the ordinary course of post unless on leave granted by the Committee or unless he is before the expiration of four weeks after the last of those meetings excused by the Committee for his absence from such meetings;
- (d) if he becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, as subsequently amended;
- (e) if he is convicted in New South Wales of a felony or of a misdemeanour which is punishable by imprisonment for twelve months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour which is punishable as aforesaid;
- (f) if he resigns his office by writing under his hand addressed to the Minister;
- (g) if he is removed from office by the Governor;
- (h) if he ceases to be an officer of the public service.

(10) The Governor may, for any cause which appears to him sufficient, remove from office any member of the Committee appointed on the nomination of the Minister.

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8. (1) The Committee shall be a body corporate, with perpetual succession and a common seal, and may sue or be sued in its corporate name, and shall, subject to this Act, be capable of purchasing, holding, granting, demising, disposing of or otherwise dealing with real and personal property, and of doing and suffering all such acts and things as bodies corporate may by law do and suffer.

Committee
to be body
corporate—
proceedings
of
Committee.

(2) The corporate name of the Committee shall be "Banana Marketing Control Committee".

(3) The common seal shall be kept in the custody of the Chairman of the Committee and shall not be affixed to any instrument except in pursuance of a resolution of the Committee.

Any instrument executed in pursuance of any such resolution shall be attested by the signature of any two members.

(4) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Act and any regulations in relation thereto, be as determined by the Committee.

(5) The members of the Committee present at the first meeting of the Committee shall elect a member to be Chairman and, where he, or any succeeding Chairman, ceases to be a member of the Committee or resigns his office as Chairman, the members of the Committee shall elect some other member to be Chairman.

(6) The Chairman, or in the absence of the Chairman, a member chosen by the members present at the meeting to act as Chairman, shall preside at any meeting of the Committee.

(7) A majority of the members of the Committee for the time being shall form a quorum and any duly convened meeting of the Committee at which a quorum is present shall be

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be competent to transact any business of the Committee and shall have and may exercise and discharge all the powers, authorities, duties and functions of the Committee.

(8) The Chairman or member acting as Chairman at any meeting of the Committee shall, in the event of an equality of votes, have in addition to a deliberative vote a second or casting vote.

(9) A decision of the majority of the members present at a meeting of the Committee shall be the decision of the Committee.

(10) The Committee shall cause full and accurate minutes to be kept of its proceedings at meetings, and shall submit to the Minister a copy of the minutes of each meeting within two weeks after the day on which it is held.

(11) No act or proceeding of the Committee shall be invalidated or prejudiced by reason only of the fact that at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the office of a member.

(12) No matter or thing done, and no contract entered into by the Committee, and no matter or thing done by any member or by any other person whomsoever acting under the direction of the Committee shall, if the matter or thing was done or the contract was entered into bona fide for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim or demand whatsoever.

(13) The Committee shall not, for any purpose, be a statutory body representing the Crown.

Dissolution
of
Committee.

9. (1) Subject to a poll being taken and being in favour of the dissolution of the Committee, the Committee shall, on and from a day appointed by the Governor for the purpose by proclamation, being a day not later than six months after the taking of the poll, proceed to wind up its affairs unless

by

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by the same or a subsequent proclamation, the Governor appoints a person to be liquidator to wind up the affairs of the Committee.

(2) Upon the appointment of a liquidator under subsection one of this section, the members of the Committee shall cease to act as such members and the liquidator may, for the purpose of winding up the affairs of the Committee, in the name and as the act and, where necessary, under the seal of the Committee—

- (a) exercise and perform such of the powers, authorities, duties and functions of the Committee;
- (b) bring and defend such proceedings; and
- (c) do and execute such other acts and things, as he thinks fit.

(3) A liquidator appointed under subsection one of this section shall receive such remuneration as the Governor determines.

(4) The Governor may, at any time after the day appointed under subsection one of this section, declare by proclamation that the Committee is dissolved and thereupon—

- (a) the dissolution of the Committee shall be deemed to have been effected; and
 - (b) all moneys and other assets of the Committee—
 - (i) shall vest in Her Majesty; and
 - (ii) shall be dealt with and disposed of as the Governor may direct.
-

PART

Banana Industry.

PART IV.

POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF THE
COMMITTEE.

Powers,
authorities,
duties and
functions of
Committee.

10. (1) For the purposes of and subject to this Act, the Committee may—

- (a) arrange for the marketing of bananas or of any product thereof;
- (b) by order, exempt from the operation of this Act a banana grower who produces a small quantity of bananas;
- (c) establish a system of inspection of bananas;
- (d) arrange for the supervision of the marketing of bananas;
- (e) enter into any agreements and give guarantees and indemnities in favour of any person who contracts with the Committee or enters into any agreements at the request of or under the authority or direction of the Committee;
- (f) enter upon and carry into execution the marketing and transporting of bananas from any plantation to rail head or markets;
- (g) support, with or without grant of financial aid and whether or not initiated by the Committee, any scheme or activity which, in the opinion of the Committee, is capable of assisting in the promotion of the sale of bananas;
- (h) acquire land, machinery (including refrigerating machinery and machinery suitable for the ripening of bananas) plant, goods, chattels and effects;
- (i) erect, maintain, repair, operate, regulate, use and regulate the use of buildings (including buildings for cold storage and the inspection, sorting and ripening of bananas) and all machinery and plant used in connection therewith;

(j)

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- (j) charge a fee whenever the Committee supplies any service, product or commodity or gives any permission;
- (k) enter into and carry out such contracts and do and suffer all such other acts and things as may be necessary and convenient for the purposes of this Act;
- (l) appoint, employ, or authorise agents, officers, servants and other persons;
- (m) arrange for financial accommodation with any bank, or with any other institution or person approved by the Governor, and give such securities therefor as may be required;
- (n) as far as practicable, provide bananas for consumption in New South Wales, and for their supply to those places within New South Wales wherein a shortage of bananas is experienced;
- (o) make such arrangements as it deems necessary with regard to sales of bananas for export or for consignment to other countries or States or for oversea ships' stores;
- (p) do such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise or discharge of its powers, authorities, duties and functions under this Act.

(2) If at any time any question or dispute arises between the Committee and any banana grower as to whether or not any matter with regard to which the Committee is exercising or performing or proposes to exercise or perform any of the powers, authorities, duties or functions conferred or imposed upon it by this Act ought to be made the subject of a direction under section twelve of this Act before the exercise or performance thereof, the question or dispute shall be referred by the Committee to the Minister, who shall consider the matter and determine the question or dispute, and his determination thereon shall be final and without appeal to any tribunal.

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Power to
impose
charge on
bananas.

11. (1) Subject to this section, the Committee may, with the prior approval of the Minister, impose on all banana growers a charge, not exceeding ten cents per bushel, in respect of all bananas produced by them for sale.

(2) The Committee shall not impose a charge under subsection one of this section unless—

- (a) it has given notice by advertisement of its intention so to do and has specified in the advertisement the amount of the proposed charge;
- (b) it has taken a poll on the question whether the charge should be imposed, if it is requested so to do by a petition lodged with the Committee not more than thirty days after publication of the advertisement, by not less than one hundred banana growers; and
- (c) any poll so taken is in favour of the imposition of the charge.

(3) Subject to subsections one and two of this section, the Committee may impose the charge specified in an advertisement under subsection two of this section by publishing, not earlier than thirty days after publication of that advertisement, a further advertisement specifying—

- (a) that the provisions of this section have been complied with;
- (b) the amount of the charge; and
- (c) the day (being a day not earlier than the day of publication of the further advertisement) as on and from which the charge is imposed.

(4) The proceeds of all fees collected and charges imposed by the Committee under this Act shall be applied—

- (a) in defraying the proper costs and expenses of the Committee incurred in the exercise or performance of the powers, authorities, duties and functions conferred or imposed upon it by this Act;

(b)

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- (b) in establishing and maintaining a fund for the purposes of effecting or providing for the orderly marketing and marketing development of bananas and for research into, and development of, the processing of banana by-products for the benefit of banana growers generally; and
- (c) in establishing and maintaining such other funds for effecting any other special object which the Committee considers to be of advantage to, and in the common interest of, banana growers generally.

(5) Any amount payable by a banana grower in respect of a charge imposed under this section, shall become due and payable by him fourteen days after the receipt by him of a notice from the Committee notifying him that the charge has been imposed.

12. (1) Subject to this section, the Committee may give a direction—

Power of
Committee
to issue
directions.

- (a) that all or any of the things included in the marketing of bananas shall be done only by the Committee, its agents and servants, or only by a specified person or specified persons or a specified class of persons;
- (b) that all bananas that, during a specified period, are in the possession of or come into the possession of any person in the course, or for the purpose, of the marketing thereof shall be handled and dealt with only under the instructions and with the authority of the Committee, or shall be consigned or delivered only to specified persons or a specified class, or specified classes, of persons.

(2) A direction given under subsection one of this section—

- (a) may be expressed to extend to all bananas or to a specified class, or to specified classes, of bananas;

(b)

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- (b) may be expressed to extend throughout the State or to any specified part thereof, or locality therein, within specified boundaries;
- (c) may be expressed to extend to the complete marketing of bananas or only to specified phases of such marketing;
- (d) shall specify the length of the period for which the direction is to remain in force.

(3) A direction issued under this section may specify the circumstances in which and the terms and conditions on which, the direction shall not apply to or in respect of—

- (a) growers of bananas who, in the opinion of the Committee, produce a small quantity of bananas;
- (b) sales of bananas direct to local consumers or to retail vendors; or
- (c) such other sales, purchases or receipts of bananas as may be specified,

and the Committee's decision as to whether any particular person or sale, purchase or receipt of bananas falls within the limits of any such exemption shall be final.

The Committee may, at any time by notice in writing to a banana grower exempted from the operation of a direction, revoke the exemption of that grower.

(4) The Committee shall not give a direction under subsection one of 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 length of the period for which the direction would remain in force;
- (b) it has taken a poll on the question whether the direction should be given, if it is requested so to do by a petition, lodged with the Committee within thirty days after publication of the advertisement, by not less than one hundred banana growers; and
- (c)

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- (c) any poll so taken is in favour of the direction being given.

(5) Subject to subsections one, two and three of this section the Committee may give the direction specified in the advertisement under subsection four of this section by publishing, not earlier than thirty days after publication of that advertisement, a further advertisement—

- (a) specifying that the provisions of this section have been complied with;
- (b) setting forth the direction;
- (c) specifying the day (being a day not earlier than the day of publication of the further advertisement) as on and from which the direction is to take effect; and
- (d) specifying the length of the period for which the direction is to remain in force.

(6) A person who—

- (a) fails to comply with or contravenes any provision of a direction given under this section;
- (b) buys or accepts delivery of bananas from any person who sells or delivers those bananas in contravention of such a direction; or
- (c) offers by advertisement (in any manner) or otherwise to buy or to accept delivery of bananas from any person who upon accepting that offer by selling or delivering those bananas would contravene such a direction,

shall, if he is a banana grower or a person, not being a banana grower, upon whom the Committee by certified mail has served a copy of the advertisement by which the direction was given, be guilty of an offence against this Act unless he is a person exempted from the operation of the direction.

(7) A direction given under this section may be revoked by the Committee by a notice published in the official journal of the Federation.

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Power to
require
returns.

13. (1) The Committee may—

- (a) by advertisement require all banana growers or a specified class or specified classes of banana growers; or
- (b) by notice sent by certified mail, require a person, whether or not he is a banana grower, associated with the marketing of bananas,

to furnish in writing to the Committee within a time specified for the purpose in the advertisement or notice, as the case may be, such information in relation to bananas and any product thereof as is specified in the advertisement or notice, as the case may be.

(2) An advertisement or notice referred to in subsection one of this section may require—

- (a) particulars of bananas by reference to type, variety, grade, quality and quantity;
- (b) in the case of a banana grower—
 - (i) particulars of the number of plants by reference to age, type and variety which he is growing for the purpose of the production and sale of bananas; and
 - (ii) an estimate, as far as is practicable, of bananas by reference to type, variety, grade, quality and quantity which he expects to produce for the purpose of marketing within any period specified in the notice.

(3) Any person who—

- (a) without reasonable excuse refuses or fails to comply with a requirement under this section; or
- (b) furnishes to the Committee under this section any information which to his knowledge is false or misleading in a material particular,

shall be guilty of an offence against this Act.

PART

Banana Industry.

PART V.

FINANCE.

14. The Committee shall cause to be kept proper books of account in relation to all of its operations, and shall, as soon as practicable after the thirtieth day of June in each year or, where some other day is prescribed for the purposes of this section, as soon as practicable after the day so prescribed, prepare and transmit to the Minister a statement of accounts in a form approved by the Auditor-General showing a true and correct view of the financial position and transactions of the Committee and each such statement of accounts shall be exhibited in such manner and at such times as may be prescribed.

Accounts
to be kept
by the
Committee.

15. (1) The accounts of the Committee shall be audited by the Auditor-General who shall have, in respect thereof, all the powers conferred on him by any law for the time being in force relating to the audit of public accounts, and the Audit Act, 1902, as subsequently amended, shall apply to the members of the Committee and its servants in the same manner as it applies to accounting officers of Public Departments.

Audit of
accounts.

(2) The Auditor-General shall report to the Minister and the Committee—

(a) whether or not in his opinion—

(i) the expenditure incurred has been duly authorised, vouched and supervised;

(ii) any of the moneys or other property of the Committee has been misappropriated or improperly or irregularly dealt with; and

(b) as to any other matters which in his judgment call for special notice or which are prescribed.

(3) Towards defraying the costs and expenses of an audit under this section, the Committee shall pay to the Consolidated Revenue Fund such sums, at such times, as the Treasurer may decide.

PART

Banana Industry.

PART VI.

GENERAL.

Annual
report.

16. As soon as practicable after the thirtieth day of June in each year or, where some other day is prescribed for the purposes of this section, as soon as practicable after the day so prescribed, the Committee shall prepare and furnish to the Minister a report on the operations and activities of the Committee during the next preceding year ending on the thirtieth day of June or the next preceding year ending on the day so prescribed, as the case may be.

The Minister shall lay such report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receipt by him of the report.

Minister
may require
further
reports.

17. The Committee shall, in addition to any other report it may be required to prepare and furnish under this Act, furnish to the Minister, within a time specified by him, such reports on the operations of the Committee as the Minister may direct.

Board not
to be con-
cerned in
party
politics.

18. It shall not be lawful for the Committee to expend any of its funds for any purpose whatsoever in connection with the politics of any political party, nor shall the Committee become affiliated in any way whatsoever with any body, association or organisation having for its object or any of its objects the support of the politics or programme or aims of any political party.

Judicial
notice of
the seal
of the
Committee.

19. All courts and persons having by law or consent of parties authority to hear, receive and examine evidence—

- (a) shall take judicial notice of the seal of the Committee affixed to any document; and
- (b) shall until the contrary is proved presume that the seal was properly affixed thereto.

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20. (1) Any notice, summons, writ or other proceeding required to be served on the Committee under this Act or the regulations may be served by being left at the office of the Committee, or, in the case of a notice, by post. Service of notices of proceedings.

(2) Except where this Act or the regulations otherwise provide, any notice that is required to be given or that may be given by the Committee under this Act or the regulations shall be deemed to have been duly given if sent by post in a letter addressed to the person to be served at his place of abode or business in New South Wales last known to the Committee, and the notice shall be deemed to have been given at the time when a letter so posted should in the ordinary course be delivered.

21. Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions. Recovery of penalty.

22. (1) Any charge, fee, remuneration or money due to the Committee under the provisions of this Act or the regulations may be recovered as a debt in a court of competent jurisdiction. Recovery of charges, etc.

(2) Proceedings for the recovery of any charge, fee or money so due to the Committee shall be deemed to be for the recovery of a debt or liquidated demand within the meaning of—

- (a) section twenty-four of the Common Law Procedure Act, 1899, as subsequently amended;
- (b) section sixty-four of the District Courts Act, 1912, as subsequently amended;
- (c) section twenty-five of the Small Debts Recovery Act, 1912, as subsequently amended.

(3) Where any matter or thing is by or under this Act directed or forbidden to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden

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forbidden to be done is done, a person offending against the direction or prohibition shall be guilty of an offence against this Act.

(4) The institution of criminal proceedings against a person or the conviction of a person for any offence against this Act shall not affect any remedy to which any other person (including the Committee) aggrieved may be entitled to in any civil proceeding.

- Evidence.** **23.** In any proceedings, whether at law or in equity—
- (a) no proof shall be required, until evidence is given to the contrary, of—
 - (i) the constitution of the Committee;
 - (ii) any resolution of the Committee;
 - (iii) the appointment of any member or any servant of the Committee;
 - (iv) the presence of a quorum at any meeting at which any determination is made or any act is done by the Committee;
 - (b) any notification, requisition, demand, order, or other document in writing, purporting to be signed or made or sent by the Committee or the Chairman or Secretary thereof or the Minister shall be judicially noticed;
 - (c) the production of a copy of the Gazette purporting to contain any proclamation, or a copy of the official journal of the Federation purporting to contain a copy of an advertisement or notice published by the Committee under this Act shall, until the contrary is proved, be evidence of the matters contained in the proclamation, advertisement or notice and that all steps necessary to be taken prior to the making of the proclamation or publication of the advertisement or notice were duly taken;
 - (d)

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- (d) the averment on behalf of the Committee that any bananas were or are bananas to which the provisions of this Act apply, or were or are bananas to which a direction in force under this Act applies, or that any place is a place in New South Wales, or that any person was or is a banana grower shall, until the contrary is proved, be evidence of that fact;
- (e) a certificate purporting to be signed by the prescribed officer of the Committee and to certify that on a specified day or during the whole of a specified period any person was or was not included in the list of banana growers compiled under this Act shall, without proof of the signature of the person purporting to sign the certificate or that he is the prescribed officer, be prima facie evidence of the matters certified in and by the certificate.

24. Except where otherwise expressly provided by this Act, any person guilty of an offence against this Act shall be liable to a penalty not exceeding four hundred dollars. **Penalty.**

25. The provisions of section thirty-two of the Marketing of Primary Products Act, 1927, as subsequently amended, shall apply to and in respect of offences against this Act. **Offences by companies and joint offenders.**

26. A power, authority, duty or function conferred or imposed on the Federation or its directors or officers by or under this Act may, to the extent that but for this section the exercise or performance thereof would not be authorised by the rules of the Federation, be exercised or performed by the Federation as if it had been so authorised. **Authority of Federation.**

27. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to— **Regulations.**

- (a) any of the powers, authorities, duties and functions of the Minister or the Committee under this Act;
- (b)

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- (b) the taking of any poll, including the method of voting thereat;
- (c) matters concerning the compilation and revision of lists of banana growers required to vote at any poll;
- (d) matters concerning the method of determining the qualification of banana growers eligible to vote at any poll;
- (e) the manner in which the results of a poll taken under this Act shall be notified;
- (f) prescribing forms to be used for the purposes of this Act;
- (g) all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may prescribe a penalty not exceeding two hundred dollars for any contravention of, or failure to comply with any provision of, the regulations, or any instruction, order or requirement given, or made under, or in force by virtue of, the regulations.

(3) A regulation may be of general operation or specially limited application according to time, place, circumstances or cases, and may be general or restricted to any specified class of subject matter.

The power to make regulations with respect to any matter or thing shall include the powers to make regulations prohibiting that matter or thing either generally or to meet particular cases.

(4) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c)

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(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session and, if not, then within fourteen sitting days after the commencement of the next session.

(5) If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after the regulations have been laid before the House disallowing the regulation or part thereof, such regulation or part shall thereupon cease to have effect.

In the name and on behalf of Her Majesty I assent to this Act.

K. W. STREET,
*By Deputation from
His Excellency the Governor.*

*Government House,
Sydney, 17th April, 1969.*

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