

FIRST PRINT

BANANA INDUSTRY BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to repeal and re-enact the provisions of the Banana Industry Act 1969 and in so doing—

- (a) to change the name of the Banana Marketing Control Committee to the Banana Industry Committee;
- (b) to provide for a change in the constitution of the Committee;
- (c) to clarify the functions of the Committee and to specify the services that may be provided by the Committee; and
- (d) to provide for an increase in certain penalties.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 contains definitions for the purposes of the proposed Act.

PART 2—BANANA INDUSTRY COMMITTEE

Clause 3 provides for the constitution, as a corporation, of the Committee. The Committee's members consist of an officer of the Public Service and another person, each appointed by the Minister (rather than by the Governor, as was the case under the 1969 Act in relation to the officer of the Public Service), and the directors for the time being of the Banana Growers Federation Co-operative Limited. The members appointed by the Minister may be appointed for a maximum term of 5 years. A maximum term was not specified under the 1969 Act.

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Clause 4 provides that, if a poll of banana growers is in favour of the dissolution of the Committee, the Committee shall be wound up.

PART 3—FUNCTIONS OF THE COMMITTEE

Clause 5 lists the major functions of the Committee. These relate to regulating and supervising, and providing services concerning, the marketing of bananas and banana products.

Clause 6 lists some further (and largely ancillary) functions of the Committee.

Clause 7 enables the Committee, with the approval of the Minister, to impose a charge on banana growers for services provided by the Committee. The clause prevents the imposition of a charge if certain procedural requirements are not satisfied and requires the proceeds of a charge to be applied exclusively for the provision of the service in relation to which the charge was imposed.

Clause 8 enables the Committee, without having to comply with clause 7, to determine the amount of a fee charged to a person for a service provided by the Committee to the person at the person's request. This clarifies the position that existed under the 1969 Act.

Clause 9 authorises the Committee to give binding directions concerning things done in relation to the marketing of bananas if a poll taken of banana growers is in favour of the direction being given.

Clause 10 provides for the determination by the Minister of a dispute between the Committee and a banana grower as to whether a function of the Committee should be made the subject of a direction under clause 9.

Clause 11 enables the Committee to require banana growers and other persons associated with the marketing of bananas to furnish specified information to the Committee.

PART 4—POLLS OF BANANA GROWERS

Clause 12 provides for the compilation by the Minister of a list of banana growers for the purposes of a poll.

Clause 13 provides for the taking by the Committee of a poll for the purpose of imposing a charge or giving a direction.

Clause 14 provides for the taking of a poll where the question to be decided is whether the committee should be dissolved.

Clause 15 determines the entitlement to vote in a poll of 2 or more persons who are banana growers in relation to one plantation.

Clause 16 enables regulations to be made with respect to the costs and expenses of a poll.

PART 5—GENERAL

Clause 17 specifies the financial year of the Committee.

Clause 18 provides that the Committee shall prepare an annual report in accordance with the Annual Reports (Statutory Bodies) Act 1984.

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Clause 19 requires the Committee to furnish to the Minister such reports concerning its operations as the Minister directs.

Clause 20 prohibits the Committee from giving financial support to or from being affiliated with a political party.

Clause 21 provides for the service of documents on or by the Committee.

Clause 22 provides for the authentication of certain documents otherwise than under the seal of the Committee if signed by the Chairperson or a person authorised by the Chairperson.

Clause 23 enables the recovery of a charge or fee by the Committee as a debt in a court of competent jurisdiction.

Clause 24 empowers the Federation to exercise functions conferred on it by the proposed Act that it would not otherwise be empowered to exercise.

Clause 25 facilitates the proof of certain formal matters concerning the constitution and proceedings of the Committee.

Clause 26 facilitates the proof in legal proceedings of certain evidentiary matters concerning the Committee.

Clause 27 is a general offence provision for the purposes of the proposed Act.

Clause 28 enables the prosecution of directors of corporations and persons concerned in the management of corporations if the corporation contravenes a provision made by or under the proposed Act.

Clause 29 enables proceedings for offences to be dealt with summarily before a Local Court.

Clause 30 imposes a general penalty of \$2,000 for offences against the proposed Act. The corresponding provision under the 1969 Act imposed a general penalty of \$1,000.

Clause 31 enables the making of regulations for the purposes of the proposed Act and includes the power (which was not included in the 1969 Act) to create an offence punishable by a penalty of \$1,000.

Clause 32 gives effect to the Schedule of savings, transitional and other provisions.

Clause 33 repeals the Banana Industry Act 1969 and certain other enactments.

Clause 34 amends the Public Finance and Audit Act 1983 consequent on the renaming of the Committee.

SCHEDULES

Schedule 1 contains provisions relating to the members of the Committee.

Schedule 2 contains provisions relating to the procedure of the Committee.

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Schedule 3 contains provisions of a savings, transitional or similar nature.

Schedule 4 lists the enactments to be repealed as a consequence of the enactment of the proposed Act.

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BANANA INDUSTRY BILL 1987

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No. , 1987

A BILL FOR

An Act to enable the provision of services to the banana industry; to constitute the Banana Industry Committee and to define its functions; to authorise the Committee to determine and fix charges and fees for services; to repeal the Banana Industry Act 1969; to amend the Public Finance and Audit Act 1983; and for other related purposes.

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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:

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PART 1

PRELIMINARY

Short title

1. This Act may be cited as the "Banana Industry Act 1987".

Interpretation

- 10 2. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"advertisement" means an advertisement published in the official journal of the Federation;

- 15 "banana grower" means a person by whom or on whose behalf bananas are grown on a plantation (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;

20 "bananas" means bananas growing or grown in New South Wales, and includes banana plants and all parts of banana plants;

"Chairperson" means the Chairperson of the Committee;

"Committee" means the Banana Industry Committee constituted by this Act;

25 "Federation" means the Banana Growers Federation Co-operative Limited, a society registered under the Co-operation Act 1923;

"marketing", in relation to bananas or banana products, means—

- (a) the harvesting, preparation, processing and packing of bananas or banana products for sale;
- 30 (b) the shipping, transporting, storing, ripening and handling of bananas or banana products for sale;
- (c) the transmission of bananas or banana products from a banana grower to another person;
- (d) the sale of bananas or banana products; and

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(e) all actions or things connected with or incidental to any of the foregoing;

“member” means a member of the Committee;

5 “plantation” means a parcel of land on which bananas are grown having—

(a) if no minimum area is prescribed under paragraph (b)—a minimum area of 0.5 hectares; or

(b) such minimum area as may be prescribed;

10 “poll” means a poll taken, in accordance with this Act and the regulations, among banana growers;

“proclamation” means a proclamation published in the Gazette;

“regulation” means a regulation made under this Act;

“sell” includes barter and exchange.

(2) In this Act—

15 (a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) The Chairperson may be referred to as the Chairman or Chairwoman.

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PART 2

BANANA INDUSTRY COMMITTEE

The Committee

3. (1) There is constituted by this Act a corporation under the corporate name of the “Banana Industry Committee”.

25 (2) The Committee is not, for any purpose, a statutory body representing the Crown.

(3) The Committee shall consist of—

(a) 1 officer of the Public Service appointed by the Minister;

(b) 1 person appointed by the Minister; and

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

(4) Schedule 1 has effect with respect to the members.

(5) Schedule 2 has effect with respect to the procedure of the Committee.

5 Dissolution of Committee

4. (1) If a poll is taken and is 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 6 months after the taking of the poll, proceed to be wound up.

10 (2) The Committee shall wind up its affairs unless, by the same or a subsequent proclamation, the Governor appoints a liquidator to wind up the affairs of the Committee.

15 (3) Upon the appointment of a liquidator, the members shall cease to act as 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 such of the functions of the Committee;

(b) bring and defend such proceedings; and

(c) do and execute such other acts and things,

20 as the liquidator thinks fit.

(4) A liquidator shall receive such remuneration as the Governor determines.

(5) The Governor may, by proclamation published at any time after the day appointed under subsection (1), declare the Committee to be dissolved.

25 (6) The dissolution of the Committee shall take effect on the date of publication of the proclamation under subsection (5) or a later date specified in the proclamation.

(7) On the dissolution of the Committee, all money and other assets of the Committee—

30 (a) shall vest in Her Majesty; and

(b) shall be dealt with and disposed of as the Governor may direct.

PART 3

FUNCTIONS OF THE COMMITTEE

Functions of the Committee

5. The Committee may—

- (a) provide facilities, material or advice to banana growers, wholesalers or retailers relating to the marketing of bananas or banana products;
- 5 (b) establish a system of quality control for bananas;
- (c) regulate and supervise the marketing of bananas;
- (d) regulate the transportation of bananas from a plantation to a railhead or market;
- 10 (e) advertise and promote bananas and banana products;
- (f) control, or develop means for controlling, pests and diseases if there is a likelihood that those pests and diseases may affect the quality or volume of output of bananas;
- (g) carry out research in relation to any matter if, in the Committee's opinion, that research is of advantage to banana growers;
- 15 (h) conduct educational or instructional programmes relating to the production and marketing of bananas;
- (i) develop and expand markets for bananas in New South Wales and elsewhere;
- 20 (j) establish a voluntary insurance scheme for the benefit of banana growers, including insurance relating to crops and equipment;
- (k) undertake and provide banana market forecasting;
- (l) establish systems of inspection of bananas for the purpose of quality control or pest and disease control;
- 25 (m) establish systems to facilitate inspection of the ripening, weighing, grading, packaging and storage of bananas, including weight and uniformity (including uniformity of ripeness) within packages;
- (n) promote or operate schemes which, in the Committee's opinion, will assist the orderly marketing of bananas;
- 30 (o) support, with or without grant of financial aid and whether or not initiated by the Committee, any scheme or activity which, in the Committee's opinion, is capable of assisting in the promotion or sale of bananas;

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- (p) provide such other services as the Minister may authorise or direct; and
- (q) arrange for the provision of any of the services or the exercise of any of the functions referred to in the preceding paragraphs, in whole or part, by any other person.

Further functions of the Committee**6. The Committee may—**

- (a) buy, acquire, sell or supply bananas, whether grown in New South Wales or elsewhere;
- 10 (b) buy or acquire equipment and supplies to sell or supply to banana growers or other persons for use in relation to the production or marketing of bananas or for associated purposes;
- (c) trade in, for cash or on terms, equipment and supplies for use in relation to the production or marketing of bananas or for associated purposes;
- 15 (d) by its agents and servants, inspect bananas at any stage of their production or marketing, and at any reasonable time on production of the prescribed written evidence of the agent's or servant's authority, enter for that purpose any land (not being a dwelling-house) on which bananas are grown, stored or handled;
- 20 (e) by its agents and servants, treat, withhold, remove, destroy or withdraw from the market bananas which, in the Committee's opinion, are damaged, overripe or otherwise unfit or inappropriate for sale;
- 25 (f) by advertisement, exempt a banana grower in any particular case from any of the provisions of this Act or the regulations on such terms and conditions as it considers appropriate;
- (g) by its agents and servants, spray or otherwise treat bananas;
- 30 (h) by its agents and servants, at any reasonable time on production of the prescribed written evidence of the agent's or servant's authority, inspect ripening rooms and other premises (not being a dwelling-house) which are used for the storage, handling or ripening of bananas;
- (i) by advertisement, declare localities in which bananas are grown;

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- (j) 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;
- 5 (k) acquire land, machinery and plant (including refrigerating machinery and plant and machinery and plant suitable for the ripening of bananas), goods, chattels and effects;
- 10 (l) 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;
- (m) subject to sections 7 and 8 in the case of the supply of a service, impose a charge or charge a fee whenever the Committee supplies any service, product or commodity or gives any permission;
- 15 (n) appoint, employ or authorise agents, officers, servants and other persons;
- (o) arrange for financial accommodation with any bank, or with any other institution or person approved by the Governor, and give such securities for any such financial accommodation as may be required;
- 20 (p) make such arrangements as it deems necessary with regard to sales of bananas for export or for consignment to other countries or States for oversea ships' stores; and
- 25 (q) enter into and carry out such contracts and do and suffer such other acts as may be necessary or expedient for the exercise or discharge of its functions under this Act.

Power to impose charges in relation to services

7. (1) The Committee may determine the cost or estimated cost of providing any service which it is authorised by this Act to provide, and, with the approval of the Minister, may impose on banana growers a charge
30 in relation to the provision of any such service.

(2) A charge imposed under this section—

- (a) shall be at the same rate in relation to all banana growers in a particular locality declared under section 6 (i); and
- 35 (b) may be at different rates in relation to banana growers in different localities so declared.

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(3) The Committee shall not impose a charge under this section unless—

- (a) it has given notice by advertisement of its intention to impose the charge and has specified in the advertisement the amount of the proposed charge;
- 5 (b) it has taken a poll of those banana growers on whom it is proposed to impose the charge, if it is requested to do so by a petition, lodged with the Committee within 30 days after the publication of the advertisement, by not less than 100 banana growers;
- (c) the poll is in favour of the imposition of the charge; and
- 10 (d) not earlier than 30 days after the publication of the advertisement, a further advertisement is published identifying (by name or general reference) the banana growers by whom the charge is payable and specifying—
 - (i) the amount of the charge;
 - 15 (ii) the day (being a day not earlier than the day of publication of the further advertisement) on and from which the charge shall be imposed; and
 - (iii) that the requirements of this section have been complied with.

(4) A charge imposed under this section shall become due and payable 20 by a grower not earlier than 14 days after the day on which the grower receives notice, in writing, from the Committee indicating that the charge has been imposed and not later than the date specified in the notice.

(5) The proceeds of a charge imposed under this section by the 25 Committee shall be deposited into a special fund and applied exclusively for the provision of the service in relation to which the charge was imposed.

(6) Nothing in subsection (5) prevents the Committee—

- (a) from allocating from a special fund an amount to be applied in defraying the proper costs and expenses of the Committee incurred—
 - 30 (i) in providing the service in relation to which the charge was imposed; or
 - (ii) in the exercise of the functions conferred or imposed on it by this Act in relation to the provision of the service; or

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- (b) with the approval of the Minister or a person nominated by the Minister, from allocating from a special fund—
- (i) to another special fund; or
 - (ii) to the general fund of the Committee,
- 5 any amount which is no longer required to be applied for the provision of the service in relation to which the charge was imposed.

Charges for services provided at person's request

8. (1) If the Committee provides a service to a person at the person's request, the Committee may determine the amount of the fee to be charged
10 for the provision of the service.

(2) Section 7 does not apply to or in respect of a fee charged under this section.

Power of Committee to issue directions

9. (1) To facilitate the provision under this Act of services to banana
15 growers by the Committee, the Committee may give a direction—

- (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 person or a specified class of persons;
- 20 (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 marketing—
 - (i) shall be handled and dealt with only under the instructions and with the authority of the Committee; or
 - 25 (ii) shall be consigned or delivered only to a specified person or a specified class, or specified classes, of persons; or
- (c) that bananas shall be treated, handled or packed by a banana grower in such manner as may be specified in the direction.

(2) A direction—

- 30 (a) may be expressed to extend to all bananas or to a specified class, or to specified classes, of bananas;
- (b) may be expressed to extend throughout the State or to any specified part or locality within specified boundaries;

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- (c) may be expressed to extend to the marketing of bananas or only to specified aspects of marketing; and
- (d) shall specify the length of the period for which the direction is to remain in force.

5 (3) A direction 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
- 10 (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 and without appeal to any court or tribunal.

15 (4) 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.

(5) The Committee shall not give a direction under this section unless—

- 20 (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 is proposed to remain in force;
- (b) it has taken a poll on the question whether the direction should be given, if it is requested to do so by a petition, lodged with the
- 25 Committee within 30 days after the publication of the advertisement, by not less than 100 banana growers; and
- (c) the poll is in favour of the direction being given.

(6) Subject to subsections (1), (2) and (3), the Committee may give the direction specified in the advertisement under subsection (5) by publishing,

30 not earlier than 30 days after publication of that advertisement, a further advertisement—

- (a) specifying that the provisions of this section have been complied with in respect of the direction;
- (b) setting forth the direction;

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- (c) specifying the day (being a day not earlier than the day of publication of the further advertisement) on and from which the direction is to take effect; and
- 5 (d) specifying the length of the period for which the direction is to remain in force.
- (7) A person (other than a person exempt from the direction) who—
- (a) fails to comply with or contravenes any provision of a direction;
- (b) buys or accepts delivery of bananas from any person who sells or delivers those bananas in contravention of a direction; or
- 10 (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 a direction,
- is, if the person is—
- 15 (d) a banana grower; or
- (e) a person associated with the marketing of bananas, 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, guilty of an offence against this Act.
- 20 (8) A direction may be revoked by the Committee by advertisement.

Dispute as to necessity for direction

10. (1) A question or dispute between the Committee and a banana grower as to whether or not any matter with regard to which the Committee is exercising or proposes to exercise any of its functions ought to be made

25 the subject of a direction under section 9 shall be referred by the Committee to the Minister for determination.

(2) The Minister's determination shall be final and without appeal to any court or tribunal.

Power to require information

- 30 11. (1) To facilitate the provision under this Act of services to banana growers by the Committee, the Committee may—
- (a) by advertisement require all banana growers or a specified class or specified classes of banana growers; or

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

to furnish in writing to the Committee, within a time specified for the purpose in the advertisement or notice, such information in relation to
5 bananas and banana products as is specified in the advertisement or notice.

(2) An advertisement or notice may require—

(a) particulars of bananas by reference to type, variety, grade, quality, quantity, the locality in which they were grown and the identity of the banana grower or supplier;

10 (b) particulars of the area of land on which the bananas by or on behalf of the person to whom the advertisement or notice is directed are grown; or

(c) in the case of a banana grower—

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

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

(3) A person who—

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

25 (b) furnishes to the Committee under this section any information which to the person's knowledge is false or misleading in a material particular,

is guilty of an offence against this Act.

PART 4

POLLS OF BANANA GROWERS

List of banana growers

12. (1) For the purposes of a poll, the Minister shall cause a list to be compiled, in accordance with the regulations, of banana growers (other than banana growers who, under section 15, are not entitled to vote in a poll).

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(2) If, after application made in accordance with the regulations for the purpose, the name of a person is not included in the list, that person may apply as prescribed to a Local Court for an order that the person's name be included in the list.

10 (3) The Local Court 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; or

(b) dismiss the application.

(4) Upon an order being made under subsection (3) (a), the name of the applicant shall be included in the list.

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(5) If the name of a person appears on the list for a poll and the person fails to vote at the poll, the person is liable to a penalty not exceeding \$10.

(6) If the name of a person does not appear on the list compiled under this section for a poll and the person votes at the poll, the person is guilty of an offence against this Act.

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Poll for purposes of s. 7 or 9

13. A poll for the purposes of section 7 or 9—

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

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(b) shall not 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.

Poll for dissolution of the Committee

14. A poll at which the question to be decided is whether the Committee should be dissolved—

- 5 (a) shall be taken only at the request, by petition to the Governor, of not less than 100 persons whose names are, or who are entitled to have their names, included in a list compiled under section 12;
- 10 (b) shall, where so requested, be taken on a day notified by the Governor for the purpose by proclamation, being a day not earlier than 30 days after publication of the proclamation or, if the Governor by a subsequent proclamation notifies a later day for the purpose, on that later day;
- (c) shall not be in favour of the question to be decided at the poll unless—
- 15 (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
- 20 (d) shall not, if 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, in accordance with the regulations, for the costs and expenses of the poll.

Voting in a poll

15. For the purposes of a poll, if 2 or more persons are banana growers in relation to one plantation—

- 25 (a) only one of them is entitled to vote in the poll;
- (b) both or all of them may, by agreement, nominate in writing which of them is entitled to vote; and
- (c) if a nomination is not made under paragraph (b), the Chairperson shall determine the person who is entitled to vote.

30 Costs and expenses of poll

16. 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.

PART 5
GENERAL

5 Financial year of the Committee

17. The financial year of the Committee is—

- (a) if no period is prescribed as referred to in paragraph (b)—the year commencing on 1 July; or
- (b) the period prescribed for the purposes of this section.

10 Annual report

18. The Committee shall prepare an annual report in accordance with the Annual Reports (Statutory Bodies) Act 1984.

Minister may require further reports

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

Committee not to be concerned in party politics

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

Service of documents

25 21. (1) A document may be served on the Committee by leaving it at, or by sending it by post to, the Committee's office.

(2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Committee in a manner not provided for in subsection (1).

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(3) Except where this Act otherwise provides, a notice that is required to be given or that may be given by the Committee is duly given if sent by post in a letter addressed to the person at the person's place of residence or business in New South Wales last known to the Committee.

5 Authentication of certain documents

22. Every summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Committee may be sufficiently authenticated without the seal of the Committee if signed by—

- 10 (a) the Chairperson; or
 (b) a person authorised to do so by the Chairperson.

Recovery of charges etc. by Committee

23. Any charge, fee or money due to the Committee may be recovered by the Committee as a debt in a court of competent jurisdiction.

15 Authority of Federation

24. A 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 of the function would not be authorised by the rules of the Federation, be exercised by the Federation as if it had been so authorised.

20 Proof of certain matters not required

25. In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) the constitution of the Committee;
 (b) any resolution of the Committee;
 25 (c) the appointment of, or the holding of office by, any member; or
 (d) the presence of a quorum at any meeting of the Committee.

Evidence

26. In any legal proceedings—

- 30 (a) any notification, requisition, demand, order or other document in writing, purporting to be signed or made or sent by the Committee, the Chairperson, the Secretary of the Committee or the Minister shall be judicially noticed;

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- (b) 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 under this Act by the Committee, is, until the contrary is proved—
- 5 (i) evidence of the matters contained in the proclamation, advertisement or notice; and
- (ii) evidence that all steps necessary to be taken prior to the making of the proclamation or publication of the advertisement or notice were duly taken;
- 10 (c) the averment on behalf of the Committee—
- (i) 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;
- (ii) that any place is a place in New South Wales; or
- 15 (iii) that any person was or is a banana grower,
- is, until the contrary is proved, evidence of that fact; and
- (d) a certificate purporting—
- (i) to be signed by the prescribed officer of the Committee; and
- 20 (ii) 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,
- is, without proof of the signature of the person purporting to sign the certificate or that the person is the prescribed officer, prima facie evidence of the matters certified in and by the certificate.

25 Offences—generally

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

Offences by corporations

28. (1) If a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

10 (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Proceedings for offences

29. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Penalty

30. 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 \$2,000.

Regulations

31. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) any of the functions of the Minister or the Committee under this Act;
- (b) the use and custody of the seal of the Committee;
- 30 (c) the taking of any poll, including the method of voting at a poll;
- (d) matters concerning the compilation and revision of lists of banana growers required to vote at any poll;
- (e) matters concerning the method of determining the qualification of banana growers eligible to vote at any poll;

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- (f) the manner in which the results of a poll taken under this Act shall be notified; and
- (g) prescribing forms to be used for the purposes of this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding \$1,000.
- (3) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- 10 (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.

Savings, transitional and other provisions

32. Schedule 3 has effect.

15 Repeals

33. Each Act specified in Schedule 4 is, to the extent indicated, repealed.

Amendment of Act No. 152, 1983

34. The Public Finance and Audit Act 1983 is amended by omitting from Schedule 2 the words "Banana Marketing Control Committee" and
20 by inserting instead the words "Banana Industry Committee".

SCHEDULE 1

(Sec. 3 (4))

PROVISIONS RELATING TO THE MEMBERS OF THE COMMITTEE**Term of office**

- 25 1. Subject to this Schedule, a member appointed by the Minister shall hold office for such period, not exceeding 5 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

*Banana Industry 1987***Remuneration**

2. (1) A member, not being an officer of the Public Service, is entitled to be paid such remuneration as the Committee may, with the approval of the Minister, from time to time determine.

5 (2) A member is entitled to be paid such allowances as the Committee may, with the approval of the Minister, from time to time determine.

Filling of vacancy in office of member

3. If the office of any member appointed by the Minister becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

10 Casual vacancies

4. (1) A member appointed by the Minister shall be deemed to have vacated office if the member—

- (a) dies;
- 15 (b) absents himself or herself from 4 consecutive ordinary meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Committee for being absent from those meetings;
- 20 (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- 25 (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- 30 (f) resigns the office by instrument in writing addressed to the Minister;
- (g) is removed from office by the Minister under subclause (2); or
- (h) being the member referred to in section 3 (3) (a), ceases to be an officer of the Public Service.

(2) The Minister may remove a member appointed by the Minister from office.

35 Effect of certain other Acts

5. (1) If by or under any other Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

*Banana Industry 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE COMMITTEE—*continued*

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision shall not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable
5 to the person under this Act as a member.

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

Liability of members etc.

6. No matter or thing done by the Committee, any member or any person acting under
10 the direction of the Committee shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

SCHEDULE 2

(Sec. 3 (5))

15 PROVISIONS RELATING TO THE PROCEDURE OF THE COMMITTEE

General procedure

1. 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 the regulations, be as determined by the Committee.

20 **Quorum**

2. A majority of the members for the time being shall form a quorum for a meeting of the Committee.

Chairperson

3. (1) If the Chairperson ceases to be a member of the Committee or resigns office
25 as Chairperson, the members shall elect some other member to be Chairperson.

(2) The Chairperson or, in the absence of the Chairperson, a member elected to chair the meeting by the members present shall preside at a meeting of the Committee.

(3) The person presiding at any meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

30 **Voting**

4. A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present shall be the decision of the Committee.

*Banana Industry 1987*SCHEDULE 2—*continued*PROVISIONS RELATING TO THE PROCEDURE OF THE COMMITTEE—
*continued***Minutes**

5. The Committee shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Committee.

SCHEDULE 3

5

(Sec. 32)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Interpretation

1. In this Schedule, “the 1969 Act” means the Banana Industry Act 1969.

Continuity of corporation

10 2. The Banana Industry Committee is a continuation of, and the same legal entity as, the Banana Marketing Control Committee.

Existing members of Banana Marketing Control Committee

15 3. (1) The persons holding office, immediately before the date of assent to this Act, as members of the Banana Marketing Control Committee under section 7 (2) (a) and (b) of the 1969 Act shall, on and from that date, be deemed to have been duly appointed as members of the Banana Industry Committee under section 3 (3) (a) and (b), respectively, of this Act and shall, subject to this Act, hold office for a term of 5 years commencing on that date.

20 (2) The person who, immediately before the date of assent to this Act, was the Chairman of the Banana Marketing Control Committee shall, on and from that date, subject to this Act, be the Chairperson of the Committee.

Construction of references

25 4. On and from the date of assent to this Act, a reference in any other Act or in any regulation, by-law or other statutory instrument or in any other document, whether of the same or a different kind, to the Banana Marketing Control Committee shall be read as a reference to the Banana Industry Committee.

Temporary use of the name “Banana Marketing Control Committee”

30 5. Notwithstanding this Act, the Committee may, for a period not exceeding 1 month after the date of assent to this Act, continue to carry on business under the name of the “Banana Marketing Control Committee”.

*Banana Industry 1987*SCHEDULE 3—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Lists of banana growers**

6. A list of banana growers compiled under section 6 of the 1969 Act, being the list as constituted immediately before the date of assent to this Act, shall be deemed to have been compiled under section 12 of this Act.

5 Charge on bananas

7. A charge imposed under section 11 of the 1969 Act shall be deemed to have been imposed under section 7 of this Act.

Directions issued by the Committee

10 8. A direction given under section 12 of the 1969 Act and in force immediately before the date of assent to this Act shall be deemed to have been given under section 9 of this Act.

Regulations under the 1969 Act

9. (1) Any regulations made under the 1969 Act and in force immediately before the date of assent to this Act shall be deemed to be regulations made under this Act.

15 (2) A regulation to which subclause (1) applies made for the purposes of a specified provision of the 1969 Act shall be deemed to be made for the provision of this Act which corresponds to the specified provision of the 1969 Act.

Regulations

20 10. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later date.

25 (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of publication; or

30 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.

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SCHEDULE 4

(Sec. 33)

REPEALS

Banana Industry Act 1969 No. 38—the whole Act

5 Supreme Court Act 1970 No. 52—so much of the Second Schedule as amends Act No. 38, 1969

Miscellaneous Acts (Public Finance and Audit) Repeal and Amendment Act 1983 No. 153—so much of Schedule 2 as amends Act No. 38, 1969





BANANA INDUSTRY ACT 1987 No. 66

NEW SOUTH WALES



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BANANA INDUSTRY ACT 1987 No. 66

NEW SOUTH WALES



Act No. 66, 1987

An Act to enable the provision of services to the banana industry; to constitute the Banana Industry Committee and to define its functions; to authorise the Committee to determine and fix charges and fees for services; to repeal the Banana Industry Act 1969; to amend the Public Finance and Audit Act 1983; and for other related purposes. [Assented to 3 June 1987]

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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 1
PRELIMINARY

Short title

1. This Act may be cited as the "Banana Industry Act 1987".

Interpretation

2. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"advertisement" means an advertisement published in the official journal of the Federation;

"banana grower" means a person by whom or on whose behalf bananas are grown on a plantation (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;

"bananas" means bananas growing or grown in New South Wales, and includes banana plants and all parts of banana plants;

"Chairperson" means the Chairperson of the Committee;

"Committee" means the Banana Industry Committee constituted by this Act;

"Federation" means the Banana Growers Federation Co-operative Limited, a society registered under the Co-operation Act 1923;

"marketing", in relation to bananas or banana products, means—

- (a) the harvesting, preparation, processing and packing of bananas or banana products for sale;
- (b) the shipping, transporting, storing, ripening and handling of bananas or banana products for sale;
- (c) the transmission of bananas or banana products from a banana grower to another person;
- (d) the sale of bananas or banana products; and

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(e) all actions or things connected with or incidental to any of the foregoing;

“member” means a member of the Committee;

“plantation” means a parcel of land on which bananas are grown having—

(a) if no minimum area is prescribed under paragraph (b)—a minimum area of 0.5 hectares; or

(b) such minimum area as may be prescribed;

“poll” means a poll taken, in accordance with this Act and the regulations, among banana growers;

“proclamation” means a proclamation published in the Gazette;

“regulation” means a regulation made under this Act;

“sell” includes barter and exchange.

(2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) The Chairperson may be referred to as the Chairman or Chairwoman.

PART 2

BANANA INDUSTRY COMMITTEE

The Committee

3. (1) There is constituted by this Act a corporation under the corporate name of the “Banana Industry Committee”.

(2) The Committee is not, for any purpose, a statutory body representing the Crown.

(3) The Committee shall consist of—

(a) 1 officer of the Public Service appointed by the Minister;

(b) 1 person appointed by the Minister; and

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- (c) the persons for the time being holding office as members of the Board of Directors of the Federation.
- (4) Schedule 1 has effect with respect to the members.
- (5) Schedule 2 has effect with respect to the procedure of the Committee.

Dissolution of Committee

4. (1) If a poll is taken and is 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 6 months after the taking of the poll, proceed to be wound up.

(2) The Committee shall wind up its affairs unless, by the same or a subsequent proclamation, the Governor appoints a liquidator to wind up the affairs of the Committee.

(3) Upon the appointment of a liquidator, the members shall cease to act as 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 such of the functions of the Committee;
- (b) bring and defend such proceedings; and
- (c) do and execute such other acts and things,

as the liquidator thinks fit.

(4) A liquidator shall receive such remuneration as the Governor determines.

(5) The Governor may, by proclamation published at any time after the day appointed under subsection (1), declare the Committee to be dissolved.

(6) The dissolution of the Committee shall take effect on the date of publication of the proclamation under subsection (5) or a later date specified in the proclamation.

(7) On the dissolution of the Committee, all money and other assets of the Committee—

- (a) shall vest in Her Majesty; and
 - (b) shall be dealt with and disposed of as the Governor may direct.
-

PART 3

FUNCTIONS OF THE COMMITTEE

Functions of the Committee

5. The Committee may—

- (a) provide facilities, material or advice to banana growers, wholesalers or retailers relating to the marketing of bananas or banana products;
- (b) establish a system of quality control for bananas;
- (c) regulate and supervise the marketing of bananas;
- (d) regulate the transportation of bananas from a plantation to a railhead or market;
- (e) advertise and promote bananas and banana products;
- (f) control, or develop means for controlling, pests and diseases if there is a likelihood that those pests and diseases may affect the quality or volume of output of bananas;
- (g) carry out research in relation to any matter if, in the Committee's opinion, that research is of advantage to banana growers;
- (h) conduct educational or instructional programmes relating to the production and marketing of bananas;
- (i) develop and expand markets for bananas in New South Wales and elsewhere;
- (j) establish a voluntary insurance scheme for the benefit of banana growers, including insurance relating to crops and equipment;
- (k) undertake and provide banana market forecasting;
- (l) establish systems of inspection of bananas for the purpose of quality control or pest and disease control;
- (m) establish systems to facilitate inspection of the ripening, weighing, grading, packaging and storage of bananas, including weight and uniformity (including uniformity of ripeness) within packages;
- (n) promote or operate schemes which, in the Committee's opinion, will assist the orderly marketing of bananas;
- (o) support, with or without grant of financial aid and whether or not initiated by the Committee, any scheme or activity which, in the Committee's opinion, is capable of assisting in the promotion or sale of bananas;

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- (p) provide such other services as the Minister may authorise or direct; and
- (q) arrange for the provision of any of the services or the exercise of any of the functions referred to in the preceding paragraphs, in whole or part, by any other person.

Further functions of the Committee

- 6. The Committee may—
 - (a) buy, acquire, sell or supply bananas, whether grown in New South Wales or elsewhere;
 - (b) buy or acquire equipment and supplies to sell or supply to banana growers or other persons for use in relation to the production or marketing of bananas or for associated purposes;
 - (c) trade in, for cash or on terms, equipment and supplies for use in relation to the production or marketing of bananas or for associated purposes;
 - (d) by its agents and servants, inspect bananas at any stage of their production or marketing, and at any reasonable time on production of the prescribed written evidence of the agent's or servant's authority, enter for that purpose any land (not being a dwelling-house) on which bananas are grown, stored or handled;
 - (e) by its agents and servants, treat, withhold, remove, destroy or withdraw from the market bananas which, in the Committee's opinion, are damaged, overripe or otherwise unfit or inappropriate for sale;
 - (f) by advertisement, exempt a banana grower in any particular case from any of the provisions of this Act or the regulations on such terms and conditions as it considers appropriate;
 - (g) by its agents and servants, spray or otherwise treat bananas;
 - (h) by its agents and servants, at any reasonable time on production of the prescribed written evidence of the agent's or servant's authority, inspect ripening rooms and other premises (not being a dwelling-house) which are used for the storage, handling or ripening of bananas;
 - (i) by advertisement, declare localities in which bananas are grown;

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- (j) 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;
- (k) acquire land, machinery and plant (including refrigerating machinery and plant and machinery and plant suitable for the ripening of bananas), goods, chattels and effects;
- (l) 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;
- (m) subject to sections 7 and 8 in the case of the supply of a service, impose a charge or charge a fee whenever the Committee supplies any service, product or commodity or gives any permission;
- (n) appoint, employ or authorise agents, officers, servants and other persons;
- (o) arrange for financial accommodation with any bank, or with any other institution or person approved by the Governor, and give such securities for any such financial accommodation as may be required;
- (p) make such arrangements as it deems necessary with regard to sales of bananas for export or for consignment to other countries or States for oversea ships' stores; and
- (q) enter into and carry out such contracts and do and suffer such other acts as may be necessary or expedient for the exercise or discharge of its functions under this Act.

Power to impose charges in relation to services

7. (1) The Committee may determine the cost or estimated cost of providing any service which it is authorised by this Act to provide, and, with the approval of the Minister, may impose on banana growers a charge in relation to the provision of any such service.

- (2) A charge imposed under this section—
 - (a) shall be at the same rate in relation to all banana growers in a particular locality declared under section 6 (i); and
 - (b) may be at different rates in relation to banana growers in different localities so declared.

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- (3) The Committee shall not impose a charge under this section unless—
- (a) it has given notice by advertisement of its intention to impose the charge and has specified in the advertisement the amount of the proposed charge;
 - (b) it has taken a poll of those banana growers on whom it is proposed to impose the charge, if it is requested to do so by a petition, lodged with the Committee within 30 days after the publication of the advertisement, by not less than 100 banana growers;
 - (c) the poll is in favour of the imposition of the charge; and
 - (d) not earlier than 30 days after the publication of the advertisement, a further advertisement is published identifying (by name or general reference) the banana growers by whom the charge is payable and specifying—
 - (i) the amount of the charge;
 - (ii) the day (being a day not earlier than the day of publication of the further advertisement) on and from which the charge shall be imposed; and
 - (iii) that the requirements of this section have been complied with.
- (4) A charge imposed under this section shall become due and payable by a grower not earlier than 14 days after the day on which the grower receives notice, in writing, from the Committee indicating that the charge has been imposed and not later than the date specified in the notice.
- (5) The proceeds of a charge imposed under this section by the Committee shall be deposited into a special fund and applied exclusively for the provision of the service in relation to which the charge was imposed.
- (6) Nothing in subsection (5) prevents the Committee—
- (a) from allocating from a special fund an amount to be applied in defraying the proper costs and expenses of the Committee incurred—
 - (i) in providing the service in relation to which the charge was imposed; or
 - (ii) in the exercise of the functions conferred or imposed on it by this Act in relation to the provision of the service; or

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- (b) with the approval of the Minister or a person nominated by the Minister, from allocating from a special fund—
- (i) to another special fund; or
 - (ii) to the general fund of the Committee,
- any amount which is no longer required to be applied for the provision of the service in relation to which the charge was imposed.

Charges for services provided at person's request

8. (1) If the Committee provides a service to a person at the person's request, the Committee may determine the amount of the fee to be charged for the provision of the service.

(2) Section 7 does not apply to or in respect of a fee charged under this section.

Power of Committee to issue directions

9. (1) To facilitate the provision under this Act of services to banana growers by the Committee, the Committee may give a direction—

- (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 person 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 marketing—
 - (i) shall be handled and dealt with only under the instructions and with the authority of the Committee; or
 - (ii) shall be consigned or delivered only to a specified person or a specified class, or specified classes, of persons; or
- (c) that bananas shall be treated, handled or packed by a banana grower in such manner as may be specified in the direction.

(2) A direction—

- (a) may be expressed to extend to all bananas or to a specified class, or to specified classes, of bananas;
- (b) may be expressed to extend throughout the State or to any specified part or locality within specified boundaries;

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-
- (c) may be expressed to extend to the marketing of bananas or only to specified aspects of marketing; and
 - (d) shall specify the length of the period for which the direction is to remain in force.
- (3) A direction 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 and without appeal to any court or tribunal.
- (4) 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.
- (5) The Committee shall not give a direction under this section unless—
- (a) it has published an advertisement giving notice of its intention to give the direction, setting forth the proposed direction, and specifying the length of the period for which the direction is proposed to remain in force;
 - (b) it has taken a poll on the question whether the direction should be given, if it is requested to do so by a petition, lodged with the Committee within 30 days after the publication of the advertisement, by not less than 100 banana growers; and
 - (c) the poll is in favour of the direction being given.
- (6) Subject to subsections (1), (2) and (3), the Committee may give the direction specified in the advertisement under subsection (5) by publishing, not earlier than 30 days after publication of that advertisement, a further advertisement—
- (a) specifying that the provisions of this section have been complied with in respect of the direction;
 - (b) setting forth the direction;

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- (c) specifying the day (being a day not earlier than the day of publication of the further advertisement) on and from which the direction is to take effect; and
 - (d) specifying the length of the period for which the direction is to remain in force.
- (7) A person (other than a person exempt from the direction) who—
- (a) fails to comply with or contravenes any provision of a direction;
 - (b) buys or accepts delivery of bananas from any person who sells or delivers those bananas in contravention of 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 a direction,
- is, if the person is—
- (d) a banana grower; or
 - (e) a person associated with the marketing of bananas, 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,
- guilty of an offence against this Act.
- (8) A direction may be revoked by the Committee by advertisement.

Dispute as to necessity for direction

10. (1) A question or dispute between the Committee and a banana grower as to whether or not any matter with regard to which the Committee is exercising or proposes to exercise any of its functions ought to be made the subject of a direction under section 9 shall be referred by the Committee to the Minister for determination.

(2) The Minister's determination shall be final and without appeal to any court or tribunal.

Power to require information

11. (1) To facilitate the provision under this Act of services to banana growers by the Committee, the Committee may—

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

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

to furnish in writing to the Committee, within a time specified for the purpose in the advertisement or notice, such information in relation to bananas and banana products as is specified in the advertisement or notice.

(2) An advertisement or notice may require—

- (a) particulars of bananas by reference to type, variety, grade, quality, quantity, the locality in which they were grown and the identity of the banana grower or supplier;
- (b) particulars of the area of land on which the bananas by or on behalf of the person to whom the advertisement or notice is directed are grown; or
- (c) in the case of a banana grower—
- (i) particulars of the number of plants by reference to age, type and variety which the grower 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 the grower expects to produce for the purpose of sale within any period specified in the advertisement or notice.

(3) A 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 the person's knowledge is false or misleading in a material particular,

is guilty of an offence against this Act.

PART 4

POLLS OF BANANA GROWERS

List of banana growers

12. (1) For the purposes of a poll, the Minister shall cause a list to be compiled, in accordance with the regulations, of banana growers (other than banana growers who, under section 15, are not entitled to vote in a poll).

(2) If, after application made in accordance with the regulations for the purpose, the name of a person is not included in the list, that person may apply as prescribed to a Local Court for an order that the person's name be included in the list.

(3) The Local Court 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; or
- (b) dismiss the application.

(4) Upon an order being made under subsection (3) (a), the name of the applicant shall be included in the list.

(5) If the name of a person appears on the list for a poll and the person fails to vote at the poll, the person is liable to a penalty not exceeding \$10.

(6) If the name of a person does not appear on the list compiled under this section for a poll and the person votes at the poll, the person is guilty of an offence against this Act.

Poll for purposes of s. 7 or 9

13. A poll for the purposes of section 7 or 9—

- (a) shall be taken by the Committee on a day notified by the Committee by advertisement for the purpose or, if the Committee by a subsequent advertisement notifies a later day for the purpose, on that later day; and
- (b) shall not 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.

Poll for dissolution of the Committee

14. A poll at which the question to be decided is whether the Committee should be dissolved—

- (a) shall be taken only at the request, by petition to the Governor, of not less than 100 persons whose names are, or who are entitled to have their names, included in a list compiled under section 12;
- (b) shall, where so requested, be taken on a day notified by the Governor for the purpose by proclamation, being a day not earlier than 30 days after publication of the proclamation or, if the Governor by a subsequent proclamation notifies a later day for the purpose, on that later day;
- (c) shall not 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
- (d) shall not, if 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, in accordance with the regulations, for the costs and expenses of the poll.

Voting in a poll

15. For the purposes of a poll, if 2 or more persons are banana growers in relation to one plantation—

- (a) only one of them is entitled to vote in the poll;
- (b) both or all of them may, by agreement, nominate in writing which of them is entitled to vote; and
- (c) if a nomination is not made under paragraph (b), the Chairperson shall determine the person who is entitled to vote.

Costs and expenses of poll

16. 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.

PART 5
GENERAL

Financial year of the Committee

17. The financial year of the Committee is—

- (a) if no period is prescribed as referred to in paragraph (b)—the year commencing on 1 July; or
- (b) the period prescribed for the purposes of this section.

Annual report

18. The Committee shall prepare an annual report in accordance with the Annual Reports (Statutory Bodies) Act 1984.

Minister may require further reports

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

Committee not to be concerned in party politics

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

Service of documents

21. (1) A document may be served on the Committee by leaving it at, or by sending it by post to, the Committee's office.

(2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Committee in a manner not provided for in subsection (1).

(3) Except where this Act otherwise provides, a notice that is required to be given or that may be given by the Committee is duly given if sent by post in a letter addressed to the person at the person's place of residence or business in New South Wales last known to the Committee.

Authentication of certain documents

22. Every summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Committee may be sufficiently authenticated without the seal of the Committee if signed by—

- (a) the Chairperson; or
- (b) a person authorised to do so by the Chairperson.

Recovery of charges etc. by Committee

23. Any charge, fee or money due to the Committee may be recovered by the Committee as a debt in a court of competent jurisdiction.

Authority of Federation

24. A 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 of the function would not be authorised by the rules of the Federation, be exercised by the Federation as if it had been so authorised.

Proof of certain matters not required

25. In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) the constitution of the Committee;
- (b) any resolution of the Committee;
- (c) the appointment of, or the holding of office by, any member; or
- (d) the presence of a quorum at any meeting of the Committee.

Evidence

26. In any legal proceedings—

- (a) any notification, requisition, demand, order or other document in writing, purporting to be signed or made or sent by the Committee, the Chairperson, the Secretary of the Committee or the Minister shall be judicially noticed;

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(b) 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 under this Act by the Committee, is, until the contrary is proved—

(i) evidence of the matters contained in the proclamation, advertisement or notice; and

(ii) evidence that all steps necessary to be taken prior to the making of the proclamation or publication of the advertisement or notice were duly taken;

(c) the averment on behalf of the Committee—

(i) 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;

(ii) that any place is a place in New South Wales; or

(iii) that any person was or is a banana grower,

is, until the contrary is proved, evidence of that fact; and

(d) a certificate purporting—

(i) to be signed by the prescribed officer of the Committee; and

(ii) 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,

is, without proof of the signature of the person purporting to sign the certificate or that the person is the prescribed officer, prima facie evidence of the matters certified in and by the certificate.

Offences—generally

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

Offences by corporations

28. (1) If a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Proceedings for offences

29. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Penalty

30. 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 \$2,000.

Regulations

31. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) any of the functions of the Minister or the Committee under this Act;
- (b) the use and custody of the seal of the Committee;
- (c) the taking of any poll, including the method of voting at a poll;
- (d) matters concerning the compilation and revision of lists of banana growers required to vote at any poll;
- (e) matters concerning the method of determining the qualification of banana growers eligible to vote at any poll;

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- (f) the manner in which the results of a poll taken under this Act shall be notified; and
- (g) prescribing forms to be used for the purposes of this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding \$1,000.
- (3) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.

Savings, transitional and other provisions

32. Schedule 3 has effect.

Repeals

33. Each Act specified in Schedule 4 is, to the extent indicated, repealed.

Amendment of Act No. 152, 1983

34. The Public Finance and Audit Act 1983 is amended by omitting from Schedule 2 the words “Banana Marketing Control Committee” and by inserting instead the words “Banana Industry Committee”.

SCHEDULE 1

(Sec. 3 (4))

PROVISIONS RELATING TO THE MEMBERS OF THE COMMITTEE**Term of office**

1. Subject to this Schedule, a member appointed by the Minister shall hold office for such period, not exceeding 5 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

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Remuneration

2. (1) A member, not being an officer of the Public Service, is entitled to be paid such remuneration as the Committee may, with the approval of the Minister, from time to time determine.

(2) A member is entitled to be paid such allowances as the Committee may, with the approval of the Minister, from time to time determine.

Filling of vacancy in office of member

3. If the office of any member appointed by the Minister becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Casual vacancies

4. (1) A member appointed by the Minister shall be deemed to have vacated office if the member—

- (a) dies;
- (b) absents himself or herself from 4 consecutive ordinary meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Committee for being absent from those meetings;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) resigns the office by instrument in writing addressed to the Minister;
- (g) is removed from office by the Minister under subclause (2); or
- (h) being the member referred to in section 3 (3) (a), ceases to be an officer of the Public Service.

(2) The Minister may remove a member appointed by the Minister from office.

Effect of certain other Acts

5. (1) If by or under any other Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

*Banana Industry 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE COMMITTEE—*continued*

- (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision shall not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

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

Liability of members etc.

6. No matter or thing done by the Committee, any member or any person acting under the direction of the Committee shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

SCHEDULE 2

(Sec. 3 (5))

PROVISIONS RELATING TO THE PROCEDURE OF THE COMMITTEE

General procedure

1. 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 the regulations, be as determined by the Committee.

Quorum

2. A majority of the members for the time being shall form a quorum for a meeting of the Committee.

Chairperson

3. (1) If the Chairperson ceases to be a member of the Committee or resigns office as Chairperson, the members shall elect some other member to be Chairperson.

(2) The Chairperson or, in the absence of the Chairperson, a member elected to chair the meeting by the members present shall preside at a meeting of the Committee.

(3) The person presiding at any meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present shall be the decision of the Committee.

*Banana Industry 1987*SCHEDULE 2—*continued*PROVISIONS RELATING TO THE PROCEDURE OF THE COMMITTEE—
*continued***Minutes**

5. The Committee shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Committee.

SCHEDULE 3

(Sec. 32)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Interpretation

1. In this Schedule, "the 1969 Act" means the Banana Industry Act 1969.

Continuity of corporation

2. The Banana Industry Committee is a continuation of, and the same legal entity as, the Banana Marketing Control Committee.

Existing members of Banana Marketing Control Committee

3. (1) The persons holding office, immediately before the date of assent to this Act, as members of the Banana Marketing Control Committee under section 7 (2) (a) and (b) of the 1969 Act shall, on and from that date, be deemed to have been duly appointed as members of the Banana Industry Committee under section 3 (3) (a) and (b), respectively, of this Act and shall, subject to this Act, hold office for a term of 5 years commencing on that date.

(2) The person who, immediately before the date of assent to this Act, was the Chairman of the Banana Marketing Control Committee shall, on and from that date, subject to this Act, be the Chairperson of the Committee.

Construction of references

4. On and from the date of assent to this Act, a reference in any other Act or in any regulation, by-law or other statutory instrument or in any other document, whether of the same or a different kind, to the Banana Marketing Control Committee shall be read as a reference to the Banana Industry Committee.

Temporary use of the name "Banana Marketing Control Committee"

5. Notwithstanding this Act, the Committee may, for a period not exceeding 1 month after the date of assent to this Act, continue to carry on business under the name of the "Banana Marketing Control Committee".

*Banana Industry 1987*SCHEDULE 3—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Lists of banana growers**

6. A list of banana growers compiled under section 6 of the 1969 Act, being the list as constituted immediately before the date of assent to this Act, shall be deemed to have been compiled under section 12 of this Act.

Charge on bananas

7. A charge imposed under section 11 of the 1969 Act shall be deemed to have been imposed under section 7 of this Act.

Directions issued by the Committee

8. A direction given under section 12 of the 1969 Act and in force immediately before the date of assent to this Act shall be deemed to have been given under section 9 of this Act.

Regulations under the 1969 Act

9. (1) Any regulations made under the 1969 Act and in force immediately before the date of assent to this Act shall be deemed to be regulations made under this Act.

(2) A regulation to which subclause (1) applies made for the purposes of a specified provision of the 1969 Act shall be deemed to be made for the provision of this Act which corresponds to the specified provision of the 1969 Act.

Regulations

10. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.

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SCHEDULE 4

(Sec. 33)

REPEALS

Banana Industry Act 1969 No. 38—the whole Act

Supreme Court Act 1970 No. 52—so much of the Second Schedule as amends Act No. 38, 1969

Miscellaneous Acts (Public Finance and Audit) Repeal and Amendment Act 1983 No. 153—so much of Schedule 2 as amends Act No. 38, 1969



