

1993—No. 419

BANANA INDUSTRY ACT 1987—REGULATION

(Banana Industry Regulation 1993)

NEW SOUTH WALES



[Published in Gazette No. 94 of 27 August 1993]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Banana Industry Act 1987, has been pleased to make the Regulation set forth hereunder.

I. R. CAUSLEY, M.P.,
Minister for Agriculture and Fisheries.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Banana Industry Regulation 1993.

Commencement

2. This Regulation commences on 1 September 1993.

Definitions

3. (1) In this Regulation:

“**calling of the poll**”, in relation to a poll, means the date on which a notice is first published under clause 6 in respect of the poll;

“**close of enrolments**”, in relation to a poll, means the final time and date fixed by the returning officer for the close of enrolments in the poll;

“**close of exhibition of the list**”, in relation to a poll, means the final time and date fixed by the returning officer for the close of

“close of the poll”, in relation to a poll, means the final time and date fixed by the returning officer for the close of the poll;

“Committee” means the Banana Industry Committee constituted by the Act;

“Executive Officer” means the Executive Officer of the Committee;

“final list”, in relation to a poll, means the list prepared for the poll by the returning officer under Division 2 of Part 2;

“poll” means a poll under Part 4 of the Act;

“preliminary list”, in relation to a poll, means the list for the poll with which the returning officer is provided under clause 5;

“returning officer”, in relation to a poll, means the person appointed by the Committee as the returning officer for the poll;

“the Act” means the Banana Industry Act 1987.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

Returning officer

4. (1) The Committee may appoint the Electoral Commissioner as the returning officer for the purposes of any poll or class of polls.

(2) The Electoral Commissioner may delegate to any member of staff of the State Electoral Office any of the returning officer’s functions under this Regulation, other than this power of delegation.

PART 2—CONDUCT OF POLLS

Division 1—Calling of the poll

Committee to notify returning officer of proposed poll

5. (1) As soon as practicable after it is determined by the Committee that a poll should be held on any question, the Committee must cause notice of that fact to be given to the returning officer.

(2) The Committee must also provide the returning officer with:

- (a) a preliminary list of the persons who, in the opinion of the Executive Offices, are qualified to vote in the poll; and
- (b) an appropriately addressed label, or an appropriately addressed envelope for each person whose name is included in that list.

(3) The preliminary list:

- (a) must contain the full names (consecutively numbered and listed in alphabetical order) and addresses of the persons whose names are included in the list; and
- (b) must be certified by the Executive Officer in accordance with Form 1.

(4) This clause does not apply to a poll to be held as a consequence of an earlier poll that has failed if a preliminary list for the earlier poll has already been provided to the returning officer.

Notice of poll

6. (1) As soon as practicable after having been notified by the Committee that a poll is required to be held, the returning officer must cause notice that a poll is to be held:

- (a) to be published in at least 1 newspaper circulating generally throughout New South Wales; and
- (b) to be sent by post to each person whose name is included in the preliminary list for the poll.

(2) The following particulars must be included in the notice:

- (a) the question on which the poll is being conducted;
- (b) the time and date for the close of exhibition of the preliminary list;
- (c) the places where copies of the preliminary list will be exhibited;
- (d) the time and date for the close of enrolments;
- (e) the qualifications which entitle a person to vote;
- (f) the places where applications for enrolment and objections against enrolment may be lodged;
- (g) the time and date for the close of the poll.

(3) The close of exhibition of the list is not to be earlier than 14 days after the calling of the poll.

(4) The close of enrolments is not to be earlier than 7 days after the close of exhibition of the list or later than 14 days before the close of the poll.

(5) The close of the poll is not to be earlier than 35 days, or later than 42 days, after the calling of the poll.

Postponement of poll

7. (1) The returning officer may, by notice published in the same way as the notice stating that a poll is to be held, postpone (for a period not exceeding 14 days) the close of exhibition of the list, the close of enrolments or the close of the poll.

(2) The power conferred on a returning officer by this clause may be exercised more than once in respect of a poll.

Division 2—Preparation of final list**Exhibition of preliminary list**

8. The returning officer must cause copies of the preliminary list to be exhibited for public inspection:

- (a) at the places where applications for enrolment and objections against enrolment may be lodged; and
- (b) for a period of not less than 14 days ending at the close of exhibition of the list.

Applications for enrolment by persons not already enrolled

9. (1) A person whose name does not appear on the preliminary list for a poll may apply for enrolment in the final list for the poll.

(2) The application must be in Form 2 and must be lodged with the returning officer before the close of enrolments.

(3) On receipt of the application, the returning officer:

- (a) if satisfied that the applicant is entitled to enrolment, must accept the application and enter the name and address of the applicant in the final list for the poll; or
- (b) if not so satisfied, must reject the application and inform the applicant in writing that the application has been rejected; or
- (c) if the application is not in the proper form or is incomplete:
 - (i) must return the application to the applicant for correction or completion within a specified time; and
 - (ii) must consider the duly corrected or completed application in accordance with this clause.

(4) An application to a Local Court for an order referred to in section 12 (2) of the Act is to be in Form 3.

Objections to enrolment

10. (1) The returning officer and any person who is entitled to vote in a poll may object to the inclusion of the name of any person in the final list.

(2) An objection:

- (a) must be made in accordance with Form 4; and
- (b) must state the grounds on which the objection is made; and
- (c) must be signed by the objector; and
- (d) must be lodged with the returning officer (unless it is signed by the returning officer) before the close of enrolments.

(3) The returning officer must send particulars of an objection to the person to whom the objection relates.

(4) The person to whom an objection relates may lodge a written reply with the returning officer within 7 days after the date on which particulars of the objection were sent to the person.

(5) The returning officer must consider each objection, and any reply received within that 7 day period, and may make such inquiries as the returning officer thinks fit.

(6) The returning officer may accept or reject an objection.

(7) If the returning officer accepts an objection, the returning officer must exclude the name of the person to whom the objection relates from the final list for the poll and must inform the person and the objector, in writing, that the person's name is so excluded.

(8) If the returning officer rejects an objection, the returning officer inform the person to whom the objection relates and the objector, in writing, that the returning officer has rejected the objection.

(9) The returning officer may require a person who lodges an objection, or who replies to an objection, to verify the objection or reply by statutory declaration.

Postponement of poll not to affect final list

11. The validity of the final list for a poll is not affected by the postponement of the close of the poll by a notice published after the close of exhibition of the list remains the final list for the poll.

Division 3—The ballot**Printing of ballot-papers**

12. (1) The returning officer must, as soon as practicable after the close of enrolments in a poll, cause sufficient ballot-papers to be printed to enable a ballot-paper to be sent to each person whose name is included in the final list for the poll.

(2) A ballot-paper for a poll must contain:

- (a) the question to be voted on in the poll with the words “YES” and “NO”, together with appropriate spaces for the voter to indicate the voter’s intention with respect to the question; and
- (b) such directions as to the manner in which a vote is to be recorded and returned to the returning officer as the returning officer considers appropriate.

Distribution of ballot-papers

13. The returning officer must, as soon as practicable after the printing of the ballot-papers for a poll, send to each person included in the final list for the poll:

- (a) a ballot-paper that is initialled by the returning officer (or by a person authorised by the returning officer) or that bears a mark prescribed as an official mark for the purposes of section 122A (3) of the Parliamentary Electorates and Elections Act 1912; and
- (b) an unsealed envelope addressed to the returning officer and bearing on the back the words “FULL NAME AND ADDRESS OF VOTER” and “SIGNATURE OF VOTER”, together with appropriate spaces for the insertion of a name, address and signature.

Duplicate ballot-papers

14. (1) The returning officer may, at any time before the close of the poll, issue to a voter a duplicate ballot-paper and envelope if the voter satisfies the returning officer by statutory declaration:

- (a) that the original ballot-paper has been spoilt, lost or destroyed; and
- (b) that the voter has not already voted in the poll to which the ballot-paper relates.

(2) The returning officer is to maintain a record of all duplicate ballot-papers issued under this clause.

Recording of votes

15. In order to vote in a poll, a person:

- (a) must record a vote on the ballot-paper in accordance with directions shown on it; and
- (b) must place the completed ballot-paper (folded so that the vote cannot be seen) in the envelope addressed to the returning officer; and
- (c) must seal the envelope; and
- (d) must complete the person's full name and address on, and must sign, the back of the envelope; and
- (e) must return the envelope to the returning officer so as to be received before the close of the poll.

Division 4—The scrutiny**Receipt of ballot-papers**

16. (1) The returning officer must reject (without opening it) any envelope purporting to contain a ballot-paper if the envelope is not received by the returning officer before the close of the poll or is received unsealed.

(2) The returning officer must examine the name on the back of each remaining envelope and, without opening the envelope:

- (a) must accept the ballot-paper in the envelope and draw a line through the name on the final list for the poll that corresponds to the name on the back of the envelope, if satisfied that a person of that name is included in the list; or
- (b) must reject the ballot-paper in the envelope, if not so satisfied or if a name, address or signature does not appear on the back of the envelope.

(3) The returning officer may reject a ballot-paper without opening the envelope if, after making such inquiries as the returning officer thinks fit:

- (a) the returning officer is unable to identify the signature on the back of the envelope; or
- (b) it appears to the returning officer that the signature on the back of the envelope is not the signature of the person whose name and address appear on the back of the envelope.

Ascertaining result of poll

17. The result of a poll is to be ascertained by the returning officer as soon as practicable after the close of the poll.

Scrutiny of votes

18. (1) The scrutiny of votes in a poll is to be conducted as follows:

- (a) the returning officer is to produce, unopened, the envelopes containing the ballot-papers accepted for scrutiny;
- (b) the returning officer is then to open each such envelope, extract the ballot-paper and (without unfolding it) place it in a locked ballot-box;
- (c) when the ballot-papers from all such envelopes have been placed in the ballot-box, the returning officer is then to unlock the ballot-box and remove the ballot-papers;
- (d) the returning officer is then to examine each ballot-paper and reject those that are informal;
- (e) the returning officer is then to proceed to count the votes and ascertain the result of the election.

(2) At the scrutiny of votes in a poll, a ballot-paper must be rejected as informal:

- (a) if it is neither initialled by the returning officer (or by a person authorised by the returning officer to do so) nor bears a mark prescribed as an official mark for the purposes of section 122A (3) of the Parliamentary Electorates and Elections Act 1912; or
- (b) if it has on it any mark or writing which the returning officer considers could enable any person to identify the voter who completed it; or
- (c) if it has not been completed in accordance with the directions on it.

(3) However, a ballot-paper is not to be rejected as informal merely because of any mark or writing on it which is not authorised or required by this Regulation (unless it is a mark or writing referred to in subclause (2) (b)) if the returning officer considers that the voter's intention is clearly indicated on the ballot-paper.

(4) The result of the poll is to be ascertained by determining the following:

- (a) the number of votes accepted in the poll;
- (b) the number of votes in favour of the question on which the poll is being taken;
- (c) the number of votes against that question;
- (d) the number of votes rejected as informal.

Notification of result of poll

19. As soon as practicable after the result of a poll has been ascertained, the returning officer is to notify the Minister and the Executive Officer in writing of the result of the poll.

Division 5—Miscellaneous**Decisions of returning officer final**

20. If the returning officer is permitted or required by the Act or this Regulation to make a decision on any matter relating to the taking of a ballot in a poll, the decision of the returning officer on the matter is final.

Offences

21. A person must not:

- (a) vote, or attempt to vote, more than once in a poll; or
- (b) vote, or attempt to vote, in a poll in which the person is not entitled to vote.

Maximum penalty: 5 penalty units.

Costs and expenses of poll

22. The provision to be made for the costs and expenses of the Electoral Commissioner in conducting a poll must include:

- (a) payment, before the poll is conducted, of an amount equal to the Electoral Commissioner's estimate of the costs and expenses likely to be incurred by the Electoral Commissioner in conducting the poll; and
- (b) an undertaking to pay to the Electoral Commissioner, after the poll is conducted, any amount by which the actual costs and expenses incurred by the Electoral Commissioner in conducting the poll exceed the amount of the estimate.

PART 3—GENERAL**Evidence of authority of servant or agent of Committee**

23. For the purposes of section 6 (d) and (h) of the Act, the written evidence as to the authority of a servant or agent of the Committee is to be in the form of a certificate:

- (a) that states that it is issued under the Banana Industry Act 1987; and
- (b) that gives the name of the person to whom it is issued; and

- (c) that describes the nature of the powers conferred on the person; and
- (d) that states its date of expiry; and
- (e) that describes the kind of premises that the person is authorised to enter; and
- (f) that bears the seal of the Committee.

Evidentiary certificates

24. For the purposes of section 26 (d) (i) of the Act, the Executive Officer is the prescribed officer.

Repeal

25. (1) The Banana Industry Regulation 1969 is repealed.

(2) Any act, matter or thing that, immediately before the commencement of this Regulation, had effect under the Banana Industry Regulation 1969 is taken to have effect under this Regulation.

SCHEDULE 1—FORMS

Form 1

(Cl. 5)

CERTIFICATE

(BANANA INDUSTRY ACT 1987)

I certify that this list of banana growers contains the names (consecutively numbered and listed in alphabetical order) and addresses of those growers considered by me to be entitled to vote in the poll in relation to which this list has been prepared.

The first and last entries in the list are as follows:

First entry: No.: Name:

Address

Last entry: No.: Name:

Address:

Dated: Signed:

Form 2

(Cl. 9 (2))

APPLICATION FOR ENROLMENT

(BANANA INDUSTRY ACT 1987)

Surname:

Given names:

Postal address:

Postcode: Telephone No.:

Address of property where bananas are grown:

.....

Local government area in which the property is situated:

.....

I hereby apply for enrolment on the list of banana growers under the Banana Industry Act 1987.

I further declare that, to the best of my knowledge, the information contained in this application is true.

Dated: Signed:

Form 3

(Cl. 9 (4))

APPLICATION FOR INCLUSION ON LIST OF VOTERS

(BANANA INDUSTRY ACT 1987)

To the Clerk of the Local Court

at

WHEREAS the returning officer for a poll to be held under the Banana Industry Act 1987 has refused to include my name on the final list of voters for the poll,

AND WHEREAS I claim to be entitled to have my name included on that list,

I HEREBY APPLY to the Local Court referred to above for an order that my name be included in that list.

.....
(Signature of appellant)

Appellant's address for service:

.....
.....

To the returning officer,

There will be a hearing at the Local Court referred to above on the day of 19, for the purpose of ascertaining the state of readiness of this matter and, if appropriate, for the purpose of fixing a date for hearing.

.....\.....
(Clerk of the Local Court)

Form 4

(Cl. 10)

OBJECTION TO ENROLMENT

(BANANA INDUSTRY ACT 1987)

I hereby object to the inclusion in the final list for the following poll:

.....

(specify the poll to which the objection relates)

of the name of

(name in full)

of

(address)

This objection is based on the following grounds:

.....

.....

(specify the grounds of the objection)

Name of objector:

Postal address:

Postcode: Telephone No:

Dated: Signed:

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SCHEDULE 1—FORMS

EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, with minor changes, the provisions of the Banana Industry Regulation 1969. The new Regulation makes provision with respect to the following matters:

- (a) the calling of polls (Division 1 of Part 2);
- (b) the preparation of final lists of voters (Division 2 of Part 2);
- (c) the conduct of ballots (Division 3 of Part 2);
- (d) the scrutiny of votes in a poll (Division 4 of Part 2);
- (e) other matters relating to polls (Division 5 of Part 2);
- (f) other matters of a minor, consequential or ancillary nature (Parts 1 and 3).

This Regulation is made under the Banana Industry Act 1987, including section 31 (the general regulation making power) and sections 4, 7 and 9.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
