



New South Wales

# Banana Industry Amendment Act 1996 No 59

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New South Wales

# **Banana Industry Amendment Act 1996 No 59**

Act No 59, 1996

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An Act to amend the *Banana Industry Act 1987* to reconstitute the Banana Industry Committee; to amend the voting entitlements of banana growers; and for other purposes. [Assented to 19 September 1996]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Banana Industry Amendment Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Banana Industry Act 1987 No 66**

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

## Schedule 1 Amendments

(Section 3)

### [1] Section 2 Definitions

Insert “or an official publication of the Committee” after “Federation” in the definition of *advertisement* in section 2 (1).

### [2] Section 2 (1)

Insert in alphabetical order:

*election* means an election of a regional member of the Committee.

*region* means a region of the banana industry to be represented on the Committee.

*regional member* means a member of the Committee who represents a region.

### [3] Section 3 The Committee

Omit section 3 (3). Insert instead:

- (3) The Committee is to consist of
  - (a) 2 persons appointed by the Minister, and
  - (b) regional members.

### [4] Section 3A

Insert after section 3:

#### 3A Regions to be represented on Committee

- (1) The Minister may from time to time, on the recommendation of the Committee, by order published in the Gazette determine:
  - (a) the number of regions of the banana industry that are to be represented on the Committee, and
  - (b) the boundaries of those regions.

- (2) If at any time after the first determination is made under this section, a further determination is made that changes the boundaries of any of the regions:
- (a) an election of members to represent the regions *so* changed is required to be held in accordance with the regulations, and
  - (b) each of the regional members holding office in respect of a region so changed ceases to hold office on the election of the new regional members.
- (3) A regional member who ceases to hold office by virtue of this section is not entitled to any remuneration or compensation in respect of ceasing to hold office but is eligible (if otherwise qualified) for re-election to the Committee.

**[5] Section 5 Functions of Committee**

Insert after section 5 (o):

- (o1) support, with or without grant of financial aid and whether or not initiated by the Committee, any group or body that assists the Committee in the exercise of the Committee's functions under this Act,

**[6] Section 9 Power of Committee to issue directions**

Insert at the end of section 9 (7):  
Maximum penalty: 20 penalty units.

**[7] Section 11 Power to require information**

Insert at the end of section 11 (3):  
Maximum penalty: 20 penalty units.

**[8] Section 12 List of banana growers**

Omit subsections (1)–(4). Insert instead:

- (1) For the purposes of a poll, the Minister is to cause a list to be compiled, in accordance with the regulations, of banana growers who are entitled to vote in a poll and of the number of votes those banana growers are entitled to cast in the poll.
- (2) If, after application made in accordance with the regulations for the purpose, a person is not satisfied with the result of the application, that person may apply as prescribed to a Local Court for an order that the name of the person or a particular voting entitlement for the person be included in the list.
- (3) The Local Court has the 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 that a particular voting entitlement for the person be included in the list, or
  - (b) dismiss the application.
- (4) If an order is made under subsection (3) (a), the list is to be changed in the manner necessary to give effect to the order.

**[9] Section 12 (6)**

Insert at the end of the subsection:  
Maximum penalty: 20 penalty units.

**[10] Section 12A**

Insert after section 12:

**12A Voting entitlements of banana growers in poll**

- (1) A banana grower who is entitled to vote in a poll is entitled to cast a vote or votes at a poll according to the area of the plantation on which bananas are grown by or on behalf of the banana grower, as follows:

- (a) if the area of the plantation exceeds the minimum area but does not exceed 4 hectares—1 vote,
  - (b) if the area of the plantation exceeds 4 hectares but does not exceed 8 hectares—2 votes,
  - (c) if the area of the plantation exceeds 8 hectares—3 votes.
- (2) If bananas are grown by or on behalf of a banana grower on more than one plantation (whether or not in the same region), the number of votes the banana grower may cast is to be determined by reference to the total area of all plantations on which bananas are grown by or on behalf of the banana grower.
- (3) However, if there is more than one banana grower in relation to a plantation, the regulations may provide for the entitlement of those banana growers to vote and the number of votes (if any) that may be cast by each banana grower. A banana grower's entitlement to vote and the determination of the number of votes that the banana grower may cast in a poll is subject to any such regulations.
- (4) The maximum number of votes that may be cast by a banana grower in a poll (whether or not bananas are grown by or on behalf of the banana grower on more than one plantation) is 3 votes.
- (5) In this section:
- minimum area*, in relation to a plantation, means the minimum area prescribed for the purposes of paragraph (b) of the definition of *plantation* in section 2 (1) or, if no minimum area is prescribed, 0.5 hectares.

**[11] Section 14 Poll for dissolution of Committee**

Omit paragraph (d). Insert instead:

- (d) is not to be taken unless the Committee has first made provision, in accordance with the regulations, for the costs and expenses of the poll.

**[12] Section 15**

Omit the section. Insert instead:

**15 One banana grower to vote per plantation**

- (1) 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 respect of that plantation in the poll, and
  - (b) both or all of them may, by agreement, nominate in writing addressed to the Chairperson which of them is entitled to vote, and
  - (c) if a nomination is not made under paragraph (b), the Chairperson is to determine the person who is entitled to vote.
- (2) If a person is a banana grower in relation to more than one plantation, this section is subject to any regulations under section 12A. For example, the regulations may provide that if 2 or more persons are banana growers in relation to more than one plantation, only one of them is entitled to vote in the poll in respect of all or any of those plantations.

**[13] Section 15A**

Insert after section 15:

**15A Banana grower must be fully paid up to be entitled to vote in poll**

A person is not entitled to vote in a poll if the person has not paid all charges, fees and other amounts due and payable to the Committee under this Act in respect of the financial year last preceding the poll by the close of enrolments for the poll under the regulations.



**[14] Section 16 Costs and expenses of poll**

Omit the section.

**[15] Part 4A**

Insert after Part 4:

**Part 4A Election of regional members of Committee**

**16A Regional members to be elected**

- (1) A regional member is to be elected, in accordance with the regulations, by banana growers who are entitled to vote in the election for the region concerned.
- (2) One regional member is to represent each region.
- (3) The regulations may make provision for or with respect to the persons who are entitled to be nominated as candidates for election as regional members. A person's nomination is invalid if the person is not entitled to be so nominated.

**16B Banana growers who are entitled to vote in election**

- (1) Subject to this Part, a banana grower is entitled to vote in the election of a regional member if bananas are grown by or on behalf of the banana grower on a plantation that is situated within the region concerned.
- (2) If bananas are grown by or on behalf of a banana grower on plantations that are situated in different regions or on a plantation that is situated partly in one region and partly in another region, the banana grower is entitled to vote in an election in respect of one region only. That region is to be the region duly nominated by the banana grower or determined by the Chairperson under section 16C.

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**16C Nomination of region**

- (1) A banana grower who is otherwise entitled to vote in an election may at any time, by notice in writing given to the Chairperson, nominate the region in respect of which he or she intends to vote. The nomination is not valid unless the banana grower is a banana grower in relation to a plantation that is wholly or partly situated in that region.
- (2) The Chairperson may at any time, by notice in writing to a banana grower, require the banana grower to make such a nomination within the time specified in the notice.
- (3) If a nomination is not duly made within that time, the Chairperson is to determine the region in respect of which the banana grower is to vote (being a region in which a plantation is wholly or partly situated on which bananas are grown by or behalf of the banana grower). The Chairperson is to give notice of that determination to the banana grower as soon as practicable after it is made.
- (4) Once a nomination by, or determination with respect to, a banana grower is made under this section, it cannot be changed by further nomination or determination except in special circumstances approved by the Chairperson. For example, the Chairperson may approve a banana grower changing the region in which he or she is entitled to vote because the banana grower is no longer a banana grower in relation to a plantation situated in the region previously nominated.

**16D Voting entitlements of regional banana growers in election**

- (1) A banana grower who is entitled to vote in an election is entitled to cast a vote or votes in the election according to the area of the plantation on which bananas are grown by or on behalf of the banana grower, as follows:
  - (a) if the area of the plantation exceeds the minimum area but does not exceed 4 hectares—1 vote,

- (b) if the area of the plantation exceeds 4 hectares but does not exceed 8 hectares—2 votes,
  - (c) if the area of the plantation exceeds 8 hectares—3 votes.
- (2) If bananas are grown by or on behalf of a banana grower on more than one plantation (whether or not in the same region), the number of votes the banana grower may cast is to be determined by reference to the total area of all plantations on which bananas are grown by or on behalf of the banana grower.
- (3) However, if there is more than one banana grower in relation to a plantation, the regulations may provide for the entitlement of those banana growers to vote and the number of votes (if any) that may be cast by each banana grower. A banana grower's entitlement to vote and the determination of the number of votes that the banana grower may cast in an election is subject to any such regulations.
- (4) The maximum number of votes that may be cast by a banana grower in an election (whether or not bananas are grown by or on behalf of the banana grower on more than one plantation) is 3 votes.
- (5) In this section:  
*minimum area* has the same meaning as in section 12A.

#### **16E One banana grower to vote per plantation**

- (1) For the purposes of an election, if 2 or more persons are banana growers in relation to one plantation:
- (a) only one of them is entitled to vote in respect of that plantation in the election, and
  - (b) both or all of them may, by agreement, nominate in writing addressed to the Chairperson which of them is entitled to vote, and
  - (c) if a nomination is not made under paragraph (b), the Chairperson is to determine the person who is entitled to vote.

- (2) If a person is a banana grower in relation to more than one plantation, this section is subject to any regulations under section 16D. For example, the regulations may provide that if 2 or more persons are banana growers in relation to more than one plantation, only one of them is entitled to vote in the election in respect of all or any of those plantations.

**16F Banana grower must be fully paid up to be entitled to vote in election**

A person is not entitled to vote in an election if the person has not paid all charges, fees and other amounts due and payable to the Committee under this Act in respect of the financial year last preceding the election by the close of enrolments for the election under the regulations.

**16G List of regional banana growers**

- (1) For the purposes of an election, the Minister is to cause a list to be compiled, in accordance with the regulations, of banana growers entitled to vote in the election and the number of votes those banana growers are entitled to cast in the election.
- (2) The regulations may:
- (a) provide that it is compulsory for a banana grower, or a banana grower of a prescribed description, to apply for enrolment in the list compiled under this section for an election, and
  - (b) provide that it is compulsory for a banana grower enrolled in the list compiled under this section for an election to vote in the election, and
  - (c) impose a penalty not exceeding 0.1 penalty unit for contravention of such a provision.
- (3) If, after application made in accordance with the regulations for the purpose, a person is not satisfied with the result of the application, that person may apply as prescribed to a Local Court for an order that the name of the person or a particular voting entitlement for the person be included in the list.

- (4) The Local Court has the 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 that a particular voting entitlement for the person be included in the list, or
  - (b) dismiss the application.
- (5) If an order is made under subsection (4) (a), the list is to be changed in the manner necessary to give effect to the order.

#### **16H False voting**

If the name of a person does not appear on the list compiled under section 16G for an election and the person votes at the election, the person is guilty of an offence against this Act.

Maximum penalty: 20 penalty units.

#### **16I Failure of election**

If no candidates are duly nominated for election as a regional member, or if an election fails for any other reason, the Minister may appoint a person nominated by the Committee to be a member of the Committee and a person so appointed is taken to be a person elected as a regional member in accordance with the regulations.

#### **[16] Section 24A**

Insert after section 24:

#### **24A Liability of members and others**

Any matter or thing done or omitted to be done by the Committee, any member of the Committee or any person acting under the direction of the Committee does not, if the matter or thing was done or omitted to be 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.

**[17] Section 26 Evidence**

Insert “or an official publication of the Committee” after “official journal of the Federation” in section 26 (b).

**[18] Section 27 Offences—generally**

Omit the section.

**[19] Section 30 Penalty**

Omit the section.

**[20] Section 31 Regulations**

Insert “or the conduct of an election” after “poll” where firstly occurring in section 31 (1) (c).

**[21] Section 31 (1)**

Insert “or election” after “poll” wherever occurring, except where firstly occurring.

**[22] Section 31 (1) (d)**

Insert “or entitled” after “required”.

**[23] Section 31 (1) (e)**

Insert “and voting entitlements” after “qualification”.

**[24] Schedule 1 Provisions relating to the members of the Committee**

Insert at the end of clause 1:

- (2) A regional member holds office, subject to this Act, for a period of 3 years commencing on the date of election of the member or, in the case of a member elected to fill the office of a member whose term is about to expire, on the date of expiry of that member's term of office.
- (3) A regional member is eligible (if otherwise qualified) for re-election at the end of his or her term of office.

**[25] Schedule 1, clause 3A**

Insert after clause 3:

**3A Filling of vacancy in office of elected member**

- (1) If the office of a regional member becomes vacant under clause 4, a person is, subject to this Act, required to be elected to fill the vacancy. The member so elected holds office for the remainder of the term of office of the member whose office became vacant.
- (2) If the vacancy occurs within 12 months before the term of office of the regional member would have expired, the Minister may appoint a person nominated by the Committee to fill the office for the remainder of that term.
- (3) In a case referred to in subclause (2), the Committee is to nominate a person who is entitled to be nominated for election as a regional member under the regulations (if any).

**[26] Schedule 1, clause 4 (1)**

Omit "appointed by the Minister".

**[27] Schedule 1, clause 4 (1) (h)**

Omit the paragraph.

**[28] Schedule 1, clause 6**

Omit the clause.

**[29] Schedule 2 Provisions relating to the procedure of the Committee**

Omit clause 3. Insert instead:

**3 Chairperson of Committee**

- (1) The regional members of the Committee are to elect one regional member as Chairperson of the Committee.
- (2) The Chairperson holds office as Chairperson, subject to this Act, for a period of 12 months but is eligible (if otherwise qualified) for re-election.
- (3) If the Chairperson ceases to be a regional member of the Committee or resigns office as Chairperson, the regional members are to elect some other regional member to be Chairperson.
- (4) The Chairperson or, in the absence of the Chairperson, a regional member elected to chair the meeting by the regional members present is to preside at a meeting of the Committee.
- (5) 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] Schedule 3 Savings, transitional and other provisions**

Renumber clause 1 as clause 1A.

Insert before that clause (as so renumbered):

**Part 1 Regulations**

**1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

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- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than its date of 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 the 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) may, if the regulations so provide, have effect despite any other clause of this Schedule.

**Part 2 Provisions relating to enactment of this Act**

**[31] Schedule 3, clause 1A (as renumbered by item [30])**

Omit “Schedule”. Insert instead “Part”.

**[32] Schedule 3, clause 10**

Omit the clause.

**[33] Schedule 3, Part 3**

Insert after clause 9:

**Part 3 Provisions relating to Banana Industry  
Amendment Act 1996**

**10 Definition**

In this Part:

*amending Act* means the *Banana Industry Amendment Act 1996*.

**11 Members of Committee appointed by Minister**

The persons holding office as members of the Committee appointed by the Minister pursuant to section 3 (3) (a) and (b) (as in force immediately before the commencement of the amendment to section 3 made by the amending Act) are taken, on that commencement, to have been appointed as members of the Committee pursuant to section 3 (3) (a) (as in force on that commencement).

**12 Directors of Federation holding office as members of  
Committee**

- (1) A person who, immediately before the of the amendment to section 3 made by the amending Act, held office as a member of the Committee under

section 3 (3) (c) (as in force immediately before that commencement) ceases to hold that office on that commencement.

- (2) A person who ceases to hold office by virtue of this clause is not entitled to any remuneration or compensation in respect of ceasing to hold office but is eligible (if otherwise qualified) for re-appointment or election to the Committee.

**13 Directors of Federation to continue to act as members of Committee until regional members are elected**

- (1) This clause applies if, on the commencement of the amendment to section 3 made by the amending Act, no regional members have been elected to hold office as members of the Committee in accordance with Part 4A.
- (2) Until the regional members are first so elected, the persons who were members of the Committee under section 3 (3) (c) (as in force immediately before the commencement of the amendment to section 3 made by the amending Act) are appointed by this clause to act as members of the Committee.
- (3) While so acting, a person appointed by this clause has all the functions of a member of the Committee and is taken to be a member of the Committee.
- (4) The office of a person acting as a member of the Committee under this clause becomes vacant in the circumstances specified in clause 4 of Schedule 1.
- (5) A person acting as a member of the Committee under this clause ceases to hold office when the first regional members are elected to hold office on the Committee in accordance with Part 4A.

#### **14 Continuity of membership of Committee**

- (1) The Minister may, after considering any recommendation of the Committee, determine the terms of office of:
  - (a) each of the first regional members elected to hold office on the Committee pursuant to section 3 (as amended by the amending Act), and
  - (b) any regional member of the Committee who is elected pursuant to section 3A (2) (following a change in the boundaries of the regions to be represented on the Committee).
- (2) A regional member holds office, despite clause 1 (2) of Schedule 1 but subject to the other provisions of that Schedule, for the period specified by the Minister in that determination commencing on the date of election of the member.
- (3) The Minister is not required to specify the same term of office for each regional member but in any case the term of office must not be less than 1 year nor more than 4 years.
- (4) A determination under this clause with respect to a regional member cannot be varied by a further determination.

#### **15 Chairperson of Committee**

- (1) The member of the Committee who, immediately before the commencement of the amendment to section 3 made by the amending Act, held office as Chairperson of the Committee, ceases to hold office as Chairperson on the commencement of that amendment or, if no regional members have been elected to hold office on the Committee by that commencement, on the election of the first regional members of the Committee.

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- (2) The member is not entitled to any remuneration or compensation in respect of ceasing to hold that office but is eligible (if otherwise qualified) to be elected as Chairperson of the Committee.

[Minister's second reading speech made in—  
Legislative Assembly on 29 May 1996  
Legislative Council on 11 September 1996]