



New South Wales

Banana Industry Amendment Act 2000 No 94

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Banana Industry Amendment Act 2000 No 94

Act No 94, 2000

An Act to amend the *Banana Industry Act 1987* to alter the functions of the Banana Industry Committee to remove anti-competitive aspects consistently with National Competition Policy; to clarify the voting entitlements of banana growers in respect of elections for the Committee; and for other purposes. [Assented to 13 December 2000]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Banana Industry Amendment Act 2000*.

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 5 Functions of Committee

Insert “in which persons may voluntarily participate” after “bananas” in section 5 (b).

[2] Section 5 (c)

Omit the paragraph.

[3] Section 5 (d)

Omit the paragraph.

[4] Section 5 (f)

Omit the paragraph. Insert instead:

- (f) control, or develop means for controlling, pests or diseases if, in the Committee’s opinion, the pests or diseases pose a threat to the commercial viability of banana growers in the State,

[5] Section 5 (l)

Omit “quality control or pest and disease control”.

Insert instead “pest or disease control if, in the Committee’s opinion, the pest or disease poses a threat to the commercial viability of banana growers in the State”.

[6] Section 5 (m) and (n)

Omit the paragraphs.

[7] Section 6 Further functions of the Committee

Omit section 6 (a). Insert instead:

- (a) enter into and carry out agreements to buy, acquire, sell or supply bananas, whether grown in New South Wales or otherwise,

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

Omit the paragraphs.

[9] Section 6 (d)

Omit the paragraph. Insert instead:

- (d) by its agents and servants (but only in connection with the exercise of the Committee's functions, under section 5 or 6, in relation to pest or disease control):
 - (i) inspect bananas at any stage of their production or marketing, and
 - (ii) enter for that purpose at any reasonable time any land or premises (not being a dwelling-house) on which bananas are grown, stored, ripened or handled on production of the prescribed written evidence of the agent's or servant's authority,

[10] Section 6 (e)

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

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

[11] Section 6 (g)

Omit the paragraph.

[12] Section 6 (h)

Omit the paragraph.

[13] Section 6 (i)

Omit the paragraph. Insert instead:

- (i) by advertisement, declare localities in which bananas are grown for the purpose of facilitating the exercise of:
 - (i) the Committee's functions under section 5 or 6 relating to pest or disease control, or
 - (ii) the Committee's functions under section 7 (2) (a) or section 9 (2) (b), or

- (iii) any other of the Committee's administrative functions under this Act,

[14] Section 6 (l) and (la)

Omit section 6 (l). Insert instead:

- (l) erect, maintain, repair, operate and use buildings and all machinery connected with any such buildings,
- (la) regulate the use of buildings of any banana grower and all machinery connected with any such buildings for the purpose of controlling pests or diseases in bananas,

[15] Section 6 (p)

Insert "for persons who voluntarily participate in the arrangements" after "stores".

[16] Section 7 Power to impose charges in relation to services

Omit ", and, with the approval of the Minister," from section 7 (1).
Insert instead "and".

[17] Section 7 (6) (b)

Omit "with the approval of the Minister or a person nominated by the Minister,".

[18] Section 9

Omit the section. Insert instead:

9 Power of Committee to give directions

- (1) For the purposes of exercising any function of the Committee in relation to pest or disease control, the Committee may give a direction concerning the treatment, handling, packing or marketing of bananas that are or may be infested or infected by any pest or disease.

- (2) A direction:
- (a) may extend to all pests and diseases infesting or infecting bananas or to a specified class, or to specified classes, of pests or diseases infesting or infecting bananas or to all bananas or a specified class of bananas, and
 - (b) may extend throughout the State or to any specified part or locality within specified boundaries, and
 - (c) may extend to the method of treatment of land or bananas for any pest or disease or any other matter necessary to be specified in relation to the control of the pest or disease, and
 - (d) may specify the circumstances in which, and the terms and conditions on which, the direction does not apply, and
 - (e) must specify the period for which the direction is to remain in force.
- (3) The Committee may, at any time by notice in writing to any banana grower, exempt the grower from the operation of a direction or revoke the exemption of that grower.
- (4) The Committee must not give a direction under this section unless:
- (a) it has published an advertisement giving notice of its intention to give the direction, setting forth the proposed direction, and specifying the period for which the direction is proposed to remain in force, and
 - (b) it has taken a poll on the question of whether the direction should be given, if it is requested to do so by a petition, lodged with the Committee within 30 days after the publication of the advertisement, of not less than 100 banana growers, and
 - (c) the poll is in favour of the direction being given.
- (5) Subject to subsections (1) and (2), the Committee may give the direction specified in the advertisement under subsection (4) by publishing, not earlier than 30 days after publication of that advertisement, a further advertisement:

- (a) specifying that the provisions of this section have been complied with in respect of the direction, and
 - (b) setting forth the direction, and
 - (c) specifying the day (being a day not earlier than the day of publication of the further advertisement) on and from which the direction is to take effect, and
 - (d) specifying the period for which the direction is to remain in force.
- (6) Any of the following persons must comply with the provisions of a direction:
- (a) a banana grower (other than a person exempted from the direction),
 - (b) any other person associated with the marketing of bananas on whom the Committee has, by post, served a copy of the advertisement by which the direction was given.
- Maximum penalty: 20 penalty units.
- (7) A direction may be revoked by the Committee by advertisement.
- (8) A decision of the Committee as to whether a particular person, thing or activity falls within the limits of any circumstance referred to in subsection (2) (d) is final.

[19] Sections 11 and 11A

Omit section 11. Insert instead:

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

- (1) For the purposes of exercising any function of the Committee in relation to pest or disease control or the calculation of associated charges, the Committee:
 - (a) may, by advertisement, require all banana growers, or a specified class or classes of banana growers, whose crop, in the Committee's opinion, is or may be infested

- or infected by a pest or disease to furnish it in writing (within a time specified in the advertisement) with such information in relation to bananas and banana products as is specified in the advertisement, or
- (b) may, by notice sent by post, require a person associated with the marketing of bananas that, in the Committee's opinion, are or may be infested or infected by the pest or disease (whether or not the person is a banana grower) to furnish it in writing (within a time specified in the notice) with such information in relation to bananas and banana products as is specified in the notice.
- (2) An advertisement or notice may require any one or more of the following classes of information to be furnished:
- (a) particulars of bananas that are or may be affected by the pest or disease by reference to type, age, variety, grade, quality, quantity, the locality in which they were grown and the identity of the banana grower or supplier,
- (b) particulars of the area of land on which the bananas that are or may be affected by the pest or disease are grown by or on behalf of the person to whom the advertisement or notice is directed,
- (c) in the case of a banana grower, an estimate, as far as is practicable, of bananas that are or may be affected by the pest or disease by reference to type, age, variety, grade, quality and quantity that the grower expects to produce for the purpose of sale within any period specified in the advertisement or notice.
- (3) A person:
- (a) must not, without reasonable excuse, refuse or fail to comply with a requirement under this section, or
- (b) must not furnish to the Committee under this section any information that, to the person's knowledge, is false or misleading in a material particular.

Maximum penalty: 20 penalty units.

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

- (1) For the purposes of ascertaining the voting entitlement of banana growers under Part 4, the Committee:
- (a) may, by advertisement, require all banana growers, or a specified class or classes of banana growers, to furnish it in writing (within a time specified in the advertisement) with such information in relation to the area of any plantation on which bananas are grown by or on behalf of the growers to whom the advertisement is directed as is specified in the advertisement, or
 - (b) may, by notice sent by post, require a person who, in the Committee's opinion, is a banana grower to furnish it in writing (within a time specified in the notice) with such information in relation to the area of any plantation on which bananas are or may be grown by or on behalf the person as is specified in the notice.
- (2) A person:
- (a) must not, without reasonable excuse, refuse or fail to comply with a requirement under this section, or
 - (b) must not furnish to the Committee under this section any information that, to the person's knowledge, is false or misleading in a material particular.

Maximum penalty: 20 penalty units.

[20] Section 16D Voting entitlements of regional banana growers in election

Omit section 16D (3).

[21] Section 16E One banana grower to vote per plantation

Omit section 16E (2). Insert instead:

- (2) If the same two or more persons are banana growers in relation to more than one plantation (whether or not in the same region):
- (a) only one of them is entitled to vote in respect of all the plantations, and

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- (b) both or all of them may, by agreement, nominate in writing addressed to the Chairperson who of them is entitled to vote in respect of all the plantations, and
- (c) if a nomination is not made under paragraph (b), the Chairperson is to determine the person who is entitled to vote, and
- (d) sections 16B–16D apply to any such banana grower who is entitled to vote as if the banana grower were the only banana grower in respect of all the plantations.

[22] Schedule 3 Savings, transitional and other provisions

Insert “*Banana Industry Amendment Act 2000*” at the end of clause 1 (1).

[Minister's second reading speech made in—
Legislative Assembly on 31 October 2000
Legislative Council on 5 December 2000]

BY AUTHORITY