

[Act 1996 No 59]



New South Wales

Banana Industry Amendment Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *Banana Industry Act 1987* as follows:

- (a) to reconstitute the membership of the Banana Industry Committee (“the Committee”), so that some of the members of the Committee are elected by banana growers to represent particular regions of the banana industry and to provide for the election of those regional members,
 - (b) to change the voting entitlements of banana growers in polls, and to provide for similar entitlements in elections, so that banana growers will be able to cast up to 3 votes each depending on the size of the plantation on which bananas are grown by or on behalf of the grower,
 - (c) to provide that banana growers are not entitled to vote in a poll or election unless they are fully paid up as regards charges, fees or other amounts due and payable to the Committee in respect of the previous financial year,
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- (d) to allow the Committee to fund groups or bodies who assist the Committee in the exercise of the Committee's functions,
- (e) to remove the requirement that one of the members appointed by the Minister to the Committee be a public servant,
- (f) to make other minor and consequential amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 gives effect to the amendments to the *Banana Industry Act 1987* as set out in Schedule 1.

Schedule 1 Amendments

Reconstitution of Banana Industry Committee

At present the Banana Industry Committee consists of 2 ministerial appointees and the persons holding office for the time being as members of the Board of Directors of the Banana Growers Federation Co-operative Limited ("the Federation").

The amendments to the Act contained in this Bill replace the Committee members who are Directors of the Federation with regional members. One regional member of the Committee is to be elected for each region of the banana industry. The Minister is to determine, by order, the number of regions to be represented on the Committee and the boundaries of those regions. In the event that the Minister makes a further determination that changes the boundaries of the regions to be represented on the Committee, a new election of members for the regions affected is required to be held. (See Schedule 1 [2], [3] and [4])

Savings and transitional provisions remove from office the members of the Committee who presently hold office by virtue of being Directors of the Federation. (See Schedule 1 [33])

The Minister is given the power to determine different terms of office for each of the first elected members of the Committee, so that their terms of office need not expire at the same time. (See Schedule 1 [33])

Election of regional members

New Part 4A provides for the election of regional members of the Committee by banana growers whose plantations are situated within the region concerned. The provisions relating to the conduct of elections are similar to existing provisions in the Act relating to the conduct of polls of banana growers. The regulations may provide that application for enrolment in the list of voters compiled for an election, and voting in an election, is compulsory. (See Schedule 1 [15], [20], [21] and [22])

If a banana grower has a plantation that is situated in more than one region, provision is made for the nomination by the banana grower of the region in which he or she is entitled to vote. (See Schedule 1 [15])

Regional members of the Committee hold office for a period of 3 years, subject to provisions in the Act relating to vacancies in office. The Minister may appoint a person to fill a vacancy in the office of a regional member in certain circumstances. (See Schedule 1 [24], [25] and [26])

Multiple votes

The voting entitlements of banana growers are changed so that in a poll conducted under the Act, or an election of a regional member, a banana grower will be entitled to cast up to 3 votes, depending on the size of the banana grower's plantation. If the plantation has an area that does not exceed 4 hectares, the banana grower is entitled to one vote. If the plantation has an area that exceeds 4 hectares but does not exceed 8 hectares, the banana grower is entitled to 2 votes. If the plantation has an area that exceeds 8 hectares, the banana grower is entitled to 3 votes. The maximum number of votes that a banana grower will be entitled to cast in an election or poll will be 3 votes (regardless of whether the banana grower has an interest in more than one plantation). Regulations may be made relating to the method of determining a person's entitlement to vote. (See Schedule 1 [10], [15] and [23])

At present, where 2 or more persons are banana growers in relation to one plantation, only one of them is entitled to vote in a poll. This rule is extended to elections. (See Schedule 1 [15])

Regulations may provide for voting entitlements where there is more than one banana grower in relation to a plantation. (See Schedule 1 [10], [12] and [15])

When compiling a list of voters for a poll or election, the Minister will be required to include the voting entitlements of those voters in the list. A person who is dissatisfied with the determination as to his or her voting entitlement will be able to apply for review by a Local Court. (See Schedule 1 [8] and [15])

Entitlement to vote

A banana grower will not be entitled to vote in a poll or an election of a regional member if the grower has not paid all charges, fees and other amounts due and payable to the Committee under the Act in respect of the previous financial year by the close of enrolments for the poll or election. (See Schedule 1 [13] and [15])

Funding of groups

At present the Committee may fund any scheme or activity that, in the Committee's opinion, is capable of assisting in the promotion or sale of bananas. The amendments also give the Committee power to fund any group or body that assists the Committee in the exercise of the Committee's functions. (See Schedule 1 [5])

Removal of requirement that a member of the Committee be a public servant

At present one of the 2 members of the Committee appointed by the Minister must be a public servant. This requirement is removed. (See Schedule 1 [3] and [27])

Other minor and consequential amendments

The current Chairperson of the Committee is removed from office. Instead the Chairperson is to be elected by regional members from their number. (See Schedule 1 [29] and [33])

The definition of *advertisement* is extended to include an advertisement that appears in an official publication of the Committee (so that, for instance, a poll can be advertised in a Committee publication). (See Schedule 1 [1] and [17])

Some references to the functions of the Federation that are now obsolete are removed. (See Schedule 1 [11] and [14])

A provision of the Act is relocated to make it clear that persons acting under the direction of the Committee are not personally liable for acts done in good faith. In addition, the provision is extended to make it clear that liability for omissions is also excluded. (See Schedule 1 [16] and [28])

Sections 27 and 30 of the Act are repealed by way of statute law revision. Those sections are general provisions that make contravention of the Act an offence and render the person guilty of such an offence liable to a penalty of up to 20 penalty units (\$2,000). The Bill replaces those provisions by specifying the maximum penalty for each offence against the Act under the offence concerned. (See Schedule 1 [6], [7], [9], [18] and [19])

Some of the provisions of Schedule 3 (Savings, transitional and other provisions) are rearranged, as a consequence of the insertion of new provisions in that Schedule. (See Schedule 1 [30], [31] and [32])