

[Act 1998 No 45]



New South Wales

Agricultural Industry Services Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to prescribe a procedure for the establishment of agricultural industry committees, to define the functions of a committee so established and to identify the circumstances in which the affairs of such a committee may be wound up. It is intended that committees established under the proposed Act will replace various boards, committees and other bodies constituted under other Acts administered by the Minister for Agriculture. A significant feature of the proposed Act is the statutory recognition given by its provisions to the *Competition Principles Agreement*.

The Bill also makes consequential amendments to various Acts and instruments.

* Amended in committee—see table at end of volume.

Outline of provisions

Part 1 Preliminary

Clause 1 specifies 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 appointed by proclamation.

Clause 3 defines certain words and expressions for the purposes of the proposed Act. These include *agricultural industry service, committee, commodity, Competition Principles Agreement, constituent, Departmental inspector, foundation regulation, primary producer* and *primary product*.

Part 2 Agricultural industry services committees

Division 1 Procedure for establishing committees

Clause 4 describes the procedure for making a regulation to establish a new committee (that is, a committee that is not intended to continue an existing body). The making of such a regulation requires an initial application from primary producers, a poll among primary producers affected by the proposal and the concurrence of the Premier. Before such a regulation is made, due regard must be had to the *Competition Principles Agreement*. Such a regulation is referred to in the proposed Act as a *foundation regulation*.

Clause 5 describes the procedure for making a regulation to establish a committee to continue an existing body (where the body may be an existing committee whose foundation regulation is due for repeal under the *Subordinate Legislation Act 1989* or may be a body established under some other Act). The making of such a regulation requires the concurrence of the Premier. Before a regulation is made, due regard must be had to the *Competition Principles Agreement*. Such a regulation is also referred to in the proposed Act as a *foundation regulation*.

Clause 6 deals with the matters for which a committee's foundation regulation must make provision in relation to the committee's constitution and functions. In particular, the regulation must contain core provisions with respect to the class of primary producers, the area of operations, the commodities and the agricultural industry services for which the committee is constituted.

Division 2 Constitution and functions of committees

Clause 7 provides that, on the day on which a committee's foundation regulation takes effect, the committee established by the regulation is constituted by the proposed Act as a corporation under the corporate name given to it by the regulation. The clause also provides that a committee established to continue a former body is taken to be a continuation of, and the same legal entity as, the former body. The clause also gives effect to Schedule 1, which contains general provisions with respect to the membership and procedure of a committee.

Clause 8 provides that a committee must compile and maintain a register of its constituents and their voting entitlements, both for polls and elections.

Clause 9 provides that a committee's principal function is to perform the agricultural industry services specified in its foundation regulation, and that it has such other functions as are conferred or imposed on it. In the exercise of its functions, a committee is to be subject to such lawful instructions from its constituents as are supported by more than half of the votes cast in a poll in which more than half of the committee's constituents cast votes. For the purpose of exercising its functions, a committee may enter into, and perform its obligations under, an arrangement with any other body with respect to the orderly provision of agricultural industry services to primary producers within the combined areas of operations of both bodies.

Clause 10 provides that a committee may employ staff and engage contractors.

Clause 11 provides that a committee may delegate its functions.

Clause 12 requires a committee to have an official seal and provides for the circumstances under which a seal may be applied to a document.

Clause 13 exempts a committee's members and staff, and persons acting under the direction of the committee, from personal liability for acts and omissions occurring in the purported exercise of the committee's functions.

Division 3 Accountability

Clause 14 provides for the conduct of meetings of a committee's constituents. A general meeting will be required every 12 months. The clause also gives effect to Schedule 2, which contains general provisions with respect to the procedure for such a meeting.

Clause 15 provides for the preparation of 5-year plans with respect to a committee's proposed work and activities. These plans will have to be revised each year. Copies of each such plan, together with copies of the committee's annual report on its work and activities, will be required to be sent to the committee's constituents.

Clause 16 entitles the Director-General of the Department of Agriculture to receive notice of, and to attend, all meetings convened by a committee and empowers the Director-General to monitor, and report to the Minister on, the work and activities of a committee.

Clause 17 empowers a Committee's constituents to call for a poll on questions relating to the amendment of the core provisions of the committee's foundation regulation (referred to in clause 6), to the committee's exercise of its functions and to the proposed winding up of the committee's affairs. Before such a poll is taken, due regard must be had to the *Competition Principles Agreement*.

Division 4 Winding up of committee's affairs

Clause 18 provides that the winding up of a committee's affairs may be proposed by the Minister (on his or her own motion) by the committee's constituents (by means of a request of the kind referred to in clause 17) or by the committee (by notice in writing to the Minister).

Clause 19 deals with the action that is to be taken where such a proposal is made by a committee, and involves a call for public submissions and then, if the public submissions so warrant, the conduct of a poll.

Clause 20 defines the circumstances in which a committee's affairs are to be wound up.

Clause 21 deals with the procedure by which a committee's affairs are to be wound up.

Division 5 Amendment and repeal of foundation regulations

Clause 23 deals with the circumstances in which a committee's foundation regulation may be amended or repealed.

Part 3 Finance

Division 1 Rates

Clause 23 empowers a committee to levy rates on its constituents in accordance with a resolution of its constituents or a proposal supported by the poll for the establishment of the committee.

Clause 24 provides that a committee levies rates on its constituents by serving rate notices on them. It details what a rate notice must include and specifies when a rate falls due.

Clause 25 provides for the charging of interest on rates that are due but unpaid.

Division 2 Fees and charges for goods and services

Clause 26 empowers a committee to impose fees and charges for the agricultural industry services provided by it.

Division 3 Funds

Clause 27 requires a committee to establish a general fund and to establish special funds for each of the agricultural industry services provided by it.

Clause 28 identifies the money that must be paid into each of the various funds.

Clause 29 authorises the making of payments out of the various funds.

Clause 30 authorises internal loans between funds.

Clause 31 provides for the investment of funds.

Division 4 Miscellaneous

Clause 32 provides that a committee's financial year is the financial year prescribed by the committee's foundation regulation, subject to a different financial year being determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

Part 4 Enforcement

Clause 33 empowers a Departmental inspector to require persons to furnish the inspector with such information as is reasonably necessary to enable the inspector to ascertain whether the person is a primary producer for whom a committee is or is to be established and, if so, the extent of that person's activities as a primary producer.

Clause 34 confers powers of entry onto private land on a Departmental inspector.

Clause 35 requires notice to be given to the owner or occupier of land in respect of which such a power of entry is proposed to be exercised.

Clause 36 authorises the use of reasonable force for the purpose of gaining entry to land.

Clause 37 requires care to be taken by a Departmental inspector in the exercise of a power of entry on land.

Clause 38 deals with the payment of compensation for damage arising out of a Departmental inspector's exercise of a power of entry on land.

Clause 39 requires a Departmental inspector to carry a certificate of authority when exercising a power of entry on land.

Clause 40 prohibits the exercise of a power of entry in relation to residential premises otherwise than with the consent of the occupier of the premises or under the authority of a search warrant.

Clause 41 deals with the issuing of search warrants, and provides for the application to such warrants of the *Search Warrants Act 1985*.

Part 5 Miscellaneous

Clause 42 provides that a person who is aggrieved by a decision of a committee as to the inclusion of the person's name in, or the exclusion of the person's name from, the committee's register of constituents, or as to the amount of a rate levied on the person, may appeal to the local land board against the committee's decision.

Clause 43 provides that the proposed Act binds the Crown.

Clause 44 provides that a committee may recover as a debt any money that is due to it but remains unpaid.

Clause 45 provides for the service of documents on persons.

Clause 46 provides for the service of documents on committees.

Clause 47 requires the Director-General to prepare annual reports on the Director-General's work and activities under the proposed Act.

Clause 48 prohibits the misuse or unauthorised disclosure of information obtained under the proposed Act.

Clause 49 provides that proceedings for an offence against the proposed Act or the regulations under the proposed Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Clause 50 renders the directors and managers of a corporation liable for offences under the proposed Act that are committed by the corporation.

Clause 51 empowers the Governor to make regulations for the purposes of the proposed Act.

Clause 52 is a formal provision giving effect to a Schedule of consequential amendments to other Acts and instruments.

Clause 53 provides for the review of the proposed Act as soon as possible after the expiry of 5 years from the date of assent to the proposed Act.

Schedule 1 Membership and procedure of an agricultural industry services committee

This Schedule deals with matters relating to the membership (Part 1) and procedure (Part 2) of a committee, including:

- (a) terms of office (clause 1),
- (b) remuneration (clause 2),
- (c) the appointment of deputy members (clause 3),
- (d) the circumstances in which a vacancy is taken to arise in a member's office (clause 4),
- (e) how a vacancy in office is to be filled (clause 5),
- (f) the appointment of a chairperson and deputy chairperson (clause 6),
- (g) the disclosure of pecuniary interests (clause 7),
- (h) the effect of certain other Acts on a member's appointment (clause 8),
- (i) the quorum for a meeting (clause 9),
- (j) the identification of, and the powers of, the presiding member at a meeting (clause 10),
- (k) voting at a meeting (clause 11),
- (l) transaction of committee business outside meetings (clause 12),
- (m) the keeping of minutes (clause 13),
- (n) the convening of a committee's first meeting (clause 14).

Schedule 2 Procedure for meetings of a committee's constituents

This Schedule deals with the procedure for the conduct of a meeting of a committee's constituents, including:

- (a) general procedure (clause 1),
- (b) the quorum for a meeting (clause 2),
- (c) the identification of, and the powers of, the presiding member at a meeting (clause 3),
- (d) voting at a meeting (clause 4),
- (e) the keeping of minutes (clause 5).

Schedule 3 Amendment of Acts and instruments

Schedule 3 makes consequential amendments to the following Acts and instruments:

- (a) *Freedom of Information (General) Regulation 1995*
- (b) *Grain Marketing Act 1991 No 15*
- (c) *Land Tax Management Act 1956 No 26*
- (d) *Marketing of Primary Products Act 1983 No 176*
- (e) *Murray Valley Citrus Marketing Act 1989 No 155*
- (f) *Public Finance and Audit Act 1983 No 152*
- (g) *Search Warrants Act 1985 No 37*
- (h) *Subordinate Legislation Act 1989 No 146*