

# Banana Industry Act 1987

As at 28 July 2003

## Reprint history:

Reprint No 1 2 September 1997 Reprint No 2 17 July 2001

## Long Title

An Act to enable the provision of services to the banana industry; to constitute the Banana Industry Committee and to define its functions; to authorise the Committee to determine and fix charges and fees for services; to repeal the *Banana Industry Act 1969* ; to amend the *Public Finance and Audit Act 1983* ; and for other related purposes.

## Part 1 - Preliminary

### 1 Name of Act

This Act may be cited as the *Banana Industry Act 1987* .

### 2 Definitions

(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**advertisement** means an advertisement published in the official journal of the Federation or an official publication of the Committee.

**banana grower** means a person by whom or on whose behalf bananas are grown on a plantation (whether or not the bananas are grown or produced pursuant to a share-farming agreement or partnership agreement, oral or written), but does not include a person engaged as an employee on wages or salary or at piece-work rates.

**bananas** means bananas growing or grown in New South Wales, and includes banana plants and all parts of banana plants.

**Chairperson** means the Chairperson of the Committee.

**Committee** means the Banana Industry Committee constituted by this Act.

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

**Federation** means the Banana Growers Federation Co-operative Limited, a society registered under the *Co-operatives Act 1992* .

**marketing** , in relation to bananas or banana products, means:

- (a) the harvesting, preparation, processing and packing of bananas or banana products for sale,
- (b) the shipping, transporting, storing, ripening and handling of bananas or banana products for sale,
- (c) the transmission of bananas or banana products from a banana grower to

- another person,
- (d) the sale of bananas or banana products, and
- (e) all actions or things connected with or incidental to any of the foregoing.

**member** means a member of the Committee.

**plantation** means a parcel of land on which bananas are grown having:

- (a) if no minimum area is prescribed under paragraph (b)--a minimum area of 0.5 hectares, or
- (b) such minimum area as may be prescribed.

**poll** means a poll taken, in accordance with this Act and the regulations, among banana growers.

**proclamation** means a proclamation published in the Gazette.

**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.

**regulation** means a regulation made under this Act.

**sell** includes barter and exchange.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) The Chairperson may be referred to as the Chairman or Chairwoman.

## **Part 2 - Banana Industry Committee**

### **3 The Committee**

- (1) There is constituted by this Act a corporation under the corporate name of the "Banana Industry Committee".
- (2) The Committee is not, for any purpose, a statutory body representing the Crown.
- (3) The Committee is to consist of:
  - (a) 2 persons appointed by the Minister, and
  - (b) regional members.
- (4) Schedule 1 has effect with respect to the members.
- (5) Schedule 2 has effect with respect to the procedure of the Committee.

### **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.

#### **4 Dissolution of Committee**

(1) If a poll is taken and is in favour of the dissolution of the Committee, the Committee shall, on and from a day appointed by the Governor for the purpose by proclamation, being a day not later than 6 months after the taking of the poll, proceed to be wound up.

(2) The Committee shall wind up its affairs unless, by the same or a subsequent proclamation, the Governor appoints a liquidator to wind up the affairs of the Committee.

(3) Upon the appointment of a liquidator, the members shall cease to act as members and the liquidator may, for the purpose of winding up the affairs of the Committee, in the name and as the act and, where necessary, under the seal of the Committee:

- (a) exercise such of the functions of the Committee,
- (b) bring and defend such proceedings, and
- (c) do and execute such other acts and things,

as the liquidator thinks fit.

(4) A liquidator shall receive such remuneration as the Governor determines.

(5) The Governor may, by proclamation published at any time after the day appointed under subsection (1), declare the Committee to be dissolved.

(6) The dissolution of the Committee shall take effect on the date of publication of the proclamation under subsection (5) or a later date specified in the proclamation.

(7) On the dissolution of the Committee, all money and other assets of the Committee:

- (a) shall vest in Her Majesty, and
- (b) shall be dealt with and disposed of as the Governor may direct.

### **Part 3 - Functions of the Committee**

#### **5 Functions of Committee**

The Committee may:

- (a) provide facilities, material or advice to banana growers, wholesalers or retailers relating to the marketing of bananas or banana products,
- (b) establish a system of quality control for bananas in which persons may voluntarily participate,
- (c), (d)
- (e) advertise and promote bananas and banana products,
- (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,
- (g) carry out research in relation to any matter if, in the Committee's opinion, that research is of advantage to banana growers,
- (h) conduct educational or instructional programmes relating to the production and marketing of bananas,
- (i) develop and expand markets for bananas in New South Wales and elsewhere,
- (j) establish a voluntary insurance scheme for the benefit of banana growers, including insurance relating to crops and equipment,
- (k) undertake and provide banana market forecasting,
- (l) establish systems of inspection of bananas for the purpose of 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,
- (m), (n)
- (o) support, with or without grant of financial aid and whether or not initiated by the

Committee, any scheme or activity which, in the Committee's opinion, is capable of assisting in the promotion or sale of bananas,

(o) 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,

(p) provide such other services as the Minister may authorise or direct, and

(q) arrange for the provision of any of the services or the exercise of any of the functions referred to in the preceding paragraphs, in whole or part, by any other person.

## **6 Further functions of the Committee**

The Committee may:

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

(b), (c)

(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,

(e) by its agents and servants, treat, withhold, remove, destroy or withdraw from the market bananas which, in the Committee's opinion, are infested by a pest, or infected with a disease, that poses a threat to the commercial viability of banana growers in the State,

(f) by advertisement, exempt a banana grower in any particular case from any of the provisions of this Act or the regulations on such terms and conditions as it considers appropriate,

(g), (h)

(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,

(j) enter into any agreements and give guarantees and indemnities in favour of any person who contracts with the Committee or enters into any agreements at the request of or under the authority or direction of the Committee,

(k) acquire land, machinery and plant (including refrigerating machinery and plant and machinery and plant suitable for the ripening of bananas), goods, chattels and effects,

(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,

(m) subject to sections 7 and 8 in the case of the supply of a service, impose a charge or charge a fee whenever the Committee supplies any service, product or commodity or gives any permission,

(n) appoint, employ or authorise agents, officers, servants and other persons,

(o) arrange for financial accommodation with any bank, building society or credit union, or with any other institution or person approved by the Governor, and give such securities for any such financial accommodation as may be required,

(p) make such arrangements as it deems necessary with regard to sales of bananas for export or for consignment to other countries or States for oversea ships' stores for persons who voluntarily participate in the arrangements, and

(q) enter into and carry out such contracts and do and suffer such other acts as may be necessary or expedient for the exercise or discharge of its functions under this Act.

## **7 Power to impose charges in relation to services**

(1) The Committee may determine the cost or estimated cost of providing any service which it is authorised by this Act to provide and may impose on banana growers a charge in relation to the provision of any such service.

(2) A charge imposed under this section:

(a) shall be at the same rate in relation to all banana growers in a particular locality declared under section 6 (i), and

(b) may be at different rates in relation to banana growers in different localities so declared.

(3) The Committee shall not impose a charge under this section unless:

(a) it has given notice by advertisement of its intention to impose the charge and has specified in the advertisement the amount of the proposed charge,

(b) it has taken a poll of those banana growers on whom it is proposed to impose the charge, if it is requested to do so by a petition, lodged with the Committee within 30 days after the publication of the advertisement, by not less than 100 banana growers,

(c) the poll is in favour of the imposition of the charge, and

(d) not earlier than 30 days after the publication of the advertisement, a further advertisement is published identifying (by name or general reference) the banana growers by whom the charge is payable and specifying:

(i) the amount of the charge,

(ii) the day (being a day not earlier than the day of publication of the further advertisement) on and from which the charge shall be imposed, and

(iii) that the requirements of this section have been complied with.

(4) A charge imposed under this section shall become due and payable by a grower not earlier than 14 days after the day on which the grower receives notice, in writing, from the Committee indicating that the charge has been imposed and not later than the date specified in the notice.

(5) The proceeds of a charge imposed under this section by the Committee shall be deposited into a special fund and applied exclusively for the provision of the service in relation to which the charge was imposed.

(6) Nothing in subsection (5) prevents the Committee:

(a) from allocating from a special fund an amount to be applied in defraying the proper costs and expenses of the Committee incurred:

(i) in providing the service in relation to which the charge was imposed, or

(ii) in the exercise of the functions conferred or imposed on it by this Act in relation to the provision of the service, or

(b) from allocating from a special fund:

(i) to another special fund, or

(ii) to the general fund of the Committee,

any amount which is no longer required to be applied for the provision of the service in relation to which the charge was imposed.

## **8 Charges for services provided at person's request**

(1) If the Committee provides a service to a person at the person's request the Committee may determine the amount of the fee to be charged for the provision of the service.

(2) Section 7 does not apply to or in respect of a fee charged under this section.

## **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.

## **10 Dispute as to necessity for direction**

(1) A question or dispute between the Committee and a banana grower as to whether or not any matter with regard to which the Committee is exercising or proposes to exercise any of its functions ought to be made the subject of a direction under section 9 shall be referred by the Committee to the Minister for determination.

(2) The Minister's determination shall be final and without appeal to any court or tribunal.

## **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.

## **Part 4 - Polls of banana growers**

### **12 List of banana growers**

(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.

(5) If the name of a person appears on the list for a poll and the person fails to vote at the poll, the person is liable to a penalty not exceeding 0.1 penalty unit.

(6) If the name of a person does not appear on the list compiled under this section for a poll and the person votes at the poll, the person is guilty of an offence against this Act.

Maximum penalty: 20 penalty units.

### **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.

### **13 Poll for purposes of sec 7 or 9**

A poll for the purposes of section 7 or 9:

(a) shall be taken by the Committee on a day notified by the Committee by advertisement for the purpose or, if the Committee by a subsequent advertisement notifies a later day for the purpose, on that later day, and

(b) shall not be in favour of the question to be decided at the poll unless a majority of votes at the poll is in favour of the question.

### **14 Poll for dissolution of Committee**

A poll at which the question to be decided is whether the Committee should be dissolved:

- (a) shall be taken only at the request, by petition to the Governor, of not less than 100 persons whose names are, or who are entitled to have their names, included in a list compiled under section 12,
- (b) shall, where so requested, be taken on a day notified by the Governor for the purpose by proclamation, being a day not earlier than 30 days after publication of the proclamation or, if the Governor by a subsequent proclamation notifies a later day for the purpose, on that later day,
- (c) shall not be in favour of the question to be decided at the poll unless:
  - (i) not less than three-fifths of the persons required to vote at the poll have so voted, and
  - (ii) a majority of the votes at the poll is in favour of the question, and
- (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.

### **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.

### **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.

### **16 (Repealed)**

## **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.

### **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) (Repealed)

(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 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

(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.

### **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.

## **Part 5 - General**

### **17 Financial year of the Committee**

The financial year of the Committee is:

(a) if no period is prescribed as referred to in paragraph (b)--the year commencing on 1 July, or

(b) the period prescribed for the purposes of this section.

### **18 Annual report**

The Committee shall prepare an annual report in accordance with the *Annual Reports (Statutory Bodies) Act 1984*.

### **19 Minister may require further reports**

The Committee shall, in addition to any other report it may be required to prepare and furnish, furnish to the Minister, within a time specified by the Minister, such reports on the operations of the Committee as the Minister may direct.

### **20 Committee not to be concerned in party politics**

It shall not be lawful for the Committee to expend any of its funds for any purpose whatever in connection with the politics of any political party, nor shall the Committee become affiliated in any way whatever with any body, association or organisation having as an object the support of the politics, programme or aims of a political party.

### **21 Service of documents**

(1) A document may be served on the Committee by leaving it at, or by sending it by post to, the Committee's office.

(2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Committee in a manner not provided for in subsection (1).

(3) Except where this Act otherwise provides, a notice that is required to be given or that may be given by the Committee is duly given if sent by post in a letter addressed to the person at the person's place of residence or business in New South Wales last known to the Committee.

### **22 Authentication of certain documents**

Every summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Committee may be sufficiently authenticated without the seal of the Committee if signed by:

- (a) the Chairperson, or
- (b) a person authorised to do so by the Chairperson.

### **23 Recovery of charges etc by Committee**

Any charge, fee or money due to the Committee may be recovered by the Committee as a debt in a court of competent jurisdiction.

### **24 Authority of Federation**

A function conferred or imposed on the Federation or its directors or officers by or under this Act may, to the extent that (but for this section) the exercise of the function would not be authorised by the rules of the Federation, be exercised by the Federation as if it had been so authorised.

### **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.

### **25 Proof of certain matters not required**

In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Committee,
- (b) any resolution of the Committee,
- (c) the appointment of, or the holding of office by, any member, or
- (d) the presence of a quorum at any meeting of the Committee.

### **26 Evidence**

In any legal proceedings:

- (a) any notification, requisition, demand, order or other document in writing, purporting to be signed or made or sent by the Committee, the Chairperson, the Secretary of the Committee or the Minister shall be judicially noticed,
- (b) the production of a copy of the Gazette purporting to contain any proclamation, or a copy of the official journal of the Federation or an official publication of the Committee purporting to contain a copy of an advertisement or notice published under this Act by the Committee, is, until the contrary is proved:
- (i) evidence of the matters contained in the proclamation, advertisement or notice, and
  - (ii) evidence that all steps necessary to be taken prior to the making of the proclamation or publication of the advertisement or notice were duly taken,
- (c) the averment on behalf of the Committee:
- (i) that any bananas were or are bananas to which the provisions of this Act apply, or were or are bananas to which a direction in force under this Act applies,
  - (ii) that any place is a place in New South Wales, or
  - (iii) that any person was or is a banana grower,
- is, until the contrary is proved, evidence of that fact, and
- (d) a certificate purporting:
- (i) to be signed by the prescribed officer of the Committee, and
  - (ii) to certify that on a specified day or during the whole of a specified period any person was or was not included in the list of banana growers compiled under this Act,
- is, without proof of the signature of the person purporting to sign the certificate or that the person is the prescribed officer, prima facie evidence of the matters certified in and by the certificate.

## **27 (Repealed)**

## **28 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

## **29 Proceedings for offences**

Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court.

## **30 (Repealed)**

## **31 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:
- (a) any of the functions of the Minister or the Committee under this Act,
  - (b) the use and custody of the seal of the Committee,
  - (c) the taking of any poll or the conduct of an election, including the method of voting at a poll or election,
  - (d) matters concerning the compilation and revision of lists of banana growers required or entitled to vote at any poll or election,

- (e) matters concerning the method of determining the qualification and voting entitlements of banana growers eligible to vote at any poll or election,
  - (f) the manner in which the results of a poll or election taken under this Act shall be notified, and
  - (g) prescribing forms to be used for the purposes of this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.
- (3) A provision of a regulation may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.

### **32 Savings, transitional and other provisions**

Schedule 3 has effect.

### **33 Repeals**

Each Act specified in Schedule 4 is, to the extent indicated, repealed.

### **34 (Repealed)**

## **Schedule 1 Provisions relating to the members of the Committee**

(Section 3 (4))

### **1 Term of office**

- (1) Subject to this Schedule, a member appointed by the Minister shall hold office for such period, not exceeding 5 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.
- (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.
- (2A) For the purposes only of ensuring that there are at all times the requisite number of regional members on the Committee, the Minister may, at any time, by written notice given to a regional member, extend or reduce the period of the 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.

### **2 Remuneration**

- (1) A member, not being an officer of the Public Service, is entitled to be paid such remuneration as the Committee may, with the approval of the Minister, from time to time determine.
- (2) A member is entitled to be paid such allowances as the Committee may, with the approval of the Minister, from time to time determine.

### **3 Filling of vacancy in office of member**

If the office of any member appointed by the Minister becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

### **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).

#### **4 Casual vacancies**

(1) A member shall be deemed to have vacated office if the member:

(a) dies,

(b) absents himself or herself from 4 consecutive ordinary meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the committee for being absent from those meetings,

(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,

(d) becomes a temporary patient or a continued treatment patient within the meaning of the *Mental Health Act 1958*, a forensic patient within the meaning of the *Mental Health Act 1983* or a protected person within the meaning of the *Protected Estates Act 1983*,

(e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable,

(f) resigns the office by instrument in writing addressed to the Minister,

(g) is removed from office by the Minister under subclause (2), or

(h)

(2) The Minister may remove a member appointed by the Minister from office.

#### **5 Effect of certain other Acts**

(1) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision shall not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(2) The office of a member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

#### **6 (Repealed)**

## **Schedule 2 Provisions relating to the procedure of the Committee**

(Section 3 (5))

### **1 General procedure**

The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Committee.

## **2 Quorum**

A majority of the members for the time being shall form a quorum for a meeting of the Committee.

## **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.

## **4 Voting**

A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present shall be the decision of the Committee.

## **5 Minutes**

The Committee shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Committee.

# **Schedule 3 Savings, transitional and other provisions**

(Section 32)

## **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
  - Banana Industry Amendment Act 1996*
  - Banana Industry Amendment Act 2000*
- (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**

## **1A Interpretation**

In this Part, **the 1969 Act** means the *Banana Industry Act 1969* .

## **2 Continuity of corporation**

The Banana Industry Committee is a continuation of, and the same legal entity as, the Banana Marketing Control Committee.

## **3 Existing members of Banana Marketing Control Committee**

(1) The persons holding office, immediately before the date of assent to this Act, as members of the Banana Marketing Control Committee under section 7 (2) (a) and (b) of the 1969 Act shall, on and from that date, be deemed to have been duly appointed as members of the Banana Industry Committee under section 3 (3) (a) and (b), respectively, of this Act and shall, subject to this Act, hold office for a term of 5 years commencing on that date.

(2) The person who, immediately before the date of assent to this Act, was the Chairman of the Banana Marketing Control Committee shall, on and from that date, subject to this Act, be the Chairperson of the Committee.

## **4 Construction of references**

On and from the date of assent to this Act, a reference in any other Act or in any regulation, by-law or other statutory instrument or in any other document, whether of the same or a different kind, to the Banana Marketing Control Committee shall be read as a reference to the Banana Industry Committee.

## **5 Temporary use of the name "Banana Marketing Control Committee"**

Notwithstanding this Act, the Committee may, for a period not exceeding 1 month after the date of assent to this Act, continue to carry on business under the name of the "Banana Marketing Control Committee".

## **6 Lists of banana growers**

A list of banana growers compiled under section 6 of the 1969 Act, being the list as constituted immediately before the date of assent to this Act, shall be deemed to have been compiled under section 12 of this Act.

## **7 Charge on bananas**

A charge imposed under section 11 of the 1969 Act shall be deemed to have been imposed under section 7 of this Act.

## **8 Directions issued by the Committee**

A direction given under section 12 of the 1969 Act and in force immediately before the date of assent to this Act shall be deemed to have been given under section 9 of this Act.

## **9 Regulations under the 1969 Act**

(1) Any regulations made under the 1969 Act and in force immediately before the date of assent to this Act shall be deemed to be regulations made under this Act.

(2) A regulation to which subclause (1) applies made for the purposes of a specified provision of the 1969 Act shall be deemed to be made for the provision of this Act which corresponds to the specified provision of the 1969 Act.

# **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 commencement 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.

(5) Despite clause 1 (2) of Schedule 1 and subclause (2) of this clause but subject to the

other provisions of this Act, the regional member who assumed office on 30 July 1997 to represent the Nambucca Region holds that office until the end of 29 September 2000.

### **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.

(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.

## **Schedule 4 Repeals**

(Section 33)

*Banana Industry Act 1969 No 38* --the whole Act *Supreme Court Act 1970 No 52* --so much of the Second Schedule as amends Act No 38, 1969 *Miscellaneous Acts (Public Finance and Audit) Repeal and Amendment Act 1983 No 153* --so much of Schedule 2 as amends Act No 38, 1969

### **Historical notes**

Table of Acts *Banana Industry Act 1987 No 66* . Assented to 3.6.1987. This Act has been amended as follows:

*Law (Penalties) Act 1992* . Assented to 8.12.1992. Date of commencement, assent, sec

*ial Institutions (Miscellaneous Amendments) Act 1996* . Assented to 21.6.1996. Date of ncement, 12.7.1996, sec 2 and Gazette No 84 of 12.7.1996, p 3984.

*Industry Amendment Act 1996* . Assented to 19.9.1996. Date of commencement, 97, sec 2 and Gazette No 43 of 24.4.1997, p 2171. The proclamation appointed 97 as the date of commencement. Pursuant to section 23 (5) of the *Interpretation Act* the proclamation does not fail merely because it was not published in the Gazette until a day appointed in the proclamation, but section 23 (5) provides, in that event, for the commencement on the day on which the proclamation was published in the Gazette.

*rative Housing and Starr-Bowkett Societies Act 1998* . Assented to 15.5.1998. Date of ncement of Sch 6.3, 1.9.2000, sec 2 and GG No 112 of 1.9.2000, p 8633.

*Law (Miscellaneous Provisions) Act 1998* . Assented to 30.6.1998. Date of ncement of Sch 2.2, assent, sec 2 (2).

*Law (Miscellaneous Provisions) Act (No 2) 1999* . Assented to 3.12.1999. Date of ncement of Sch 1.2, assent, sec 2 (2); date of commencement of Sch 4, assent, sec 2 (1).

*Legislation Amendment (Sentencing) Act 1999* . Assented to 8.12.1999. Date of ncement of sec 7 and Sch 5, 1.1.2000, sec 2 (1) and GG No 144 of 24.12.1999, p 12184.

*Industry Amendment Act 2000* . Assented to 13.12.2000. Date of commencement, 1, sec 2 and GG No 45 of 1.3.2001, p 1077.

*Legislation Repeal and Amendment Act 2001* . Assented to 19.12.2001. Date of  
nouncement of Sch 2, 7.7.2003, sec 2 and GG No 104 of 27.6.2003, p 5978.

*Law (Miscellaneous Provisions) Act 2003* . Assented to 22.7.2003. Date of  
nouncement of Sch 1.5, assent, sec 2 (2).

#### Table of amendments

	96 No 59, Sch 1 [1] [2]; 1998 No 11, Sch 6.3.
	96 No 59, Sch 1 [3].
	6 No 59, Sch 1 [4].
	96 No 59, Sch 1 [5]; 2000 No 94, Sch 1 [1]-[6].
	96 No 24, Sch 1.7; 2000 No 94, Sch 1 [7]-[15].
	00 No 94, Sch 1 [16] [17].
	96 No 59, Sch 1 [6]; 1998 No 54, Sch 2.2. Subst 2000 No 94, Sch 1 [18].
	96 No 59, Sch 1 [7]. Subst 2000 No 94, Sch 1 [19].
A	0 No 94, Sch 1 [19].
	92 No 112, Sch 1; 1996 No 59, Sch 1 [8] [9].
A	6 No 59, Sch 1 [10].
	96 No 59, Sch 1 [11].
	996 No 59, Sch 1 [12].
A	6 No 59, Sch 1 [13].
	96 No 59, Sch 1 [14].
.	6 No 59, Sch 1 [15].
A-16C	6 No 59, Sch 1 [15].
D	6 No 59, Sch 1 [15]. Am 2000 No 94, Sch 1 [20].
E	6 No 59, Sch 1 [15]. Am 2000 No 94, Sch 1 [21].
F-16I	6 No 59, Sch 1 [15].
A	6 No 59, Sch 1 [16].
	96 No 59, Sch 1 [17].

96 No 59, Sch 1 [18].

01 No 121, Sch 2.22.

02 No 112, Sch 1. Rep 1996 No 59, Sch 1 [19].

02 No 112, Sch 1; 1996 No 59, Sch 1 [20]-[23].

99 No 85, Sch 4.

06 No 59, Sch 1 [24]-[28]; 1999 No 94, sec 7 (2) and Sch 5, Part 2; 2003 No 40,  
.

06 No 59, Sch 1 [29].

06 No 59, Sch 1 [30]-[33]; 1999 No 85, Sch 1.2; 2000 No 94, Sch 1 [22].