

# Banana Industry Regulation 2008

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Banana Industry Act 1987*.

Minister for Primary Industries

## Explanatory note

The object of this Regulation is to remake, with some changes, the *Banana Industry Regulation 2003* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the conduct of polls among banana growers,
- (b) the conduct of elections for regional members of the Banana Industry Committee,
- (c) the returning officer for polls and elections,
- (d) evidentiary matters,
- (e) savings and formal matters.

This Regulation is made under the *Banana Industry Act 1987*, including sections 3A (2) (a), 12 (1) and (2), 14 (d), 16A, 16G, 26 (d) (i) and 31 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989* --namely, matters of a machinery nature.

## Part 1 – Preliminary

### 1 Name of Regulation

This Regulation is the *Banana Industry Regulation 2008*.

### 2 Commencement

This Regulation commences on 1 September 2008.

This Regulation replaces the *Banana Industry Regulation 2003* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation: "**approved form**" means in a form approved by the Director-General from time to time. "**Director-General**" means the Director-General of the Department of Primary Industries. "**Executive Officer**" means the Executive Officer of the Committee. "**returning officer**" for a poll or election means the person appointed by the Committee as the returning officer for the poll or election. "**the Act**" means the *Banana Industry Act 1987*.

(2) Notes in this Regulation do not form part of this Regulation.

### 4 Returning officer

(1) The Committee may appoint the Electoral Commissioner for New South Wales as the returning officer for the purposes of any election, poll or class of polls.

(2) The Electoral Commissioner for New South Wales may delegate to any member of staff of the State Electoral Office any of the returning officer's functions under this Regulation, other than this power of delegation.

## **Part 2 – Conduct of polls**

### **Division 1 – Preliminary**

#### **5 Definitions**

In this Part:

"**calling of the poll**" means the date on which a notice for a poll is first published under clause 7.

"**close of enrolments**" means the final time and date fixed by the returning officer for the close of enrolments for a poll.

"**close of the exhibition of the list**" means the final time and date fixed by the returning officer for the close of the exhibition of the list for a poll.

"**close of the poll**" means the final time and date fixed by the returning officer for the close of a poll.

"**final list**" means the list prepared for a poll under Division 3.

"**preliminary list**" means the list for a poll provided to the returning officer under clause 6.

### **Division 2 – Calling of poll**

#### **6 Committee to notify returning officer of proposed poll**

(1) As soon as practicable after it is determined by the Committee that a poll should be held on any question, the Committee must cause notice of that fact to be given to the returning officer.

(2) The Committee must also provide the returning officer with:

(a) a preliminary list of the persons who, in the opinion of the Executive Officer, are entitled to vote in the poll, and

(b) an appropriately addressed label, or an appropriately addressed envelope, for each person whose name is included in that list.

(3) The preliminary list:

(a) must contain:

(i) the full names (consecutively numbered and listed in alphabetical order) and addresses of the persons whose names are included in the list, and

(ii) the voting entitlement of each of those persons, and

(iii) sufficient details to identify the plantations in respect of which those persons are entitled to vote in the poll, and

(b) must be certified by the Executive Officer in an approved form.

(4) This clause does not apply to a poll to be held as a consequence of an earlier poll that has failed if a preliminary list for the earlier poll has already been provided to the returning officer.

#### **7 Notice of poll**

(1) As soon as practicable after having been notified by the Committee that a poll is required to be held, the returning officer must cause notice that a poll is to be held:

(a) to be published in at least one newspaper circulating generally throughout New South Wales or in an official publication of the Committee, or

(b) to be sent by post to each person whose name is included in the preliminary list for the poll.

(2) The following particulars must be included in the notice:

- (a) the question on which the poll is being conducted,
  - (b) the time and date for the close of the exhibition of the preliminary list,
  - (c) the places where, the dates on which, and the times at which, copies of the preliminary list will be exhibited,
  - (d) the time and date for the close of enrolments,
  - (e) the qualifications which entitle a person to vote,
  - (f) the places where applications for enrolment and objections against enrolment may be lodged,
  - (g) the time and date for the close of the poll.
- (3) The close of the exhibition of the list must not be earlier than 14 days after the calling of the poll.
- (4) The close of enrolments must not be earlier than 7 days after the close of the exhibition of the list or later than 14 days before the close of the poll.
- (5) The close of the poll must not be earlier than 35 days after the calling of the poll.

### **8 Postponement of poll**

- (1) The returning officer may, by notice published in the same way as the notice stating that a poll is to be held, postpone (for a period not exceeding 14 days) the close of the exhibition of the list, the close of enrolments or the close of the poll.
- (2) The power conferred on a returning officer by this clause may be exercised more than once in respect of a poll.

### **Division 3 – Preparation of final list**

#### **9 Exhibition of preliminary list**

The returning officer must cause copies of the preliminary list to be exhibited for public inspection:

- (a) at the places where applications for enrolment and objections against enrolment may be lodged, and
- (b) for a period of not less than 14 days ending at the close of the exhibition of the list.

#### **10 Applications for enrolment by persons not already enrolled**

- (1) A person whose name does not appear on the preliminary list for a poll may apply for enrolment in the final list for the poll.
- (2) The application must be in an approved form and must be lodged with the returning officer before the close of enrolments.
- (3) On receipt of the application, the returning officer:
- (a) if satisfied that the applicant is entitled to enrolment, must accept the application and enter the name, address and voting entitlement of the applicant in the final list for the poll, or
  - (b) if not so satisfied, must reject the application and inform the applicant in writing that the application has been rejected, or
  - (c) if the application is not in the proper form or is incomplete:
    - (i) must return the application to the applicant for correction or completion, and
    - (ii) must consider the duly corrected or completed application in accordance with this clause.
- (4) An application to a Local Court for an order referred to in section 12 (2) of the Act is to be in an approved form if the application relates to the inclusion of:
- (a) the name of any person in the final list for the poll, or
  - (b) a particular voting entitlement for any person in the final list for the poll.

#### **11 Objections to enrolment**

- (1) Before the close of enrolments, the returning officer or any person who is entitled to vote in a poll may object to the inclusion in the final list of:
- (a) the name of any person, or

- (b) the particular voting entitlement for any person.
- (2) An objection:
  - (a) must be in an approved form if the objection relates to the inclusion of:
    - (i) the name of any person in the final list for the poll, or
    - (ii) a particular voting entitlement for any person in the final list for the poll, and
  - (b) must state the grounds on which the objection is made, and
  - (c) must be signed by the objector, and
  - (d) must be lodged with the returning officer (unless it is signed by the returning officer).
- (3) The returning officer must send particulars of an objection to the person to whom the objection relates.
- (4) The person to whom an objection relates may lodge a written reply with the returning officer within 7 days after the date on which particulars of the objection were sent to the person.
- (5) The returning officer must consider each objection, and any reply received within that 7 day period, and may make such inquiries as the returning officer thinks fit.
- (6) The returning officer may accept or reject an objection.
- (7) If the returning officer accepts an objection relating to the inclusion of a person's name in the final list for the poll, the returning officer:
  - (a) must exclude the person's name from the final list, and
  - (b) must inform the person and the objector, in writing, that the person's name is so excluded.
- (8) If the returning officer accepts an objection relating to the inclusion of a particular voting entitlement for a person in the final list for the poll, the returning officer:
  - (a) must amend the final list so as to ensure that it reflects the person's true voting entitlement, and
  - (b) must inform the person and the objector, in writing, that the person's voting entitlement is so amended.
- (9) If the returning officer rejects an objection, the returning officer must inform the person to whom the objection relates and the objector, in writing, that the returning officer has rejected the objection.
- (10) The returning officer may require a person who lodges an objection, or who replies to an objection, to verify the objection or reply by statutory declaration.

## **12 Postponement of poll not to affect final list**

The validity of the final list for a poll is not affected by the postponement of the close of the poll by a notice published after the close of the exhibition of the list, and the list remains the final list for the poll.

## **Division 4 – The ballot**

### **13 Printing of ballot-papers**

- (1) As soon as practicable after the close of enrolments in a poll, the returning officer must cause sufficient ballot-papers to be printed to enable ballot-papers to be sent to each person whose name is included in the final list for the poll.
- (2) A ballot-paper for a poll must contain:
  - (a) the question to be voted on in the poll with the words "YES" and "NO", together with appropriate spaces for the voter to indicate the voter's intention with respect to the question, and
  - (b) such directions as to the manner in which a vote is to be recorded and returned to the returning officer as the returning officer considers appropriate.

### **14 Distribution of ballot-papers**

As soon as practicable after the printing of the ballot-papers for a poll, the returning officer must

send to each person included in the final list for the poll:

- (a) for each vote to which the person is entitled, a ballot-paper that is initialled by the returning officer (or by a person authorised by the returning officer) or that bears a mark prescribed for the purposes of section 122A (3) of the *Parliamentary Electorates and Elections Act 1912* together with a blank unsealed envelope (the "**inner envelope**"), and
- (b) a large unsealed envelope addressed to the returning officer and bearing on the back the words "FULL NAME AND ADDRESS OF VOTER" and "SIGNATURE OF VOTER", together with appropriate spaces for the insertion of a name, address and signature (the "**outer envelope**").

### **15 Duplicate ballot-papers**

(1) At any time before the close of the poll, the returning officer may issue to a voter duplicate ballot-papers and duplicate envelopes if the voter satisfies the returning officer by statutory declaration:

- (a) that the original ballot-paper or ballot-papers has or have been spoilt, lost or destroyed, and
- (b) that the voter has not already voted in the poll concerned.

(2) The returning officer is to maintain a record of all duplicate ballot-papers issued under this clause.

### **16 Recording of votes**

(1) In order to vote in a poll, a person:

- (a) for each vote to which the person is entitled:
  - (i) must record a vote on a ballot-paper in accordance with the directions shown on it, and
  - (ii) must place the completed ballot-paper in an inner envelope, and
  - (iii) must seal the inner envelope, and
- (b) must place each inner envelope in the outer envelope, and
- (c) must seal the outer envelope, and
- (d) must complete the person's full name and address on, and must sign, the back of the outer envelope, and
- (e) must return the outer envelope to the returning officer so as to be received before the close of the poll.

(2) An inner envelope must not contain more than one ballot-paper.

## **Division 5 – The scrutiny**

### **17 Ascertaining result of poll**

The result of a poll is to be ascertained by the returning officer as soon as practicable after the close of the poll.

### **18 Scrutiny of outer envelopes**

(1) The returning officer must reject (without opening it) any outer envelope purporting to contain a ballot-paper if the outer envelope is not received before the close of the poll or is received unsealed.

(2) The returning officer must examine the name on the back of each remaining outer envelope and, without opening the outer envelope:

- (a) must provisionally accept any ballot-paper in the outer envelope and draw a line through the name on the final list for the poll that corresponds to the name on the back of the outer envelope, if satisfied that a person of that name is included in the list, or
- (b) must reject any ballot-paper in the outer envelope, if not so satisfied or if a name, address or signature does not appear on the back of the outer envelope.

(3) The returning officer may reject a ballot-paper without opening the outer envelope if, after making such inquiries as the returning officer thinks fit:

- (a) the returning officer is unable to identify the signature on the back of the outer envelope, or
- (b) it appears to the returning officer that the signature on the back of the outer envelope is not the signature of the person whose name and address appear on the back of the outer envelope.

### **19 Scrutiny of inner envelopes**

- (1) The scrutiny of inner envelopes in a poll is to be conducted as follows:
  - (a) the returning officer is to open the outer envelopes containing the ballot-papers that have not been rejected,
  - (b) the returning officer is then to extract any inner envelope contained in any such outer envelope,
  - (c) the returning officer is then to note on the final list for the poll, against the name of the person appearing on the back of the outer envelope, the number of inner envelopes contained in the outer envelope,
  - (d) the returning officer is then to place each such inner envelope in a locked ballot-box.
- (2) However, if there are more inner envelopes in the outer envelope than the number of votes to which the person is entitled, the returning officer must reject all of the inner envelopes contained in the outer envelope.

### **20 Scrutiny of votes**

- (1) The scrutiny of votes in a poll is to be conducted as follows:
  - (a) the returning officer is to unlock the ballot-box, remove the inner envelopes and then remove the ballot-papers from the inner envelopes,
  - (b) the returning officer is then to reject all ballot-papers in an inner envelope if the inner envelope contains more than one ballot-paper,
  - (c) the returning officer is then to examine each remaining ballot-paper and reject those that are informal,
  - (d) the returning officer is then to proceed to count the votes and ascertain the result of the poll.
- (2) At the scrutiny of votes in a poll, a ballot-paper must be rejected as informal:
  - (a) if it is neither initialled by the returning officer (or by a person authorised by the returning officer to do so) nor bears a mark prescribed as an official mark for the purposes of section 122A (3) of the *Parliamentary Electorates and Elections Act 1912*, or
  - (b) if it has on it any mark or writing which the returning officer considers could enable any person to identify the voter who completed it, or
  - (c) if it has not been completed in accordance with the directions on it.
- (3) However, a ballot-paper is not to be rejected as informal merely because of any mark or writing on it which is not authorised or required by this Regulation (unless it is a mark or writing referred to in subclause (2) (b)) if the returning officer considers that the voter's intention is clearly indicated on the ballot-paper.
- (4) The result of the poll is to be ascertained by determining the following:
  - (a) the number of votes accepted in the poll,
  - (b) the number of votes in favour of the question on which the poll is being taken,
  - (c) the number of votes against that question,
  - (d) the number of votes rejected as informal.

### **21 Notification of result of poll**

As soon as practicable after the result of a poll has been ascertained, the returning officer is to notify the Minister and the Executive Officer in writing of the result of the poll.

## **Part 3 – Conduct of elections**

## **Division 1 – Preliminary**

### **22 Definitions**

In this Part:

**"calling of the ballot"** means the date on which a notice for an election is first published under clause 23.

**"close of enrolments"** means the final time and date fixed by the returning officer for the close of enrolments for an election.

**"close of nominations"** means the final time and date fixed by the returning officer for the close of nominations for an election.

**"close of the ballot"** means the final time and date fixed by the returning officer for the close of the ballot for an election.

**"close of the exhibition of the list"** means the final time and date fixed by the returning officer for the close of the exhibition of the list for an election.

**"final list"** means the list prepared for an election under Division 5.

**"preliminary list"** means the list for an election provided to the returning officer under clause 30.

## **Division 2 – Calling of elections**

### **23 Notice of election**

(1) As soon as practicable after having been notified in writing by or on behalf of the Minister that an election is required to be held for a region, the returning officer:

- (a) must cause to be published, in at least one newspaper circulating generally throughout the region or in an official publication of the Committee, a notice calling for the nomination of candidates for the election, and
- (b) must notify the Executive Officer in writing that an election is to be held for the region and of the time and date for the close of nominations, as stated in the notice published under paragraph (a).

(2) The notice:

- (a) must state that an election is to be held for the region concerned, and
- (b) must call for the nomination of candidates, and
- (c) must fix the time and date for the close of nominations, and
- (d) must state the places where nomination forms may be obtained and where nominations may be lodged, and
- (e) must state the qualifications that entitle a person to nominate, or be nominated as, a candidate.

(3) The close of nominations is not to be earlier than 21 days after the date on which the notice is first published.

### **24 Postponement of close of nominations**

(1) The returning officer may, by a notice in a form similar to, and published in the same manner as, the notice calling for the nomination of candidates, postpone (for a period not exceeding 14 days) the close of nominations for an election.

(2) The power conferred by this clause on a returning officer may be exercised more than once in respect of an election.

## **Division 3 – Nominations**

### **25 Qualifications for candidates and for nominating candidates**

(1) A person is qualified to nominate, or to be nominated as, a candidate for an election if, and only if:

(a) the person has paid all charges, fees and other amounts due and payable to the Committee under the Act in respect of the financial year last preceding the election, and

(b) the person is entitled to vote in the election or the person would be so entitled but for the operation of section 16B (2) or 16E (1) (a) of the Act.

(2) However, a person is not qualified to be nominated as a candidate for election for a region if the person is already a regional member, or candidate for election, for some other region.

## **26 Nomination of candidates**

(1) A nomination of a candidate:

(a) must be in an approved form, and

(b) must be made by at least 2 persons (other than the candidate) who are qualified to nominate a candidate, and

(c) must contain a statement, signed by the candidate, stating that the candidate:

(i) is entitled to vote in the election or would be so entitled but for the operation of section 16B (2) or 16E (1) (a) of the Act, and

(ii) consents to the nomination and will act as a member of the Committee if elected, and

(iii) has not consented to being nominated as a candidate for any other region, and

(d) must be lodged with the returning officer before the close of nominations.

(2) If the returning officer considers that an insufficient number of the persons by whom a candidate has been nominated are qualified to nominate the candidate, the returning officer must, as soon as practicable after receiving the nomination, cause notice of that fact to be given to the candidate.

(3) The returning officer may, in order to decide whether a person who nominates a candidate in an election is qualified to do so, require the Executive Officer to provide the returning officer with such information regarding the person as the returning officer specifies.

(4) The Executive Officer is to comply with such a requirement as soon as practicable.

## **27 Withdrawal of nomination**

A candidate who has been nominated in an election may withdraw the nomination at any time before the close of nominations by notice in writing given to the returning officer.

## **28 Uncontested elections**

If, by the close of nominations, only one person has been duly nominated as a candidate for the region concerned, that person is taken to have been elected.

## **29 Contested elections**

If, by the close of nominations, 2 or more persons have been duly nominated as candidates for the region concerned, a ballot must be held.

## **Division 4 – Preparation of preliminary list and calling of ballot**

### **30 Preparation of preliminary list**

(1) As soon as practicable after it becomes apparent that a ballot must be held for an election, the returning officer must notify the Executive Officer:

(a) that a ballot is to be held for the election, and

(b) that a preliminary list for the election is required.

(2) The Executive Officer must provide the returning officer with:

(a) a preliminary list of the persons who, in the opinion of the Executive Officer,

are entitled to vote in the election, and

(b) an appropriately addressed label, or an appropriately addressed envelope, for each person whose name is included in that list.

(3) A preliminary list:

(a) must contain:

(i) the full names (consecutively numbered and listed in alphabetical order) and addresses of the persons whose names are included in the list, and

(ii) the voting entitlement of each of those persons, and

(iii) sufficient details to identify the plantations in respect of which those persons are entitled to vote in the election, and

(b) must be certified by the Executive Officer in an approved form.

(4) This clause does not apply to an election to be held as a consequence of an earlier election that has failed if a preliminary list for the earlier election has already been provided to the returning officer.

### **31 Notice of ballot**

(1) As soon as practicable after receiving the preliminary list for an election, the returning officer must cause notice that a ballot is to be held:

(a) to be published in at least one newspaper circulating generally throughout the region concerned or in an official publication of the Committee, or

(b) to be sent by post to each person whose name is included in the preliminary list for the election.

(2) The notice must state:

(a) that a ballot is to be held, and

(b) the time and date fixed for the close of the exhibition of the preliminary list, and

(c) the places where, the dates on which, and times at which, copies of the preliminary list will be exhibited, and

(d) the time and date fixed for the close of enrolments, and

(e) the qualifications that entitle a person to vote, and

(f) the places where applications for enrolment and objections against enrolment may be lodged, and

(g) the time and date fixed for the close of the ballot.

(3) The notice must also state:

(a) that it is compulsory for a banana grower to be enrolled, or to apply for enrolment, in the final list for the election unless the banana grower is prevented from enrolling in that final list because of the operation of section 16B (2) or 16E

(1) (a) of the Act, and

(b) that it is compulsory for a banana grower who is enrolled in the final list for the election to vote in the election.

(4) The close of the exhibition of the list must not be earlier than 14 days after the calling of the ballot.

(5) The close of enrolments must not be earlier than 7 days after the close of the exhibition of the list or later than 14 days before the close of the ballot.

(6) The close of the ballot must not be earlier than 35 days after the calling of the ballot.

### **32 Postponement of ballot**

(1) The returning officer may, by notice published in the same way as the notice stating that a ballot is to be held, postpone (for a period not exceeding 14 days) the close of the exhibition of the list, the close of enrolments or the close of the ballot.

(2) The power conferred on a returning officer by this clause may be exercised more than once in respect of an election.

## **Division 5 – Preparation of final list**

### **33 Exhibition of preliminary list**

The returning officer must cause copies of the preliminary list to be exhibited for public inspection:

- (a) at the places where applications for enrolment and objections against enrolment may be lodged, and
- (b) for a period of at least 14 days ending at the close of the exhibition of the list.

### **34 Enrolment compulsory**

It is compulsory for every banana grower to be enrolled, or to apply for enrolment, in the final list for the election unless the banana grower is prevented from enrolling in the final list because of the operation of section 16B (2) or 16E (1) (a) of the Act.

Maximum penalty: 0.1 penalty units.

### **35 Applications for enrolment by persons not already enrolled**

- (1) A person whose name does not appear on the preliminary list for an election may apply for enrolment in the final list for the election.
- (2) The application must be in an approved form and must be lodged with the returning officer before the close of enrolments.
- (3) On receipt of the application, the returning officer:
  - (a) if satisfied that the applicant is entitled to enrolment, must accept the application and enter the name, address and voting entitlement of the applicant in the final list for the election, or
  - (b) if not so satisfied, must reject the application and inform the applicant in writing that the application has been rejected, or
  - (c) if the application is not in the proper form or is incomplete:
    - (i) must return the application for correction or completion, and
    - (ii) must consider the duly corrected or completed application in accordance with this clause.
- (4) An application to a Local Court for an order referred to in section 16G (3) of the Act is to be in an approved form if the application relates to the inclusion of:
  - (a) the name of any person in the final list for the election, or
  - (b) a particular voting entitlement for any person in the final list for the election.

### **36 Objections to enrolment**

- (1) Before the close of enrolments, the returning officer or any person who is entitled to vote in an election may object to the inclusion in the final list of:
  - (a) the name of any person, or
  - (b) the particular voting entitlement for any person.
- (2) An objection:
  - (a) must be in an approved form if the objection relates to the inclusion of:
    - (i) the name of any person in the final list for the election, or
    - (ii) a particular voting entitlement for any person in the final list for the election, and
  - (b) must state the grounds on which the objection is made, and
  - (c) must be signed by the objector, and
  - (d) must be lodged with the returning officer (unless it is signed by the returning officer).
- (3) The returning officer must send particulars of an objection to the person to whom the objection relates.
- (4) The person to whom an objection relates may lodge a written reply with the returning officer within 14 days after the date on which particulars of the objection were sent to the person.

- (5) The returning officer must consider each objection, and any reply received within that 14 day period, and may make such inquiries as the returning officer thinks fit.
- (6) The returning officer may accept or reject an objection.
- (7) If the returning officer accepts an objection relating to the inclusion of a person's name in the final list for the election, the returning officer:
  - (a) must exclude the person's name from the final list, and
  - (b) must inform the person and the objector, in writing, that the person's name is so excluded.
- (8) If the returning officer accepts an objection relating to the inclusion of a particular voting entitlement for a person in the final list for the election, the returning officer:
  - (a) must amend the final list so as to ensure that it reflects the person's true voting entitlement, and
  - (b) must inform the person and the objector, in writing, that the person's voting entitlement is so amended.
- (9) If the returning officer rejects an objection, the returning officer must notify the person to whom the objection relates and the objector, in writing, that the returning officer has rejected the objection.
- (10) The returning officer may require a person who lodges an objection, or who replies to an objection, to verify the objection or reply by statutory declaration.

### **37 Postponement of ballot not to affect final list**

The validity of the final list for an election is not affected by the postponement of the close of the ballot by a notice published after the close of the exhibition of the list, and the list remains the final list for the election.

## **Division 6 – The ballot**

### **38 Voting compulsory**

It is compulsory for every banana grower who is enrolled in the final list for an election to vote in the election.

Maximum penalty: 0.1 penalty units.

### **39 Printing of ballot-papers**

- (1) As soon as practicable after the close of enrolments in an election, the returning officer:
  - (a) must determine the order in which the candidates' names are to be listed on the ballot-paper by means of a ballot held in accordance with the procedure prescribed for the purposes of section 82A of the *Parliamentary Electorates and Elections Act 1912*, and
  - (b) must cause sufficient ballot-papers to be printed to enable ballot-papers to be sent to each person whose name is included in the final list for the election.
- (2) A ballot-paper for an election must contain:
  - (a) the names of the candidates, arranged in the order determined in accordance with subclause (1) (a), with a small square set opposite each name, and
  - (b) if the returning officer considers that the names of 2 or more candidates are so similar as to cause confusion, such other matter as the returning officer considers will distinguish between the candidates, and
  - (c) such directions as to the manner in which a vote is to be recorded and returned to the returning officer as are required by subclause (3), and
  - (d) such further directions as to the manner in which a vote is to be recorded and returned to the returning officer as the returning officer considers appropriate.
- (3) The directions to voters must include a direction that:
  - (a) the voter must record a vote for at least one candidate by placing the number

"1" in the square opposite the name of the candidate for whom the voter desires to give his or her first preference vote, and

(b) the voter may, but is not required to, vote for additional candidates by placing consecutive numbers (beginning with the number "2") in the squares opposite the names of those additional candidates in the order of the voter's preferences for them.

#### **40 Distribution of ballot-papers**

As soon as practicable after the printing of the ballot-papers for an election, the returning officer must send to each person included in the final list for the election:

(a) for each vote to which the person is entitled, a ballot-paper that is initialled by the returning officer (or by a person authorised by the returning officer) or that bears a mark prescribed for the purposes of section 122A (3) of the *Parliamentary Electorates and Elections Act 1912* together with a blank unsealed envelope (the "**inner envelope**"), and

(b) a large unsealed envelope addressed to the returning officer and bearing on the back the words "FULL NAME AND ADDRESS OF VOTER" and "SIGNATURE OF VOTER", together with appropriate spaces for the insertion of a name, address and signature (the "**outer envelope**").

#### **41 Duplicate ballot-papers**

(1) At any time before the close of the ballot, the returning officer may issue to a voter duplicate ballot-papers and duplicate envelopes if the voter satisfies the returning officer by statutory declaration:

(a) that the original ballot-paper or ballot-papers has or have been spoilt, lost or destroyed, and

(b) that the voter has not already voted in the election concerned.

(2) The returning officer is to maintain a record of all duplicate ballot-papers issued under this clause.

#### **42 Recording of votes**

(1) In order to vote in an election, a person:

(a) for each vote to which the person is entitled:

(i) must record a vote on a ballot-paper in accordance with the directions shown on it, and

(ii) must place the completed ballot-paper in an inner envelope, and

(iii) must seal the inner envelope, and

(b) must place each inner envelope in the outer envelope, and

(c) must seal the outer envelope, and

(d) must complete the person's full name and address on, and must sign, the back of the outer envelope, and

(e) must return the outer envelope to the returning officer so as to be received before the close of the ballot.

(2) An inner envelope must not contain more than one ballot-paper.

#### **Division 7 – The scrutiny**

#### **43 Ascertaining result of ballot**

The result of a ballot is to be ascertained by the returning officer as soon as practicable after the close of the ballot.

#### **44 Scrutineers**

(1) Each candidate is entitled to appoint, by notice in writing, a scrutineer to represent the candidate at all stages of the scrutiny.

(2) A candidate who appoints a scrutineer must cause written notice of the appointment to be given to the returning officer.

#### **45 Scrutiny of outer envelopes**

- (1) The returning officer must reject (without opening it) any outer envelope purporting to contain a ballot-paper if the outer envelope is not received before the close of the ballot or is received unsealed.
- (2) The returning officer must examine the name on the back of each remaining outer envelope and, without opening the outer envelope:
  - (a) must provisionally accept any ballot-paper in the outer envelope and draw a line through the name on the final list for the election that corresponds to the name on the back of the outer envelope, if satisfied that a person of that name is included in that final list, or
  - (b) must reject any ballot-paper in the outer envelope, if not so satisfied or if a name, address or signature does not appear on the back of the outer envelope.
- (3) The returning officer may reject a ballot-paper without opening the outer envelope if, after making such inquiries as the returning officer thinks fit:
  - (a) the returning officer is unable to identify the signature on the back of the outer envelope, or
  - (b) it appears to the returning officer that the signature on the back of the outer envelope is not the signature of the person whose name and address appear on the back of the outer envelope.

#### **46 Scrutiny of inner envelopes**

- (1) The scrutiny of inner envelopes in a ballot is to be conducted as follows:
  - (a) the returning officer is to open the outer envelopes containing the ballot-papers that have not been rejected,
  - (b) the returning officer is then to extract any inner envelope contained in any such outer envelope,
  - (c) the returning officer is then to note on the final list for the election, against the name of the person appearing on the back of the outer envelope, the number of inner envelopes contained in the outer envelope,
  - (d) the returning officer is then to place each such inner envelope in a locked ballot-box.
- (2) However, if there are more inner envelopes in the outer envelope than the number of votes to which the person is entitled, the returning officer must reject all of the inner envelopes contained in the outer envelope.

#### **47 Scrutiny of votes**

- (1) The scrutiny of votes in a ballot is to be conducted as follows:
  - (a) the returning officer is to unlock the ballot-box, remove the inner envelopes and then remove the ballot-papers from the inner envelopes,
  - (b) the returning officer is then to reject all ballot-papers in an inner envelope if the inner envelope contains more than one ballot-paper,
  - (c) the returning officer is then to examine each remaining ballot-paper and reject those that are informal,
  - (d) the returning officer is then to proceed to count the votes and ascertain the result of the election.
- (2) At the scrutiny of votes in a ballot, a ballot-paper must be rejected as informal:
  - (a) if it is neither initialled by the returning officer (or by a person authorised by the returning officer to do so) nor bears a mark prescribed as an official mark for the purposes of section 122A (3) of the *Parliamentary Electorates and Elections Act 1912*, or
  - (b) if it has on it any mark or writing that the returning officer considers could enable any person to identify the voter who completed it, or
  - (c) if it has not been completed in accordance with the directions on it.
- (3) However, a ballot-paper is not to be rejected as informal:
  - (a) merely because of any mark or writing on it that is not authorised or required

by this Regulation (unless it is a mark or writing referred to in subclause (2) (b)) if the returning officer considers that the voter's intention is clearly indicated on the ballot-paper, or

- (b) if the voter has recorded a vote by placing in a square the number "1":
- (i) merely because the same preference (other than a first preference) has been recorded on the ballot-paper for more than one candidate, or
  - (ii) merely because there is a break in the order of preferences recorded on the ballot-paper.

#### **48 Counting of votes**

(1) The method of counting the votes to ascertain the result of an election is as provided in Part 2 of the Seventh Schedule to the *Constitution Act 1902*.

(2) For the purpose of applying the provisions of that Part to an election, a reference in those provisions to the returning officer is to be read as a reference to the returning officer under this Regulation.

#### **49 Notification of result of election**

As soon as practicable after a candidate in an election has been elected, the returning officer is to notify the Minister and the Executive Officer in writing of the name of the candidate elected.

#### **50 Election proceedings have no effect in certain circumstances**

(1) If, after the close of nominations and before the close of the ballot, a candidate becomes disqualified:

(a) the returning officer is to cause notice of the disqualification to be published in a newspaper circulating generally throughout the region concerned or in an official publication of the Committee, and

(b) all proceedings taken after the Minister notified the returning officer that the election was required to be held are of no effect and those proceedings must be taken again.

(2) For the purposes of this clause, a candidate becomes disqualified if the candidate:

(a) dies, or

(b) 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, or

(c) becomes a mentally incapacitated person, or

(d) 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.

### **Part 4 – General**

#### **51 Decisions of returning officer final**

If the returning officer is permitted or required by the Act or this Regulation to make a decision on any matter relating to the conduct of a ballot in a poll or election, the returning officer's decision on the matter is final.

#### **52 Offences**

A person must not:

(a) apply for enrolment in the final list for any poll or election if the person is already included in the list, or

(b) cast more votes, or attempt to cast more votes, than the person is entitled to cast in any poll or election, or

(c) vote, or attempt to vote, in any poll or election in which the person is not entitled to

vote.

Maximum penalty: 5 penalty units.

### **53 Costs and expenses of polls and elections**

The Committee must ensure that provision is made in the following manner for payment of the costs and expenses of the returning officer in conducting a poll or an election:

- (a) before the poll or election is conducted, the Committee must pay to the returning officer an amount equal to the returning officer's estimate of the costs and expenses of the poll or election likely to be incurred by the returning officer in conducting the poll or election,
- (b) the Committee must give an undertaking to the returning officer to pay to the returning officer, after the poll or election is conducted, any amount by which the actual costs and expenses incurred by the returning officer in conducting the poll or election exceed the amount of the estimate.

### **54 Evidence of authority of employee or agent of Committee**

For the purposes of section 6 (d) of the Act, the written evidence as to the authority of an employee or agent of the Committee is to be in the form of a certificate:

- (a) that states that it is issued under the *Banana Industry Act 1987*, and
- (b) that gives the name of the person to whom it is issued, and
- (c) that describes the nature of the powers conferred on the person, and
- (d) that states its date of expiry, and
- (e) that describes the kind of premises that the person is authorised to enter, and
- (f) that bears the seal of the Committee.

### **55 Evidentiary certificates**

For the purposes of section 26 (d) (i) of the Act, the Executive Officer is the prescribed officer.

### **56 Saving**

Any act, matter or thing that, immediately before the repeal of the *Banana Industry Regulation 2003*, had effect under that Regulation continues to have effect under this Regulation.

### **Historical notes**

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
ClI	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Banana Industry Regulation 2008 (297)*. GG No 88 of 18.7.2008, p 7157. Date of commencement, 1.9.2008, cl 2.