

NSW SOUTH WALES GOVERNMENT

REVIEW OF THE *BANANA INDUSTRY ACT 1987*

FINAL REPORT

December 2009



Title: Review of the *Banana Industry Act 1987*

© State of New South Wales through Department of Industry and Investment (Industry & Investment NSW) 2009

This publication is copyright. You may download, display, print and reproduce this material in an unaltered form only (retaining this notice) for your personal use or for non-commercial use within your organisation. To copy, adapt, publish, distribute or commercialise any of this publication you will need to seek permission from the Manager Publishing, Industry & Investment NSW, Orange.

For updates to this publication, check <http://www.dpi.nsw.gov.au/>

Published by Industry & Investment NSW

First published June 2010

Disclaimer

The information contained in this publication is based on knowledge and understanding at the time of writing (December 2009). However, because of advances in knowledge, users are reminded of the need to ensure that information on which they rely is up to date and to check the currency of the information with the appropriate officer of Industry & Investment NSW or the user's independent advisor.

TRIM reference: INT09/64354

CONTENTS

EXECUTIVE SUMMARY	4
The Review	4
Banana Industry Levy Arrangements	4
Banana Industry Committee Activities & Bunchy Top.....	4
Review Findings and Conclusions.....	5
1. INTRODUCTION	6
The Banana Industry Committee	6
The Committee's Powers and Functions	6
The NSW Banana Industry	7
The National Reform Agenda and Competition Principles	8
This Review	9
2. OBJECTIVES OF THE LEGISLATION.....	10
Historical Objectives of NSW Banana Industry Legislation.....	10
Objectives of the Present Act.....	10
Market Failure.....	11
3. RESTRICTIONS ON COMPETITION.....	12
Pest and Disease Control	12
Promotion.....	16
Research, Development and Education	17
Industry Representation	18
BIC Power to Impose Charges on Banana Growers.....	18
4. THE FUTURE OF THE COMMITTEE	20
REFERENCES	22
APPENDIX A: BIC REQUEST FOR REVIEW.....	23
APPENDIX B: LIST OF SUBMISSIONS RECEIVED.....	24
APPENDIX C: BANANA INDUSTRY COMMITTEE FUNCTIONS.....	25
APPENDIX D: REVIEW TERMS OF REFERENCE.....	27
APPENDIX E: ABGC COMMITMENT TO BBTV CONTROL	28

EXECUTIVE SUMMARY

The Review

- The NSW Banana Industry Committee (BIC) is a statutory authority constituted under the *Banana Industry Act 1987* (the Act). The BIC's primary functions since 2000 have been industry services in the form of pest and disease control, research, education and promotion.
- The BIC's primary activity in recent years has been its Banana Bunchy Top Virus (BBTV) Program, the operational responsibility for which was transferred to the National Program operated by the Australian Banana Growers' Council (ABGC) in 2009-2010.
- Significant decreases in the area planted to bananas in NSW over the last decade have meant that an increasing proportion of the BIC's budget has been devoted to its own administration, with the 2009-2010 budget not providing for any service provision on the basis of them being otherwise provided under the national arrangements. It was in this context that the Committee wrote to the Minister for Primary Industries in April 2009 requesting that he initiate a review of the Act.
- This review was conducted with reference to the Competition Principles in accordance with the NSW Government's commitment under the National Reform Agenda. Industry consultation included two regional grower meetings, a call for submissions (with 21 received), and various stakeholder meetings including with ABGC, Horticulture Australia Limited (HAL), Queensland DPI&F and the BIC.

Banana Industry Levy Arrangements

- The BIC presently imposes a \$25 per hectare charge on NSW banana growers, raising approximately \$47,500 per annum, or around \$108 per grower. The BIC has advised that this would need to be increased four fold to provide any level of service to growers.
- NSW banana growers are also subject to the new national banana levy of 1.7 cents per kilogram, which raises approximately \$238,000 within NSW, or around \$540 per grower. National levy funds are now used to fund the industry services previously provided by the BIC, including promotion and research activity, including the new National BBTV Program. These funds are partially matched by the Commonwealth, thereby significantly increasing the total funds available for industry services.
- The review found that there is widespread industry support for the new national arrangements and opposition to paying two banana levies.

Objectives of the NSW Legislation – The *Banana Industry Act 1987*

- The review found that the Act's objectives are to address a number of market failures in areas such as disease control, promotion and research, development and education (RD&E) where growers acting independently would result in inefficient industry outcomes.

Banana Industry Committee Activities & Bunchy Top

- While there was majority support for the new National BBTV Program, and hence repeal of the *Banana Industry Act 1987*, a concern raised by a small number of growers was whether the Act should be retained as a form of insurance should the National Program prove inadequate. This issue was therefore a primary focus of the review.

Review Findings and Conclusions

- The review was unable to support retention of the Act as a form of insurance should the National Program prove inadequate.
- The review considered evidence from both ABGC and HAL of their commitment to a ten-year BBTV eradication strategy, and found that the new Program is better designed and resourced than the former BIC program.
- The review found that representation of the NSW industry on the various BBTV Program management committees provides an effective form of insurance for the NSW industry and also ensures that there will be full consideration of NSW stakeholder concerns.
- The review also found that continuation of the Act for ‘insurance’ purposes would otherwise require an ‘insurance premium’ to be paid in the form of maintained BIC levies that could not be justified.
- Finally, the review concluded that, in the unlikely event of the National Program proving inadequate, the *NSW Agricultural Industry Services Act 1998* provides a final ‘insurance’ safeguard.
- The review found that there is widespread industry support for the approach taken to BBTV eradication under the National Program and that promotional and RD&E activities funded through the national levy arrangements are better resourced than would be the case under the BIC and enjoy general industry support.
- The review also found that there was general industry support for winding up the BIC, as evidenced by support for the repeal of the Act in all grower submissions and at both grower meetings, as well as the express recommendation for dissolution of the BIC by its grower-elected members in their submission to the review.
- This review concludes, therefore, that the BIC’s industry services in relation to disease control, promotion and research, development and education are now more efficiently provided under the national arrangements.
- Given the finding that there are now more efficient alternative means of undertaking the BIC’s authorised functions, the review concludes that the Act should be repealed with the BIC dissolved by 30 June 2010 in order to preserve its financial reserves. In the event of BIC dissolution, the review further concludes that the most appropriate use of BIC reserves would be to lodge them with HAL under its voluntary contribution mechanism.

1. INTRODUCTION

The Banana Industry Committee

- 1.1. The NSW Banana Industry Committee (BIC) is a statutory authority constituted under the *Banana Industry Act 1987* (the Act). The forerunner of the Committee, the Banana Marketing Control Committee (BMCC), was first constituted under the *Banana Industry Act 1969*. While the 1969 Act did not list its objectives, the BMCC's primarily role was to organise the transport and distribution of NSW-grown bananas to market so as to improve product quality and avoid periodic gluts.
- 1.2. In 1996 the Act was reviewed in accordance with National Competition Policy principles. As a consequence, the Act was amended in 2000, resulting in the present form of the Act. Among other things, the amendments removed the BIC's 'power of direction' in relation to banana transport, which had effectively created a monopoly provider of transport for NSW-grown bananas to southern markets. The BIC's primary functions have since related to pest and disease control, research, education and promotion.

The Committee's Powers and Functions

- 1.3. The Act empowers the BIC to employ or appoint staff and to impose compulsory charges on banana growers to fund the powers and functions set out in sections 5 and 6 of the Act (reproduced in Appendix C), which can be summarised as follows:
 - undertake promotion and marketing;
 - undertake pest and disease control programs, including authorisation of related inspections and treatment/destruction of bananas;
 - conduct research and education;
 - provision of banana ripening or marketing facilities;
 - establish a voluntary insurance scheme for banana growers; and
 - trade in bananas.
- 1.4. Of these functions, the BIC has only undertaken activity in relation to the first three since 1996. The BIC's primary activity in recent years has been its Banana Bunchy Top Virus (BBTV) Program, the operational responsibility for which was transferred to the Australian Banana Growers' Council (ABGC) in 2009-2010 following a twelve month period whereby the ABGC funded the BBTV operations of the BIC following the commencement of the National Program.
- 1.5. Significant decreases in the area planted to bananas in NSW over the last decade have meant that an increasing proportion of the BIC's budget has been devoted to its own administration. With the transfer of responsibility for the BBTV Program, the 2009-2010 budget does not provide for any service provision, with the BIC secretariat devoted to administrative tasks, particularly the recovery of outstanding grower charges. It was in this context that the Committee wrote to the Minister for Primary Industries in April 2009 requesting that he initiate a review of the Act.

- 1.6. The BIC presently imposes a \$25 per hectare charge on NSW banana growers, raising approximately \$47,500 per annum, or around \$108 per grower. This income, however, is insufficient to cover the BIC's operating costs, with the BIC's submission to the review suggesting that:

The present BIC levy of \$25/ha is insufficient to provide any real service delivery and BIC reserves will be exhausted by 30 June 2011 unless the levy is increased at least four fold.

- 1.7. The ABGC's National BBTV Program is funded through the recently introduced national banana levy of 1.7 cents per kilogram, which raises approximately \$238,000 within NSW, or around \$540 per grower. The national levy is also used to fund promotion and research activity, some components of which attract matching Commonwealth funding, thereby significantly increasing the total funds available above that raised from industry.

The NSW Banana Industry

- 1.8. NSW produced around 14,000 tonnes of bananas in 2007-08. This represented 6.8 percent of the national crop of 207,062 tonnes.¹
- 1.9. The number of banana growers and associated hectares of plantation has dramatically declined since the early 1990s, primarily in response to competition from larger plantations in far north Queensland, which have seasonal and topographical productivity advantages over sub-tropical producers in NSW. Table 1 contains grower and plantation area statistics for NSW for 2003 and 2008.

Table 1: NSW Banana Growers and Plantation Area

Growing Area	2003		2008	
	Growers	Hectare	Growers	Hectare
SOUTHERN ZONE				
Coffs Harbour	306	1351	91	370
Woolgoolga	(in above)		114	471
Nambucca	72	280	41	127
	378	1631	246	968
NORTHERN ZONE				
Richmond/Brunswick	114	468	86	357
Tweed Coastal	140	693	64	348
Tweed West	(in above)		48	229
	254	1161	198	934
NSW TOTAL	632	2782	444	1902

¹ Source> Australian Bureau of Statistics (2009), Agricultural Commodities 2007-08, ref: 7121.0.

- 1.10. There is significant variance in the varieties grown between the southern and northern growing zones of NSW, with Cavendish dominating the southern zone and Lady Finger dominating the northern zone (Table 2).

Table 2: Variety by Zone

Variety	Northern Zone		Southern Zone		Total	
	Area	per cent %	Area	per cent %	Area	per cent %
Cavendish	456	39	1512	93	1968	70
Ladyfinger	658	57	99	6	757	27
Other	48	4	20	1	68	3
Total	1162		1631		2793	

- 1.11. The majority of NSW bananas are consigned to Sydney wholesalers, although there are numerous niche marketing arrangements and some direct selling in banana growing areas.

The National Reform Agenda and Competition Principles

- 1.12. Well designed and targeted regulation is essential to delivering appropriate economic, social and environmental outcomes. It is also fundamental to creating a business environment that generates jobs, investment and growth. Good quality regulation serves the public interest by maximising the net benefit to the community while minimising regulatory burden and red-tape. Consequently, the NSW State Plan, *A New Direction for NSW*, commits the NSW Government to simplifying or eliminating rules and regulations as a way of growing prosperity across NSW.
- 1.13. The NSW Government is also committed to the National Reform Agenda, a 2006 agreement between all Australian governments that, among other things, recommitted those governments to the Competition Principles established under the former National Competition Policy. The review was therefore conducted in accordance with the Competition Principles, as follows:
- identify the objectives of the *Banana Industry Act 1987* and consider whether the policy objectives of the Act remain valid;
 - assess if the Act remains the most efficient way to achieve those objectives with the least impact in accordance with the National Competition Principles, namely that legislation should not restrict competition unless it can be demonstrated that:
 - the benefits of the restriction to the community as a whole outweigh the costs; and
 - the objectives of the legislation can only be achieved by restricting competition.

The Review's full Terms of Reference is reproduced in Appendix D.

This Review

- 1.14. On 29 April 2009, the BIC wrote to the Minister for Primary Industries requesting a review of the Act. The BIC's letter cited the introduction of a national banana levy and the reluctance of NSW growers to pay two levies. It also outlined the recent transfer of BIC BBTV control activities to the Australian Banana Growers Council (ABGC) with funding to be provided through the national banana levy via Horticulture Australia (HAL).
- 1.15. The Minister agreed to a review, to be undertaken by the then NSW Department of Primary Industries (now Industry and Investment NSW, henceforth "the Department"), in accordance with the Competition Principles. The Department, following appropriate consultation with growers and other interested parties, was to report back to the Minister by the end of December 2009.
- 1.16. The Department began the review by meeting with BIC members of the Board to discuss the review process and timeline.
- 1.17. In late August 2009, advertisements advising stakeholders of the review, the associated call for submissions and proposed regional meetings were placed in regional newspapers and industry publications. Submissions were invited by the close of business on 30 September 2009.
- 1.18. The Department also met with representatives of ABGC, HAL and Queensland DPI to discuss a number of issues related to the BIC and particularly the operation of the BBTV Program under the new national levy arrangements.
- 1.19. Twenty one submissions were received from interested parties. A list of submissions is attached at Appendix B.

2. OBJECTIVES OF THE LEGISLATION

Historical Objectives of NSW Banana Industry Legislation

- 2.1. While the *Banana Industry Act 1969* did not include objectives, the primary role of the forerunner of the BIC, the Banana Marketing Control Committee (BMCC), was to organise the transport and distribution of NSW-grown bananas to market so as to improve product quality and avoid periodic gluts.
- 2.2. The BMCC had the power of direction in relation to the marketing of bananas and for the imposition of compulsory charges to fund its activities, which was levied on banana transport services provided by the Banana Growers Federation (BGF). The BGF at that time provided the vast majority of transport services to the industry.
- 2.3. In addition to using its levy powers to fund its own services, the BMCC also funded the banana bunchy top virus (BBTV) program being run at that time by the BGF. However, by the mid 1980s, fewer NSW banana growers were using BGF transport services, which undermined the BMCC's revenue and fostered feelings among growers that some were "free riding" by avoiding the payment of industry charges by using different carriers.
- 2.4. Industry dissent, along with growing doubts about the constitutionality of the charging system, led to the replacement of the 1969 Act with the *Banana Industry Act 1987*. The new Act changed the name of the BMCC to the Banana Industry Committee, strengthened the constitutional validity of the BIC's charging powers by enabling charges to be levied on a per hectare basis, and reaffirmed the BIC's authorised activities as being primarily concerned with industry services such as the marketing and transportation of bananas, fruit quality control, promotion, pest and disease control, research and education, crop forecasting and insurance.
- 2.5. The 1996 National Competition Policy Review recommended the removal of the BIC's powers to both regulate banana marketing, including any power to impose supply or quality controls, and to regulate banana transport. These amendments to the Act were implemented in 2000 to produce the present form of the Act.

Objectives of the Present Act

- 2.6. The present *Banana Industry Act 1987* does not include explicit objectives, with its long title only listing activities authorised by the Act rather than outcome based objectives.
- 2.7. The 1996 Review Group recommended retention of BIC's powers "to undertake industry service functions, including pest and disease control, research and development, grower education and information services, promotion and industry representation, with the capacity to impose compulsory charges to fund them". Hence, it can be inferred that the Act's objectives are to address a number of market failures in areas such as disease control, where growers acting independently would result in inefficient industry outcomes.

- 2.8. This inference is supported by the 2000 amendment bill second reading speech, which indicated that the amended Act's primary objective would be to enable the BIC to continue to be involved in addressing industry-wide market failures, such as in the provision of research and development, and pest and disease control.

Market Failure

- 2.9. There are numerous forms of market failure that may be relevant to the BIC. For instance, where banana plant pests and diseases are present, it may not be in the interests of an individual grower to undertake control activities because reinfestation would soon occur as a result of the inaction of neighbouring growers. Such "spillovers" can result in less pest and disease control activity across a region or industry than would be efficient if all growers acted in unison.
- 2.10. Similarly, sub-optimal investment in research or promotion activities may occur due to lack of coordinated action. Goods or services that exhibit these characteristics are called "public goods" (or "industry goods" where the benefits are limited to a specific industry) and are likely to be subject to under-investment (where investment is below the social or industry optimal) without the imposition of compulsory investment mechanisms.
- 2.11. While there is evidence that the objectives of the Act are primarily to address market failure in the NSW banana industry and there is further evidence that such market failures are likely to exist, this is a necessary but not sufficient justification for continuance of the Act. The Competition Principles clearly require additional criteria to be met, including assurance that the benefits of the Act to the community as a whole outweigh the costs and that the objectives of the Act can only be achieved by restricting competition. Examination of these points was the focus of this review.

3. RESTRICTIONS ON COMPETITION

- 3.1. A key task of the review was to identify the nature and extent of any restrictions on competition arising from the powers of the BIC and to assess whether any such restrictions generate net public benefits in a manner which least restricts competition.
- 3.2. 'Restriction on competition' can mean obvious and major impositions on trade or where the effects of restrictions are more subtle. A simple definition is that a restriction on competition occurs when the behaviour of individuals or firms is changed from that which would occur in the absence of the legislation under consideration.
- 3.3. The guiding principle of the Review was that competition should not be restricted unless it can be demonstrated:
 - (a) that the benefits of the restriction to the community as a whole outweigh the costs; and
 - (b) that the objectives of the legislation can only be achieved by restricting competition.
- 3.4. Under the Competition and Regulatory Reform Agenda, where criteria (a) and (b) are met, competition restrictions in legislation may be retained. However, where competition restricting provisions of the Act are identified, and it is determined that either the provisions do not yield a net public benefit or that the same objective could be achieved without restricting (or by a lesser restriction on) competition, then it is necessary to recommend repeal of those provisions.
- 3.5. It is also recognised that legislation which restricts competition in a particular market, but which effectively addresses instances of market failure, will often result in positive outcomes for the community. Conversely, it is recognised that legislation can generate public costs where it:
 - is ineffective or inefficient in addressing market failure problems;
 - duplicates other legislation aimed at addressing the problem; or
 - does not address a market failure at all.

Pest and Disease Control

- 3.6. The Act provides the BIC with substantial powers relating to the control of pest and diseases. Sections 5 and 6 provide that the BIC may:

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

5(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,

6(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,*

6(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,

6(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,

- 3.7. The powers of inspection, entry and withholding/destruction of product are particularly strong restrictions on competition. Furthermore, section 9 of the Act provides the BIC with the power of direction over both classes of banana growers and individual banana growers for the purposes of exercising its pest and disease control functions. Such a direction “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”.
- 3.8. The above mentioned BIC powers largely duplicate the powers conferred on inspectors under the *Plant Diseases Act 1924*, and it is through *Order ORI02 Treatment and eradication of banana diseases and pests within the NSW Banana Protected Area* made under the *Plant Diseases Act* that both the previous BIC BBTV Program and the present National BBTV Program were, and are, enforced.
- 3.9. The *Plant Diseases Act* provides for the appointment of inspectors, which need not be Departmental employees, and empowers them, among other things, to serve notices on owners or occupiers of land requiring measures to be taken with respect to control or prevention of any disease or pest. Inspectors can also enter land and premises (other than dwellings) to carry out pest or disease control or prevention work if authorised to do so through a ‘control order’.
- 3.10. *Order ORI02* requires persons wishing to plant banana material within the protected area to obtain a ‘permit to plant’ from an inspector, as well as requiring persons wishing to move banana material (other than fruit) to obtain either a permit from an inspector or a Plant Health Certificate issued by a person accredited under the Queensland Quality Banana Approved Nursery Scheme. The Order also requires, among other things, the immediate destruction of bunchy top infected banana plants, as well a destruction of surrounding plants within a specified radius (known as a ‘bullring’).

Discussion – Pest and Disease Control

- 3.11. While the potential loss of the BIC’s pest and disease control functions, particularly in relation to Banana Bunchy Top Virus (BBTV), was the most commonly raised concern during the review, it was found that the BIC has

not used any of these powers since the transfer of responsibility for the National BBTV Program to the ABGC on 1 July 2009. Moreover, the former BIC NSW BBTV Program relied primarily on grower cooperation with the Program's consultant "detectors" and, in rare cases where grower cooperation could not be achieved, regulatory back-up was obtained through NSW Government inspectors empowered under the *Plant Diseases Act 1924*, rather than the *Banana Industry Act*. This is also the model for the new National BBTV Program in NSW, which should be even more effective than the former program due to Industry & Investment NSW's recent appointment of the National Program's detectors and Coordinator as inspectors under the *Plant Diseases Act*.

- 3.12. The continued presence of BBTV in NSW banana growing areas during the extended time of operation of the BIC's control program raises doubts about the effectiveness of the approach underpinned by, and resourced through, the Act. For example, the Muirhead Report² asserted that while BBTV was eradicated from some areas of NSW between the 1930s to the 1990s, infection levels 'waxed and waned' in the northern half of the NSW growing area and southeast Queensland, despite a concerted effort to eradicate between 1993 and 1998 under the cross-border Banana Plant Health Program. Muirhead cited a number of reasons for this, including inability to secure total grower acceptance of the need for change and "industrial relations problems connected with the entrenched detection system in NSW".
- 3.13. The Thomas Report³ also found that insufficient resourcing devoted to the eradication of chronically infected plantings was among the reasons for the Banana Plant Health Program's failure. Thomas nevertheless concluded that eradication is feasible over a longer, ten-year time frame in conjunction with greater resourcing for more regular plantation inspection and treatment, as well as eradication of external sources of infection.
- 3.14. A common concern raised at grower meetings was the long term security of the National BBTV Program. Specifically, a small number of growers asked about the commitment of ABGC and HAL to the Program and expressed a preference for retaining the Act as a back-up or 'insurance' levy-raising mechanism for funding a future state-based BBTV program in case the National Program was discontinued.
- 3.15. A central issue for the review was therefore to assess the need for the retention of the Act as a form of insurance in case the National BBTV Program was abandoned.
- 3.16. Both the ABGC and HAL have repeatedly expressed their commitment to the ten-year National BBTV Eradication Plan. This commitment has been made to industry, through HAL's open letter of 21 March 2007, in correspondence from ABGC to the Minister (29 June 2007) and recently reiterated in an

² Muirhead, I.F. (2008). *Framework for the Australian Banana Bunchy Top Eradication Program*, report commissioned by the Australian Banana Growers' Council, Brisbane, p7.

³ Thomas, J.E. (2009). *Strategies for the control and ultimate eradication of banana bunchy top virus – a review*, Queensland Department of Primary Industries and Fisheries, Brisbane, p.8.

ABGC letter to Industry and Investment NSW (4 September 2009 – see Appendix E).

- 3.17. This commitment was also included in ABGC’s submission to the review, which stated that the ABGC has given the NSW banana industry an undertaking to:

... allocate minimum funding of \$370k in the first year and a minimum of \$80k per year for a further five years for the development and implementation of a national BBTV eradication/control program for sub-tropical production areas.

- 3.18. This commitment has been backed up by ABGC by it funding from its own reserves the first year of the BBTV Program (2008-09), with HAL now funding the Program as part of its initial \$809,000 three-year “BBTV Management Phase 1” project. Phase 1 is funded by HAL solely through national grower levies that are matched by the Commonwealth through its R&D levy matching arrangements.

- 3.19. The program funding provided by both ABGC and HAL has seen BBTV expenditure in NSW increase significantly from that previously provided through the BIC Committee, as follows:

- BIC 2006-07 = \$53k
- BIC 2007-08 = \$91k
- ABGC 2008-09 = \$147k
- HAL levy 3-year = \$161k p.a. (NSW average, with \$809k for the National Program over three years)

- 3.20. A further form of ‘insurance’ to the NSW industry is provided by way of NSW grower representation on the various National Program management committees. HAL has established several layers of industry oversight that enable NSW growers to have significant say in the direction of the BBTV Program. This includes:

- the Banana Industry Advisory Committee, which supervises the expenditure of banana levy funds across all HAL banana projects and which must include at least one sub-tropical representative;
- the Banana R&D sub-committee, which specifically guides banana R&D expenditure funded by the national levy and matching Commonwealth contributions and which must include at least one sub-tropical representative; and
- the soon-to-be-established BBTV Project Management Committee, which will closely monitor BBTV progress and which will comprise:
 - 1 Industry & Investment NSW representative;
 - 1 Biosecurity Queensland representative;
 - 1 Plant Health Australia representative;
 - ABGC CEO;
 - HAL Industry Services Manager;
 - Dr John Thomas (scientist); and
 - 2 grower representatives (1 x NSW, 1 x QLD).

- 3.21. As a final safeguard or form of insurance, the *NSW Agricultural Industry Services Act 1998* provides for the establishment of industry services committees with compulsory levy powers for the purpose of providing a particular grower constituency with services, such as pest and disease control, R&D, promotion and information dissemination. Such committees can be established following a successful poll of growers. There are presently two such committees – the Wine Grapes Marketing Board and Riverina Citrus.
- 3.22. While BBTV control in NSW could therefore, if necessary, revert to a State-based program, the review found no evidence to suggest that weaknesses in the National Program were likely to necessitate this approach in future.
- 3.23. The review found widespread acceptance of the new BBTV arrangements amongst growers, as evidenced by grower comment at the regional meetings and in submissions. Furthermore, most grower submissions that expressed a view on the new BBTV arrangements also made the link between the transfer of responsibility for BBTV to Horticulture Australia and the need to dissolve the BIC.
- 3.24. For example, a representative grower submission stated:

I am satisfied that all areas of concern, such as bunchy top funding, are covered by national levies. Therefore the continuation of BIC levies would result in unnecessary duplication.

Conclusions – Pest and Disease Control

- 3.25. This review concludes that the BIC's existing powers in relation to pest and disease control constitute a significant restriction on competition and there are now more efficient alternative means of achieving the Act's objectives in relation to pest and disease control.

Promotion

- 3.26. The Act authorises the BIC to become involved in banana marketing and promotion. Sections 5 and 6 provide that the BIC may:

5(a) provide facilities, material or advice to banana growers, wholesalers or retailers relating to the marketing of bananas or banana products,

5(b) establish a system of quality control for bananas in which persons may voluntarily participate,

5(e) advertise and promote bananas and banana products,

5(i) develop and expand markets for bananas in New South Wales and elsewhere,

5(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,

6(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,

- 3.27. Statutory promotional activities restrict competition by forcing growers to fund certain promotion activities through compulsory levies.
- 3.28. Promotion is a commonly authorised activity for agricultural statutory authorities as it an activity often characterised by under-investment. This is due to the fact that those that fund the promotion of a generic product, such as NSW-grown Cavendish bananas, may not be able to capture sufficient benefits to warrant the investment.

Discussion – Promotion

- 3.29. While certain promotion activities are appropriately funded through compulsory levies, the ABGC launched a new three-year promotion campaign in June 2009 aiming to make bananas the number one snack of choice by 2015 by targeting 18 to 39 year old consumers utilising television, outdoor signage, radio, online and website mediums⁴. The campaign is funded through the national levy and constitutes an alternative promotion program that brings to bear far greater resources than that which could be financed through the BIC.
- 3.30. The Australian Banana Growers’ Council submission stated:
- The national banana levy is also funding the development and implementation of the most comprehensive national banana promotions program in the industry’s history. The development of the new \$3 million per annum promotions campaign was developed in consultation with the Council’s promotions committee whose membership includes a member of the sub tropical production sector.*
- 3.31. The BIC, in its submission to the review, agreed that the resources available for promotion under the national levy are “much more substantial” than those available under the BIC, and that it believes that its recent strategy of facilitating the transfer of responsibility for its programs, including promotion, to other service providers is now complete.

Conclusions - Promotion

- 3.32. This review concludes that the BIC’s existing powers in relation to promotion constitute a significant restriction on competition and there are now more efficient alternative means of achieving the Act’s objectives in relation to promotion.

Research, Development and Education

- 3.33. The Act authorises the BIC to become involved in the provision of banana research, development and education (RD&E). Section 5 provides that the BIC may:

5(g) carry out research in relation to any matter if, in the Committee’s opinion, that research is of advantage to banana growers,
5(h) conduct educational or instructional programmes relating to the production and marketing of bananas,

⁴ Source: ABGC website, <http://abgc.org.au/?media/50609>, accessed 4 November 2009.

- 3.34. RD&E is a commonly authorised activity for agricultural statutory authorities as it is an activity often characterised by under-investment. This is due to the fact that those that fund RD&E in relation to a generic product, such as NSW-grown Cavendish bananas, may not be able to capture sufficient benefits to warrant the investment.

Discussion – Research, Development and Education

- 3.35. The BIC does not presently engage in or fund RD&E activity, indicating that the NSW banana industry is satisfied with the level and focus of RD&E proposed in the joint ABGC and HAL Australian Banana Industry Strategic Plan 2009-2014, which indicates national annual R&D expenditure will be between \$1.7 and \$2.3 million over that period.
- 3.36. This inference is supported by the fact that all four grower submissions that mentioned RD&E were supportive of the new arrangements under the national levy. The BIC’s submission confirmed that the “national levy provides a much more substantial budget for these [R&D and promotion] than the \$10,000 p.a. available from the BIC”.

Conclusions - BIC Research, Development and Education

- 3.37. This review concludes that the BIC’s existing powers in relation to research, development and education constitute a significant restriction on competition and there are now more efficient alternative means of achieving the Act’s objectives in relation to research, development and education.

Industry Representation

- 3.38. The BIC’s role in relation to ‘industry representation’ was raised during the review. Some growers felt that the dissolution of the BIC would reduce the ‘voice’ of the industry in negotiations with government.
- 3.39. While the Act does not list industry representation as one of the BIC’s authorised functions, there is implicit support in the Act for the BIC to engage in representative activity in relation to its authorised functions. However, as a statutory authority with compulsory levying powers, the BIC cannot engage in party-political lobbying or other representations that are not related to its authorised functions.
- 3.40. Generic banana industry representation is the responsibility of the ABGC, for which it collects a voluntary levy. There are also a number of state-based organisations that can engage in banana industry representation, including the various regional banana grower associations and the NSW Farmers’ Association.

BIC Power to Impose Charges on Banana Growers

- 3.41. Section 7 of the Act empowers the BIC to impose compulsory charges on banana growers to cover the cost of its authorised activities. Such charges represent a significant restriction on competition as they effectively force banana growers to pay for certain services that they otherwise might not have chosen to consume.

3.42. While the collection of compulsory charges is competition restricting, it might be justifiable if they were used to fund services aimed at overcoming under-investment due to market failure, as is the case with other NSW statutory authorities. However, the preceding sections have addressed the need for such charges in the context of the industry services the BIC provides.

4. THE FUTURE OF THE COMMITTEE

- 4.1. The review found that all of the BIC's former areas of activity, namely pest/disease control, promotion, and research and development, are now undertaken more effectively, on behalf of NSW growers, by HAL.
- 4.2. Of fundamental importance is that the more than halving of both banana growers and banana plantation area in NSW over the last decade has eroded the financial ability of the BIC to undertake any significant service provision.
- 4.3. For example, there are substantial fixed administrative costs involved in the operation of the BIC, including adherence to statutory auditing and governance requirements, as well as the pursuit of outstanding grower charges.
- 4.4. The BIC is now in a position, having transferred its industry service functions to ABGC and HAL under the new national arrangements, where nearly all of its income is used to fund its administration. The 2009-2010 BIC budget, for example, allocates only \$250 of its total budget of \$130,000 to grower service provision, with the remainder to be used to meet auditing and reporting requirements and to fund salaries (much of which is used to collect charges from growers).
- 4.5. The BIC, in its submission, also pointed out that its present "levy of \$25/ha is insufficient to provide any real service delivery and BIC reserves will be exhausted by 30 June 2011 unless the levy is increased at least four fold".
- 4.6. Such an increase would not gain industry support. Grower dissatisfaction with paying two sets of banana levies was raised at both grower meetings.
- 4.7. The BIC later stated in its submission:

The NSW BIC decided to continue operating until its service programs for NSW growers were satisfactorily transferred to other providers, funded by the national levy. In the Committee's opinion this has now been achieved. The Committee is also mindful that its current levy is insufficient to cover operating costs and its activities are funded significantly from reserves. The Committee is of the view that it should discontinue its operations by 30 June 2010, thus preserving the remaining reserves for better use by the NSW banana industry.

- 4.8. The issue of the BIC's financial reserves was also raised during the review on numerous occasions. Some growers expressed concern that the BIC's remaining reserves might revert to the Crown should the BIC be dissolved in accordance with section 4(7) of the Act, which states:

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.

- 4.9. The NSW Government has routinely allocated such funds back to the industry from which it was raised, usually through the relevant peak body. In the absence of a state banana grower association, there are a number of ways of dealing with the BICs residual funds. One grower submission suggested refunding reserves to present growers on an acreage basis, however, the BIC reserves were built up over many years.
- 4.10. An effective way of ensuring that any residual BIC funds are used for the purposes for which they were raised would be through HAL's 'voluntary contribution' mechanism. Under this mechanism, the BIC could negotiate the future use of its estimated residual funds prior to the BIC's dissolution. Furthermore, as the residual funds were raised through grower levies, they would likely qualify for matching Commonwealth funding if they were devoted to research and development projects⁵.

Conclusions – BIC dissolution and residual funds

- 4.11. Given the finding that there are now more efficient alternative means of undertaking the BIC's authorised functions, the review concludes that the Act should be repealed with the BIC dissolved by 30 June 2010 in order to preserve its reserves. In the event of BIC dissolution, the review further concludes that the most appropriate use of BIC reserves would be to lodge them with HAL under its voluntary contribution mechanism.

⁵ Pers comm.. Graham Royden, Finance Manager, Horticulture Australia Limited, 2 October 2009.

REFERENCES

Australian Banana Growers' Council (2009), *Bananas bouncing as nature's ultimate energy snack*, media release Friday, June 5 2009, <http://abgc.org.au/?media/50609>, website, accessed 4 November 2009.

Australian Bureau of Statistics (2009), *Agricultural Commodities 2007-08*, ref: 7121.0.

Kiri-ganai Research (2009), *Australian Bananas 2009-2014: The Strategic Plan for the Australian Banana Industry*, p\Plan prepared for ABGC and HAL.

Graham Royden (2009), pers comm. Finance Manager, Horticulture Australia Limited, 2 October 2009.

Muirhead, I.F. (2008). *Framework for the Australian Banana Bunchy Top Eradication Program*, report commissioned by the Australian Banana Growers' Council, Brisbane.

Thomas, J.E. (2009). *Strategies for the control and ultimate eradication of banana bunchy top virus – a review*, Queensland Department of Primary Industries and Fisheries, Brisbane.

APPENDIX A: BIC REQUEST FOR REVIEW



P.O. Box 775
Murwillumbah NSW 2484

Ph: (02) 6672 6269
Fx: (02) 6672 6633
Email: bic@bananasnsw.org.au
www.bananasnsw.org.au

The Hon Ian Macdonald MLC
Minister for Primary Industries
Level 33 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

29 April 2009

Dear Mr Macdonald

Re: Future of NSW Banana Industry Committee

Thank you for your letter of 4 March providing information on the procedure for the wind up of the NSW Banana Industry Committee (BIC) as prescribed under the *Banana Industry Act 1987*.

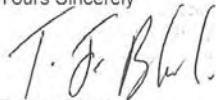
Australian banana growers recently voted to introduce a national levy to provide marketing and promotion, research and development as well as pest and disease management services for the industry. The BIC has therefore been negotiating the transfer of a number of services previously provided by the NSW BIC to the Australian Banana Growers Council (ABGC) and Horticulture Australia Limited (HAL). The most significant of these services is the Banana Bunchy Top Virus (BBTV) control program in NSW.

NSW banana growers have supported the continued operation of the BIC in order to manage the transition of the BBTV control in NSW. NSW BIC has now received an undertaking from ABGC that they will fund the NSW BBTV control program for a further six years, commencing in the financial year 2008/09. In addition ABGC has been negotiating a national BBTV eradication program with HAL, which was approved on 8 April 2009. This may see the eradication of BBTV in NSW over a ten year program.

The BIC is now reviewing its future and is aware that NSW growers are unwilling to pay two sets of compulsory industry fees into the future. The BIC is therefore looking at a reform strategy and notes that the procedure prescribed by the Act is lengthy and expensive with uncertain outcomes. Since 1987 when the Act was gazetted there has been a significant decline in the number of NSW banana growers from around 1000 to 400 today. Where 100 signatures to request a poll originally represented 10 percent of growers today this figure is closer 25 percent. Similarly the Committee believes there is no guarantee that 60 percent of growers would actually vote in the poll based on a recent election for a BIC Director vacancy.

The Committee believes that the circumstances of the NSW industry have changed significantly over the past 20 years and that a review of the *Banana Industry Act 1987* is appropriate. It therefore requests that you initiate steps to undertake this review. The Committee would like to participate in the review so that appropriate legislation can be designed for the future needs of the NSW industry.

Yours Sincerely


Trevor Black
Chair
Banana Industry Committee

RECEIVED
5 - MAY 2009
Minister for Primary
Industries

Naturally Growing

Constituted by the Banana Industry ACT 1987

APPENDIX B: LIST OF SUBMISSIONS RECEIVED

	Name	Location
1	JENNING, Bob & Jas	Not given
2	DIRECTOR OF ABGC & PAST CHAIRMAN OF BIC Nicky SINGH	Not given
3	VOISEY, Jim	Murwillumbah
4	ZANETTE, Jett	Tullera
5	BURGOYNE, L & K	Condong
6	JOHNSON, Leon B	Banora Point
7	BLACK, Trevor & Lyn	Numulgi
8	HAYER, David	South Murwillumbah
9	ATWAL, Steven	Dunbible
10	ATWAL, RS	Dunbible
11	SINGH, Barry	South Murwillumbah
12	LARSSON, Tim	Not given
13	LARSSON, Jeff	Not given
14	URALBA VALLEY BANANAS SIMPSON Family	Uralba
15	BLACK, Darren Cameron	Not given
16	BLACK, Francis John	Not given
17	MOLENAAR, Peter	Not given
18	MOLENAAR, Annette	Not given
19	CHAIRMAN BIC, Trevor Black	Numulgi
20	CEO, AUSTRALIAN BANANA GROWERS COUNCIL, Tony HEIDRICH	Brisbane
21	SPEAR, Michael	Via Macksville

APPENDIX C: BANANA INDUSTRY COMMITTEE FUNCTIONS

Sections 5 and 6 of the *Banana Industry Act 1987* sets out the Committee's functions as follows.

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) (Repealed)
- (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) (Repealed)
- (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,
- (o1) 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) (Repealed)
- (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) (Repealed)
- (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.

APPENDIX D: REVIEW TERMS OF REFERENCE

Review of the Banana Industry Act 1987


Terms of Reference

The recent introduction of a national banana levy for research, disease control and promotion has opened for question whether the existing state-based banana levy raised under the *Banana Industry Act 1987* is required. With the national levy arrangements now in place, it is opportune to review the Act in accordance with the State's National Reform Agenda commitments.

Consequently, the review will:

- identify the objectives of the *Banana Industry Act 1987* and consider whether the policy objectives of the Act remain valid;
- assess if the Act remains the most efficient way to achieve those objectives with the least impact in accordance with the National Competition Principles, namely that legislation should not restrict competition unless it can be demonstrated that:
 - the benefits of the restriction to the community as a whole outweigh the costs; and
 - the objectives of the legislation can only be achieved by restricting competition.

APPENDIX E: ABGC COMMITMENT TO BBTV CONTROL



Australian Banana Growers' Council
the voice of the Australian Banana Industry

the voice of the Australian Banana Industry

4 September 2009

Stewart Webster
Manager Industry Policy
Economic Policy & Analysis Branch
NSW Department of Primary Industries
Locked Bag 21
Orange NSW 2800

Dear Mr Webster

RE: Review of the Banana Industry Act 1987

I believe that it would be in the interests of your review and of all stakeholders in this matter for me to outline the clear commitment the Australian Banana Growers' Council (ABGC) has given the New South Wales banana industry with respect to funding for the banana bunchy top virus (BBTV) program in NSW under the national banana levy.

The clear commitment with respect to BBTv funding given by the ABGC in the lead up to the national banana levy ballot in 2007 was that:

The existing BBTv control program in place in New South Wales will be expanded to include south-east Queensland and will form part of a broader national BBTv management plan for the sub-tropics. In addition, a 12-month scoping study will be undertaken to determine the extent of disease spread with a view to eradication.

Funding: HAL has allocated funding (\$370k in the first year and a minimum of \$80k per year for a further five years) for the development and implementation of a six-year BBTv eradication/control program for sub-tropical production areas. The allocated funding is contingent upon a full project proposal being approved by HAL.

POSTAL
Australian Banana Growers' Council
PO Box 309
BRISBANE MARKET QLD 4106

STREET
Unit 3, K1 Building
South Gate Commercial Centre
250 Sherwood Rd
ROCKLEA QLD 4106

TEL: 07 3278 4786 (Int: +61 7 3278 4786)
FAX: 07 3278 4938 (Int: +61 7 3278 4938)
WEB: www.abgc.org.au
EMAIL: jann@abgc.org.au



Australian Banana Growers' Council

the voice of the Australian Banana Industry

This commitment was included in the Information Statement which accompanied all of ballot material which was posted to every commercial banana grower in Australia during the levy ballot process. The Information Statement also contained a letter from the CEO of Horticulture Australia Limited confirming his organisations in-principle support for the BBTV commitment from a funding perspective.

I can also advise that the ABGC's funding commitment for the BBTV program in NSW was formally conveyed to the Minister for NSW Primary Industries in a letter dated 29 June 2007.

Since this commitment was given the ABGC has implemented the first stage of a 10 year BBTV eradication plan which involves an initial 3 year project to increase the level of BBTV inspection activity to that recommended in a report by world renowned BBTV expert Dr John Thomas. Over \$809k will be spent during this period to achieve the objectives for stage 1 of the 10 year plan, approximately \$483k of which has been allocated to BBTV management in NSW specifically. This compares to the \$93k spent on BBTV in NSW by the Banana Industry Committee for the year ended June 2008 (as reported in the BIC Annual Report).

For the avoidance of doubt I wish to reaffirm that the ABGC remains resolute in its commitments to the NSW industry with respect to the funding of BBTV management in that state.

Sincerely

Tony Heidrich

POSTAL
Australian Banana Growers' Council
PO Box 309
BRISBANE MARKET QLD 4106

STREET
Unit 3, K1 Building
South Gate Commercial Centre
250 Sherwood Rd.
ROCKLEA QLD 4106

TEL - 07 3278 4786 (Int: +61 7 3278 4786)
FAX - 07 3278 4938 (Int: +61 7 3278 4938)
WEB - www.abgc.org.au
EMAIL - jann@abgc.org.au