

HORTICULTURAL PRODUCE COMMISSION AMENDMENT BILL 1999
EXPLANATORY MEMORANDUM

THE PURPOSE OF THIS BILL IS TO AMEND THE HORTICULTURAL PRODUCE COMMISSION ACT IN THE FOLLOWING WAYS:

1. SO THAT IT BECOMES THE AGRICULTURAL PRODUCE COMMISSION ACT 1988. TO RENAME "GROWERS COMMITTEES" AS "PRODUCERS COMMITTEES". COVERAGE OF THE ACT IS EXPANDED TO COVER ALL AGRICULTURAL PRODUCE
2. TO INCREASE THE MEMBERSHIP OF THE COMMISSION FROM 3 TO 5, WITH A POSSIBLE 6 AT A LATER STAGE. THIS WILL CATER FOR THE COVERAGE OF A WIDER RANGE OF AGRICULTURAL PRODUCE.
3. TO, AT THE DISCRETION OF THE COMMISSION, ALLOW MEMBERS OF PRODUCERS' COMMITTEES TO BE ELECTED. THE NUMBER OF NOMINATIONS RECEIVED FOR APPOINTMENT TO GROWERS' COMMITTEES HAVE IN THE PAST NOT BEEN SUFFICIENT TO WARRANT ELECTIONS BEING HELD. SOME PRODUCER GROUPS HAVE REQUESTED THAT THEIR REPRESENTATIVES BE ELECTED. THE INTENTION EXPRESSED IN THE SECOND READING SPEECH IS THAT "AN ELECTION MIGHT BE HELD IF A LARGE NUMBER OF NOMINATIONS WAS RECEIVED OR THE PRODUCERS GROUP PLANNING TO FORM A COMMITTEE REQUESTED THAT AN ELECTION BE HELD."
4. TO BROADEN THE SCOPE FOR PRODUCERS TO FORM COMMITTEES RELATING TO MORE THAN ONE TYPE OF AGRICULTURAL PRODUCE. THESE AMENDMENTS CLEARLY ALLOW FOR COMMITTEES TO BE ESTABLISHED TO COVER ACTIVITIES SUCH AS FRUIT FLY CONTROL.
5. TO INCLUDE AS A POSSIBLE FUNCTION OF A PRODUCERS' COMMITTEE THE PROVISION OF A COMPENSATION SCHEME FOR PRODUCERS WHO HAVE CROPS OR ANIMALS DESTROYED AS A RESULT OF ACTION TAKEN TO CONTROL PESTS OR DISEASES.
6. TO MAKE PROVISION FOR THE COLLECTION BY A SPECIFIED PERSON (EG A LOCAL GOVERNMENT) OF CHARGES FOR SERVICES PROVIDED BY A PRODUCERS' COMMITTEE.
7. TO RE-DRAFT THE PROVISIONS FOR THE IMPOSITION OF CHARGES. WHEN THE HPC ACT WAS REVIEWED FOR COMPLIANCE WITH THE COMPETITION PRINCIPLES AGREEMENT (CPA) THE REVIEW CONCLUDED THAT THE IMPOSITION OF A COMPULSORY LEVY WOULD BE IN CONFLICT WITH THE CPA UNLESS THE SERVICES PROVIDED WERE OF SUFFICIENT PUBLIC BENEFIT AND THE CHARGES WERE ASSESSED IN ACCORDANCE WITH A GOVERNMENT APPROVED COST/BENEFIT ANALYSIS. THERE WAS ALSO A DANGER OF

INFRINGEMENT OF SECTION 90 OF THE CONSTITUTION WHICH PROHIBITS THE IMPOSITION OF EXCISE DUTIES EXCEPT BY THE COMMONWEALTH.

8. TO EXTEND THE ACT TO INCLUDE NON-COMMERCIAL PRODUCERS ON PRODUCERS' COMMITTEES IN SPECIFIC CIRCUMSTANCES RELATING TO PEST AND DISEASE CONTROL. THIS IS TO ALLOW NON-COMMERCIAL PRODUCERS TO BE INVOLVED IN COMMITTEES FORMED FOR ACTIVITIES SUCH AS FRUIT FLY CONTROL. THIS PROVISION IS TO OVERCOME THE PROBLEM ENCOUNTERED WITH FRUIT FLY CONTROL WHERE NON-COMMERCIAL PRODUCERS ARE NOT COVERED BY THE CURRENT ACT. A DISTINCTION IS MADE IN A SPECIAL SECTION FOR THE PURPOSES OF A COMMITTEE FORMED WITH THE OBJECT OF CONTROLLING OR DEVELOPING A MEANS OF CONTROLLING A SPECIFIED PEST OR DISEASE.

THERE IS ALSO AN AMENDMENT TO VALIDATE ANY ACTS OF THE COMMISSION WHICH MAY NOT HAVE BEEN VALID BEFORE THESE AMENDMENTS (THESE RELATE TO FRUIT FLY CONTROL COMMITTEES) AND SOME OTHER MINOR AND CONSEQUENTIAL AMENDMENTS.

OUTLINED OVER IS AN EXAMINATION OF THE CONTENTS OF THE BILL ON A CLAUSE BY CLAUSE BASIS.

CLAUSE NOTES

- CLAUSE 1:** THE SHORT TITLE OF THE ACT IS THE HORTICULTURAL PRODUCE COMMISSION AMENDMENT ACT 1999
- CLAUSE 2:** THE ACT COMES INTO OPERATION ON A DAY FIXED BY PROCLAMATION. THIS WILL ENABLE THE REGULATIONS TO BE AMENDED AND NEW ONES MADE.
- CLAUSE 3:** THE ACT BEING AMENDED IS THE HORTICULTURAL PRODUCE COMMISSION ACT 1988 UNLESS OTHERWISE INDICATED.
- CLAUSE 4:** THIS CLAUSE IS THE RE-WRITE OF THE LONG TITLE TO CLEARLY STATE THE PURPOSE OF THE ACT.
- CLAUSE 5:** AMENDS SECTION 1 OF THE HORTICULTURAL PRODUCE COMMISSION ACT (HPC ACT) TO CHANGE THE COMMISSION'S NAME TO "AGRICULTURAL PRODUCE COMMISSION".
- CLAUSE 6:** THIS CLAUSE AMENDS SECTION 3 OF THE HPC ACT BY INCLUDING DEFINITIONS FOR "AGRICULTURAL INDUSTRY", "AGRICULTURAL PRODUCE" AND

"PRODUCERS COMMITTEE". IT DELETES THE DEFINITIONS OF "HORTICULTURAL PRODUCE" AND "GROWERS COMMITTEE" AND MAKES CHANGES ASSOCIATED WITH THE REPLACEMENT OF "HORTICULTURAL" BY "AGRICULTURAL".

"AGRICULTURAL PRODUCE" MEANS THE PRODUCE OF AN AGRICULTURAL INDUSTRY.

"AGRICULTURAL INDUSTRY" INCLUDES THE FOLLOWING INDUSTRIES:
BROAD-ACRE CROPPING;
HORTICULTURAL;
PASTORAL;
GRAZING;
DAIRYING;
INTENSIVE ANIMAL PRODUCTION;
LAND-BASED AQUACULTURE;
APICULTURE AND
AGROFORESTRY.

THE CLAUSE REPEALS SECTION 3(2) WHICH CLEANS UP SUPERFLUOUS WORDING IN THE ACT.

- CLAUSE 7:** THIS CLAUSE BRINGS A NAME CHANGE ONLY.
- CLAUSE 8:** REPEALS SECTION 4 (4) BECAUSE THE COMMISSION IS NOT A PART OF THE PUBLIC SERVICE UNDER THE EXISTING LAW.
- CLAUSE 9:** THIS CLAUSE AMENDS SECTION 5 AND PROVIDES FOR THE INCREASE IN THE MEMBERSHIP OF THE COMMISSION. REFERENCES TO PUBLIC SERVICE OFFICERS ARE ALTERED IN LINE WITH THE PUBLIC SECTOR MANAGEMENT ACT 1994.

TWO ADDITIONAL COMMISSIONERS ARE TO BE APPOINTED, ADDING;
ONE WITH KNOWLEDGE AND UNDERSTANDING OF BROAD ACRE CROPPING, AND ONE WITH KNOWLEDGE AND UNDERSTANDING OF THE PASTORAL, GRAZING, DAIRYING OR INTENSIVE ANIMAL PRODUCTION INDUSTRY.

SUBCLAUSE 5(2) PROVIDES THAT A FURTHER COMMISSIONER MAY BE APPOINTED. THIS MEMBER, IF APPOINTED, WOULD HAVE KNOWLEDGE AND UNDERSTANDING OF AN AGRICULTURAL INDUSTRY THAT WAS NOT COVERED BY ANY OF THE OTHER COMMISSIONERS. THE OPTION TO APPOINT A SIXTH

COMMISSIONER PROVIDES FOR FUTURE DEMAND FROM NON TRADITIONAL INDUSTRY AREAS.

CLAUSE 10 THIS CLAUSE PROVIDES A NEW SUB SECTION 6(2) WHICH CLARIFIES THE SCOPE FOR WHICH PRODUCER COMMITTEES MAY BE ESTABLISHED. PRODUCER COMMITTEES MAY BE ESTABLISHED IN RELATION TO AGRICULTURAL PRODUCE OF A PARTICULAR KIND CLASS OR VARIETY OR WHICH POSSESSES A PARTICULAR CHARACTERISTIC. COMMITTEES MAY ALSO BE ESTABLISHED IN RELATION TO A NUMBER OF DIFFERENT KINDS, CLASSES OR VARIETIES OF AGRICULTURAL PRODUCE OR BE ESTABLISHED TO ACHIEVE SPECIFIED OBJECTS IN RELATION TO ANY AGRICULTURAL PRODUCE.

A COMMITTEE MAY BE RESPONSIBLE TO COVER THE WHOLE STATE OR ONLY A SPECIFIED PART OF THE STATE.

CLAUSE 11: THIS CLAUSE REMOVES REFERENCE IN SECTION 7 TO FEES WHICH ARE NOT MENTIONED ELSEWHERE IN THE ACT AND CHANGES THE COMMISSION'S NAME TO "AGRICULTURAL".

CLAUSE 12 THIS CLAUSE CHANGES THE HEADING OF PART 3 TO "PRODUCERS COMMITTEES".

CLAUSE 13: THIS CLAUSE AMENDS SECTION 10 WHICH SETS OUT THE PRELIMINARY REQUIREMENTS FOR THE ESTABLISHMENT OF PRODUCERS' COMMITTEES. THE INTENTIONS OF THE SECTION REMAIN UNCHANGED AND AMENDMENTS REMOVE UNNECESSARY WORDING AND CLEARLY STATE THE REQUIREMENTS.

CLAUSE 14 THIS CLAUSE AMENDS SECTION 11 WHICH SETS OUT THE ESTABLISHMENT PROCEDURE FOR A PRODUCERS' COMMITTEE. PRODUCERS' COMMITTEES ARE TO BE ESTABLISHED INSTEAD OF APPOINTED. EXCESS WORDING IS REMOVED BY SUBCLAUSE 14(1)C.

THE SPECIFICATION OF A NOTICE TO ESTABLISH A PRODUCERS' COMMITTEE IS EXPANDED BY SUBCLAUSE 14(1)(D). THE NOTICE MUST ALSO SPECIFY WHETHER A POLL IS TO BE HELD TO ELECT MEMBERS OF A PRODUCERS' COMMITTEE.

SUBCLAUSE 14(2) ADDS SUBSECTIONS WHICH PROVIDE THE COMMISSION WITH THE OPTION TO CONDUCT A POLL OF THE PRODUCERS CONCERNED TO ELECT THE

MEMBERS OF A PRODUCERS' COMMITTEE. THE COMMISSION MAY CONDUCT A POLL IF FOR ANY REASON THE COMMISSION IS OF THE OPINION THAT A POLL SHOULD BE HELD. A REASON COULD BE THAT THE PRODUCERS CONCERNED MAY REQUEST THAT A POLL BE HELD. THE COMMISSION MUST SPECIFY IN THE RESOLUTION TO CONDUCT A POLL THE NUMBER OF PERSONS TO BE ELECTED. THEN PERSONS ELECTED AT THE POLL ARE TO BE APPOINTED BY THE COMMISSION TO THE PRODUCERS' COMMITTEE IN QUESTION.

SUBSECTION (1C) REQUIRES THAT PERSON STANDING AT A POLL TO ELECT MEMBERS OF A PRODUCERS' COMMITTEE MUST BE ELIGIBLE TO BE APPOINTED TO THE PRODUCERS' COMMITTEE IN QUESTION. THAT IS THE PERSON MUST BE A PRODUCER OF THE PARTICULAR AGRICULTURAL PRODUCE IN QUESTION.

CLAUSE 15 THIS CLAUSE AMENDS SECTION 12 WHICH SETS OUT THE FUNCTIONS OF A PRODUCERS' COMMITTEE.

AN ADDITIONAL FUNCTION IS ADDED, TO ESTABLISH A COMPENSATION SCHEME FOR THE BENEFIT OF PRODUCERS WHOSE AGRICULTURAL PRODUCE IS DESTROYED AS A RESULT OF ACTION TAKEN TO CONTROL A PEST OR DISEASE OF THAT PRODUCE.

CLAUSE 16 THIS CLAUSE CONTAINS A MINOR AMENDMENT IN LINE WITH THE CHANGE FROM "GROWERS" TO "PRODUCERS".

CLAUSE 17 THIS CLAUSE PROVIDES FOR THE REPLACEMENT OF THE SECTION ENABLING THE IMPOSITION BY THE COMMISSION OF CHARGES FOR SERVICES. THE COMMISSION ACTING ON THE ADVICE OF A PRODUCERS' COMMITTEE DETERMINES THE COST OR ESTIMATED COST OF PROVIDING THE SERVICE WHICH THE PRODUCERS' COMMITTEE IS AUTHORIZED TO PROVIDE AND WITH THE MINISTER'S APPROVAL, MAY IMPOSE A CHARGE FOR THE PROVISION OF THAT SERVICE.

IN DETERMINING THE AMOUNT OF A CHARGE THE COMMISSION MUST TAKE INTO CONSIDERATION THE COST OR ESTIMATED COST OF PROVIDING THE SERVICE AND ANY OTHER RELEVANT FACTORS. NOTICE OF THE CHARGE TO BE IMPOSED IS TO BE PUBLISHED AND THE CHARGE IS PAYABLE IN ACCORDANCE WITH THE REGULATIONS. THE CHARGE FOR THE SERVICE IS TO BE LINKED TO THE COST OR ESTIMATED COST OF PROVIDING THE SERVICE.

CLAUSE 18: THIS CLAUSE AMENDS SECTION 15 RELATING TO THE DISSOLUTION OF A PRODUCERS' COMMITTEE. A POLL FOR THE DISSOLUTION OF A PRODUCERS COMMITTEE IS DECIDED BY THE POLL BEING IN FAVOUR OF THE DISSOLUTION. THE EXISTING PROVISION IS FOR A POLL TO BE DECIDED "BY A SIMPLE MAJORITY OF THE PERSONS ENTITLED TO VOTE". ALL OTHER POLLS UNDER THE ACT ARE DECIDED BY THE POLL BEING IN FAVOUR AND THIS AMENDMENT PROVIDES CONSISTENCY.

CLAUSE 19 THIS CLAUSE REMOVES SURPLUS WORDING FROM SECTION 16 AND CHANGES "HORTICULTURAL" TO "AGRICULTURAL".

CLAUSE 20: THIS CLAUSE REPEALS SECTION 18(3) AND INSERTS A REPLACEMENT SUBSECTION. THE AMENDMENT AUTHORIZES THE USE FOR ANOTHER SERVICE OF MONEYS RECEIVED BY THE COMMISSION IN PAYMENT OF PARTICULAR CHARGES. WHEN THOSE MONEYS ARE NO LONGER REQUIRED FOR THE PROVISION OF THAT SERVICE AND THE ADMINISTRATIVE COSTS OF A COMMITTEE, ANOTHER SERVICE IS ONE THAT THE COMMITTEE IS AUTHORIZED TO PROVIDE. THIS IDENTIFIES HOW THE COMMISSION MAY USE MONEY WHICH IS SURPLUS TO THE REQUIREMENTS OF A COMMITTEE AND CLARIFIES UNCERTAINTY ON THE ISSUE IN THE PRESENT LEGISLATION.

THIS CLAUSE ADDITIONALLY ADDS A NEW SUBSECTION WHICH REQUIRES THE COMMISSION TO KEEP APPROPRIATE RECORDS FOR EACH COMMITTEE. SUCH ACTION HAS BEEN THE COMMISSION'S NORMAL PRACTICE.

CLAUSE 21: THIS CLAUSE REMOVES SURPLUS WORDING FROM SECTION 19 AND CHANGES "HORTICULTURAL" TO "AGRICULTURAL".

CLAUSE 22: THIS CLAUSE INSERTS A NEW SECTION TO COVER THE APPLICATION TO COMMERCIAL AND NON-COMMERCIAL PRODUCERS OF PROVISIONS RELATING TO THE CONTROL OF CERTAIN PESTS OR DISEASES.

THE NEW SECTION 19A OF THE ACT IS EXPRESSED TO APPLY WHERE A PRODUCERS' COMMITTEE IS TO BE FORMED WITH THE OBJECT OF CONTROLLING A SPECIFIED PEST OR DISEASE. A NOTICE PUBLISHED IN THE GAZETTE BY THE MINISTER WILL DECLARE THE PEST OR DISEASE IN RELATION TO WHICH THE SECTION WILL APPLY.

WHERE THE SECTION IS TO APPLY THEN "A PRODUCER" WILL MEAN A PRODUCER OF ANY AMOUNT OF AGRICULTURAL PRODUCE, WHETHER FOR SALE OR NOT.

THEREFORE, NON-COMMERCIAL PRODUCERS ARE INCLUDED WHEN THIS SECTION IS ACTIVATED.

UNDER MOST CIRCUMSTANCES THE ACT APPLIES TO COMMERCIAL PRODUCERS ONLY, BUT FOR SPECIFIED SITUATIONS CONTAINED IN THIS SECTION, A COMMITTEE MAY BE FORMED TO INCLUDE NON-COMMERCIAL PRODUCERS.

CLAUSE 23: THIS CLAUSE REPEALS SECTION 22(2). THE SECTION WAS UNNECESSARY.

CLAUSE 24: THIS CLAUSE AMENDS SECTION 25(2). SUBSECTION 25(2)(E) IS DIVIDED AND CLARIFIED. TWO SEPARATE ISSUES RELATING TO REGULATION MAKING POWERS ARE NOW COVERED BY SEPARATE SUBSECTIONS.

REGULATIONS MAY BE MADE REQUIRING FOR THE PURPOSES OF THIS ACT, INFORMATION RELATING TO AGRICULTURAL PRODUCE TO BE FURNISHED TO PRESCRIBED PERSONS OR ORGANIZATIONS.

IT IS ALSO CLARIFIED THAT REGULATIONS MAY PRESCRIBE THE MANNER IN WHICH CHARGES ARE IMPOSED UNDER THIS ACT, SHALL BE PAID AND COLLECTED AND THE PERSONS TO WHOM THE CHARGES SHALL BE PAID OR BY WHOM THE CHARGES SHALL BE COLLECTED. THIS ALLOWS FOR THE COLLECTION OF CHARGES BY A BODY SUCH AS LOCAL GOVERNMENT.

CLAUSE 25: THIS CLAUSE AMENDS THE REVIEW PROVISIONS OF THE ACT. REVIEW OF THE ACT IS REQUIRED WITHIN 12 MONTHS OF THE FIFTH ANNIVERSARY OF THE COMMENCEMENT OF THE HORTICULTURAL PRODUCE COMMISSION AMENDMENT ACT, 1999.

CLAUSE 26: THIS CLAUSE UPDATES THE SCHEDULE TO THE ACT. CLAUSE 2 OF THE SCHEDULE REPLACES "PUBLIC SERVICE COMMISSIONER" WITH "MINISTER FOR PUBLIC SECTOR MANAGEMENT".

CLAUSE 6(4) OF THE SCHEDULE CHANGES A QUORUM OF THE COMMISSION FROM "2" TO "3" IN LINE WITH THE INCREASED MEMBERSHIP.

- CLAUSE 27:** THIS CLAUSE CHANGES VARIOUS REFERENCES THROUGHOUT THE ACT FROM "HORTICULTURAL" TO "AGRICULTURAL".
- CLAUSE 28:** THIS CLAUSE CHANGES VARIOUS REFERENCES THROUGHOUT THE ACT FROM "HORTICULTURAL" TO "AGRICULTURAL".
- CLAUSE 29:** THIS CLAUSE CHANGES VARIOUS REFERENCES THROUGHOUT THE ACT FROM "GROWER" TO "PRODUCER".
- CLAUSE 30** THIS CLAUSE CHANGES VARIOUS REFERENCES THROUGHOUT THE ACT FROM "GROWERS" TO "PRODUCERS".
- CLAUSE 31:** THIS CLAUSE CHANGES VARIOUS REFERENCES THROUGHOUT THE ACT FROM "GROWERS" TO "PRODUCERS"
- CLAUSE 32:** THIS CLAUSE VALIDATES CERTAIN ACTS DONE BY THE COMMISSION IN SETTING UP FRUIT FLY CONTROL COMMITTEES UNDER SECTION 11 OF THE HORTICULTURAL PRODUCE COMMISSION ACT 1988. THESE ACTIONS WERE CARRIED OUT IN GOOD FAITH. SUBSEQUENT LEGAL ADVICE WAS THAT THE ACT APPLIES ONLY TO COMMERCIAL PRODUCERS. THIS CLAUSE VALIDATES ACTS OF THE COMMISSION AND COMMITTEES WHICH PURPORTED TO ACT UNDER THE HORTICULTURAL PRODUCE COMMISSION ACT.
- CLAUSE 33:** THIS CLAUSE PROVIDES FOR CONSEQUENTIAL AMENDMENTS TO THE; CONSTITUTION ACTS AMENDMENT ACT 1899, AND THE FINANCIAL ADMINISTRATION AND AUDIT ACT 1985.
- CLAUSE 34:** THIS CLAUSE PROVIDES FOR TRANSITIONS ON COMMENCEMENT OF THE HORTICULTURAL PRODUCE COMMISSION AMENDMENT ACT 1999.

THE HORTICULTURAL PRODUCE COMMISSION ACCOUNT ESTABLISHED UNDER SECTION 7 WILL CONTINUE UNDER THE NAME THE AGRICULTURAL PRODUCE COMMISSION ACCOUNT. GROWERS' COMMITTEES ESTABLISHED UNDER SECTION 11 OF THE HORTICULTURAL PRODUCE COMMISSION ACT WILL CONTINUE AS PRODUCERS' COMMITTEES.