

Act No. 6, 1909.

An Act to provide for the dedication, reservation, and management of State forests and timber reserves; for regulating the obtaining and removing of timber and other products; for regulating saw-mills; for imposing fees, rents, and royalties; to regulate ringbarking; to amend the Crown Lands Act of 1884, the Crown Lands Amendment Act of 1905, the Crown Lands (Amendment) Act, 1908, the Mining Act, 1906, the Public Works Act, 1900, and the Impounding Act of 1898; and for purposes consequent thereon or incidental thereto. [11th November, 1909.]

FORESTRY.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title and repeal.

1. This Act may be cited as the "Forestry Act, 1909."

Short title and
division of Act.

This Act is divided into Parts, as follows:—

PART I.—PRELIMINARY—*ss.* 1-5.

PART II.—STATE FORESTS AND TIMBER RESERVES—*ss.* 6-13.

PART III.—LICENSES, TIMBER RIGHTS, AND PERMITS—*ss.* 14-22.

PART IV.—GENERAL AND SUPPLEMENTAL—*ss.* 23-34.

2. The enactments mentioned in the Schedule are to the extent therein indicated repealed.

3. This Act shall commence and come into force on the first day of January, one thousand nine hundred and ten.

Definitions.

*Forestry.**Definitions.*

Definitions.

4. In this Act, unless the context requires another meaning,—
- “ Crown lands ” means lands vested in His Majesty and not permanently dedicated to any public purpose or granted or lawfully contracted to be granted in fee-simple.
- “ Exclusive rights ” means rights granted under section fifteen.
- “ Lease ” when referring to a lease under the Crown Lands Acts includes a promise of lease under those Acts; and “ lessee ” means the holder of such lease, and includes the holder of any such promise.
- “ Minister ” means Minister of the Crown charged with the administration of this Act.
- “ Prescribed ” means prescribed by this Act or the regulations.
- “ Products ” means products of growing or dead timber, trees, shrubs, or vegetable growth of economic value.
- “ Regulations ” means regulations made under this Act.
- “ State forest ” means land dedicated under this Act as a State forest.
- “ Timber reserve ” means land temporarily reserved for forestry purposes.

Forestry Department.

Forestry Department and director of forests.

5. A branch of the Public Service shall be established, to be called the Forestry Department.

The Governor shall, subject to the Public Service Act, 1902, and the Acts amending the same, appoint a director of forests, and such other officers of the Forestry Department as he thinks necessary.

PART II.

STATE FORESTS AND TIMBER RESERVES.

Resumption for State forests.

See Vict. Act, 1907, s. 21.

6. The Governor may, under the Public Works Act, 1900, purchase, resume, or appropriate land for the purpose of a State forest. Such purchase, resumption, or appropriation shall be deemed to be for an authorised work. Such land shall not be dealt with otherwise than in pursuance of this Act.

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7. The Minister shall, within three years of the commencement of this Act, or as soon after the expiration of that period as practicable, cause a classification of the forest lands of the State to be made by such persons as the Minister may appoint in that behalf for the purpose of determining which of such lands are suitable to be—

Classification of forest lands.

- (a) permanently dedicated as State forests ;
- (b) temporarily reserved as timber reserves.

8. The Governor, by notice in the Gazette, may dedicate as a State forest any land vested in His Majesty, and not granted or lawfully contracted to be granted in fee-simple, but may not include in such dedication land held under a conditional lease granted before the commencement of this Act unless the land so leased is within a reserve from sale, and for that purpose may cancel any previous dedication of such land.

Dedication of State forests.
See Vict. Act, 1907, ss. 16-19.

Land dedicated under this section shall not be dealt with otherwise than in pursuance of this Act, and such dedication shall not be revoked or altered except under the authority of this Act.

9. A dedication under this Act of a State forest may be revoked in whole or in part in the following manner :—

Revocation of dedication of State forests.
See *Ibid.*

- (a) The Governor shall lay on the table of each House of Parliament proposals for such revocation.
- (b) After such proposals have been so laid before Parliament, the Governor, on a resolution being passed by both Houses that such proposals be carried out, may, by notice in the Gazette, revoke such dedication as aforesaid, and thereupon the land shall become Crown lands within the meaning of the Crown Lands or Western Lands Acts, and shall be dealt with under those Acts.

10. (1) The dedication of land as a State forest shall not affect any lease or license from the Crown or any portion thereof, provided that, unless with the concurrence of the Minister, such lease or license shall not be renewed, and its term shall not extend beyond the term or period then current at the time of such dedication.

Provision where land in State forest is subject to Crown lease or license.

(2) A lease or license for grazing purposes of land included in a State forest or timber reserve may be granted under the Crown Lands or Western Lands Acts, subject to such provisions and conditions as the Minister thinks necessary in the interests of forestry.

Conditions of future leases and licenses.

11. Land within a State forest shall be subject to such of the provisions of the Mining Act, 1906, and of the Acts amending the same, as are applicable to land permanently dedicated ; but the exercise of any right thereunder within a State forest shall be subject to such conditions and restrictions relating to forestry as may be prescribed :

Land within State forest open to mining.

Provided that the Minister, with the concurrence of the Minister for Mines, by notification in the Gazette, may take any part of a State forest out of the operation of those provisions, and revoke or alter any such notification.

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Reservation from
sale of Crown lands.

12. The Governor, by notice in the Gazette, may, on the recommendation of the Minister, and with the concurrence of the Secretary for Lands, temporarily reserve from sale any Crown land, except land held under a conditional lease granted before the passing of this Act, as a timber reserve, and revoke or alter, in whole or in part, any such reservation, or any reservation made before the commencement of this Act, of land for a timber or forest reserve.

Where any reservation of any land is so revoked, the land shall, unless otherwise declared by notification in the Gazette, become Crown lands within the meaning of and be dealt with under the Crown Lands or Western Lands Acts.

Revocation of
reservation from
sale.

13. No reservation from sale of land as a timber or forest reserve, notified before or after the commencement of this Act, shall be revoked or altered in whole or in part except under this Act.

PART III.

LICENSES, TIMBER RIGHTS, AND PERMITS.

Timber-getters' and other licenses.

Licenses to obtain
timber and products.

14. Timber-getters' and other licenses to have effect for a year or any less term not less than one month may, on payment of the prescribed fee, be granted by the Minister or by any person authorised by him. Any such license shall authorise the holder to take timber and products, or any specified description thereof, on any State forest, timber reserve, or portion thereof, or Crown land mentioned in the license, whether such land is or is not under lease or license from the Crown; but the Minister may limit the number of licenses which may apply to a specified area:

Provided that a license granted under this section shall not apply unless with the consent of the lessee or the trustees, as the case may be, to land held under conditional lease and not reserved from sale, or under conditional purchase lease, or in respect of which trustees have been appointed for any public purpose:

Provided also that the powers conferred by any such license shall be exercised subject to such conditions, exemptions, and reservations as at any time, before or after the grant of the license, may be prescribed, or may be notified by the Minister in the Gazette.

Exclusive

*Forestry.**Exclusive rights.*

15. The Minister may, after open inquiry and report by the local land board, where the land in question is difficult of access or where the getting of the timber or products thereon would entail heavy expenditure, grant exclusive rights to take timber or products, or any specified description thereof, on specified areas of State forests, timber reserves, or, with the concurrence of the Secretary for Lands, on Crown lands reserved from sale; but such right shall not be granted in respect of an area exceeding ten thousand acres, or for a period exceeding fifteen years.

16. In respect of any such right, the following provisions shall apply:—

- (a) The right may be granted at a rent to be determined by the Minister, or may be disposed of by auction at not less than the upset rent fixed by the Minister.
- (b) The royalty payable shall be as prescribed, but shall not be less than that payable where no exclusive right is granted.
- (c) The right shall be granted by a document signed by the Minister and approved by the Governor, in which shall be stated the conditions under which the right may be exercised and the circumstances under which it may be forfeited by the Minister.
- (d) In every such document proper provision shall be made to secure that the exercise of the right shall be commenced and continued without undue delay, and provision may so be made for the employment of a minimum number of men on the land, or for a minimum quantity of timber or products to be cut and removed, or for the expenditure of a minimum amount of money in works and improvements in connection with the exercise of the right granted.
- (e) The holder of every such right shall furnish a monthly return, giving particulars of the number of logs and superficial contents of timber removed from the land subject to the right each month. In default thereof the right shall be liable to forfeiture.
- (f) Only persons duly licensed in that behalf under this Act shall be employed in taking timber and products on the land.
- (g) The Governor may at any time withdraw from such right any part of the land to which it applies if he is satisfied that such action is desirable, either in the interests of mining or to meet the necessities of settlement.

Saw-mills

*Forestry.**Saw-mills licenses.*

Saw-mills to be licensed, and books to be kept.

17. (1) Every person conducting a saw-mill for the sawing or treatment of timber shall obtain a license in respect of the same, and shall keep the prescribed books and records and make the prescribed returns.

(2) Every such license shall be in force until the thirty-first day of December in the year in which it is issued, and shall thereafter be renewable from year to year.

(3) Such licenses may be granted and renewed by the Minister, or some person authorised by him in that behalf, in the manner and subject to the conditions prescribed and upon payment of an annual fee of one pound :

Provided that persons conducting saw-mills exclusively for the treatment of timber which is not subject to the payment of royalty may, on application, be exempted by the Minister from the operation of this clause :

Provided also that where any such license is issued after the thirtieth day of June in any year the fee in respect of the unexpired portion of that year shall be one half of the annual fee.

(4) Every such license shall specify in addition to any other matter prescribed the site or wharf which shall be the authorised place for delivering or for loading timber cut, sawn, or otherwise treated at a saw-mill, into ocean-going ships, or other mediums of transport.

(5) Any person conducting a saw-mill, whether as owner, lessee, or otherwise, without holding a license in force in respect of the same in pursuance of this section, and any such person who fails to keep and exhibit on demand by an authorised officer the prescribed books and records, or fails to make the prescribed returns, shall be liable to a penalty not exceeding fifty pounds.

Royalty.

Royalty on timber.

18. (1) Royalty shall be paid at the rates prescribed on all timber felled on or removed from State forests, timber reserves, Crown lands, or lands held under any tenure from the Crown which requires the payment of royalty on timber. But such royalty shall not be payable on timber exempted therefrom by the terms of the license or by the regulations, or on timber on such holdings required for the use of the holder on his land, and allowance may be made for any timber which is not marketable.

Royalty, how calculated.

(2) Such royalty shall be calculated on the log measurement of the timber, or as prescribed, or, if so directed by or under instructions from the director of forests, on the gross output of a saw-mill :
Provided

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Provided that a rebate, to be ascertained in the manner prescribed, shall, on application, be allowed from such gross output in respect of timber not liable to royalty.

(3) Royalty shall be paid at the time and in the manner ^{How paid.} prescribed to the director of forests or the person appointed by him in that behalf.

In the case of royalty on log-measurement, the person felling the timber or the person (if any) employing him or receiving the timber shall be liable for such payment.

In the case of royalty on the output of a saw-mill, the licensee of the saw-mill or the person in charge of the same shall be liable for such payment.

(4) The Minister may establish or approve of the establishment of depôts where logs, piles, girders, sleepers, and hewn or other timbers may be measured for the purpose of determining the amount of royalty payable in respect thereof.

19. Royalty shall be paid on all products taken on any ^{Royalty on products.} State forest, timber reserve, or Crown land, not being exempted from royalty by the terms of the license or by this Act or the regulations, at the rates at the time and in the manner prescribed to the director of forests or any person appointed by him in that behalf; and the holder of the license or the person (if any) employing him shall be liable for such payment.

Permits.

20. (1) The following permits may be granted to any person ^{Permits to graze and permits to occupy.} who is the holder of any license or of any exclusive right under this Act:—

- (a) A permit to graze such horses and cattle as are necessary and are used by him in the exercise of his license or right, and for a period not exceeding that mentioned in the permit.
- (b) A permit to occupy for any period not exceeding that therein specified any land specified in such permit as the site of any saw-mill or other building or any tramway, wharf, or timber depôt to be used for or in connection with the exercise of his license or right, or for charcoal-burning, converting products, or other similar purpose, or to fence and cultivate for the purpose of growing fodder for the maintenance of horses and cattle used in the exercise of such right.

(2) Any such permit shall cease to have effect if the said person ceases to be the holder of the license or right or ceases to exercise his powers thereunder.

(3) Any such permit may be granted over land within a State forest or timber reserve, or, with the concurrence of the Secretary for Lands, over any Crown land other than land held under a conditional lease and not reserved from sale, or held as a conditional purchase lease. Such

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Such permit shall not withdraw the land to which it applies from any lease or license under the Crown Lands or Western Lands Acts.

The grant of such permit and the exercise of the powers conferred thereby shall not entitle the lessee or licensee to any compensation other than as hereinafter provided.

(4) The holder of every such permit shall pay rent or fees to the Crown at a rate to be determined by the Minister, or as prescribed. Where any of the land is under lease or license as aforesaid, the said holder shall, in addition, pay compensation to the lessee or licensee as follows:—

- (a) Where the permit is granted under paragraph (a) of subsection one of this section, the compensation shall be such agistment fees as may be assessed by an officer of the Forestry Department authorised by the Minister, subject to a right of appeal from such assessment to the Minister.
- (b) Where the permit is granted under paragraph (b) of the said subsection the amount of the compensation shall be determined by the Minister.

(5) Such permits may be granted by the Minister or some person authorised by him in that behalf, and in the manner and subject to the conditions prescribed.

(6) Land included in a permit granted under paragraph (b) of subsection one of this section shall not be available for sale during the currency of the permit.

Ringbarking.

Trees not to be ringbarked unless duly authorised.

21. (1) No trees on any State forest, timber reserve, or Crown lands, with the exception of lands held under conditional lease granted before the passing of this Act, shall be ringbarked except—

- (a) in pursuance of a permit to ringbark granted under this Act; or
- (b) in pursuance of a permit to ringbark granted before and in force at the commencement of this Act; or
- (c) in pursuance of an authority to ringbark contained in a Crown lease granted before and in force at such commencement; or
- (d) in pursuance of conditions or provisions inserted with the concurrence of the Minister under this Act in a Crown lease granted after such commencement.

(2) Permits to ringbark may be granted by the Minister, or by some person authorised by him in that behalf, in respect of such land for such period as may be thought fit, and shall be subject to such conditions as may be prescribed, or as may be contained in the permit.

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(3) Any person who ringbarks any tree in contravention of this section, or knowingly causes or suffers the same to be done, shall be liable to a penalty not exceeding ten shillings in respect of every tree so ringbarked.

Rights of lessees and licensees under Crown Lands Acts.

22. (1) In section ninety-eight of the Crown Lands Act of 1884, unless the context otherwise indicates, the word "material" shall include timber and products; and the expressions "authorised persons" and "persons duly authorised" shall include persons authorised by licenses granted under this Act. Extension of meaning of "material" and "authorised persons" in section 98 of the Crown Lands Act of 1884.

(2) Subsection (III) of the said section is amended by the addition thereto, before the proviso, of the words "and where any land subject to any such lease or license is enclosed, the lessee, licensee, or occupier of the land shall provide reasonable means of access thereto, for any of the said purposes, to the satisfaction of the Secretary for Lands, by gates or otherwise."

PART IV.

GENERAL AND SUPPLEMENTAL.

General provisions.

23. Licenses, exclusive rights, and permits under this Act shall not be transferable except with the consent in writing of the Minister or of some person authorised by him in that behalf, and if transferred without such consent, shall confer no rights on the holder thereof. Transfer of leases, &c.

24. The Minister shall, where practicable, impose conditions for afforestation and reforestation in all exclusive rights or licenses. Imposition of afforestation and reforestation conditions.

25. If the Minister is of opinion that the holder of a right, license, or permit under this Act has contravened or failed to comply with any provision or condition contained therein, or in this Act or the regulations, or that such right, license, or permit is not held or used bona fide for the purpose for which it was granted, he may suspend the operation of the right, license, or permit, and may, after affording such holder an opportunity to be heard, cancel the same, and such license or permit shall thereupon, or at such future time as the Minister may fix, be cancelled and determined. Cancellation of lease, license, or authority.

26. Any member of the police force or person authorised by the Minister by writing under his hand to act under this section may impound any animals, as defined in the Impounding Act, 1898, trespassing Impounding of animals trespassing.

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trespassing on any land included in a State forest or a timber reserve under this Act, or in a timber reserve notified before the commencement of this Act.

For the purpose of carrying out the provision aforesaid, every member of the police force and person authorised as aforesaid shall have the same powers as if he were an occupant within the meaning of the Impounding Act, 1898, and the said animals were trespassing on his land.

Supplemental.

Power of entry by authorised person.

27. Any person authorised by the Minister by writing under his hand to act under this section may, on producing his authority as aforesaid, enter any land and inspect any timber and products thereon or therein.

Whosoever obstructs any such person in the exercise of any power hereby conferred shall be liable to a penalty not exceeding ten pounds.

Recovery of fees, royalties, and rents.

28. All fees, royalties, and rents imposed by or under this Act or the regulations may be recovered by the Minister, or any person authorised by him, in any court of competent jurisdiction as a debt due to His Majesty.

Regulations.

Regulations.

29. (1) The Governor may make regulations generally for carrying out the provisions of this Act, and in particular—

- (a) regulating the manner of applying for, and granting, and the forms, of rights, licenses, and permits under this Act; and prescribing the fees, charges, rents, and royalties, payable in respect of or under the same;
- (b) prescribing the periods for which and the conditions under which such rights, licenses, and permits may be granted, and the powers thereby conferred may be exercised;
- (c) regulating the exercise of the powers conferred by any right, license, or permit and any matters incidental thereto, including the protection and preservation of timber and other growth, and regulating the cutting, marking, and removing of timber;
- (d) regulating the inspection, branding, marking, and certification of timber and products, and the fees to be charged for the same; and providing penalties for falsely applying or counterfeiting the prescribed brands, marks, and certificates;
- (e) regulating and controlling the storing on any public wharf, road, depot, or place of any timber subject to inspection or to payment of royalty;

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- (f) prohibiting the making of any instrument which might be used for counterfeiting the brands or marks placed on timber by officers of the Forestry Department ;
- (g) prohibiting any person from having in his possession, disposing of, or using any instrument used by any such officer for placing brands or marks on timber ;
- (h) prescribing the kinds, sizes, and quantities of timber or products which may be cut or removed ; and prohibiting the removal of timber unless branded or marked as prescribed ;
- (i) prescribing the books and records to be kept and the returns to be made by owners or lessees of saw-mills, and by persons taking delivery of timber ;
- (j) providing for the making of declarations or statements as to the quantity and description of timber and products obtained, removed, hewn, sawn, or otherwise treated, or transported or consigned by road, rail, or water, and prescribing the time within which such declarations or statements shall be made ; and imposing penalties for making untrue declarations or statements ;
- (k) prescribing the conditions under which fires may or may not be lighted or used in State forests ;
- (l) providing for the organization of a system of education in scientific forestry.

And may in such regulations impose a penalty not exceeding twenty pounds for any breach of the same or any contravention or failure to comply with any provision or condition contained in any right, license, or permit granted in pursuance of this Act.

(2) The Governor, by proclamation in the Gazette, may declare that the catchment area of any public works therein mentioned, constructed, or proposed to be constructed for the conservation or storage of water, shall be subject to regulations made as hereinafter provided.

(3) The Governor may make regulations applicable within each such area to any Crown lands, or to any lands which, after the commencement of this Act, may be sold or leased under the Crown Lands Acts or the Closer Settlement Acts, or under the Western Lands Acts—

- (a) providing for the preservation of vegetation near to any channels or any watercourses, whether flowing in defined channels or not ;
- (b) providing for the replanting of vegetation in place of any vegetation unlawfully destroyed ;
- (c) imposing any penalty not exceeding five pounds per acre for any such vegetation unlawfully destroyed.

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Regulations to be published.

- 30.** All regulations so made shall—
- (i) be published in the Gazette ;
 - (ii) take effect from the date of publication, or from a later date to be specified in such regulations ; and
 - (iii) be laid before both Houses of Parliament within seven days after publication if Parliament is in session, and, if not, then within fourteen days after the commencement of the next session. But if either House of Parliament passes a resolution at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation, such regulation shall thereupon cease to have effect.

Penalties and forfeitures.

Penalty for unlawfully cutting timber, &c.

31. Any person who, except in pursuance of a right, license, or permit under this Act, or any lease, license, or authority from the Crown, lawfully in force, on any land included in a State forest or timber reserve, or on any Crown land—

- (a) cuts, strips, obtains, removes, destroys, or damages any timber ; or
- (b) digs for, extracts, obtains, removes, destroys, or damages any products ;
- (c) grazes any horses, cattle, or sheep, or other animals ;
- (d) occupies any such land ; or
- (e) causes any of the things aforesaid to be done ;

shall be liable to a penalty not exceeding twenty pounds, and in addition shall be liable for any loss or damage caused by the offence. Such loss or damage may be awarded by the court imposing the penalty, and may be recovered in the same manner as the penalty.

Seizure and forfeiture of timber and products.

32. (1) Any member of the police force or person authorised by the Minister by writing under his hand to act under this section—

- (a) may stop and detain any timber or products within the boundaries of a State forest, a timber reserve, or upon any Crown land, or on any public highway within or adjoining the same ;
- (b) if he has reason to believe that any timber or products have been cut, removed, or otherwise dealt with contrary to the provisions of this Act or the regulations, or have been abandoned, may enter any land and seize such timber and products, and place a distinctive mark thereon ; and such timber and products, shall thereupon become and remain the property of the Crown until otherwise ordered by a court of petty sessions.

(2)

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- (2) where timber or products are seized as aforesaid—
- (a) the person making the seizure shall inform the person in possession of, or owning, or reasonably believed to own the timber or products of the fact of the seizure, or if such person is not known to him shall affix a notice of the seizure on such timber or products, and also at the nearest court of petty sessions ;
 - (b) after such seizure prompt measures shall be taken to prosecute the person who is suspected of cutting, removing, or otherwise dealing with the timber or products contrary to the provisions of this Act ;
 - (c) if any person is convicted of the offence aforesaid, or if, in the case of a notice affixed as aforesaid, no one, within fourteen days after the fixing of such notice, claims to be owner of the timber or products, a court of petty sessions may order that the same be forfeited to the Crown, or may make such order vesting the same in any person as may be thought just.

(3) Any timber or products forfeited in pursuance of this Act may be sold or otherwise disposed of as the Minister may direct, and the proceeds of any such sale shall be paid into the Treasury and carried to the Consolidated Revenue Fund.

33. (1) Whosoever—

- (a) offers violence to or assaults, threatens, or attempts to intimidate any officer of the Forestry Department while such officer is acting in the exercise of his powers or the discharge of his duties under this Act or the regulations ; or
- (b) gives or agrees to give or offers to any such officer any gift or consideration as an inducement or reward for any act done or to be done or any forbearance observed or to be observed or any favour shown or to be shown by any such officer in or in relation to the exercise of such powers or the discharge of such duties as aforesaid,

Penalty for assaulting or attempting to corrupt an official

shall be liable to a penalty not exceeding fifty pounds.

(2) A gift or consideration shall be deemed to be given as an inducement or reward if the receipt or any expectation thereof would be in any way likely to influence the officer to do or leave undone something contrary to his duty.

34. Penalties and forfeitures under this Act or the regulations may be sued for, imposed, enforced, and recovered in a summary way before a stipendiary or police magistrate, or any two justices in petty sessions.

Recovery of penalties.

Act No. 7, 1909.

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SCHEDULE.

No. of Act.	Title.	Extent of repeal.
48 Vic. No. 18...	Crown Lands Act of 1884 ...	Sections 93, 94, 95, 112, 113, 114, and so much of sections 115, 116, and 133 as relates to the cutting and removing of timber and products, and the stripping of bark.
Act No. 22, 1902	Timber Licenses Act, 1902 ...	The whole.
Act No. 42, 1905	Crown Lands Amendment Act of 1905.	So much of the Schedule as amends the portions of section 133 of the Crown Lands Act of 1884 repealed as aforesaid.
Act No. 30, 1908	Crown Lands (Amendment) Act, 1908.	The words in section 28 "in accordance with the regulations framed under section one hundred and fifteen of the Crown Lands Act of 1884," and so much of the Schedule as amends sections 95 and 112 of the Crown Lands Act of 1884.