

TIMBER MARKETING (AMENDMENT) ACT 1986 No. 141

NEW SOUTH WALES



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TIMBER MARKETING (AMENDMENT) ACT 1986 No. 141

NEW SOUTH WALES



Act No. 141, 1986

An Act to amend the Timber Marketing Act 1977 to make further provision with respect to the control of the sale and use of timber. [Assented to, 17 December 1986]

Timber Marketing (Amendment) 1986

BE it enacted by the Queen'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:

Short title

1. This Act may be cited as the "Timber Marketing (Amendment) Act 1986".

Commencement

2. (1) Except as provided by this section, this Act shall commence on the date of assent to this Act.

(2) Section 4, in its application to a provision of Schedules 1-6, shall commence on the day on which the provision commences.

(3) The several provisions of Schedules 1-6 shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

3. The Timber Marketing Act 1977 is referred to in this Act as the Principal Act.

Amendment of Act No. 72, 1977

4. The Principal Act is amended in the manner set forth in Schedules 1-6.

SCHEDULE 1

(Sec. 4)

AMENDMENTS TO PART I OF THE PRINCIPAL ACT

Section 4 (**Interpretation**)—

- (1) Section 4 (1), definition of “lyctid susceptible sapwood”—

Omit the definition, insert instead:

“lyctid susceptible sapwood” means sapwood of a hardwood species of tree, being sapwood—

- (a) that has been, or is being, attacked by lyctids; or
- (b) that, when tested for the presence of starch in accordance with a prescribed test, shows a result prescribed in relation to that test,

but does not include—

- (c) sapwood that has been treated by an approved preservative treatment for the prevention of attack by lyctids; or
 - (d) the sapwood of a prescribed species of tree;
- (2) Section 4 (1), definition of “preservative treated”—

Omit “or increasing the resistance of that timber to fire”.

- (3) Section 4 (1), definition of “registered brand”—

Omit the definition, insert instead:

“registered brand”, in relation to the treatment of timber by means of an approved preservative treatment, means the brand for the time being registered by the Commission under section 20 in respect of that approved preservative treatment;

- (4) Section 4 (1), definition of “timber”—

Omit “similar materials;”, insert instead:

similar materials,

but does not include an article.

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SCHEDULE 1—*continued*AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued*

(5) Section 4 (1), definition of “untreated”—

Omit the definition.

SCHEDULE 2

(Sec. 4)

AMENDMENTS TO PART II OF THE PRINCIPAL ACT

(1) Section 4A—

Before section 5, insert:

Application of Part

4A. This Part applies only to timber that is the wood of a hardwood species of tree (not being a prescribed species).

(2) Section 5 (**Sale of certain timber prohibited**)—

Omit “untreated” wherever occurring.

(3) Section 6—

Omit the section, insert instead:

Sale of certain framing timber

6. (1) A person shall not sell any framing timber—

- (a) of which more than 25 per cent of the perimeter of any cross section comprises lyctid susceptible sapwood; or
- (b) of which more than 50 per cent of any face or edge at any cross section comprises lyctid susceptible sapwood.

(2) It is a defence to a prosecution brought against a person in respect of an offence under this section if the person proves that the purchaser was given the prescribed warning in the prescribed manner.

*Timber Marketing (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued*

(3) It is a defence to a prosecution brought in respect of an offence under this section against a person who has sold any framing timber by way of resale if the person proves that—

(a) if the offence is an offence under subsection (1) (a)—the person did not know and could not reasonably be expected to have known that more than 25 per cent of the perimeter of a cross section of that timber comprised lyctid susceptible sapwood; or

(b) if the offence is an offence under subsection (1) (b)—the person did not know and could not reasonably be expected to have known that more than 50 per cent of any face or edge at a cross section of that timber comprised lyctid susceptible sapwood.

(4) Section 7 (**Sale of certain mixed timbers prohibited**)—

Omit the section.

(5) Section 8 (**Sale of timber free from lyctid susceptible sapwood**)—

(a) Section 8—

Omit “brand registered by the Commission in respect of that approved preservative treatment”, insert instead “registered brand in accordance with the conditions of the approval”.

(b) Section 8 (2)—

At the end of section 8, insert:

(2) A person need not comply with the requirement that timber be branded if the timber is of a prescribed class or description but (if the quantity of any such timber sold is 2 or more pieces and the sale is the first sale of the timber in New South Wales) the person shall ensure that—

(a) the invoice or docket of sale; and

(b) if the timber is sold in a pre-wrapped form, the wrapping, bear a facsimile of the registered brand.

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SCHEDULE 2—*continued*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued*

(6) Section 9 (**Sale of articles**), section 10 (**Erection of buildings**)—

Omit “untreated” wherever occurring.

(7) Section 11 (**Sale of buildings**)—

(a) Section 11—

Omit “untreated” wherever occurring.

(b) Section 11 (1) (b) (ii)—

Omit “or”.

(c) Section 11 (1) (c), (d)—

At the end of section 11 (1) (c), insert:

; or

(d) timber (not being milled timber, laminated wood, veneer or plywood) of which more than 50 per cent of any face or edge at any cross section comprises lyctid susceptible sapwood.

SCHEDULE 3

(Sec. 4)

AMENDMENTS TO PART III OF THE PRINCIPAL ACT

(1) Section 12 (**Describing timber as dried or seasoned**)—

(a) Section 12 (d) (ii)—

Omit “maximum”.

(b) Section 12 (d) (ii)—

Omit “does not, as at the date of sale, exceed 15 per centum by mass”, insert instead “is not, as at the date of sale, less than 10 per cent or more than 15 per cent by mass”.

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SCHEDULE 3—*continued*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued*

(2) Section 12A—

After section 12, insert:

Certain timber to be dried or seasoned, or described as unseasoned

12A. A person shall not sell any timber of a prescribed class or description unless—

- (a) if the moisture content of that timber is clearly shown on the invoice or docket of sale—the moisture content of that timber, when determined in the prescribed manner, complies, as at the date of sale, with the moisture content so shown;
- (b) if no moisture content as referred to in paragraph (a) is so shown—
 - (i) if a standard has been prescribed that specifies the moisture content for that timber or for a class or description of timber to which that timber belongs and the manner of determining that moisture content—the moisture content of that timber, when determined in that manner, complies, as at the date of sale, with that standard; or
 - (ii) if no such standard has been prescribed—the moisture content of any piece of that timber, when determined in the prescribed manner, is not, as at the date of sale, less than 10 per cent or more than 15 per cent by mass; or
- (c) the timber is described as unseasoned.

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SCHEDULE 3—*continued*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued*

(3) Sections 13, 13A—

Omit section 13, insert instead:

Manufacture of furniture and other articles

13. (1) A person shall not use in the manufacture of furniture, a prescribed article or an article of a prescribed class or description any timber which—

(a) if a standard has been prescribed that specifies—

(i) the moisture content for that timber or for a class or description of timber to which that timber belongs;
and

(ii) the manner of determining that moisture content,

has a moisture content which does not comply, as at the date of sale, with that standard when determined in that manner; or

(b) if no such standard has been prescribed—has a moisture content which, when determined in the prescribed manner, is, as at the date of sale, less than 10 per cent or more than 15 per cent by mass.

(2) It is a defence to a prosecution brought in respect of an offence under this section if the defendant proves that—

(a) the use of the timber was agreed to in writing by the person for whom the furniture, the prescribed article or the article of the prescribed class or description was or was being manufactured; or

SCHEDULE 3—*continued*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued*

- (b) the furniture, the prescribed article or the article of the prescribed class or description is for the defendant's use.

Sale of furniture and other articles

13A. (1) A person shall not sell any furniture, prescribed article or article of a prescribed class or description which contains any timber which—

- (a) if the moisture content of that timber is clearly shown on the invoice or docket of sale for the furniture or article—has a moisture content which does not comply, as at the date of sale, with the moisture content so shown when determined in the prescribed manner; or
- (b) if no moisture content as referred to in paragraph (a) is so shown—
- (i) if a standard has been prescribed that specifies the moisture content for that timber or for a class or description of timber to which that timber belongs and the manner of determining that moisture content—has a moisture content which does not comply, as at the date of sale, with that standard when determined in that manner; or
- (ii) if no such standard has been prescribed—has a moisture content which, when determined in the prescribed manner, is, as at the date of sale, less than 10 per cent or more than 15 per cent by mass.

(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) (b) (i) or (ii) if the defendant proves that the defendant did not know and could not reasonably be expected to have known that the moisture content of the timber contravened the requirements of that subparagraph.

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SCHEDULE 4

(Sec. 4)

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT

(1) Section 16—

Omit the section, insert instead:

Sale of preservative treated timber

16. (1) A person shall not sell any timber—

- (a) described by the person or the person's servants or agents as being preservative treated; or
- (b) described or presented by the person or the person's servants or agents in such manner as to convey or be likely to convey to any person the impression that that timber is preservative treated,

unless that timber is treated by means of an approved preservative treatment and is branded with the registered brand in accordance with the conditions of the approval.

(2) A person need not comply with the requirement that timber be branded if the timber is of a prescribed class or description but (if the quantity of any such timber sold is 2 or more pieces and the sale is the first sale of the timber in New South Wales) the person shall ensure that—

- (a) the invoice or docket of sale; and
- (b) if the timber is sold in a pre-wrapped form, the wrapping, bear a facsimile of the registered brand.

(2) Section 16A—

After section 16, insert:

Sale of preservative treated articles

16A. A person shall not sell any article—

- (a) described by the person or the person's servants or agents as being preservative treated; or

*Timber Marketing (Amendment) 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued*

- (b) described or presented by the person or the person's servants or agents in such manner as to convey or be likely to convey to any person the impression that that article is preservative treated,

unless every timber component part of the article is treated by means of an approved preservative treatment.

(3) Section 17—

Omit the section, insert instead:

Dealing in timber preservative treated for reward

17. (1) A person who owns or controls a preservative treatment plant at which timber is preservative treated for reward shall not allow any timber—

- (a) described as being preservative treated; or
 (b) described in such manner as to convey or be likely to convey to any person the impression that that timber is preservative treated.

to leave that preservative treatment plant unless that timber is treated by means of an approved preservative treatment and is branded with the registered brand in accordance with the conditions of the approval.

(2) A person need not comply with the requirement that timber be branded if the timber is of a prescribed class or description but (if the quantity of any such timber sold is 2 or more pieces and the sale is the first sale of the timber in New South Wales) the person shall ensure that—

- (a) the invoice or docket of sale; and
 (b) if the timber is sold in a pre-wrapped form, the wrapping, bear a facsimile of the registered brand.

(4) Section 19 (**Consideration of applications by the Commission**)—

- (a) Section 19 (a) (v)—

Omit “and” where lastly occurring.

*Timber Marketing (Amendment) 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued*

- (b) Section 19 (a) (vii)—
 After section 19 (a) (vi), insert:
 (vii) the design and performance of the preservative treatment plant and its capability to treat timber.
- (c) Section 19 (b)—
 Omit the paragraph.
- (5) Section 20 (**Determination of application**)—
- (a) Section 20 (1) (b)—
 Omit “the brand”, insert instead “a brand”.
- (b) Section 20 (2)—
 Omit “the brand referred to in that application”, insert instead “a brand”.

SCHEDULE 5

(Sec. 4)

INSERTION OF PART IV_A INTO THE PRINCIPAL ACTPart IV_A—

After Part IV, insert:

PART IV_A

COMPLIANCE WITH AUSTRALIAN STANDARDS

Interpretation

26A. In this Part—

“Australian Standard” means a standard of the Standards Association of Australia.

SCHEDULE 5—*continued*INSERTION OF PART IV_A INTO THE PRINCIPAL ACT—*continued***Sale of timber branded or marked as complying with an Australian Standard**

26B. (1) A person shall not sell any timber that is branded or marked with—

- (a) the words “Australian Standard”;
- (b) the letters “AS”; or
- (c) any other words or letters that are an abbreviation of the words “Australian Standard”,

followed by a number which corresponds to that used to identify a particular Australian Standard (being a standard which is not divided into parts), unless that timber complies with that standard.

(2) A person shall not sell any timber that is branded or marked with—

- (a) the words “Australian Standard”;
- (b) the letters “AS”; or
- (c) any other words or letters that are an abbreviation of the words “Australian Standard”,

followed by a number which corresponds to that used to identify a particular Australian Standard (being a standard which is divided into parts), unless that number is followed by a number which corresponds to a part of that standard.

(3) A person shall not sell any timber that is branded or marked with—

- (a) the words “Australian Standard”;
- (b) the letters “AS”; or

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SCHEDULE 5—*continued*

INSERTION OF PART IVA INTO THE PRINCIPAL ACT—*continued*

(c) any other words or letters that are an abbreviation of the words "Australian Standard",

followed by a number which corresponds to that used to identify a particular Australian Standard and a number which corresponds to a part of that standard, unless that timber complies with that part of that standard.

Sale of timber branded or marked as complying with a stress grading

26c. A person shall not sell any timber which is branded or marked with the letter "F" followed by a number which corresponds to a stress grading under an Australian Standard, unless that timber complies with the criteria set out in that standard for that grading.

SCHEDULE 6

(Sec. 4)

AMENDMENTS TO PART V OF THE PRINCIPAL ACT

(1) Section 27 (**Entry, inspection, testing and seizure**)—

Section 27 (5)—

Omit "by the removal of that timber.", insert instead:

by the removal of that timber,

and, if a notice of seizure has been issued in respect of the timber, terminate the notice.

*Timber Marketing (Amendment) 1986*SCHEDULE 6—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(2) Section 27A—

After section 27, insert:

Notice of seizure

27A. (1) A person authorised under section 27 (1) may issue a notice of seizure in respect of any timber or article if the person suspects on reasonable grounds that there has been a contravention of this Act or the regulations in respect of the timber or article.

(2) A notice of seizure takes effect—

- (a) on service of the notice on a person who appears to have possession, care or control of the timber or article;
- (b) on the affixing of the notice or a copy to the timber or article; or
- (c) on the placing of a distinctive mark on the timber or article indicating that the notice has been issued in respect of it.

(3) A notice of seizure ceases to have effect—

- (a) if proceedings for an offence in respect of the timber or article are not commenced within a period of 30 days after the notice takes effect—at the end of that period;
or
- (b) if proceedings for an offence in respect of the timber or article are commenced within a period of 30 days after the notice takes effect—at the end of the proceedings.

or, in either case, at such earlier time as the Commission determines.

(4) A person shall not, without the permission of the Commission, remove or interfere with timber or an article in respect of which a notice of seizure has effect.

*Timber Marketing (Amendment) 1986*SCHEDULE 6—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(5) Subject to subsection (4), a notice of seizure does not have any effect in respect of the property in, or the responsibility for the care or control of, the timber or article in respect of which it is issued.

(6) If a notice of seizure is issued in respect of any timber or article and a person is subsequently found guilty of an offence under this Act in respect of the timber or article, a person who, within 6 months after the notice ceases to have effect, removes the timber or article from the place at which it was when the notice was issued shall inform the Commission forthwith of the destination of the timber or article.

(7) It is a defence to a prosecution under subsection (6) if the defendant proves that the defendant did not know and could not reasonably be expected to have known that a notice of seizure had been in force in respect of the timber or article.

(8) No matter or thing done by the Commission or an authorised person shall, if the matter or thing was done in good faith for the purpose of executing the provisions of subsections (1)–(4), subject the Crown, the Commission or an authorised person to any action, liability, claim or demand.

(3) Section 29 (Offences)—

(a) Omit “\$500”, insert instead “\$2,000”.

(b) Omit “3 months”, insert instead “12 months”.

(4) Section 31 (Certificate evidence of certain matters)—

(a) Section 31 (b)—

After “employed by”, insert “the Commission or”.

(b) Section 31 (b)—

Before “research officer”, insert “technical officer”.

(c) Section 31 (b) (i), (vi)—

Omit “untreated” wherever occurring.

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SCHEDULE 6—*continued*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(d) Section 31 (b) (vi)—

Omit “or”.

(e) Section 31 (b) (vii)—(ix)—

Omit section 31 (b) (vii), insert instead:

(vii) has more than 50 per cent of a face or edge at a cross section comprised of lyctid susceptible sapwood;

(viii) does not comply with a particular standard or a part thereof (including a particular stress grading under a standard); or

(ix) has the moisture content specified in that certificate,

(f) Section 31 (2)—

At the end of section 31, insert:

(2) In any legal proceedings, evidence that a portion or sample of timber taken from a quantity of timber or from a building does not comply with a particular provision of this Act or the regulations is, in the absence of evidence to the contrary, evidence that that quantity of timber or the timber in that building does not comply with that provision.

(5) Section 32A—

After section 32, insert:

Presumption that certain timber or article is for sale

32A. (1) In proceedings under this Act for a contravention of, or failure to comply with, a provision of this Act relating to the selling of timber or an article (being proceedings against a person who carries on the business of selling timber or articles), it shall be presumed, in the absence of evidence to the contrary, that any timber or article found at a place of business of the person is offered or exposed for sale or held in possession for sale.

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SCHEDULE 6—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(2) The presumption in subsection (1) does not apply if it is established that the timber or article—

- (a) has attached to it or exhibited near it, in the prescribed manner, a notice, in the prescribed form, stating that the timber or article is not for sale; and
- (b) does not have any other notice attached to it or exhibited near it, or any marking on or near to it, that purports to be the price of the timber or article or that suggests that the timber or article is being offered or exposed for sale or held in possession for sale.

(6) Section 34 (**Regulations**)—

Section 34 (4)—

Omit section 34 (4) and (5), insert instead:

- (4) A provision of a regulation may—
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) apply differently according to different factors of a specified kind; or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.
