

# Timber Marketing Act 1977 No 72

[1977-72]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*Corporations (Consequential Amendments) Act 2001 No 34* (not commenced)

### Authorisation

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# Timber Marketing Act 1977 No 72



New South Wales

An Act to control the sale and use of certain timbers; and to repeal the *Timber Marketing Act 1945*.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Timber Marketing Act 1977*.

### 2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.
- (3) (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**approved preservative treatment**, in relation to timber, means a preservative treatment in respect of which an approval of the Commission is in force.

**article** means a manufactured article, the whole or any component part of which is comprised of timber, but does not include a prescribed article or an article of a prescribed class or description.

**building** includes a structure or part of a structure, but does not include:

- (a) a building, structure or part of a structure intended to have a life of less than 2 years,
- (b) a fence, or
- (c) an article.

**Commission** means the Forestry Commission of New South Wales constituted under the *Forestry Act 1916*.

**corporation** has the meaning ascribed thereto in the *Companies (New South Wales) Code*.

**cross section**, in relation to a piece of timber, means the cross section that would be produced if that piece of timber were cut at right angles to its longitudinal axis.

**erection**, in relation to a building, includes alteration, addition, rebuilding or repair.

**framing timber** means sawn, hewn or otherwise processed timber of a kind used to form the basic structure of a building or to support roofing materials or wall cladding.

**lyctid** means an insect of the family Lyctidae.

**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.

**milled timber** means timber products of the following classes or descriptions, namely, joinery timber, flooring, mouldings, cladding, lining and similar timber products which have been machined to a required shape or finish.

**preservative treated**, in relation to timber, means treated by a chemical substance with the object of protecting that timber from attack by wood destroying insects, animals or fungi.

**preservative treatment**, in relation to timber, means the treatment of that timber which causes it to be preservative treated.

**preservative treatment plant** means a plant for:

- (a) the preservative treatment of timber which is to be:
  - (i) sold as being preservative treated,
  - (ii) used in the manufacture of an article to be sold as being preservative treated,or

- (iii) used in the erection of a building to be sold as being preservative treated, or
- (b) the preservative treatment of timber for reward.

**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.

**regulation** means a regulation made under this Act.

**sapwood** means the layers of the wood of a tree in which its food materials are conveyed and stored during the life of the tree.

**sell** includes:

- (a) barter or exchange,
- (b) offer or expose for sale, barter or exchange,
- (c) cause or suffer to be sold, bartered, exchanged, offered for sale or exposed for sale,
- (d) attempt to sell, barter, exchange, offer for sale or expose for sale,
- (e) agree to sell, barter or exchange,
- (f) send, forward or deliver for or on sale or for barter or exchange,
- (g) have in possession for sale, barter or exchange,
- (h) cause or suffer to be sent, forwarded or delivered for or on sale or for barter or exchange,
- (i) attempt to forward or deliver for or on sale or for barter or exchange, and
- (j) in relation to land, convey.

**standard** includes a standard of Standards Australia.

**timber** means the wood of any indigenous or exotic species of tree and includes:

- (a) poles, piles, posts and mine props,
- (b) sawn, hewn or otherwise processed sections of solid wood including framing timber, sleepers, girders, cross-arms and similar objects,
- (c) milled timber,
- (d) laminated wood,
- (e) veneer and plywood, and

(f) hardboard, particle board, fibre board, insulation board and similar materials, but does not include an article.

(2) A reference in this Act to a person to whom an approval is given under section 20 (1) (a) shall be construed as a reference to:

(a) where an approval has been confirmed or varied under section 22 (3) (a) or varied under section 24, the person in respect of whom that approval is so confirmed or varied, and

(b) where an approval has been transferred under section 25, the person to whom that approval is so transferred.

## **Part 2 Lyctid susceptible timber**

### **4A Application of Part**

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

### **5 Sale of certain timber prohibited**

(1) A person shall not sell any milled timber, laminated wood, veneer or plywood having lyctid susceptible sapwood.

(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) against a person who has sold any timber referred to in that subsection by way of resale if it is proved that the person did not know and could not reasonably be expected to have known that that timber had lyctid susceptible sapwood.

### **6 Sale of certain framing timber**

(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.

(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.

## **7 (Repealed)**

## **8 Sale of timber free from lyctid susceptible sapwood**

- (1) A person shall not sell any timber:

- (a) described by the person, the person's servants or agents as being free from lyctid susceptible sapwood, or
- (b) described by the person, 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 free from lyctid susceptible sapwood,

unless the lyctid susceptible sapwood has been removed from that timber or that timber has been 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.

## **9 Sale of articles**

- (1) A person shall not sell an article having lyctid susceptible sapwood.
- (2) It is a defence to a prosecution brought in respect of an offence under subsection (1) if the defendant proves that:
- (a) the defendant did not know and could not reasonably be expected to have known that the article had lyctid susceptible sapwood,
  - (b) before the completion of the sale of that article the defendant gave the purchaser

a written statement to the effect that sapwood liable to attack by lyctids was included in that article, or

- (c) the completion of the first sale of that article after the inclusion in it of the lyctid susceptible sapwood occurred more than 2 years before the date on which that prosecution was commenced.

## **10 Erection of buildings**

- (1) A person shall not use in the erection of a building:
  - (a) milled timber, laminated wood, veneer or plywood having lyctid susceptible sapwood,
  - (b) timber (not being milled timber, laminated wood, veneer or plywood) having lyctid susceptible sapwood if:
    - (i) lyctid attack in that timber would be detrimental to the use or service for which that building is intended, or
    - (ii) that timber would, on completion of erection of the building, be exposed to the view of persons using that building,
  - (c) timber (not being milled timber, laminated wood, veneer or plywood) of which more than 25 per cent of the perimeter of any cross section comprises lyctid susceptible sapwood, 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.
- (2) It is a defence to a prosecution brought in respect of an offence under subsection (1) if the defendant proves that:
  - (a) the defendant did not know and could not reasonably be expected to have known that the timber had lyctid susceptible sapwood,
  - (b) the use of the timber was agreed to in writing by the person for whom the building was or was being erected, or
  - (c) the building is for that person's occupation.

## **11 Sale of buildings**

- (1) A person shall not sell a building any part of which is comprised of:
  - (a) milled timber, laminated wood, veneer or plywood having lyctid susceptible sapwood,
  - (b) timber (not being milled timber, laminated wood, veneer or plywood) having lyctid

susceptible sapwood if:

- (i) lyctid attack in that timber would be detrimental to the use or service for which that building is intended, or
  - (ii) that timber is exposed to the view of persons using that building,
  - (c) timber (not being milled timber, laminated wood, veneer or plywood) of which more than 25 per cent of the perimeter of any cross section comprises lyctid susceptible sapwood, 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.
- (2) It is a defence to a prosecution brought in respect of an offence under subsection (1) if the defendant proves that:
- (a) the defendant did not know and could not reasonably be expected to have known that the timber had lyctid susceptible sapwood,
  - (b) before entering into the contract for the sale of the building the defendant gave the purchaser a written statement to the effect that lyctid susceptible sapwood was used in the erection of that building, or
  - (c) the completion of the first sale of the building after the inclusion in it of the timber occurred more than 2 years before the date on which that prosecution was commenced.

## **Part 3 Moisture content of timber**

### **12 Describing timber as dried or seasoned**

A person shall not sell any timber:

- (a) described by the person, the person's servants or agents as being kiln dried, air dried, dry or seasoned, or
- (b) described by the person, 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 kiln dried, air dried, dry or seasoned,

unless:

- (c) where 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, or
- (d) where no moisture content as referred to in paragraph (c) is so shown:

- (i) where a standard has been prescribed which specifies the moisture content for that timber or for a class or description of timber to which class or description 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) where 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.

#### **12A Certain timber to be dried or seasoned, or described as unseasoned**

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.

#### **13 Manufacture of furniture and other articles**

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

### **13A Sale of furniture and other articles**

- (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.

### **14 Erection of buildings**

- (1) A person shall not use in the erection of a building any timber which, where a standard has been prescribed which specifies the moisture content for that timber or for a class or description of timber to which class or description that timber belongs and the manner of determining that moisture content, has a moisture content which does not comply with that standard when determined in that manner.
- (2) It is a defence to a prosecution brought in respect of an offence under subsection (1)

if the defendant proves that:

- (a) the use of the timber was agreed to in writing by the person for whom the building was or was being erected, or
- (b) the building is for that person's occupation.

## **Part 4 Preservative treatment of timber**

### **15 Use of preservative treatment**

A person shall not use in the preservative treatment of:

- (a) any timber which is to be:
    - (i) sold as being preservative treated,
    - (ii) used in the manufacture of an article to be sold as being preservative treated, or
    - (iii) used in the erection of a building to be sold as being preservative treated, or
  - (b) any timber which is to be preservative treated for reward,
- a preservative treatment other than an approved preservative treatment.

### **16 Sale of preservative treated timber**

- (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.

## **16A Sale of preservative treated articles**

A person shall not sell any article:

- (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 article is preservative treated,

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

## **17 Dealing in timber preservative treated for reward**

- (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.

## **18 Application for approval of preservative treatment and registration of brand**

- (1) A person may make an application for approval by the Commission of a preservative treatment and the registration by the Commission of a brand to be used to brand timber treated by means of that preservative treatment.
- (2) An application under subsection (1) shall be in or to the effect of the prescribed form.
- (3) An applicant under subsection (1) who is not resident in New South Wales must, in the application, specify an address in New South Wales for the giving of notices under this Act.

## **19 Consideration of applications by the Commission**

In respect of an application under section 18 (1), the Commission shall take into consideration the following matters and any other matters it considers to be relevant:

- (a) in respect of the preservative treatment referred to in that application:
  - (i) the object of treatment,
  - (ii) the substances comprising the preservative,
  - (iii) the amount of preservative to be used in respect of the quantity of timber to be treated,
  - (iv) the method of treatment,
  - (v) the nature and quantity of timber to be treated,
  - (vi) the use for which that timber is intended, and
  - (vii) the design and performance of the preservative treatment plant and its capability to treat timber.
- (b) (Repealed)

## **20 Determination of application**

- (1) After consideration of an application under section 18 (1), the Commission may:
  - (a) approve the preservative treatment unconditionally or subject to such conditions as to it seems proper or refuse to approve the preservative treatment, and
  - (b) register or refuse to register a brand.
- (2) Where, in respect of an application under section 18 (1), the Commission refuses to approve a preservative treatment, it shall not register a brand.
- (3) Where, in respect of an application under section 18 (1), the Commission refuses to register a brand, it shall not approve the preservative treatment referred to in that application.
- (4) The Commission shall give notice in writing to the person making the application of its decision with respect to the application.

## **21 Duration of approval and registration**

The approval of a preservative treatment and the registration of a brand shall, unless sooner revoked and cancelled by the Commission under section 22 or renewed by the Commission under section 23, remain in force for a period of 3 years from the date of approval and registration or such lesser period as is determined by the Commission and



specified in the notice under section 20 (4).

## **22 Suspension of approval and registration**

- (1) The Commission, by notice in writing to a person to whom an approval is given under section 20 (1) (a), may suspend, for a period not exceeding 30 days after the date of the notice, that approval and the registration of the brand registered in respect of that approval if it is of the opinion that:
  - (a) the preservative treatment in respect of which that approval is given does not afford or no longer affords the protection for which it was intended,
  - (b) the conditions, if any, in force in relation to that approval have not been or are not being observed.
  - (c) that registered brand has been or is being used in contravention of this Act,
  - (d) timber treated by the preservative treatment in respect of which that approval is given has not been or is not being branded with that registered brand, or
  - (e) the person has otherwise contravened or failed to comply with a provision of this Act or the regulations relating to the approval or the preservative treatment of timber.
- (2) A person to whom a notice of suspension is given may, with respect to the terms of that notice and within the period of suspension specified in that notice or such longer period as may be agreed to by the Commission on application made to it by that person, make representations to the Commission that the suspension be terminated.
- (3) After receiving any representations referred to in subsection (2) or, where no such representations are received, on the expiration of the period of suspension specified in the notice of suspension or the longer period referred to in subsection (2), as the case may be, the Commission may:
  - (a) confirm or vary the terms of its approval of the preservative treatment and terminate the suspension of the registration of the brand registered in respect of that approval, or
  - (b) revoke that approval and cancel the registration of that brand.
- (4) The exercise by the Commission of any of its powers under subsection (3) arising out of the giving of a notice of suspension shall have effect notwithstanding that the period of suspension specified in that notice has not expired and on the exercise by the Commission of those powers that notice shall cease to have effect accordingly.

## **23 Renewal of approval and registration**

- (1) A person to whom an approval is given under section 20 (1) (a), may, within 60 days

prior to the date of expiration of that approval and the registration of the brand registered in respect of that approval, or such longer period not exceeding 60 days after that date of expiration as the Commission, on application made to it by that person, may allow, make an application to the Commission for the renewal of that approval and the registration of that brand.

- (2) An application for renewal shall be in or to the effect of the prescribed form.
- (3) The Commission, on receipt of an application for renewal, may renew the approval and the registration of the brand referred to in that application for a further period of 3 years from the date on which that approval and the registration of that brand would, but for the renewal, expire or on which they expired, as the case may be, or such lesser period as is determined by the Commission and specified by notice in writing to the person making the application.

#### **24 Variation of approval and registered brand**

- (1) A person to whom an approval is given under section 20 (1) (a) may make an application to the Commission for its consent to variation of the terms of that approval or the form and design of the brand registered in respect of that approval, or both.
- (2) An application for variation shall be in or to the effect of the prescribed form.
- (3) The Commission, on receipt of an application for variation, may grant or refuse to grant its consent.
- (4) The Commission shall give notice in writing to the person making the application of its decision with respect to the application.

#### **25 Transfer of approval and registration**

- (1) A person to whom an approval is given under section 20 (1) (a) shall not transfer that approval or the registration of the brand registered in respect of that approval to another person without the prior consent of the Commission.
- (2) A person to whom an approval is given under section 20 (1) (a) may make an application to the Commission for its consent to transfer that approval and the registration of the brand registered in respect of that approval to another person.
- (3) An application for transfer shall be in or to the effect of the prescribed form.
- (4) The Commission, on receipt of an application for transfer, may grant or refuse to grant its consent.
- (5) The Commission shall give notice in writing to the person making the application of its decision with respect to the application.

## **26 Use of registered brands**

A person shall not use a registered brand:

- (a) for a purpose other than branding timber which has been treated by means of the approved preservative treatment in respect of which that brand has been registered, or
- (b) during any period for which the registration of that brand is suspended under section 22 (1).

## **Part 4A Compliance with Australian Standards**

### **26A Definitions**

In this Part:

***Australian Standard*** means a standard of Standards Australia.

### **26B Sale of timber branded or marked as complying with an Australian Standard**

- (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

(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.

#### **26C Sale of timber branded or marked as complying with a stress grading**

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.

### **Part 4B Reviews by the Administrative Decisions Tribunal**

#### **26D Applications for review by the Administrative Decisions Tribunal**

A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:

- (a) a refusal by the Commission under section 20 to approve the person’s preservative treatment and register the brand for the treatment,
- (b) the suspension by the Commission under section 22 of an approval of the person’s preservative treatment and registration of a brand,
- (c) a refusal by the Commission under section 23 of an application by the person to renew an approval of a preservative treatment and registration of a brand,
- (d) a refusal by the Commission under section 24 of the person’s application for its consent to a variation to the terms of an approval or the form and design of the brand registered in respect of the approval,
- (e) a refusal by the Commission under section 25 of the person’s application for its consent to the transfer of an approval and the brand registered in respect of that approval.

### **Part 5 Miscellaneous**

#### **27 Entry, inspection, testing and seizure**

- (1) The Commission may authorise a person to carry out inspections and tests for the purposes of this Act and a person so authorised shall be provided by the Commission with a certificate of the person’s authority in the prescribed form.
- (2) A person authorised under subsection (1), in exercising or performing in any place any power, authority, duty or function under this section, shall, if so required by a person

apparently in charge of that place, produce the certificate of the person's authority to that person.

- (3) A person authorised under subsection (1) may, at any reasonable time:
- (a) enter any premises where the person is of the opinion that:
    - (i) timber is sawn, hewn or otherwise processed,
    - (ii) timber is sold,
    - (iii) a preservative treatment is used,
    - (iv) timber is branded,
    - (v) timber is used in the manufacture of articles,
    - (vi) articles are sold, or
    - (vii) timber or articles are held or stored,and inspect and test any timber, preservative or article and inspect any brand,
  - (b) enter any building site and inspect and test any timber on that building site,
  - (c) enter any building in the erection of which the person is of the opinion that timber is used and inspect and test any timber which is so used,
  - (d) require any person:
    - (i) in or on any premises referred to in paragraph (a),
    - (ii) on any building site, or
    - (iii) in any building referred to in paragraph (c),to produce any accounts, records, books or other documents which relate to, or which the person authorised under subsection (1) believes on reasonable grounds relate to, the use or sale of timber or the manufacture or sale of articles, and
  - (e) take copies of, or extracts or notes from, any accounts, records, books or other documents referred to in paragraph (d).
- (4) A person authorised under subsection (1) may, in exercising or performing in any place any power, authority, duty or function under this section, remove or cause to be removed for testing portions or samples of timber or preservative.
- (5) If a test on timber removed under subsection (4) proves that that timber was not used or sold in contravention of this Act, the Commission shall:
- (a) restore any article or building from which that timber was removed to the state in

which that article or building existed immediately before the removal of that timber, or

- (b) compensate the owner of the timber so removed for any loss or damage caused by the removal of that timber,

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

## **27A Notice of seizure**

- (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.
- (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.

## **28 Obstruction of authorised person**

A person shall not obstruct, hinder, prevent or interfere with a person authorised under section 27 (1) in the exercise or performance of any power, authority, duty or function conferred by this Act on the person so authorised.

## **29 Offences**

A person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and liable to a penalty not exceeding 50 penalty units or imprisonment for a period not exceeding 12 months, or both.

## **30 Proceedings for offences**

- (1) Proceedings for offences under this Act or the regulations shall be disposed of in a Local Court held before a Magistrate sitting alone.
- (2) Any such proceedings, except proceedings brought in respect of an offence alleged to have been committed under section 28, may be commenced within 2 years after the time when the offence is alleged to have been committed.

## **31 Certificate evidence of certain matters**

- (1) In any proceedings for an offence under this Act or the regulations, a document purporting to be a certificate under the hand of:
  - (a) the Secretary of the Commission, or the person for the time being acting as Secretary, that:
    - (i) a preservative treatment was or was not on such date or during such period as is specified in the certificate an approved preservative treatment, or
    - (ii) a brand used for branding timber was or was not on such date or during such period as is specified in the certificate a registered brand, or
  - (b) a person employed by the Commission or a prescribed body as at the date of the certificate as a technical officer, research officer or research scientist that such timber or article as is described in the certificate:
    - (i) has lyctid susceptible sapwood,

- (ii) is free from sapwood,
- (iii) has sapwood which has been treated with an approved preservative treatment,
- (iv) has sapwood which is not lyctid susceptible sapwood,
- (v) has not been treated by means of an approved preservative treatment,
- (vi) has more than 25 per cent of the perimeter of a cross section comprised of lyctid susceptible sapwood,
- (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,

shall be admissible and be evidence of the matters stated in that certificate.

- (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.

### **32 Evidence against corporations**

- (1) Where, in the exercise or performance in any place of any power, authority, duty or function under section 27, any information, whether in answer to a question or otherwise, is given to a person authorised under section 27 (1) by an officer within the meaning of the [Companies \(New South Wales\) Code](#) of a corporation, that information is, for the purposes of any proceedings against that corporation under this Act or the regulations, binding upon and admissible in evidence against the corporation unless it is proved that that information was given in relation to a matter in respect of which that officer had no authority to bind that corporation.
- (2) The provisions of subsection (1) are in addition to and not in derogation of any rule of law relating to the binding effect and admissibility in evidence of statements made by an officer or employee of a corporation.

### **32A Presumption that certain timber or article is for sale**

- (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.

- (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.

### **33 Notices**

- (1) Where under this Act notice is required to be given to a person by the Commission, the notice may be given:
  - (a) in the case of an individual:
    - (i) by delivering it to the individual, or
    - (ii) by sending it by prepaid post addressed to the individual at the address, if any, specified by the individual for the giving of notices under this Act, or, where no such address is specified, at the individual's usual or last known place of abode or last known place of business, or
  - (b) in the case of a person not being an individual:
    - (i) by leaving it at that person's place of business, or, if that person is a corporation, at the registered office of that corporation, with a person apparently in the service of the person to whom the notice is required to be given and apparently not less than 16 years of age, or
    - (ii) by sending it by prepaid post addressed to that person at the address, if any, specified by that person for the giving of notices under this Act, or, where no such address is specified, at that person's last known place of business.
- (2) Notice shall, in respect of a notice sent by prepaid post in accordance with subsection (1) (a) (ii) or (b) (ii), be deemed to have been given at the time at which the notice would be delivered in the ordinary course of post.

### **34 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, prescribing any matter which is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to:
  - (a) the making of any application authorised or required to be made under this Act and the determination of any such application,
  - (b) the furnishing of information relating to the preservative treatment of timber,
  - (c) the form and design of brands and the use of brands, and
  - (d) requiring the payment of fees on the making of any application authorised or required to be made under this Act and prescribing the amount of any such fees.
- (3) The regulations may impose a penalty not exceeding 20 penalty units for an offence arising under the regulations.
- (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.
- (5) (Repealed)

**35 Repeals**

Each Act specified in Column 1 of Schedule 1 is, to the extent specified opposite that Act in Column 2 of Schedule 1, repealed.

**36 Savings and transitional provisions**

Schedule 2 has effect.

**Schedule 1 Repeals**

Section 35

Column 1		Column 2
Year and number of Act	Short title of Act	Extent of repeal
1946, No 7	<i>Timber Marketing Act 1945.</i>	The whole Act.
1952, No 58	<i>Timber Marketing (Amendment) Act 1952.</i>	The whole Act.

## Schedule 2 Savings and transitional provisions

Section 36

### 1

- (1) A preservative treatment that was an approved preservative treatment within the meaning of the *Timber Marketing Act 1945* immediately before the day appointed and notified under section 2 (2), shall be deemed to be a preservative treatment which is approved by the Commission under section 20 (1) (a).
- (2) With respect to a preservative treatment referred to in subclause (1):
  - (a) the day appointed and notified under section 2 (2) shall, for the purposes of section 21, be deemed to be the date of approval of that preservative treatment, and
  - (b) the approval of that preservative treatment shall, subject to section 22, remain in force for a period of 3 years after the day referred to in paragraph (a).

### 2

- (1) A brand registered under the *Timber Marketing Act 1945*, the registration of which was in force immediately before the day appointed and notified under section 2 (2), shall be deemed to be a brand registered by the Commission under section 20 (1) (b).
- (2) With respect to a brand referred to in subclause (1):
  - (a) the day appointed and notified under section 2 (2) shall, for the purposes of section 21, be deemed to be the date of registration of that brand, and
  - (b) the registration of that brand shall, subject to section 22, remain in force for a period of 3 years after the day referred to in paragraph (a).