

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 8 June, 1977.*

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. , 1977.

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

BE

Timber Marketing.

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:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Timber Marketing Act, Short title. 1977".

2. (1) This section and section 1 shall commence on the Commence-
date of assent to this Act. ment.

(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
15 proclamation published in the Gazette.

3. This Act is divided as follows :— Division of Act.

PART I.—PRELIMINARY—ss. 1–4.

PART II.—LYCTID SUSCEPTIBLE TIMBER—ss. 5–11.

PART III.—MOISTURE CONTENT OF TIMBER—ss.
20 12–14.

PART IV.—PRESERVATIVE TREATMENT OF TIMBER—
ss. 15–26.

PART V.—MISCELLANEOUS—ss. 27–36.

SCHEDULES.

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

5 “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;

10 “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; or

15 (b) an article;

“Commission” means the Forestry Commission of New South Wales constituted under the Forestry Act, 1916;

20 “corporation” has the meaning ascribed thereto in the Companies Act, 1961;

“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;

25 “erection”, in relation to a building, includes alteration, addition, rebuilding or repair;

30 “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

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“lyctid susceptible sapwood” means sapwood containing sufficient starch to render it liable to attack by lyctids;

5 “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;

10 “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 or increasing the resistance of that timber to fire;

15 “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—

20 (i) sold as being preservative treated;

(ii) used in the manufacture of an article to be sold as being preservative treated; or

25 (iii) used in the erection of a building to be sold as being preservative treated; or

(b) the preservative treatment of timber for reward;

30 “registered brand” means a brand registered by the Commission under section 20 (1) (b) the registration of which is in force;

“regulation” means a regulation made under this Act;

“sapwood”

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“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—

- 5 (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;
- 10 (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;
- 15 (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;
- 20 (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 the Standards Association of Australia;

25 “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;
- 30

(c)

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- (c) milled timber;
- (d) laminated wood;
- (e) veneer and plywood; and
- 5 (f) **hardboard, particle board, fibre board,**
insulation board and similar materials;

“untreated”, in relation to timber, means not treated with an approved preservative treatment.

(2) A reference in this Act to a person to whom an approval is given under section 20 (1) (a) shall be construed
10 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
- 15 (b) where an approval has been transferred under section 25, the person to whom that approval is so transferred.

PART II.

LYCTID SUSCEPTIBLE TIMBER.

20 **5.** (1) A person who manufactures any timber being milled timber, laminated wood, veneer or plywood shall not sell any such timber manufactured by him if that timber has untreated lyctid susceptible sapwood. Sale or removal of certain timber prohibited.

(2) A person who manufactures any timber being
25 milled timber, laminated wood, veneer or plywood shall not allow any such timber manufactured by him to leave the premises at which that timber is manufactured if that timber has untreated lyctid susceptible sapwood except—

- 30 (a) for the purpose of having that timber preservative treated; or

(b)

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(b) in accordance with a direction given to him by the Commission or a person authorised under section 27 (1).

5 6. (1) A person shall not sell any framing timber of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood, unless he gives the purchaser the prescribed warning in the prescribed manner. Warning on sale of certain framing timber.

10 (2) It is a defence to a prosecution brought in respect of an offence under subsection (1) against a person who has sold any framing timber referred to in that subsection by way of resale if that person proves that he did not know and could not reasonably be expected to have known that more than 25 per centum of the perimeter of any cross section of 15 that timber comprised untreated lyctid susceptible sapwood.

7. (1) A person shall not sell any framing timber of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood mixed with any other timber. Sale of certain mixed timbers prohibited.

20 (2) It is a defence to a prosecution brought in respect of an offence under subsection (1) against a person who has sold any framing timber referred to in that subsection by way of resale if that person proves that he did not know and could not reasonably be expected to have known that more 25 than 25 per centum of the perimeter of any cross section of that timber comprised untreated lyctid susceptible sapwood.

8. A person shall not sell any timber—

(a) described by him, his servants or agents as being free from lyctid susceptible sapwood; or Sale of timber free from lyctid susceptible sapwood.

(b)

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(b) described by him, his 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,

5 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 brand registered by the Commission in respect of that approved preservative treatment.

10 **9.** (1) A person shall not sell an article having untreated lyctid susceptible sapwood. Sale of articles.

(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) if the defendant proves that—

15 (a) he did not know and could not reasonably be expected to have known that the article had untreated lyctid susceptible sapwood;

(b) before the completion of the sale of that article he gave the purchaser a written statement to the effect that sapwood liable to attack by lyctids was included in that article; or

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

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10. (1) A person shall not use in the erection of a building— Erection of buildings.

(a) milled timber, laminated wood, veneer or plywood having untreated lyctid susceptible sapwood;

(b)

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- (b) timber (not being milled timber, laminated wood, veneer or plywood) having untreated lyctid susceptible sapwood if—
- 5 (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; or
- 10 (c) timber (not being milled timber, laminated wood, veneer or plywood) of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood.

(2) It is a defence to a prosecution brought in respect
15 of an offence under subsection (1) if the defendant proves that—

- (a) he did not know and could not reasonably be expected to have known that the timber had untreated lyctid susceptible sapwood;
- 20 (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 his occupation.

11. (1) A person shall not sell a building any part of
25 which is comprised of— Sale of buildings.

- (a) milled timber, laminated wood, veneer or plywood having untreated lyctid susceptible sapwood;
- (b) timber (not being milled timber, laminated wood, veneer or plywood) having untreated lyctid
30 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)

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- (ii) that timber is exposed to the view of persons using that building; or
- (c) timber (not being milled timber, laminated wood, veneer or plywood) of which more than 25 per centum of the perimeter of any cross section comprises untreated 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) he did not know and could not reasonably be expected to have known that the timber had untreated lyctid susceptible sapwood;
- (b) before entering into the contract for the sale of the building he gave the purchaser a written statement to the effect that untreated 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 III.

MOISTURE CONTENT OF TIMBER.

12. A person shall not sell any timber—

- (a) described by him, his servants or agents as being kiln dried, air dried, dry or seasoned; or
- (b) Sale of dried or seasoned timber.

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(b) described by him, his 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,

5 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

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(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

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(ii) where no such standard has been prescribed, the maximum moisture content of any piece of that timber when determined in the prescribed manner does not, as at the date of sale, exceed 15 per centum by mass.

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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, 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.

Manufacture
of furniture
and other
articles.

30

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(2)

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(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) if the defendant proves that—

- 5 (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 his use.

10 **14.** (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
15 moisture content, has a moisture content which does not comply with that standard when determined in that manner.

Erection of buildings.

(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) if the defendant proves that—

- 20 (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 his occupation.

PART

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PART IV.

PRESERVATIVE TREATMENT OF TIMBER.

15. A person shall not use in the preservative treatment of— Use of
preservative
treatment.

- 5 (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
 - 10 (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.

15 16. A person shall not sell any timber—

- (a) described by him, his servants or agents as being preservative treated; or
- 20 (b) described by him, his servants or agents in such manner as to convey or be likely to convey to any person the impression that that timber has been preservative treated,

unless that timber has been treated by means of an approved preservative treatment and is branded with the brand registered by the Commission in respect of that approved preservative
25 treatment.

Sale of
preservative
treated
timber.

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

Dealing in timber preservative treated for reward.

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

to leave that preservative treatment plant unless that timber has been treated by means of an approved preservative treatment and is branded with the brand registered by the Commission in respect of that approved preservative treatment.

18. (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.

Application for approval of preservative treatment and registration of brand.

(2) An application under subsection (1) shall be in or to the effect of the prescribed form.

(3) Where an application under subsection (1) is made by a person not resident in New South Wales, he shall, in his application, specify an address in New South Wales for the giving of notices under this Act.

19. 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—

Consideration of applications by the Commission.

25 (a) in respect of the preservative treatment referred to in that application—

- (i) the object of treatment;
- (ii) the substances comprising the preservative;

(iii)

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- (iii) the amount of preservative to be used in respect of the quantity of timber to be treated;
 - (iv) the method of treatment;
 - 5 (v) the nature and quantity of timber to be treated; and
 - (vi) the use for which that timber is intended; and
- (b) in respect of the brand referred to in that application—the form and design of the brand.

20. (1) After consideration of an application under section 18 (1), the Commission may—

Determina-
tion of
application.

- 15 (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 the brand.

(2) Where, in respect of an application under section 18 (1), the Commission refuses to approve a preservative treatment, it shall not register the brand referred to in that application.

(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.

25 (4) The Commission shall give notice in writing to the person making the application of its decision with respect to his application.

21.

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21. 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).

Duration of approval and registration.

22. (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—

Suspension of approval and registration.

- (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; or
- (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.

(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)

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(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
- 10 (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 15 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. (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 25 renewal of that approval and the registration of that brand.

Renewal
of approval
and registra-
tion.

(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 30 further period of 3 years from the date on which that approval and the registration of that brand would, but for the renewal,

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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.

5 **24.** (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. Variation of approval and registered brand.

(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.

15 (4) The Commission shall give notice in writing to the person making the application of its decision with respect to his application.

20 **25.** (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. Transfer of approval and registration.

(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)

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(5) The Commission shall give notice in writing to the person making the application of its decision with respect to his application.

26. A person shall not use a registered brand—

Use of registered brands.

- 5 (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
- 10 (b) during any period for which the registration of that brand is suspended under section 22 (1).

PART V.

MISCELLANEOUS.

27. (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 his authority in the prescribed form.

Entry, inspection and testing.

(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 his authority to that person.

(3) A person authorised under subsection (1) may, at any reasonable time—

- 25 (a) enter any premises where he is of the opinion that—
- (i) timber is sawn, hewn or otherwise processed;
 - (ii) timber is sold;

(ii)

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- (iii) a preservative treatment is used;
- (iv) timber is branded;
- (v) timber is used in the manufacture of articles;
or
- 5 (vi) articles are sold,
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;
- 10 (c) enter any building in the erection of which he is of
the opinion that timber is used and inspect and
test any timber which is so used;
- (d) require any person—
 - 15 (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
20 authorised under subsection (1) believes on
reasonable grounds relate to, the use or sale of
timber or the manufacture or sale of articles; and
- 25 (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
30 preservative.

(5)

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(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—

- 5 (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
- 10 (b) compensate the owner of the timber so removed for any loss or damage caused by the removal of that timber.

28. 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. Obstruction of authorised person.

15 **29.** 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 \$500 or imprisonment for a period not exceeding 3 months, or both. Offences.

30. (1) Proceedings for offences under this Act or the regulations shall be disposed of in a court of petty sessions held before a stipendiary magistrate sitting alone. Proceedings for offences.

(2) Any such proceedings, except proceedings brought in respect of an offence alleged to have been committed under section 28, may be commenced within 25 years after the time when the offence is alleged to have been committed.

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31. In any proceedings for an offence under this Act or the regulations, a document purporting to be a certificate under the hand of— Certificate evidence of certain matters.

5 (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

10 (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

15 (b) a person employed by a prescribed body as at the date of the certificate as a research officer or research scientist that such timber or article as is described in the certificate—

(i) has untreated lyctid susceptible sapwood;

(ii) is free from sapwood;

20 (iii) has sapwood which has been treated with an approved preservative treatment;

(iv) has sapwood which is not lyctid susceptible sapwood;

25 (v) has not been treated by means of an approved preservative treatment;

(vi) has more than 25 per centum of the perimeter of a cross section comprised of untreated lyctid susceptible sapwood; or

30 (vii) has the moisture content specified in that certificate,

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

32.

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32. (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 Act, 1961, of a corporation, that information is, for the purposes of any proceedings against the 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.

Evidence
against
corporations.

(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.

33. (1) Where under this Act notice is required to be given to a person by the Commission, the notice may be given—

Notices.

- (a) in the case of an individual—
 - (i) by delivering it to him; or
 - (ii) by sending it by prepaid post addressed to him at the address, if any, specified by him for the giving of notices under this Act, or, where no such address is specified, at his usual or last known place of abode or his 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)

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5 (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
10 the notice would be delivered in the ordinary course of post.

34. (1) The Governor may make regulations, not **Regulations.** 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
15 to this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to—

- 20 (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;
- 25 (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.

30 (3) The regulations may impose a penalty not exceeding \$500 for an offence arising under the regulations.

(4)

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(4) The regulations may authorise any matter or thing to be from time to time determined, applied or regulated by any person specified therein, either generally or for any class of cases or in a particular case.

5 (5) Regulations may be made so as to apply differently according to such factors as may be specified in the regulations.

35. Each Act specified in Column 1 of Schedule 1 is, to Repeals. the extent specified opposite that Act in Column 2 of Schedule 10 1, repealed.

36. Schedule 2 has effect.

Savings and transitional provisions.

SCHEDULE 1.

Sec. 35.

REPEALS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Extent of Repeal.
15 1946, No. 7	Timber Marketing Act, 1945.	The whole Act.
20 1952, No. 58	Timber Marketing (Amendment) Act, 1952.	The whole Act.

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SCHEDULE 2.

Sec. 36.

SAVINGS AND TRANSITIONAL PROVISIONS.

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)—

10 (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

15 (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).

20 (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

25 (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).

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977
[32c]

TIMBER MARKETING BILL.

*Schedule of Amendments referred to in Legislative Council's
Message of 23 August, 1977.*

No. 1.—Page 3, clause 4, lines 14 and 15. *Omit* all words on these lines, *insert*—

“(b) a fence; or

(c) an article;”

No. 2.—Pages 6 and 7, clause 5. *Omit* the clause, *insert*—

**“5. (1) A person shall not sell any milled timber, laminated wood, veneer or Sale of
plywood having untreated lyctid susceptible sapwood. certain
timber**

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

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 311

1974-75

LECTURE NOTES

BY

ROBERT H. COHEN

AND

DAVID J. MORSE

CHICAGO, ILLINOIS

1975

1975

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 8 June, 1977.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

L. A. JECKELN,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 23 August, 1977.*

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. , 1977.

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

BE

28504 116—A

NOTE.—The words to be *omitted* are *ruled through*; those to be *inserted* are printed in **black letter**.

Timber Marketing.

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:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Timber Marketing Act, 1977". Short title.

2. (1) This section and section 1 shall commence on the date of assent to this Act. Commencement.

(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. This Act is divided as follows :— Division of Act.

PART I.—PRELIMINARY—ss. 1-4.

PART II.—LYCTID SUSCEPTIBLE TIMBER—ss. 5-11.

20 PART III.—MOISTURE CONTENT OF TIMBER—ss. 12-14.

PART IV.—PRESERVATIVE TREATMENT OF TIMBER—ss. 15-26.

PART V.—MISCELLANEOUS—ss. 27-36.

SCHEDULES.

Timber Marketing.

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

5 “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;

10 “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;
or

15 ~~(b) an article;~~

(b) a fence; or

(c) an article;

20 “Commission” means the Forestry Commission of New
South Wales constituted under the Forestry Act,
1916;

“corporation” has the meaning ascribed thereto in the
Companies Act, 1961;

25 “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;

30 “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

Timber Marketing.

“lyctid susceptible sapwood” means sapwood containing sufficient starch to render it liable to attack by lyctids;

5 “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;

10 “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 or increasing the resistance of that timber to fire;

15 “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—

- 20 (i) sold as being preservative treated;
- (ii) used in the manufacture of an article to be sold as being preservative treated; or
- 25 (iii) used in the erection of a building to be sold as being preservative treated; or

(b) the preservative treatment of timber for reward;

30 “registered brand” means a brand registered by the Commission under section 20 (1) (b) the registration of which is in force;

“regulation” means a regulation made under this Act;

“sapwood”

Timber Marketing.

“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—

- 5 (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;
- 10 (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;
- 15 (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;
- 20 (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 the Standards Association of Australia;

25 “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;
- 30

(c)

Timber Marketing.

- (c) milled timber;
- (d) laminated wood;
- (e) veneer and plywood; and
- (f) hardboard, particle board, fibre board, insulation board and similar materials;

“untreated”, in relation to timber, means not treated with an approved preservative treatment.

(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 II.

LYCTID SUSCEPTIBLE TIMBER.

5. (1) A person who manufactures any timber being milled timber, laminated wood, veneer or plywood shall not sell any such timber manufactured by him if that timber has untreated lyctid susceptible sapwood.

Sale or removal of certain timber prohibited.

(2) A person who manufactures any timber being milled timber, laminated wood, veneer or plywood shall not allow any such timber manufactured by him to leave the premises at which that timber is manufactured if that timber has untreated lyctid susceptible sapwood except—

- (a) for the purpose of having that timber preservative treated; or
- (b)

Timber Marketing.

~~(b) in accordance with a direction given to him by the Commission or a person authorised under section 27 (1).~~

5 **5. (1) A person shall not sell any milled timber, laminated wood, veneer or plywood having untreated lyctid susceptible sapwood.** Sale of certain timber prohibited.

10 **(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 that person proves that he did not know and could not reasonably be expected to have known that that timber had untreated lyctid susceptible sapwood.**

15 **6. (1) A person shall not sell any framing timber of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood, unless he gives the purchaser the prescribed warning in the prescribed manner.** Warning on sale of certain framing timber.

20 **(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) against a person who has sold any framing timber referred to in that subsection by way of resale if that person proves that he did not know and could not reasonably be expected to have known that more than 25 per centum of the perimeter of any cross section of that timber comprised untreated lyctid susceptible sapwood.**

25 **7. (1) A person shall not sell any framing timber of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood mixed with any other timber.** Sale of certain mixed timbers prohibited.

30 **(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) against a person who has sold any framing timber referred to in that subsection by way of resale if that person proves that he did not know and could not reasonably be expected to have known that more than 25 per centum of the perimeter of any cross section of that timber comprised untreated lyctid susceptible sapwood.**

Timber Marketing.

8. A person shall not sell any timber—
- (a) described by him, his servants or agents as being free from lyctid susceptible sapwood; or
 - (b) described by him, his 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,
- 5 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 brand registered by the Commission in respect of that approved preservative treatment.
- 10
9. (1) A person shall not sell an article having untreated lyctid susceptible sapwood.
- 15 (2) It is a defence to a prosecution brought in respect of an offence under subsection (1) if the defendant proves that—
- (a) he did not know and could not reasonably be expected to have known that the article had untreated lyctid susceptible sapwood;
 - (b) before the completion of the sale of that article he 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 untreated lyctid susceptible sapwood occurred more than 2 years before the date on which that prosecution was commenced.
- 20
- 25
10. (1) A person shall not use in the erection of a building—
- (a) milled timber, laminated wood, veneer or plywood having untreated lyctid susceptible sapwood;
 - (b)
- 30

Sale of timber free from lyctid susceptible sapwood.

Sale of articles.

Erection of buildings.

Timber Marketing.

- (b) timber (not being milled timber, laminated wood, veneer or plywood) having untreated lyctid susceptible sapwood if—
- 5 (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; or
- 10 (c) timber (not being milled timber, laminated wood, veneer or plywood) of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood.

(2) It is a defence to a prosecution brought in respect
15 of an offence under subsection (1) if the defendant proves that—

- (a) he did not know and could not reasonably be expected to have known that the timber had untreated lyctid susceptible sapwood;
- 20 (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 his occupation.

11. (1) A person shall not sell a building any part of ^{Sale of} which is comprised of— ^{buildings.}

25

- (a) milled timber, laminated wood, veneer or plywood having untreated lyctid susceptible sapwood;
- (b) timber (not being milled timber, laminated wood, veneer or plywood) having untreated lyctid susceptible sapwood if—
- 30 (i) lyctid attack in that timber would be detrimental to the use or service for which that building is intended; or

(ii)

Timber Marketing.

- (ii) that timber is exposed to the view of persons using that building; or
- 5 (c) timber (not being milled timber, laminated wood, veneer or plywood) of which more than 25 per centum of the perimeter of any cross section comprises untreated 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—

- 10 (a) he did not know and could not reasonably be expected to have known that the timber had untreated lyctid susceptible sapwood;
- 15 (b) before entering into the contract for the sale of the building he gave the purchaser a written statement to the effect that untreated lyctid susceptible sapwood was used in the erection of that building; or
- 20 (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 III.

MOISTURE CONTENT OF TIMBER.

12. A person shall not sell any timber—
- 25 (a) described by him, his servants or agents as being kiln dried, air dried, dry or seasoned; or
- Sale of dried or seasoned timber.

(b)

Timber Marketing.

- (b) described by him, his 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,
- 5 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
- 10
- (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
- 15
- 20
- (ii) where no such standard has been prescribed, the maximum moisture content of any piece of that timber when determined in the prescribed manner does not, as at the date of sale, exceed 15 per centum by mass.
- 25

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, 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.

30

35

Manufacture
of furniture
and other
articles.

(2)

Timber Marketing.

(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) if the defendant proves that—

- 5 (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 his use.

10 **14.** (1) A person shall not use in the erection of a build- ^{Erection of}
 ing any timber which, where a standard has been prescribed buildings.
 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
 15 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—

- 20 (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 his occupation.

Timber Marketing.

PART IV.

PRESERVATIVE TREATMENT OF TIMBER.

15. A person shall not use in the preservative treatment of— Use of
preservative
treatment.

- 5 (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
 - 10 (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.

15 16. A person shall not sell any timber— Sale of
preservative
treated
timber.

- (a) described by him, his servants or agents as being preservative treated; or
- 20 (b) described by him, his servants or agents in such manner as to convey or be likely to convey to any person the impression that that timber has been preservative treated,

unless that timber has been treated by means of an approved preservative treatment and is branded with the brand registered by the Commission in respect of that approved preservative
25 treatment.

17.

Timber Marketing.

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

Dealing in timber preservative treated for reward.

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

to leave that preservative treatment plant unless that timber has been treated by means of an approved preservative treatment and is branded with the brand registered by the

10 Commission in respect of that approved preservative treatment.

18. (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

15 timber treated by means of that preservative treatment.

Application for approval of preservative treatment and registration of brand.

(2) An application under subsection (1) shall be in or to the effect of the prescribed form.

(3) Where an application under subsection (1) is made by a person not resident in New South Wales, he shall,

20 in his application, specify an address in New South Wales for the giving of notices under this Act.

19. 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—

Consideration of applications by the Commission.

25 (a) in respect of the preservative treatment referred to in that application—

- (i) the object of treatment;
- (ii) the substances comprising the preservative;

(iii)

Timber Marketing.

- (iii) the amount of preservative to be used in respect of the quantity of timber to be treated;
 - (iv) the method of treatment;
 - 5 (v) the nature and quantity of timber to be treated; and
 - (vi) the use for which that timber is intended; and
- 10 (b) in respect of the brand referred to in that application—the form and design of the brand.

20. (1) After consideration of an application under section 18 (1), the Commission may—

Determina-
tion of
application.

- 15 (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 the brand.

(2) Where, in respect of an application under section 18 (1), the Commission refuses to approve a preservative treatment, it shall not register the brand referred to in that application.

(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.

25 (4) The Commission shall give notice in writing to the person making the application of its decision with respect to his application.

Timber Marketing.

21. 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). Duration of approval and registration.

22. (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— Suspension of approval and registration.

- 15 (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;
- 20 (c) that registered brand has been or is being used in contravention of this Act; or
- (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.

25 (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)

Timber Marketing.

(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
- 10 (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 15 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. (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 25 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 30 further period of 3 years from the date on which that approval and the registration of that brand would, but for the renewal,

Timber Marketing.

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. (1) A person to whom an approval is given under
5 section 20 (1) (a) may make an application to the Com-
mission 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. Variation of approval and registered brand.

(2) An application for variation shall be in or to the
10 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
15 the person making the application of its decision with respect to his application.

25. (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
20 Commission. Transfer of approval and registration.

(2) A person to whom an approval is given under
section 20 (1) (a) may make an application to the Com-
mission for its consent to transfer that approval and the
registration of the brand registered in respect of that approval
25 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)

Timber Marketing.

(5) The Commission shall give notice in writing to the person making the application of its decision with respect to his application.

26. A person shall not use a registered brand—

Use of
registered
brands.

- 5 (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
- 10 (b) during any period for which the registration of that brand is suspended under section 22 (1).

PART V.**MISCELLANEOUS.**

27. (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 his authority in the prescribed form.

Entry,
inspection
and
testing.

(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 his authority to that person.

(3) A person authorised under subsection (1) may, at any reasonable time—

- 25 (a) enter any premises where he is of the opinion that—
- (i) timber is sawn, hewn or otherwise processed;
 - (ii) timber is sold;

(iii)

Timber Marketing.

- (iii) a preservative treatment is used;
- (iv) timber is branded;
- (v) timber is used in the manufacture of articles;
or
- 5 (vi) articles are sold,
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;
- 10 (c) enter any building in the erection of which he is of
the opinion that timber is used and inspect and
test any timber which is so used;
- (d) require any person—
- 15 (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
20 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
25 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
30 preservative.

(5)

Timber Marketing.

(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—

- 5 (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
- 10 (b) compensate the owner of the timber so removed for any loss or damage caused by the removal of that timber.

28. 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. Obstruction of authorised person.

15 **29.** 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 \$500 or imprisonment for a period not exceeding 3 months, or both. Offences.

30. (1) Proceedings for offences under this Act or the regulations shall be disposed of in a court of petty sessions held before a stipendiary magistrate sitting alone. Proceedings for offences.

(2) Any such proceedings, except proceedings brought in respect of an offence alleged to have been committed under section 28, may be commenced within 25 years after the time when the offence is alleged to have been committed.

Timber Marketing.

31. In any proceedings for an offence under this Act or the regulations, a document purporting to be a certificate under the hand of— Certificate evidence of certain matters.

- 5 (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
 - 10 (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
- 15 (b) a person employed by a prescribed body as at the date of the certificate as a research officer or research scientist that such timber or article as is described in the certificate—
- (i) has untreated lyctid susceptible sapwood;
 - (ii) is free from sapwood;
 - 20 (iii) has sapwood which has been treated with an approved preservative treatment;
 - (iv) has sapwood which is not lyctid susceptible sapwood;
 - 25 (v) has not been treated by means of an approved preservative treatment;
 - (vi) has more than 25 per centum of the perimeter of a cross section comprised of untreated lyctid susceptible sapwood; or
 - 30 (vii) has the moisture content specified in that certificate,

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

Timber Marketing.

32. (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
5 (1) by an officer within the meaning of the Companies Act, 1961, of a corporation, that information is, for the purposes of any proceedings against the corporation under this Act or the regulations, binding upon and admissible in evidence against the corporation unless it is proved that that information
10 was given in relation to a matter in respect of which that officer had no authority to bind that corporation.

Evidence
against
corporations.

(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
15 by an officer or employee of a corporation.

33. (1) Where under this Act notice is required to be given to a person by the Commission, the notice may be given—

Notices.

(a) in the case of an individual—

- 20 (i) by delivering it to him; or
- (ii) by sending it by prepaid post addressed to him at the address, if any, specified by him for the giving of notices under this Act, or, where no such address is specified, at his
25 usual or last known place of abode or his last known place of business; or

(b) in the case of a person not being an individual—

- 30 (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)

Timber Marketing.

(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. (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 \$500 for an offence arising under the regulations.

(4)

Timber Marketing.

(4) The regulations may authorise any matter or thing to be from time to time determined, applied or regulated by any person specified therein, either generally or for any class of cases or in a particular case.

5 (5) Regulations may be made so as to apply differently according to such factors as may be specified in the regulations.

35. Each Act specified in Column 1 of Schedule 1 is, to Repeals.
the extent specified opposite that Act in Column 2 of Schedule
10 1, repealed.

36. Schedule 2 has effect.

Savings and
transitional
provisions.

SCHEDULE 1.

Sec. 35.

REPEALS.

	Column 1.	Column 2.
15	Year and number of Act.	Extent of Repeal.
	Short title of Act.	
20	1946, No. 7 1952, No. 58	The whole Act. The whole Act.
	Timber Marketing Act, 1945. Timber Marketing (Amendment) Act, 1952.	

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SCHEDULE 2.

Sec. 36.

SAVINGS AND TRANSITIONAL PROVISIONS.

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)—

10 (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

15 (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).

20 (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

25 (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).

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977
[32c]

TIMBER MARKETING BILL, 1977

No. , 1977.

A BILL FOR

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

[MR GORDON—7 June, 1977.]

BE

Timber Marketing.

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:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Timber Marketing Act, 1977". Short title.

2. (1) This section and section 1 shall commence on the date of assent to this Act. Commencement.

(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. This Act is divided as follows :— Division of Act.

PART I.—PRELIMINARY—ss. 1-4.

PART II.—LYCTID SUSCEPTIBLE TIMBER—ss. 5-11.

PART III.—MOISTURE CONTENT OF TIMBER—ss. 12-14.

PART IV.—PRESERVATIVE TREATMENT OF TIMBER—ss. 15-26.

PART V.—MISCELLANEOUS—ss. 27-36.

SCHEDULES.

Timber Marketing.

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

5 “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;

10 “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; or
- 15 (b) an article;

“Commission” means the Forestry Commission of New South Wales constituted under the Forestry Act, 1916;

20 “corporation” has the meaning ascribed thereto in the Companies Act, 1961;

“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;

25 “erection”, in relation to a building, includes alteration, addition, rebuilding or repair;

30 “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

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“lyctid susceptible sapwood” means sapwood containing sufficient starch to render it liable to attack by lyctids;

5 “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;

10 “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 or increasing the resistance of that timber to fire;

15 “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—
- 20 (i) sold as being preservative treated;
- (ii) used in the manufacture of an article to be sold as being preservative treated; or
- 25 (iii) used in the erection of a building to be sold as being preservative treated; or
- (b) the preservative treatment of timber for reward;

30 “registered brand” means a brand registered by the Commission under section 20 (1) (b) the registration of which is in force;

“regulation” means a regulation made under this Act;

“sapwood”

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“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—

- 5 (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;
- 10 (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;
- 15 (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;
- 20 (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 the Standards Association of Australia;

25 “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;
- 30

(c)

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- (c) milled timber;
- (d) laminated wood;
- (e) veneer and plywood; and
- (f) **hardboard, particle board, fibre board,**
insulation board and similar materials;

5 “untreated”, in relation to timber, means not treated with an approved preservative treatment.

(2) A reference in this Act to a person to whom an approval is given under section 20 (1) (a) shall be construed
10 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
- 15 (b) where an approval has been transferred under section 25, the person to whom that approval is so transferred.

PART II.

LYCTID SUSCEPTIBLE TIMBER.

20 5. (1) A person who manufactures any timber being milled timber, laminated wood, veneer or plywood shall not sell any such timber manufactured by him if that timber has untreated lyctid susceptible sapwood. Sale or removal of certain timber prohibited.

25 (2) A person who manufactures any timber being milled timber, laminated wood, veneer or plywood shall not allow any such timber manufactured by him to leave the premises at which that timber is manufactured if that timber has untreated lyctid susceptible sapwood except—

- 30 (a) for the purpose of having that timber preservative treated; or

(b)

Timber Marketing.

(b) in accordance with a direction given to him by the Commission or a person authorised under section 27 (1).

5 6. (1) A person shall not sell any framing timber of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood, unless he gives the purchaser the prescribed warning in the prescribed manner.

Warning on sale of certain framing timber.

10 (2) It is a defence to a prosecution brought in respect of an offence under subsection (1) against a person who has sold any framing timber referred to in that subsection by way of resale if that person proves that he did not know and could not reasonably be expected to have known that more than 25 per centum of the perimeter of any cross section of 15 that timber comprised untreated lyctid susceptible sapwood.

7. (1) A person shall not sell any framing timber of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood mixed with any other timber.

Sale of certain mixed timbers prohibited.

20 (2) It is a defence to a prosecution brought in respect of an offence under subsection (1) against a person who has sold any framing timber referred to in that subsection by way of resale if that person proves that he did not know and could not reasonably be expected to have known that more 25 than 25 per centum of the perimeter of any cross section of that timber comprised untreated lyctid susceptible sapwood.

8. A person shall not sell any timber—

(a) described by him, his servants or agents as being free from lyctid susceptible sapwood; or

Sale of timber free from lyctid susceptible sapwood.

(b)

Timber Marketing.

(b) described by him, his 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,

5 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 brand registered by the Commission in respect of that approved preservative treatment.

10 **9.** (1) A person shall not sell an article having untreated lyctid susceptible sapwood. Sale of articles.

(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) if the defendant proves that—

15 (a) he did not know and could not reasonably be expected to have known that the article had untreated lyctid susceptible sapwood;

20 (b) before the completion of the sale of that article he gave the purchaser a written statement to the effect that sapwood liable to attack by lyctids was included in that article; or

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

10. (1) A person shall not use in the erection of a building— Erection of buildings.

(a) milled timber, laminated wood, veneer or plywood having untreated lyctid susceptible sapwood;

(b)

Timber Marketing.

- (b) timber (not being milled timber, laminated wood, veneer or plywood) having untreated lyctid susceptible sapwood if—
- 5 (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; or
- 10 (c) timber (not being milled timber, laminated wood, veneer or plywood) of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood.

(2) It is a defence to a prosecution brought in respect
15 of an offence under subsection (1) if the defendant proves that—

- (a) he did not know and could not reasonably be expected to have known that the timber had untreated lyctid susceptible sapwood;
- 20 (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 his occupation.

11. (1) A person shall not sell a building any part of
25 which is comprised of— Sale of buildings.

- (a) milled timber, laminated wood, veneer or plywood having untreated lyctid susceptible sapwood;
- (b) timber (not being milled timber, laminated wood, veneer or plywood) having untreated lyctid
30 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)

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- (ii) that timber is exposed to the view of persons using that building; or
- (c) timber (not being milled timber, laminated wood, veneer or plywood) of which more than 25 per centum of the perimeter of any cross section comprises untreated 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) he did not know and could not reasonably be expected to have known that the timber had untreated lyctid susceptible sapwood;
- (b) before entering into the contract for the sale of the building he gave the purchaser a written statement to the effect that untreated 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 III.

MOISTURE CONTENT OF TIMBER.

12. A person shall not sell any timber—

- (a) described by him, his servants or agents as being kiln dried, air dried, dry or seasoned; or

Sale of dried or seasoned timber.

(b)

Timber Marketing.

(b) described by him, his 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,

5 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 maximum moisture content of any piece of that timber when determined in the prescribed manner does not, as at the date of sale, exceed 15 per centum by mass.

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, 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.

Manufacture of furniture and other articles.

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(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) if the defendant proves that—

- 5 (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 his use.

10 **14.** (1) A person shall not use in the erection of a build-^{Erection of buildings.}ing 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

15 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—

- 20 (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 his occupation.

PART

Timber Marketing.

PART IV.

PRESERVATIVE TREATMENT OF TIMBER.

15 **15.** A person shall not use in the preservative treatment of— Use of
preservative
treatment.

- 5 (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
 - 10 (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.

15 **16.** A person shall not sell any timber— Sale of
preservative
treated
timber.

- (a) described by him, his servants or agents as being preservative treated; or
- 20 (b) described by him, his servants or agents in such manner as to convey or be likely to convey to any person the impression that that timber has been preservative treated,

25 unless that timber has been treated by means of an approved preservative treatment and is branded with the brand registered by the Commission in respect of that approved preservative treatment.

(iii)

17.

Timber Marketing.

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

Dealing in timber preservative treated for reward.

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

to leave that preservative treatment plant unless that timber has been treated by means of an approved preservative treatment and is branded with the brand registered by the Commission in respect of that approved preservative treatment.

18. (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 15 timber treated by means of that preservative treatment.

Application for approval of preservative treatment and registration of brand.

(2) An application under subsection (1) shall be in or to the effect of the prescribed form.

(3) Where an application under subsection (1) is made by a person not resident in New South Wales, he shall, 20 in his application, specify an address in New South Wales for the giving of notices under this Act.

19. 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—

Consideration of applications by the Commission.

25 (a) in respect of the preservative treatment referred to in that application—

- (i) the object of treatment;
- (ii) the substances comprising the preservative;

(iii)

Timber Marketing.

- (iii) the amount of preservative to be used in respect of the quantity of timber to be treated;
- (iv) the method of treatment;
- 5 (v) the nature and quantity of timber to be treated; and
- (vi) the use for which that timber is intended; and

10 (b) in respect of the brand referred to in that application—the form and design of the brand.

20 **20.** (1) After consideration of an application under section 18 (1), the Commission may— Determina-
tion of
application.

- 15 (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 the brand.

(2) Where, in respect of an application under section 18 (1), the Commission refuses to approve a preservative treatment, it shall not register the brand referred to in that application.

(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.

25 (4) The Commission shall give notice in writing to the person making the application of its decision with respect to his application.

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21. 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). Duration of approval and registration.

22. (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— Suspension of approval and registration.

- 15 (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;
- 20 (c) that registered brand has been or is being used in contravention of this Act; or
- (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.

25 (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)

Timber Marketing.

(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
- 10 (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 15 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. (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 25 renewal of that approval and the registration of that brand.

Renewal
of approval
and registra-
tion.

(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 30 further period of 3 years from the date on which that approval and the registration of that brand would, but for the renewal,

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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.

5 **24.** (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. Variation of approval and registered brand.

10 (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.

15 (4) The Commission shall give notice in writing to the person making the application of its decision with respect to his application.

20 **25.** (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. Transfer of approval and registration.

25 (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)

Timber Marketing.

(5) The Commission shall give notice in writing to the person making the application of its decision with respect to his application.

26. A person shall not use a registered brand—

- 5 (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
- 10 (b) during any period for which the registration of that brand is suspended under section 22 (1).

Use of registered brands.

PART V.

MISCELLANEOUS.

27. (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 his authority in the prescribed form.

Entry, inspection and testing.

20 (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 his authority to that person.

(3) A person authorised under subsection (1) may, at any reasonable time—

- 25 (a) enter any premises where he is of the opinion that—
- (i) timber is sawn, hewn or otherwise processed;
 - (ii) timber is sold;

(iii)

Timber Marketing.

- (iii) a preservative treatment is used;
- (iv) timber is branded;
- (v) timber is used in the manufacture of articles;
or
- 5 (vi) articles are sold,
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;
- 10 (c) enter any building in the erection of which he is of
the opinion that timber is used and inspect and
test any timber which is so used;
- (d) require any person—
 - 15 (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),
20 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
- 25 (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
30 preservative.

(5)

Timber Marketing.

(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—

- 5 (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
- 10 (b) compensate the owner of the timber so removed for any loss or damage caused by the removal of that timber.

28. 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. Obstruction of authorised person.

15 29. 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 \$500 or imprisonment for a period not exceeding 3 months, or both. Offences.

20 30. (1) Proceedings for offences under this Act or the regulations shall be disposed of in a court of petty sessions held before a stipendiary magistrate sitting alone. Proceedings for offences.

(2) Any such proceedings, except proceedings brought in respect of an offence alleged to have been committed under section 28, may be commenced within 25 years after the time when the offence is alleged to have been committed.

Timber Marketing.

31. In any proceedings for an offence under this Act or the regulations, a document purporting to be a certificate under the hand of— Certificate evidence of certain matters.

5 (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

10 (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

15 (b) a person employed by a prescribed body as at the date of the certificate as a research officer or research scientist that such timber or article as is described in the certificate—

(i) has untreated lyctid susceptible sapwood;

(ii) is free from sapwood;

20 (iii) has sapwood which has been treated with an approved preservative treatment;

(iv) has sapwood which is not lyctid susceptible sapwood;

25 (v) has not been treated by means of an approved preservative treatment;

(vi) has more than 25 per centum of the perimeter of a cross section comprised of untreated lyctid susceptible sapwood; or

30 (vii) has the moisture content specified in that certificate,

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

Timber Marketing.

32. (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
5 (1) by an officer within the meaning of the Companies Act, 1961, of a corporation, that information is, for the purposes of any proceedings against the corporation under this Act or the regulations, binding upon and admissible in evidence against the corporation unless it is proved that that information
10 was given in relation to a matter in respect of which that officer had no authority to bind that corporation.

Evidence
against
corporations.

(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
15 by an officer or employee of a corporation.

33. (1) Where under this Act notice is required to be given to a person by the Commission, the notice may be given—

Notices.

(a) in the case of an individual—

- 20 (i) by delivering it to him; or
(ii) by sending it by prepaid post addressed to him at the address, if any, specified by him for the giving of notices under this Act, or, where no such address is specified, at his
25 usual or last known place of abode or his last known place of business; or

(b) in the case of a person not being an individual—

- 30 (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)

Timber Marketing.

5 (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
10 the notice would be delivered in the ordinary course of post.

34. (1) The Governor may make regulations, not ~~Regulations.~~ 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
15 to this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to—

- 20 (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;
- 25 (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.

30 (3) The regulations may impose a penalty not exceeding \$500 for an offence arising under the regulations.

(4)

Timber Marketing.

(4) The regulations may authorise any matter or thing to be from time to time determined, applied or regulated by any person specified therein, either generally or for any class of cases or in a particular case.

5 (5) Regulations may be made so as to apply differently according to such factors as may be specified in the regulations.

35. Each Act specified in Column 1 of Schedule 1 is, to Repeals. the extent specified opposite that Act in Column 2 of Schedule 10 1, repealed.

36. Schedule 2 has effect.

Savings and transitional provisions.

SCHEDULE 1.

Sec. 35.

REPEALS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Extent of Repeal.
15 1946, No. 7	Timber Marketing Act, 1945.	The whole Act.
20 1952, No. 58	Timber Marketing (Amendment) Act, 1952.	The whole Act.

Timber Marketing.

SCHEDULE 2.

Sec. 36.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. (1) A preservative treatment that was an approved preservative treatment within the meaning of the Timber Marketing Act, 5 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)—

- 10 (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 15 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).

20 (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
- 25 (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).

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977
[32c]

TIMBER MARKETING BILL, 1977

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

THE objects of this Bill are—

- (a) to control the sale and use of—
 - (i) sapwood containing sufficient starch to render it liable to attack by lyctids (that is, powder post borers); and
 - (ii) timber described as being dried or seasoned; and
- (b) to control the preservative treatment of timber and the sale and use of timber described as being preservative treated.

The Bill will replace the Timber Marketing Act, 1945.

The Bill contains the following provisions:—

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Division of proposed Act.

Clause 4. Interpretation.

Clause 5 prohibits the sale or removal of certain timber having untreated lyctid susceptible sapwood.

Clause 6 requires a vendor of framing timber to notify a purchaser of that timber if it contains untreated lyctid susceptible sapwood.

Clause 7 prohibits the sale of framing timber containing untreated lyctid susceptible sapwood mixed with other timber.

Clause 8 prohibits the sale of timber described as being free from lyctid susceptible sapwood unless that timber accords with that description.

Clause 9 prohibits the sale of an article having untreated lyctid susceptible sapwood.

Clause 10 prohibits the use in the erection of a building of certain timber having untreated lyctid susceptible sapwood.

Clause 11 prohibits the sale of a building erected in contravention of clause 10.

Clause 12 prohibits the sale of dried or seasoned timber unless the moisture content of that timber complies with a specified standard.

Clause 13 prohibits the use in the manufacture of furniture and certain other articles of certain timber unless the moisture content of that timber complies with a specified standard.

Clause 14 prohibits the use in the erection of a building of certain timber unless the moisture content of that timber complies with a specified standard.

Clause 15 prohibits the use of a preservative treatment of timber other than a preservative treatment approved by the Forestry Commission of New South Wales (hereinafter called "the Commission").

Clause 16 prohibits the sale of timber described as being preservative treated unless it has been treated by means of a preservative treatment approved by the Commission and branded with a brand registered by the Commission in respect of that preservative treatment.

Clause 17 prohibits the preservative treatment of timber for reward unless that timber has been treated by means of a preservative treatment approved by the Commission and branded with a brand registered by the Commission in respect of that preservative treatment.

Clauses 18-25 provide for the making of an application to the Commission for the approval of a preservative treatment and the registration of a brand, the determination of that application by the Commission, the duration of an approval and a registration, the suspension of an approval and a registration, the renewal of an approval and a registration, the variation of a preservative treatment or registered brand and the transfer of an approval and a registration.

Clause 26 prohibits the use of a registered brand for any purpose other than the branding of timber treated by means of the preservative treatment approved by the Commission in respect of which that brand is registered.

Clause 27 empowers the Commission to authorise persons to carry out inspections and tests for the purposes of the proposed Act.

Clause 28 makes it an offence to obstruct a person authorised under clause 27.

Clause 29. Offences.

Clause 30. Proceedings for offences.

Clause 31 provides for prima facie evidence of certain matters to be given by the production of a certificate of a specified person.

Clause 32 specifies, for the purposes of proceedings brought under the proposed Act, the circumstances in which information given by an officer of a corporation binds that corporation.

Clause 33 provides for the giving of notices under the proposed Act.

Clause 34. Regulations.

Clause 35 provides for the repeal of the Acts specified in Schedule 1.

Clause 36 gives effect to Schedule 2.

Schedule 1 specifies the Timber Marketing Act, 1945, and the Timber Marketing (Amendment) Act, 1952, as the Acts to be repealed by the proposed Act.

Schedule 2. Savings and transitional provisions.

PROOF

TIMBER MARKETING BILL, 1977

No. , 1977.

A BILL FOR

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

[MR GORDON—7 June, 1977.]

BE

Timber Marketing.

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
5 follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Timber Marketing Act, Short
1977". title.

10 **2.** (1) This section and section 1 shall commence on the Commence-
date of assent to this Act. ment.

(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
15 proclamation published in the Gazette.

3. This Act is divided as follows :— Division
of Act.

PART I.—PRELIMINARY—ss. 1–4.

PART II.—LYCTID SUSCEPTIBLE TIMBER—ss. 5–11.

20 **PART III.—MOISTURE CONTENT OF TIMBER—ss.
12–14.**

**PART IV.—PRESERVATIVE TREATMENT OF TIMBER—
ss. 15–26.**

PART V.—MISCELLANEOUS—ss. 27–36.

SCHEDULES.

Timber Marketing.

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

5 “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;

10 “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;
or

15 (b) an article;

“Commission” means the Forestry Commission of New
South Wales constituted under the Forestry Act,
1916;

20 “corporation” has the meaning ascribed thereto in the
Companies Act, 1961;

“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;

25 “erection”, in relation to a building, includes alteration,
addition, rebuilding or repair;

30 “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

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“lyctid susceptible sapwood” means sapwood containing sufficient starch to render it liable to attack by lyctids;

5 “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;

10 “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 or increasing the resistance of that timber to fire;

15 “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—

- 20 (i) sold as being preservative treated;
- (ii) used in the manufacture of an article to be sold as being preservative treated; or
- 25 (iii) used in the erection of a building to be sold as being preservative treated; or

(b) the preservative treatment of timber for reward;

30 “registered brand” means a brand registered by the Commission under section 20 (1) (b) the registration of which is in force;

“regulation” means a regulation made under this Act;

“sapwood”

Timber Marketing.

“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—

- 5 (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;
- 10 (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;
- 15 (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;
- 20 (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 the Standards Association of Australia;

25 “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;
- 30

(c)

Timber Marketing.

- (c) milled timber;
- (d) laminated wood;
- (e) veneer and plywood; and
- 5 (f) **hardboard, particle board, fibre board,**
insulation board and similar materials;

“untreated”, in relation to timber, means not treated with an approved preservative treatment.

(2) A reference in this Act to a person to whom an approval is given under section 20 (1) (a) shall be construed 10 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
- 15 (b) where an approval has been transferred under section 25, the person to whom that approval is so transferred.

PART II.

LYCTID SUSCEPTIBLE TIMBER.

20 5. (1) A person who manufactures any timber being milled timber, laminated wood, veneer or plywood shall not sell any such timber manufactured by him if that timber has untreated lyctid susceptible sapwood. Sale or removal of certain timber prohibited.

25 (2) A person who manufactures any timber being milled timber, laminated wood, veneer or plywood shall not allow any such timber manufactured by him to leave the premises at which that timber is manufactured if that timber has untreated lyctid susceptible sapwood except—

- 30 (a) for the purpose of having that timber preservative treated; or

(b)

Timber Marketing.

(b) in accordance with a direction given to him by the Commission or a person authorised under section 27 (1).

5 6. (1) A person shall not sell any framing timber of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood, unless he gives the purchaser the prescribed warning in the prescribed manner. Warning on sale of certain framing timber.

10 (2) It is a defence to a prosecution brought in respect of an offence under subsection (1) against a person who has sold any framing timber referred to in that subsection by way of resale if that person proves that he did not know and could not reasonably be expected to have known that more than 25 per centum of the perimeter of any cross section of 15 that timber comprised untreated lyctid susceptible sapwood.

7. (1) A person shall not sell any framing timber of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood mixed with any other timber. Sale of certain mixed timbers prohibited.

20 (2) It is a defence to a prosecution brought in respect of an offence under subsection (1) against a person who has sold any framing timber referred to in that subsection by way of resale if that person proves that he did not know and could not reasonably be expected to have known that more 25 than 25 per centum of the perimeter of any cross section of that timber comprised untreated lyctid susceptible sapwood.

8. A person shall not sell any timber—

(a) described by him, his servants or agents as being free from lyctid susceptible sapwood; or Sale of timber free from lyctid susceptible sapwood.

(b)

Timber Marketing.

(b) described by him, his 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,

5 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 brand registered by the Commission in respect of that approved preservative treatment.

10 **9.** (1) A person shall not sell an article having untreated lyctid susceptible sapwood. Sale of articles.

(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) if the defendant proves that—

- 15 (a) he did not know and could not reasonably be expected to have known that the article had untreated lyctid susceptible sapwood;
- (b) before the completion of the sale of that article he gave the purchaser a written statement to the effect that sapwood liable to attack by lyctids was included in that article; or
- 20 (c) the completion of the first sale of that article after the inclusion in it of the untreated lyctid susceptible sapwood occurred more than 2 years before the date on which that prosecution was commenced.
- 25

10. (1) A person shall not use in the erection of a building— Erection of buildings.

(a) milled timber, laminated wood, veneer or plywood having untreated lyctid susceptible sapwood;

(b)

Timber Marketing.

- (b) timber (not being milled timber, laminated wood, veneer or plywood) having untreated lyctid susceptible sapwood if—
- 5 (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; or
- 10 (c) timber (not being milled timber, laminated wood, veneer or plywood) of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood.

(2) It is a defence to a prosecution brought in respect
15 of an offence under subsection (1) if the defendant proves that—

- (a) he did not know and could not reasonably be expected to have known that the timber had untreated lyctid susceptible sapwood;
- 20 (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 his occupation.

11. (1) A person shall not sell a building any part of
25 which is comprised of— Sale of buildings.

- (a) milled timber, laminated wood, veneer or plywood having untreated lyctid susceptible sapwood;
- (b) timber (not being milled timber, laminated wood, veneer or plywood) having untreated lyctid
30 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)

Timber Marketing.

- (ii) that timber is exposed to the view of persons using that building; or
- 5 (c) timber (not being milled timber, laminated wood, veneer or plywood) of which more than 25 per centum of the perimeter of any cross section comprises untreated 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—

- 10 (a) he did not know and could not reasonably be expected to have known that the timber had untreated lyctid susceptible sapwood;
- 15 (b) before entering into the contract for the sale of the building he gave the purchaser a written statement to the effect that untreated lyctid susceptible sapwood was used in the erection of that building; or
- 20 (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 III.

MOISTURE CONTENT OF TIMBER.

12. A person shall not sell any timber—
- 25 (a) described by him, his servants or agents as being kiln dried, air dried, dry or seasoned; or

Sale of dried or seasoned timber.

(b)

Timber Marketing.

- (b) described by him, his 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,
- 5 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
- 10
- (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
- 15
- 20
- (ii) where no such standard has been prescribed, the maximum moisture content of any piece of that timber when determined in the prescribed manner does not, as at the date of sale, exceed 15 per centum by mass.
- 25

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, 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.

30

35

Manufacture
of furniture
and other
articles.

(2)

Timber Marketing.

(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) if the defendant proves that—

- 5 (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 his use.

10 **14.** (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
15 moisture content, has a moisture content which does not comply with that standard when determined in that manner.

Erection of buildings.

(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) if the defendant proves that—

- 20 (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 his occupation.

Timber Marketing.

PART IV.

PRESERVATIVE TREATMENT OF TIMBER.

15. A person shall not use in the preservative treatment of— Use of
preservative
treatment.

- 5 (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
 - 10 (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.

15 16. A person shall not sell any timber— Sale of
preservative
treated
timber.

(a) described by him, his servants or agents as being preservative treated; or

20 (b) described by him, his servants or agents in such manner as to convey or be likely to convey to any person the impression that that timber has been preservative treated,

25 unless that timber has been treated by means of an approved preservative treatment and is branded with the brand registered by the Commission in respect of that approved preservative treatment.

17.

Timber Marketing.

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

Dealing in timber preservative treated for reward.

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

to leave that preservative treatment plant unless that timber has been treated by means of an approved preservative treatment and is branded with the brand registered by the

10 Commission in respect of that approved preservative treatment.

18. (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

15 timber treated by means of that preservative treatment.

Application for approval of preservative treatment and registration of brand.

(2) An application under subsection (1) shall be in or to the effect of the prescribed form.

(3) Where an application under subsection (1) is made by a person not resident in New South Wales, he shall,

20 in his application, specify an address in New South Wales for the giving of notices under this Act.

19. 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—

Consideration of applications by the Commission.

- 25 (a) in respect of the preservative treatment referred to in that application—
- (i) the object of treatment;
- (ii) the substances comprising the preservative;
- (iii)

Timber Marketing.

- (iii) the amount of preservative to be used in respect of the quantity of timber to be treated;
- (iv) the method of treatment;
- 5 (v) the nature and quantity of timber to be treated; and
- (vi) the use for which that timber is intended; and
- 10 (b) in respect of the brand referred to in that application—the form and design of the brand.

20. (1) After consideration of an application under section 18 (1), the Commission may—

Determina-
tion of
application.

- 15 (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 the brand.

(2) Where, in respect of an application under section 18 (1), the Commission refuses to approve a preservative treatment, it shall not register the brand referred to in that application.

(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.

25 (4) The Commission shall give notice in writing to the person making the application of its decision with respect to his application.

Timber Marketing.

21. 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. (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; or
- (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.

(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)

Timber Marketing.

(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
5 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
- 10 (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
15 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. (1) A person to whom an approval is given under section 20 (1) (a), may, within 60 days prior to the date
20 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
25 renewal of that approval and the registration of that brand.

Renewal
of approval
and registra-
tion.

(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 regis-
30 tration 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,

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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. (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. Variation of approval and registered brand.

(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 his application.

25. (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. Transfer of approval and registration.

(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)

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(5) The Commission shall give notice in writing to the person making the application of its decision with respect to his application.

26. A person shall not use a registered brand—

- 5 (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
- 10 (b) during any period for which the registration of that brand is suspended under section 22 (1).

Use of registered brands.

PART V.

MISCELLANEOUS.

27. (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 his authority in the prescribed form.

Entry, inspection and testing.

(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 his authority to that person.

(3) A person authorised under subsection (1) may, at any reasonable time—

- 25 (a) enter any premises where he is of the opinion that—
- (i) timber is sawn, hewn or otherwise processed;
 - (ii) timber is sold;

(iii)

Timber Marketing.

- (iii) a preservative treatment is used;
- (iv) timber is branded;
- (v) timber is used in the manufacture of articles;
or
- 5 (vi) articles are sold,
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;
- 10 (c) enter any building in the erection of which he is of
the opinion that timber is used and inspect and
test any timber which is so used;
- (d) require any person—
 - 15 (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
20 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
- 25 (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
30 preservative.

(5)

Timber Marketing.

(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—

- 5 (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
- 10 (b) compensate the owner of the timber so removed for any loss or damage caused by the removal of that timber.

28. 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. Obstruction of authorised person.

15 **29.** 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 \$500 or imprisonment for a period not exceeding 3 months, or both. Offences.

30. (1) Proceedings for offences under this Act or the regulations shall be disposed of in a court of petty sessions held before a stipendiary magistrate sitting alone. Proceedings for offences.

(2) Any such proceedings, except proceedings brought in respect of an offence alleged to have been committed under section 28, may be commenced within 25 years after the time when the offence is alleged to have been committed.

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31. In any proceedings for an offence under this Act or the regulations, a document purporting to be a certificate under the hand of— Certificate evidence of certain matters.

- 5 (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
 - 10 (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

- 15 (b) a person employed by a prescribed body as at the date of the certificate as a research officer or research scientist that such timber or article as is described in the certificate—
 - (i) has untreated lyctid susceptible sapwood;
 - (ii) is free from sapwood;
 - 20 (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;
 - 25 (vi) has more than 25 per centum of the perimeter of a cross section comprised of untreated lyctid susceptible sapwood; or
 - 30 (vii) has the moisture content specified in that certificate,

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

Timber Marketing.

32. (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 Act, 1961, of a corporation, that information is, for the purposes of any proceedings against the 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.

Evidence
against
corporations.

(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.

33. (1) Where under this Act notice is required to be given to a person by the Commission, the notice may be given—

Notices.

(a) in the case of an individual—

- (i) by delivering it to him; or
- (ii) by sending it by prepaid post addressed to him at the address, if any, specified by him for the giving of notices under this Act, or, where no such address is specified, at his usual or last known place of abode or his 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)

Timber Marketing.

5 (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
10 the notice would be delivered in the ordinary course of post.

34. (1) The Governor may make regulations, not **Regulations.** 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
15 to this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to—

- 20 (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;
- 25 (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.

30 (3) The regulations may impose a penalty not exceeding \$500 for an offence arising under the regulations.

(4)

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(4) The regulations may authorise any matter or thing to be from time to time determined, applied or regulated by any person specified therein, either generally or for any class of cases or in a particular case.

5 (5) Regulations may be made so as to apply differently according to such factors as may be specified in the regulations.

35. Each Act specified in Column 1 of Schedule 1 is, to Repeals. the extent specified opposite that Act in Column 2 of Schedule 10 1, repealed.

36. Schedule 2 has effect.

Savings and transitional provisions.

SCHEDULE 1.

Sec. 35.

REPEALS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Extent of Repeal.
15 1946, No. 7	Timber Marketing Act, 1945.	The whole Act.
20 1952, No. 58	Timber Marketing (Amendment) Act, 1952.	The whole Act.

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SCHEDULE 2.

Sec. 36.

SAVINGS AND TRANSITIONAL PROVISIONS.

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)—

10 (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

15 (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).

20 (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

25 (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).

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977

TIMBER MARKETING ACT, 1977

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 72, 1977.

An Act to control the sale and use of certain timbers; and to repeal the Timber Marketing Act, 1945. [Assented to, 29th September, 1977.]

BE

Timber Marketing.

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:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Timber Marketing Act, 1977".

Commencement.

2. (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.

Division of Act.

3. This Act is divided as follows :—

PART I.—PRELIMINARY—*ss.* 1-4.

PART II.—LYCTID SUSCEPTIBLE TIMBER—*ss.* 5-11.

PART III.—MOISTURE CONTENT OF TIMBER—*ss.* 12-14.

PART IV.—PRESERVATIVE TREATMENT OF TIMBER—*ss.* 15-26.

PART V.—MISCELLANEOUS—*ss.* 27-36.

SCHEDULES.

Timber Marketing.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— **Interpretation.**

“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 Act, 1961;

“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

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“lyctid susceptible sapwood” means sapwood containing sufficient starch to render it liable to attack by lyctids;

“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 or increasing the resistance of that timber to fire;

“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;

(b) the preservative treatment of timber for reward;

“registered brand” means a brand registered by the Commission under section 20 (1) (b) the registration of which is in force;

“regulation” means a regulation made under this Act;

“sapwood”

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“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 the Standards Association of 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)

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- (c) milled timber;
- (d) laminated wood;
- (e) veneer and plywood; and
- (f) hardboard, particle board, fibre board, insulation board and similar materials;

“untreated”, in relation to timber, means not treated with an approved preservative treatment.

(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 II

LYCTID SUSCEPTIBLE TIMBER.

Sale of
certain
timber
prohibited.

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

(2)

Timber Marketing.

(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 that person proves that he did not know and could not reasonably be expected to have known that that timber had untreated lyctid susceptible sapwood.

6. (1) A person shall not sell any framing timber of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood, unless he gives the purchaser the prescribed warning in the prescribed manner.

Warning on sale of certain framing timber.

(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) against a person who has sold any framing timber referred to in that subsection by way of resale if that person proves that he did not know and could not reasonably be expected to have known that more than 25 per centum of the perimeter of any cross section of that timber comprised untreated lyctid susceptible sapwood.

7. (1) A person shall not sell any framing timber of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood mixed with any other timber.

Sale of certain mixed timbers prohibited.

(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) against a person who has sold any framing timber referred to in that subsection by way of resale if that person proves that he did not know and could not reasonably be expected to have known that more than 25 per centum of the perimeter of any cross section of that timber comprised untreated lyctid susceptible sapwood.

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Sale of timber free from lyctid susceptible sapwood.

8. A person shall not sell any timber—

- (a) described by him, his servants or agents as being free from lyctid susceptible sapwood; or
- (b) described by him, his 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 brand registered by the Commission in respect of that approved preservative treatment.

Sale of articles.

9. (1) A person shall not sell an article having untreated 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) he did not know and could not reasonably be expected to have known that the article had untreated lyctid susceptible sapwood;
- (b) before the completion of the sale of that article he 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 untreated lyctid susceptible sapwood occurred more than 2 years before the date on which that prosecution was commenced.

Erection of buildings.

10. (1) A person shall not use in the erection of a building—

- (a) milled timber, laminated wood, veneer or plywood having untreated lyctid susceptible sapwood;
- (b)

Timber Marketing.

(b) timber (not being milled timber, laminated wood, veneer or plywood) having untreated 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; or

(c) timber (not being milled timber, laminated wood, veneer or plywood) of which more than 25 per centum of the perimeter of any cross section comprises untreated 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) he did not know and could not reasonably be expected to have known that the timber had untreated 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 his occupation.

11. (1) A person shall not sell a building any part of which is comprised of— Sale of buildings.

(a) milled timber, laminated wood, veneer or plywood having untreated lyctid susceptible sapwood;

(b) timber (not being milled timber, laminated wood, veneer or plywood) having untreated 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)

Timber Marketing.

- (ii) that timber is exposed to the view of persons using that building; or
- (c) timber (not being milled timber, laminated wood, veneer or plywood) of which more than 25 per centum of the perimeter of any cross section comprises untreated 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) he did not know and could not reasonably be expected to have known that the timber had untreated lyctid susceptible sapwood;
- (b) before entering into the contract for the sale of the building he gave the purchaser a written statement to the effect that untreated 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 III.
MOISTURE CONTENT OF TIMBER.

12. A person shall not sell any timber—

- (a) described by him, his servants or agents as being kiln dried, air dried, dry or seasoned; or

(b)

Sale of
dried or
seasoned
timber.

Timber Marketing.

(b) described by him, his 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 maximum moisture content of any piece of that timber when determined in the prescribed manner does not, as at the date of sale, exceed 15 per centum by mass.

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, 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.

Manufacture
of furniture
and other
articles.

(2)

Timber Marketing.

(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 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 his use.

**Erection of
buildings.**

14. (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 his occupation.
-

Timber Marketing.

PART IV.

PRESERVATIVE TREATMENT OF TIMBER.

15. A person shall not use in the preservative treatment of— Use of
preservative
treatment.

(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. A person shall not sell any timber—

(a) described by him, his servants or agents as being preservative treated; or

(b) described by him, his servants or agents in such manner as to convey or be likely to convey to any person the impression that that timber has been preservative treated,

unless that timber has been treated by means of an approved preservative treatment and is branded with the brand registered by the Commission in respect of that approved preservative treatment.

Sale of
preservative
treated
timber.

Timber Marketing.

Dealing in timber preservative treated for reward.

17. 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 has been preservative treated,

to leave that preservative treatment plant unless that timber has been treated by means of an approved preservative treatment and is branded with the brand registered by the Commission in respect of that approved preservative treatment.

Application for approval of preservative treatment and registration of brand.

18. (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) Where an application under subsection (1) is made by a person not resident in New South Wales, he shall, in his application, specify an address in New South Wales for the giving of notices under this Act.

Consideration of applications by the Commission.

19. 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)

Timber Marketing.

- (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; and
 - (vi) the use for which that timber is intended; and
- (b) in respect of the brand referred to in that application—the form and design of the brand.

20. (1) After consideration of an application under section 18 (1), the Commission may— Determination of application.

- (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 the brand.

(2) Where, in respect of an application under section 18 (1), the Commission refuses to approve a preservative treatment, it shall not register the brand referred to in that application.

(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 his application.

Timber Marketing.

Duration of approval and registration.

21. 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).

Suspension of approval and registration.

22. (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; or
- (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.

(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.

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(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. (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. Renewal
of approval
and registra-
tion.

(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,

Timber Marketing.

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.

Variation of approval and registered brand.

24. (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 his application.

Transfer of approval and registration.

25. (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)

Timber Marketing.

(5) The Commission shall give notice in writing to the person making the application of its decision with respect to his application.

26. 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).

Use of
registered
brands.

PART V.

MISCELLANEOUS.

27. (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 his authority in the prescribed form.

Entry,
inspection
and
testing.

(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 his authority to that person.

(3) A person authorised under subsection (1) may, at any reasonable time—

- (a) enter any premises where he is of the opinion that—
 - (i) timber is sawn, hewn or otherwise processed;
 - (ii) timber is sold;

(iii)

Timber Marketing.

- (iii) a preservative treatment is used;
- (iv) timber is branded;
- (v) timber is used in the manufacture of articles;
or
- (vi) articles are sold,
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 he 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)

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(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.

28. 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. **Obstruction of authorised person.**

29. 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 \$500 or imprisonment for a period not exceeding 3 months, or both. **Offences.**

30. (1) Proceedings for offences under this Act or the regulations shall be disposed of in a court of petty sessions held before a stipendiary magistrate sitting alone. **Proceedings for offences.**

(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.

Timber Marketing.

Certificate
evidence of
certain
matters.

31. 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 a prescribed body as at the date of the certificate as a research officer or research scientist that such timber or article as is described in the certificate—
 - (i) has untreated 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 centum of the **perimeter** of a cross section comprised of **untreated** lyctid susceptible sapwood; or
 - (vii) has the moisture content specified in that certificate,

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

Timber Marketing.

32. (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 Act, 1961, of a corporation, that information is, for the purposes of any proceedings against the 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. Evidence against corporations.

(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.

33. (1) Where under this Act notice is required to be given to a person by the Commission, the notice may be given— Notices.

(a) in the case of an individual—

- (i) by delivering it to him; or
- (ii) by sending it by prepaid post addressed to him at the address, if any, specified by him for the giving of notices under this Act, or, where no such address is specified, at his usual or last known place of abode or his 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)

Timber Marketing.

- (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.

Regulations. 34. (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 \$500 for an offence arising under the regulations.

(4)

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(4) The regulations may authorise any matter or thing to be from time to time determined, applied or regulated by any person specified therein, either generally or for any class of cases or in a particular case.

(5) Regulations may be made so as to apply differently according to such factors as may be specified in the regulations.

35. 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. Schedule 2 has effect.

Savings and transitional provisions.

SCHEDULE 1.

Sec. 35.

REPEALS.

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

Timber Marketing.

Sec. 36.

SCHEDULE 2.

SAVINGS AND TRANSITIONAL PROVISIONS.

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).

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 25 August, 1977.*

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 72, 1977.

An Act to control the sale and use of certain timbers; and to repeal the Timber Marketing Act, 1945. [Assented to, 29th September, 1977.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

T. J. CAHILL,
Chairman of Committees of the Legislative Assembly.

Timber Marketing.

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:—

PART I.

PRELIMINARY.

Short
title.

1. This Act may be cited as the "Timber Marketing Act, 1977".

Commence-
ment.

2. (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.

Division
of Act.

3. This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1-4.

PART II.—LYCTID SUSCEPTIBLE TIMBER—ss. 5-11.

PART III.—MOISTURE CONTENT OF TIMBER—ss. 12-14.

PART IV.—PRESERVATIVE TREATMENT OF TIMBER—ss. 15-26.

PART V.—MISCELLANEOUS—ss. 27-36.

SCHEDULES.

Timber Marketing.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— **Interpre-**
tation.

“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 Act, 1961;

“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

Timber Marketing.

“lyctid susceptible sapwood” means sapwood containing sufficient starch to render it liable to attack by lyctids;

“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 or increasing the resistance of that timber to fire;

“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” means a brand registered by the Commission under section 20 (1) (b) the registration of which is in force;

“regulation” means a regulation made under this Act;

“sapwood”

Timber Marketing.

“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 the Standards Association of 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)

Timber Marketing.

- (c) milled timber;
- (d) laminated wood;
- (e) veneer and plywood; and
- (f) hardboard, particle board, fibre board, insulation board and similar materials;

“untreated”, in relation to timber, means not treated with an approved preservative treatment.

(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 II
LYCTID SUSCEPTIBLE TIMBER.

Sale of
certain
timber
prohibited.

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

(2)

Timber Marketing.

(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 that person proves that he did not know and could not reasonably be expected to have known that that timber had untreated lyctid susceptible sapwood.

6. (1) A person shall not sell any framing timber of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood, unless he gives the purchaser the prescribed warning in the prescribed manner. Warning on sale of certain framing timber.

(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) against a person who has sold any framing timber referred to in that subsection by way of resale if that person proves that he did not know and could not reasonably be expected to have known that more than 25 per centum of the perimeter of any cross section of that timber comprised untreated lyctid susceptible sapwood.

7. (1) A person shall not sell any framing timber of which more than 25 per centum of the perimeter of any cross section comprises untreated lyctid susceptible sapwood mixed with any other timber. Sale of certain mixed timbers prohibited.

(2) It is a defence to a prosecution brought in respect of an offence under subsection (1) against a person who has sold any framing timber referred to in that subsection by way of resale if that person proves that he did not know and could not reasonably be expected to have known that more than 25 per centum of the perimeter of any cross section of that timber comprised untreated lyctid susceptible sapwood.

8.

Timber Marketing.

Sale of
timber free
from lyctid
susceptible
sapwood.

8. A person shall not sell any timber—

- (a) described by him, his servants or agents as being free from lyctid susceptible sapwood; or
- (b) described by him, his 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 brand registered by the Commission in respect of that approved preservative treatment.

Sale of
articles.

9. (1) A person shall not sell an article having untreated 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) he did not know and could not reasonably be expected to have known that the article had untreated lyctid susceptible sapwood;
- (b) before the completion of the sale of that article he 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 untreated lyctid susceptible sapwood occurred more than 2 years before the date on which that prosecution was commenced.

Erection of
buildings.

10. (1) A person shall not use in the erection of a building—

- (a) milled timber, laminated wood, veneer or plywood having untreated lyctid susceptible sapwood;
- (b)

Timber Marketing.

- (b) timber (not being milled timber, laminated wood, veneer or plywood) having untreated 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; or
- (c) timber (not being milled timber, laminated wood, veneer or plywood) of which more than 25 per centum of the perimeter of any cross section comprises untreated 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) he did not know and could not reasonably be expected to have known that the timber had untreated 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 his occupation.

11. (1) A person shall not sell a building any part of which is comprised of— Sale of buildings.

- (a) milled timber, laminated wood, veneer or plywood having untreated lyctid susceptible sapwood;
- (b) timber (not being milled timber, laminated wood, veneer or plywood) having untreated 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)

Timber Marketing.

(ii) that timber is exposed to the view of persons using that building; or

(c) timber (not being milled timber, laminated wood, veneer or plywood) of which more than 25 per centum of the perimeter of any cross section comprises untreated 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) he did not know and could not reasonably be expected to have known that the timber had untreated lyctid susceptible sapwood;

(b) before entering into the contract for the sale of the building he gave the purchaser a written statement to the effect that untreated 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 III.

MOISTURE CONTENT OF TIMBER.

Sale of
dried or
seasoned
timber.

12. A person shall not sell any timber—

(a) described by him, his servants or agents as being kiln dried, air dried, dry or seasoned; or

(b)

Timber Marketing.

(b) described by him, his 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 maximum moisture content of any piece of that timber when determined in the prescribed manner does not, as at the date of sale, exceed 15 per centum by mass.

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, 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.

Manufacture
of furniture
and other
articles.

(2)

Timber Marketing.

(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 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 his use.

Erection of
buildings.

14. (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 his occupation.

PART

Timber Marketing.

PART IV.

PRESERVATIVE TREATMENT OF TIMBER.

15. A person shall not use in the preservative treatment of— Use of preservative treatment.

- (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. A person shall not sell any timber—

- (a) described by him, his servants or agents as being preservative treated; or
- (b) described by him, his servants or agents in such manner as to convey or be likely to convey to any person the impression that that timber has been preservative treated,

Sale of preservative treated timber.

unless that timber has been treated by means of an approved preservative treatment and is branded with the brand registered by the Commission in respect of that approved preservative treatment.

17.

Timber Marketing.

Dealing in timber preservative treated for reward.

17. 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 has been preservative treated,

to leave that preservative treatment plant unless that timber has been treated by means of an approved preservative treatment and is branded with the brand registered by the Commission in respect of that approved preservative treatment.

Application for approval of preservative treatment and registration of brand.

18. (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) Where an application under subsection (1) is made by a person not resident in New South Wales, he shall, in his application, specify an address in New South Wales for the giving of notices under this Act.

Consideration of applications by the Commission.

19. 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)

Timber Marketing.

- (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; and
 - (vi) the use for which that timber is intended; and
- (b) in respect of the brand referred to in that application—the form and design of the brand.

20. (1) After consideration of an application under section 18 (1), the Commission may—

Determina-
tion of
application.

- (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 the brand.

(2) Where, in respect of an application under section 18 (1), the Commission refuses to approve a preservative treatment, it shall not register the brand referred to in that application.

(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 his application.

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Duration of approval and registration.

21. 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).

Suspension of approval and registration.

22. (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; or
- (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.

(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)

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(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. (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. Renewal of approval and registration.

(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,

(2)

expire

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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.

Variation of approval and registered brand.

24. (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 his application.

Transfer of approval and registration.

25. (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)

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(5) The Commission shall give notice in writing to the person making the application of its decision with respect to his application.

26. A person shall not use a registered brand—

Use of registered brands.

- (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 V.

MISCELLANEOUS.

27. (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 his authority in the prescribed form.

Entry, inspection and testing.

(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 his authority to that person.

(3) A person authorised under subsection (1) may, at any reasonable time—

- (a) enter any premises where he is of the opinion that—
 - (i) timber is sawn, hewn or otherwise processed;
 - (ii) timber is sold;

(iii)

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- (iii) a preservative treatment is used;
 - (iv) timber is branded;
 - (v) timber is used in the manufacture of articles;
 - or
 - (vi) articles are sold,
- 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 he 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.

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(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.

28. 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. Obstruction of authorised person.

29. 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 \$500 or imprisonment for a period not exceeding 3 months, or both. Offences.

30. (1) Proceedings for offences under this Act or the regulations shall be disposed of in a court of petty sessions held before a stipendiary magistrate sitting alone. Proceedings for offences.

(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.

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Certificate
evidence of
certain
matters.

31. 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 a prescribed body as at the date of the certificate as a research officer or research scientist that such timber or article as is described in the certificate—

(i) has untreated 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 centum of the **perimeter** of a cross section comprised of **untreated** lyctid susceptible sapwood; or

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

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

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32. (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 Act, 1961, of a corporation, that information is, for the purposes of any proceedings against the 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. Evidence
against
corporations.

(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.

33. (1) Where under this Act notice is required to be given to a person by the Commission, the notice may be given— Notices.

(a) in the case of an individual—

(i) by delivering it to him; or

(ii) by sending it by prepaid post addressed to him at the address, if any, specified by him for the giving of notices under this Act, or, where no such address is specified, at his usual or last known place of abode or his 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)

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- (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.

Regulations. 34. (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 \$500 for an offence arising under the regulations.

(4)

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(4) The regulations may authorise any matter or thing to be from time to time determined, applied or regulated by any person specified therein, either generally or for any class of cases or in a particular case.

(5) Regulations may be made so as to apply differently according to such factors as may be specified in the regulations.

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

36. Schedule 2 has effect.

Savings and transitional provisions.

SCHEDULE 1.

Sec. 35.

REPEALS.

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

SCHEDULE

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Sec. 36.

SCHEDULE 2.

SAVINGS AND TRANSITIONAL PROVISIONS.

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).

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 29th September, 1977.*