

# **REGULATION REVIEW COMMITTEE**

## **PARLIAMENT OF NEW SOUTH WALES**

**REPORT DRAWING THE SPECIAL ATTENTION OF PARLIAMENT TO THE  
NEED TO AMEND THE FORESTRY REGULATION 1994 SO THAT IT  
IMPLEMENTS GOVERNMENT POLICY FOR PUBLIC PARTICIPATION IN THE  
PREPARATION OF MANAGEMENT PLANS FOR STATE FORESTS**

**Report No. 31  
November 1994**

## REGULATION REVIEW COMMITTEE

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## **FUNCTIONS OF THE REGULATION REVIEW COMMITTEE**

The Regulation Review Committee was established under the Regulation Review Act 1987. A principal function of it is to consider all regulations while they are subject to disallowance by Parliament.

In examining a regulation the Committee is required to consider whether the special attention of Parliament should be drawn to it on any ground, including any of the following :-

- (a) that the regulation trespasses unduly on personal rights and liberties;
- (b) that the regulation may have an adverse impact on the business community;
- (c) that the regulation may not have been within the general objects of the legislation under which it was made;
- (d) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made;
- (e) that the objective of the regulation could have been achieved by alternative and more effective means;
- (f) that the regulation duplicates, overlaps or conflicts with any other regulation or Act;
- (g) that the form or intention of the regulation calls for elucidation; or
- (h) that any of the requirements of sections 4, 5 and 6 of the Subordinate Legislation Act 1989, or of the Guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

The Committee may, as a consequence of its examination of a regulation, make such reports and recommendations to each House of Parliament as it thinks desirable including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.

## FORESTRY REGULATION 1994

The Forestry Regulation 1994 was gazetted on 26 August 1994. It is a principal statutory rule and it was made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989. It regulates:

- (a) the establishment and organisation of State forests and flora reserves (Part 2);
- (b) the control and management of State forests, timber reserves and flora reserves, including controlling fires and camping (Part 3);
- (c) timber, products and forest materials licences, contractors' operators' licences, sawmill licences, clearing licences, grazing permits, occupation permits, hunting permits, special purposes permits and forest leases (Part 4);
- (d) the branding of timber (Division 1 of Part 5);
- (e) miscellaneous matters, including royalty and other payments under the Act (Division 2 of Part 5);
- (f) offences and provisions relating to penalty notices issued under the Act (Part 6).

A copy of the Forestry Regulation 1994 is set out in Appendix 3 of this Report

### MANAGEMENT PLANS FOR STATE FORESTS

Clause 6 of this regulation requires the Forestry Commission to ensure that every State forest is managed in accordance with a plan approved by it. These plans have been used by the Forestry Commission to set out the objectives to be achieved and procedure to be followed in implementing forest management at the operational level. The 1988 Management Plan for the Kempsey Management Area, for example, sets out the considerations upon which the plan of management is based (Part I). It then details in Part II the management objectives, the management strategy and the period of the plan. It covers the plan for timber management including commercial harvesting plans, fire management, flora and fauna conservation, Aboriginal site preservation, capital improvement plans (roads, trails), recreation and research.

The Forestry Regulation 1994 does not make any provision for public comment or involvement in relation to the preparation of management plans although Forestry Commission policy is to welcome public comments at any time during the life of these plans.

In June 1990, the Premier announced a new Forestry Strategy (Forestry Commission of NSW 1990). This Strategy heralded a major shift to public participation. Two of the five principles of this Strategy related to public participation, namely:

- Forest management must be publicly accountable in ecological, social and economic terms, and responsive to evolving community concerns.
- Decision making must be balanced and open, and provide for public participation in the planning process.

That Strategy states the NSW Government accepts these principles as a necessary and practical foundation for the management of State Forests. The Strategy says that the community now expects a higher level of visible commitment to their implementation.

One objective of the Forestry Commissions Corporate Plan 1992-1995 is "to ensure forest operations are both ecologically and socially sustainable by increasing effective involvement of the community in forest management." In fact a target of the Commission was to have in place by June 1993 consultation processes and structures for wider community participation in forest management.

The report of March 1993 of the Forestry Commission headed Public Participation in Forest Management prepared by Manidis Roberts Consultants, recommends that the public should be involved at the very start of the management plan process so they can provide input. One finding of the consultant's study was that whereas in the past the community entrusted foresters to make appropriate decisions about forests that "now the expectation is for greater participation (and empowerment) by the public in decision making and planning related to forest management." The consultants also said in their recommendations that the strategy for public participation should involve arrangements "enabling a continuous input from the public during the preparation of environmental impact statements and management plans." Current regulatory controls do not give the public any avenue for input at this stage.

### Position in other Australian States

#### **Tasmania**

Current Tasmanian legislation requires Forestry Tasmania (the Corporation) to advertise its intention to prepare a forest management plan and to invite submissions. Forestry Tasmania is obliged to consult with persons whose forestry rights will be affected by the plan. Government departments are given a statutory right to make submissions and be consulted.

After the plan has been prepared Forestry Tasmania must again advertise and seek submissions upon it. The public have 60 days to make a submission. These submissions must be taken into account. Forestry Tasmania then submits the management plan to the Minister for approval and at the same time it details for the Minister the public submissions received and any action taken on them.

These statutory requirements for public involvement are contained in the Tasmanian Forestry Act 1920 as amended by Public Lands (Administration and Forests) Act 1991 and Forestry Amendment (Forestry Corporation) Act 1994.

### **Queensland**

There is no statutory requirement for Forest Service to prepare management plans but these have been prepared for 2/3 of the forestry area. After they are drawn up they are offered for public comment - by advertisement in local newspapers. The plan is modified if public response warrants it.

### **Victoria**

Victoria operates under the Forest Act 1958. In 1986 strategies were implemented under a Forest Management Area Plan involving 14 such plans. Each plan provides information governing forest management, wood production and wood utilisation. Plans are drawn up every 3 years and there is vigorous public scrutiny and public input.

## **FORESTRY REGULATION 1994 DOES NOT IMPLEMENT GOVERNMENT POLICY**

The Forestry Regulation 1994 does not implement government policy because it fails to make any provision for public participation in the preparation of management plans for State forests. The terms of the existing regulation reflect the previous refusal by the Forestry Commission to make provision for public participation in the drawing up of management plans. This is contrary to the 1990 Forestry Strategy released by the Premier and it is contrary to the Corporate Plan of the Commission. The RIS for the regulation states "no realistic alternative to the proposed regulation can be identified." This is incorrect as it could have made provision for public participation in the preparation of management plans. A strong case exists for these management plans to be incorporated by reference in a schedule to the regulation, along the lines of the practice adopted for many operational codes incorporated by regulations made under the Clean Air Act 1961, Coal Mines Regulation Act 1982, the Consumer Protection Act 1969, the Dairy Industry Act 1979, and the Local Government Act 1993. This does not involve publication of the whole code in the regulation but only reference to its formal title and the date of approval of the plan. This would make the management plans subject to review and disallowance by Parliament. As a result of incorporation in the regulation they would also be subject to Schedule 1 assessment under the Subordinate Legislation Act and full review each 5 years under Schedule 2 of that Act.

## **LETTER TO MINISTER FOR LAND AND WATER CONSERVATION**

On 27 October 1994 the Regulation Review Committee wrote to the Minister setting out in full the details of its appraisal of the regulation including its assessment of the

regulatory impact statement which accompanied the regulation. The Committee recommended to the Minister that the regulation should be amended to provide for public participation in the preparation of management plans for State forests and for these plans to be incorporated by reference in a schedule to the regulation.

## **MINISTER'S RESPONSE TO THE RECOMMENDATIONS OF THE COMMITTEE**

On 10 November 1994 the Minister wrote to the Committee rejecting its recommendations. The Minister's letter is attached as Appendix 1 of this Report. The points made by the Minister and the comments of the Committee upon them follows.

### **(1) EIS process provides adequate public participation**

The Minister argues that the EIS process provides adequate public participation because the public have a right to comment on EIS proposals and the determination made on the EIS leads to revision of the management plan for the area it covers. There would be duplication if the regulation also required public participation in the preparation of management plans. This is the Minister's central argument.

#### **Comment**

The Minister's letter concedes that "the EIS program is basically confined to preparing EISs that are relevant to forests covered by the Timber Industry (Interim Protection) Act 1992."

One of the objects of that Act is to protect the employment of timber industry workers. For this purpose it suspends the operation of Part V of the EP&A Act in a number of forest management areas identified in Schedule 4, so as to allow new logging proposals to go ahead and existing ones to continue. At the same time it sets a timetable for the completion of EISs. In other areas, identified in Schedules 1 and 2, Part V continues to apply. EISs are not required in these areas unless the operation is likely to significantly affect the environment.

Under the Timber Industry (Interim Protection) Act there are now EISs in place for the following areas:

1. Wingham Management area
3. Glenn Innes Management area
4. Kempsey and Wauchope Management areas

Two further EISs are due for release under the Timber Industry (Interim Protection) Act on 23 November 1994 for the Eden and Grafton management areas and early in 1995 EISs for the Dorrigo and Tenterfield areas are also planned for release. Even

though these EISs afford satisfactory public participation in respect of the particular proposals the TIIP Act will never provide substantial coverage by EISs of the 60 management plan areas that now regulate the 825 State forests. The TIIP Act is directed at providing EISs for the old growth "hot spots" mainly in NSW coastal areas; that Act relates to only approximately 50% of the NSW State forests. The maximum area that will be covered by EISs made under the Timber Industry (Interim Protection) Act will be approximately 1.8 million hectares which amounts to approximately 52 per cent of native forests in State forests and approximately 50 per cent of all State forests. The argument that EISs provide adequate public participation in the management of the 825 State forests of NSW is therefore unacceptable.

(2) Commercial focus and competitiveness of softwood plantations

The Minister states that if the regulatory regime was more prescriptive it would seriously compromise the commercial focus and competitiveness of softwood plantations.

Comment

It is difficult to see how this would arise from a regulatory requirement giving the public the right to comment on a draft management plan.

(3) Management plans are internal management documents that do not impinge directly on the public

The Minister argues that management plans do not impinge directly on the public and are rather an internal document for the guidance of forestry staff. They are therefore inappropriate for regulation.

Comment

This view is in conflict with the Government's 1990 Forest Strategy which requires public participation in the planning process and it is also contrary to the Forestry Commission's Corporate Plan 1992-1995 which followed on from the 1990 Report on the Forestry Commission by the Public Accounts Committee. That report recommended that the Forestry Commission urgently address the need for public participation in its planning processes generally, and in its preparation of Indigenous Forest Policy Documents, Management Plans, and Preferred Management Priority Classification documents specifically.

The comprehensive range of matters covered in management plans suggests they do have direct public relevance: the management plan for the Kempsey Management Area covers management objectives, management strategy, commercial harvesting plans, flora and fauna conservation, Aboriginal site preservation and capital improvement

plans. These are all matters central to the management of State forests as evidenced by their appraisal in EIS documents for which there is public input. The Minister argues that management plans are inappropriate for regulation yet the regulation currently deals with them.

This situation can be contrasted with national parks. Management plans for national parks and historic sites have to be placed on public exhibition. Members of the public then have a month to make representations to the Director. These are passed on to the National Parks and Wildlife Advisory Council. The plan, with the suggestions or comments of the Council, is then referred to the Minister, who has the final say on the matter. Tasmania, Queensland and Victoria all afford the public scrutiny of draft management plans for State forests.

(4) The Forestry Commission is considering intensifying public involvement in the EIS and Management Plan process

The Minister in his letter says the Forestry Commission is currently considering the scope and focus of management plans and that the intent is "in part, to intensify the public's involvement in the EIS and Management Plan processes" but that "there is difficulty in further crystallising that enhancement at this stage."

Comment

This seems to be a recognition by the Minister and by the Forestry Commission that there should be more public involvement and this contradicts the conclusion in the Minister's letter that public participation in management plans "would be an unnecessary duplication without substantive merit."

(5) Incorporation by reference of management plans in a schedule to the regulation

The Committee made two principal recommendations in its letter; the first supported public participation in the preparation of management plans; the second recommended the incorporation by reference of management plans in a schedule to the regulation. The purpose of the second recommendation was to oblige the review of management plans each 5 years under the sunset provisions of the Subordinate Legislation Act. The Minister, in his letter argues this would be impractical because there are approximately 60 management plans and the resources of the Commission would be inadequate to review them each 5 years. This is a reasonable point of view which is already taken into account by the Subordinate Legislation Act which requires its obligations to be met "as far as practicable", that is, within the existing resources of the department. The Committee resolved to reserve this matter for further examination.

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## **FURTHER CORRESPONDENCE FROM THE MINISTER AGREEING TO THE CHANGES RECOMMENDED BY THE COMMITTEE**

The Minister's letter of 10 November 1994 does not deny that the current refusal by the Forestry Commission to make any provision in the regulations for public comment or consultation in the preparation of management plans is contrary to NSW Government policy. The Commission's argument that public involvement is already provided through the EIS process is not acceptable because only 50 per cent of state forests will be the subject of an EIS under the TIIP Act and even this may be years after the management plans come into operation. The Minister's letter contains a statement unsupported by details, that EISs are being prepared for areas that are not embraced by the TIIP Act and that there are plans to extend the program to all native forests managed as State forests. The Committee understands this program is intended to be achieved for all 60 management plan areas within 5 years.

This target is unlikely to be realised because of resource limitations of the Commission. Evidence of this is apparent from the recent need for amendments to the TIIP Act to overcome delays in the EIS program of the Commission. At the present time the priority of the Commission is to complete EISs for the TIIP Act areas and to the knowledge of the Committee, no EISs have been completed for areas outside that Act. The EIS process would, in any event, not cover the recurrent need to review management plans at which time there should also be public participation.

The Committee also found it difficult to see how the grave commercial consequences predicted by the Forestry Commission for softwood plantations could arise from giving the general public and the softwood timber industry the right to comment on proposed management plans or amendments to those plans. In recent years the High Court has stressed the need for government departments to take into account relevant considerations in decision making and part of that process, it said, involved providing affected members of the public with an opportunity to address proposals which would have an impact upon them. This approach is now common practice in the majority of government departments.

Environmental concerns have undeniable relevance to the community. The Committee also recognises that forest management is an ongoing process underpinning capital intensive industries on which many regional communities rely. This provides a very strong case for encouraging the forest and timber industries and the regional communities they support to participate in forest management planning.

As a consequence of these concerns the Committee requested from the Minister a briefing and discussion on the operation of the regulation. This was provided to the Committee at its meeting on 21 November 1994 by Dr J H Drielsma, Chief Executive, Forestry Commission of NSW and by Mr D Giles, Legal Officer of the Commission.

Following those discussions the Minister agreed to amend the Forestry Regulation 1994 so as to prohibit the approval by the Forestry Commission of a management plan or a significant amendment to a management plan unless the proposal had been publicly advertised and the public have been given 30 days to comment upon it. The Commission will also be obliged under the regulation to duly consider any submission made by members of the public on the proposal.

These changes agreed to by the Minister will bring the regulation into conformity with government policy.

A copy of the Minister's letter dated 21 November 1994 agreeing to these changes appears in this report as Appendix 2



**Adrian Cruickshank, MP**  
**Chairman**  
**Regulation Review Committee**



NEW SOUTH WALES

MINISTER FOR  
LAND AND WATER CONSERVATION

**APPENDIX 1**

Mr A Cruickshank MP  
Regulation Review Committee  
Parliament of NSW  
121 Macquarie Street  
SYDNEY NSW 2000

10 NOV 1994

**Re: FORESTRY REGULATION 1994**

Dear Mr Cruickshank

I refer to your letter of the 27th October 1994, making recommendations concerning the provision for public participation in the preparation of Management Plans for State Forests and the need for these plans to be incorporated by reference in a schedule to the Regulation.

In your letter you firstly make reference to a possible lack of enabling power in the Forestry Act 1916 for the Regulations concerning Management Plans. You also recommend amending legislation to underpin the Regulation in issue. Parliamentary Counsel has considered the Regulation and certified that it may be legally made. Bearing in mind the paramountcy the Subordinate Legislation Act 1989 gives to the opinion of Parliamentary Counsel in these matters, I cannot agree with your recommendation.

With regard to public participation in preparation of Management Plans, your letter suggests that public participation in the EIS and FIS process is insufficient for two reasons, (a) because those processes occur at a later stage than preparation of Management Plans and (b) there are some areas covered by Management Plans that will not be the subject of an EIS. In practice these points are not persuasive.

State Forests has prepared approximately 60 Management Plans which cover state forests and Crown timber-land across the whole State. There is no intention to systematically prepare further Management Plans in their present form.

Existing Management Plans are used as the starting point for the development of the proposal put forward in the EIS. As each EIS is determined, it is in effect reviewing and amending the Management Plan. At the completion of the EIS process, management plans will be amended to conform with, and become the principle vehicle for implementation of, EIS Determinations. There is no relevant topic that is mentioned in a Management Plan that is not subsequently overtaken or confirmed by the provisions of the EIS determination. As the EIS program is State Forests' planning priority there are neither the resources nor the need for independent review of existing Management Plans.

Therefore it can be seen that under the present administrative arrangements the most relevant type of public participation is in the EIS process . It would force a duplication to make a requirement of public participation in the subsequent preparation of management plans.

State Forests EIS program is basically confined to preparing EISs that are relevant to forests covered by the Timber Industry (Interim Protection) Act 1992.

As to those areas that are not referred to in the Timber Industry (Interim Protection) Act 1992, the following can be said. Firstly, State Forests is preparing EISs for areas that are not embraced by that Act, and plans to extend the program to all native forests. In the meantime, Fauna Impact Statements are being prepared for all areas under the Endangered Fauna Act, and this will involve public participation as required under that Act. Most forest areas are also embraced by EPA licences under Clean Waters legislation, and the EPA has undertaken public participation in the development of these licences.

In respect of softwood plantations, I am particularly concerned to ensure that a commercial focus and competitiveness can be maintained. This would be seriously and unnecessarily compromised by a regulatory regime more prescriptive than proposed.

State Forests is currently considering the appropriateness of the scope and focus of present Management Plans, and the role of public participation in that process. The intent is, in part, to intensify the public's involvement in the EIS and Management Plan processes, however, there is a difficulty in further crystallising that enhancement at this stage.

In light of the abovementioned practical considerations, it is apparent that any further regulations concerning Management Plans, particularly involving public participation, would be an unnecessary duplication of process without substantive merit.

Accordingly I cannot agree to the Regulation being amended at this stage to provide for public participation.

Finally, you recommend that the plans be incorporated by reference into a schedule to the regulations.

The initial difficulty with this suggestion is that plans are being reviewed and amended as EISs for areas covered by the plans are determined. There is a need that the planning process be flexible and not unnecessarily impeded by the necessity to amend the Regulation as Management Plans are revised in consequence of the EIS determination.

Secondly, it should be understood that the Management Plan is not a regulatory instrument in the nature of, for instance, a Code of Practice. It is a planning tool not impinging directly on the public, but rather an internal management document for the guidance of forestry staff. It is, in other words, inappropriate for regulation.

Further, if each Management Plan was to become part of the Regulation, then it would be subject to provisions of the Subordinate Legislation Act ie the subject of a regulatory Impact Statement every five years. At least on one view, it may be necessary to carry out a cost benefit analysis for each Management Plan and each reasonable alternative. Bearing in mind that there are presently approximately 60 Management Plans the impracticality is immediately apparent, as is the inefficiency, given that the EIS process already addresses itself to those issues.

Therefore I am of the view it would be inappropriate and impractical to at this stage to agree with your recommendations concerning Management Plans. I believe they are contrary to the governments reform agenda for eliminating duplication and an unnecessary restriction on efficient administrative process and commercial undertaking.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'George Souris', written in a cursive style. The signature is positioned above the printed name 'George Souris MP'.

George Souris MP



NEW SOUTH WALES

MINISTER FOR  
LAND AND WATER CONSERVATION

21 NOV 1994

Mr A J Cruickshank MP  
Chairman  
Regulation Review Committee  
Parliament House  
SYDNEY NSW 2000

Dear Mr Cruickshank

Further to my earlier correspondence concerning the Forestry Regulation 1994 I wish to advise that I am prepared to approve an amendment to the following effect which should address the Committee's concerns:

"(2) The Commission must not approve a Management Plan or a significant amendment to a management plan unless:

- (a) the proposed plan has been publicly advertised and the public have been given 30 days to comment on that proposal and any submission by members of the public within that period have been duly considered by the Commission;
- (b) the plan specifies the forest management strategy to be adopted by the Commission in relation to the forest; and
- (c) the plan specifies subject to the Act, the conditions under which any timber, products or forest materials may be taken from the forest and the conditions subject to which the forest may otherwise be used

(2A) nothing in clause 2 requires a plan to be publicly advertised when an EIS has been prepared and determined under the provisions of the Environmental Planning and Assessment Act 1979, within the previous 5 years and the proposed Plan is in accordance with the determination of the EIS."

Yours sincerely

A handwritten signature in black ink, appearing to read 'George Souris'.

George Souris MP

## FORESTRY ACT 1916—REGULATION

(Forestry Regulation 1994)

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Forestry Act 1916, has been pleased to make the Regulation set forth hereunder.

GEORGE SOURIS, M.P.,  
Minister for Land and Water Conservation.

## PART 1—PRELIMINARY

## Citation

1. This Regulation may be cited as the Forestry Regulation 1994.

## Commencement

2. This Regulation commences on 1 September 1994.

## Definitions

3. In this Regulation:

“approved” means for the time being approved by the Commission;

“authorised officer” means:

- (a) a person authorised by the Commission in writing; or
- (b) an employee of the Commission directed by the Commission in writing,

to exercise the function conferred or imposed on an authorised officer by the provision of this Regulation in which the expression is used;

“contractor’s licence” means a contractor’s licence issued under clause 48;

“District” means a part of a region designated for the time being by the Commission as a District for the purposes of the administration of the Act;

“District Forester” means the person for the time being in charge of the forestry administration of a District;

“Eastern and Central Division” has the meaning given by the Crown Lands Act 1989;

“employee of the Commission” includes an officer or other person appointed by the Governor under section 10 of the Act;

“exercise” of a function includes the performance of a duty;

“flammable matter” includes vegetable matter whether it is still growing or not;

“function” includes a power, authority or duty;

“General Manager” (of a Region) means the person for the time being responsible for the forestry administration of the Region;

- “**machine**” means a device powered by an internal combustion engine, and includes a motor vehicle, a stationary engine, a chainsaw and felling, logging, welding or road making equipment;
- “**operator’s licence**” means an operator’s licence issued under clause 48;
- “**permit**” means a permit granted by the Commission under the Act;
- “**prescribed fee**”, in relation to a licence, permit or other matter specified in Column 1 of Schedule 1, means the amount specified in Column 3 of that Schedule opposite the description of the licence, permit or other matter;
- “**Region**” means a part of New South Wales that the Commission has for the time being designated as a Region for the purpose of administering the Act;
- “**sale agreement**” means an agreement in force under section 11 (1) (m) (i) of the Act;
- “**the Act**” means the Forestry Act 1916;
- “**the Commission**” means the Forestry Commission of New South Wales;
- “**Western Division**” has the meaning given by the Crown Lands Act 1989.

#### **Matters to be prescribed for the purposes of the Act**

4. (1) For the purposes of section 10A (1) (d) of the Act, the following are prescribed as persons or classes or descriptions of persons to whom the Commission may delegate its functions:

- (a) in relation only to the function of the Commission under section 27G of the Act (except in respect of State forests and timber reserves)—any person for the time being employed in the Department of Conservation and Land Management;
- (b) in relation only to the function of the Commission under section 30I of the Act:
  - (i) any public servant; and
  - (ii) any police officer; and
  - (iii) the spouse of any police officer.

(2) For the purposes of section 25E (3) of the Act, the prescribed period is 12 months.

(3) For the purposes of section 25I (1) of the Act, the prescribed form is a form that is in accordance with Form 1 in Schedule 2.

(4) For the purposes of paragraph (e) of the definition of “structure” in section 35A (1) of the Act, the following are prescribed objects:

- (a) implements, machinery, tanks, troughing, piping, stands, components of a building, containers, pipes, slabs and fabricated structures; and
- (b) any parts of those objects.

#### **Notes.**

- (a) Section 10A of the Act authorises the Commission to delegate the exercise or performance of specified powers, authorities, functions and functions to a “prescribed person” or a member of a “prescribed class or description” of persons.

- (b) Section 25D of the Act empowers the Minister, on the recommendation of the Commission, to declare specified Crown lands not to be subject to section 25E or 25F of the Act (which respectively place restrictions of granting applications to purchase land that is subject to prescribed leases from the Crown and specify the Crown's rights to timber and products on purchase-tenure land). The expressions "timber" and "products" are defined in section 4 of the Act.
- (c) Section 25I of the Act requires the Commission to execute a certificate releasing land from a profit à prendre in specified circumstances (such as when the relevant timber or products have been worked out).
- (d) Section 27G of the Act empowers the Commission to issue clearing licences to clear trees (not having economic value) from certain Crown-timber lands.
- (e) Section 30I of the Act allows the Commission to authorise a person to take small quantities of timber, products or forest materials from land within certain State forests or to take small quantities of timber or products from Crown lands.
- (f) Section 35A of the Act empowers the Commission to have unauthorised structures removed from a State forest, timber reserve or flora reserve.

## **PART 2—ESTABLISHMENT AND ORGANISATION OF STATE FORESTS AND FLORA RESERVES**

### **State forests to be named**

5. The Commission must ensure that every State forest (including a State forest constituted under section 18 (2A) of the Act) has a distinctive name and a distinctive number.

### **State forest to be managed in accordance with a management plan**

6. (1) Following appropriate investigation and survey work, the Commission must ensure that every State forest is managed in accordance with an approved management plan. The management plan may be either for the State forest concerned or for that State forest together with other State forests or other nearby Crown-timber land.

(2) The Commission must not approve a management plan unless the plan specifies:

- (a) the forest management strategy to be adopted by the Commission in relation to the forest; and
- (b) subject to the Act, the conditions under which any timber, products or forest materials may be taken from the forest and the conditions subject to which the forest may otherwise be used.

(3) The Commission must ensure that the management plan for a State forest is departed from only with its approval.

### **Flora reserves to be named**

7. The Commission must ensure that every flora reserve has a distinctive name and a distinctive number. This clause applies whether or not the reserve comprises land dedicated as a State forest.

### **Is the public entitled to have access to plans?**

8. The Commission must ensure that copies of approved management plans for State forests and of the working plans for flora reserves:

- (a) are kept at the offices of the District Forester for the District and the General Manager for the Region in which the State forest or flora reserve is situated and at the office of the Commission; and
- (b) are available for inspection by members of the public at those offices during the normal business hours of the Commission.

### **PART 3—CONTROL AND MANAGEMENT OF STATE FORESTS, TIMBER RESERVES AND FLORA RESERVES**

#### **Division 1—Preliminary**

##### **“Forestry area” defined**

9. In this Part, “forestry area” means a State forest, timber reserve or flora reserve, and includes a part of a forestry area.

#### **Division 2—Control of forestry areas generally**

##### **“Authorised officer” defined**

10. In this Division, a reference to an authorised officer includes a reference to a police officer.

##### **Can a person be asked to leave a forestry area?**

11. (1) A person who:

- (a) enters or remains in a forestry area in contravention of the Act or this Regulation; or
- (b) while in a forestry area:
  - (i) causes annoyance or inconvenience to other persons in the area; or
  - (ii) otherwise contravenes the Act or this Regulation,

must, on being requested to do so by an authorised officer, leave the area, or a part of the area specified by the officer.

(2) A person who fails to comply with a request under this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

##### **When can persons be removed from a forestry area?**

12. (1) An authorised officer may remove from a forestry area a person:

- (a) who has entered or is remaining in the area in contravention of the Act or this Regulation; or
- (b) who is causing annoyance or inconvenience to other persons in the area,

and who fails to leave the area after being requested to do so by the officer.

(2) The removal of a person under this clause does not prevent the person from being charged with having committed an offence against clause 11.

**What powers does the Commission have to control persons and vehicles in a forestry area?**

**13. (1)** The Commission may, by displaying a notice to that effect in a conspicuous position in or in the immediate vicinity of a forestry area, prohibit:

- (a) all persons, or all persons of a class specified in the notice; or
- (b) all vehicles, or all vehicles of a class so specified,

from entering the area, or a part of the area specified in the notice. The prohibition may be for an indefinite period or for such period or periods as are specified in the notice.

**(2)** A person who, without the prior permission of the Commission:

- (a) enters a forestry area; or
- (b) drives a vehicle into a forestry area; or
- (c) having entered a forestry area, remains in, or drives a vehicle within, the area,

in contravention of a notice displayed in accordance with subclause (1) is guilty of an offence.

Maximum penalty: 20 penalty units.

**(3)** The Commission may, by displaying a notice to that effect in a conspicuous position in or in the immediate vicinity of a forestry area or a part of a forestry area, fix the maximum speed at which any vehicle, or any vehicle of a class specified in the notice, may be driven or ridden in the area or part.

**(4)** A person who, without the prior permission of the Commission, drives a vehicle in a forestry area in excess of the speed specified in a notice displayed in accordance with subclause (3) is guilty of an offence.

Maximum penalty: 20 penalty units.

**(5)** In this clause:

“drive”, in relation to a vehicle, includes ride, take and place the vehicle;

“vehicle” includes a caravan or other trailer.

**Can a forestry area be reserved for separate or exclusive use?**

**14. (1)** The Commission may, by displaying a notice to that effect in a conspicuous position in or in the immediate vicinity of a forestry area, reserve, for such periods as it thinks fit, the area for separate or exclusive use for the purpose of:

- (a) recreational use and enjoyment; or
- (b) enabling any person to exercise a right or privilege conferred by a licence, permit, forest lease or other authority issued or granted by the Commission; or
- (c) enabling any exercise or activity to be carried on by members of the Commonwealth Defence Forces; or
- (d) enabling the Commission to exercise any of its functions.

**(2)** The Commission may erect or authorise the erection of such enclosures, gates or ramps as it considers necessary for the purposes of such a reservation.

**Can a person be requested to leave a forestry area?**

**15. (1)** An authorised officer may request a person to leave a forestry area if:

- (a) in the area:
  - (i) logging operations or other forest activities are in progress; or
  - (ii) a bushfire is burning or, in the opinion of the Commission or the officer, conditions of high fire danger exist; or
  - (iii) the Commission, the officer or another authorised officer is undertaking deliberate or controlled burning of any kind; or
  - (iv) very wet or windy conditions exist; or
  - (v) roads have been damaged; and
- (b) the Commission or officer believes that:
  - (i) those activities or conditions constitute a danger or potential danger to the safety of persons or property; or
  - (ii) there is likely to be conflict with other uses of the area by other persons.

**(2)** The Commission may erect or cause to be erected such enclosures, gates or ramps as it considers necessary for the purpose of preventing or restricting the entry of persons into the area.

**(3)** A person who fails to comply with a request under this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

**(4)** Subclause (3) applies to a person irrespective of any provisions of a lease, licence or permit that the person holds in relation to the forestry area concerned.

**Offence to damage forests and reserves**

**16. (1)** A person who, being in a forestry area:

- (a) causes damage to, interferes with or destroys vegetation (other than timber); or
- (b) obstructs, damages or interferes with a way; or
- (c) in a manner that does not involve committing an offence against section 27 (1) (b) of the Act—interferes with material that is not part of a way; or
- (d) erects a fence or other obstruction; or
- (e) obstructs or interferes with the flow of water in a watercourse; or
- (f) causes damage to, defaces, interferes with or destroys a standard, sign, notice or device erected by the Commission; or
- (g) causes damage to, defaces, interferes with or destroys a building, enclosure, dam or other structure, or plant or equipment, of the Commission or of a lessee or licensee of the Commission,

is guilty of an offence.

Maximum penalty: 20 penalty units.

**(2)** However, such an offence is not committed if the act in question:

- (a) is done with the prior consent of the Commission; or
- (b) is authorised by a licence, permit, forest lease or other authority issued or granted under the Act or this Regulation or under some other law.

- (3) Damaged caused to a way is not an offence against subclause (1)  
(b) if it was a natural consequence of travelling over the way.

(4) In this clause:

“**material**” includes soil, sand and gravel;

“**way**” includes a road, track, trail, bridge and causeway.

**Note.** Section 27 of the Act creates certain offences relating to timber, products and forest materials on Crown-timber lands. The expressions “timber”, “products” and “forest materials” are defined in section 4 of the Act.

### **Division 3—Control of fire**

#### **Definitions**

17. In this Division:

“**fire**” means combustion of any kind, whether burning gas or liquid or solid fuel;

“**fireplace**” means the site or location in which a fire is lit and includes a naturally occurring site and a fixed or portable barbecue.

#### **Offence to leave lighted tobacco product or lighted match in a forestry area**

18. A person who leaves or deposits in a forestry area a lighted cigarette or other lighted tobacco product or a lighted match is guilty of an offence.

Maximum penalty: 20 penalty units.

#### **Offence to light fire for an unauthorised purpose**

19. A person who lights, maintains or uses a fire in a forestry area, or causes a fire to be lit, maintained or used in a forestry area, for a purpose other than a purpose authorised by this Division is guilty of an offence.

Maximum penalty: 20 penalty units.

#### **Can a fire be lit in a forestry area for cooking or other purposes?**

20. (1) A person may light, maintain or use a fire in a forestry area, or cause a fire to be lit, maintained or used in such an area, for the purpose of cooking, heating, preparing meals or boiling water or for personal warmth or repairing tools or for a similar purpose, but only:

(a) if:

(i) the site of the fire at any point is at least 4.5 metres from the nearest log, stump or tree; and

(ii) the ground within 1.5 metres of the site of the fire at all points is cleared of all flammable matter; and

(iii) the fire is lit in a fireplace of a kind approved by an authorised officer; or

(b) if the fire is authorised by a special purposes permit or an authorised officer; or

(c) if the fire is lit in a place within a building, or a caravan or other vehicle, located in a forestry area if the place is specially constructed for containing a fire.

(2) A person who, for the purpose referred to in subclause (1):

(a) lights, maintains or uses a fire in a forestry area; or

(b) causes a fire to be lit, maintained or used in such an area, otherwise than in accordance with that subclause is guilty of an offence.

Maximum penalty: 20 penalty units.

**Can a fire be lit in a forestry area to process timber, products or materials?**

21. (1) A person may light, maintain or use a fire in a forestry area, or cause a fire to be lit, maintained or used in such an area, for the purpose of processing timber, products or forest materials, but only if the land within 30 metres (or such other distance as may be specified or allowed by an authorised officer in the particular case) of all points of the site of the fire:

(a) has been cleared of all flammable matter; and

(b) is kept cleared of that material until the fire has been extinguished.

(2) A person who, for the purpose specified in subclause (1):

(a) lights, maintains or uses a fire in a forestry area; or

(b) causes to be lit, maintained or used a fire in a forestry area, otherwise than in accordance with that subclause is guilty of an offence.

Maximum penalty: 20 penalty units.

(3) This clause is subject to clause 22.

**Can a fire be lit in a forestry area to destroy waste material?**

22. (1) A person may, for the purpose of destroying waste resulting from the processing of timber, products or forest materials, light, maintain or use a fire in a forestry area, or cause a fire to be lit, maintained or used in such an area, in the open air, but only if:

(a) the fire is lit in an incinerator from which the escape of all sparks, incandescent and burning material is prevented; or

(b) if an authorised officer is satisfied that such an incinerator is not available—the fire is lit with the permission of, and in accordance with the written conditions specified by, the officer.

(2) A person who, for the purpose specified in subclause (1):

(a) lights, maintains or uses a fire in a forestry area; or

(b) causes a fire to be lit, maintained or used in such an area, otherwise than in accordance with that subclause is guilty of an offence.

Maximum penalty: 20 penalty units.

**Can a fire be lit in a forestry area to clear vegetation or to make a firebreak?**

23. (1) A person may at any time light, maintain or use a fire in a forestry area, or cause a fire to be lit, maintained or used in such an area, for the purpose of clearing trees, grass or other vegetation or other material or for burning a firebreak, but only if:

(a) the person has obtained authority to do so from an authorised officer; and

(b) the fire is lit, maintained and used in accordance with the conditions specified by such a person.

(2) A person who lights, maintains or uses a fire in a forestry area, or causes a fire to be lit, maintained or used in a forestry area, for a purpose referred to in subclause (1) is guilty of an offence unless paragraphs (a) and (b) of that subclause have been complied with.

Maximum penalty: 20 penalty units.

(3) This clause does not apply to an employee of the Commission acting in the execution of the employee's duty.

#### **Offence to use a machine in a forestry area unless precautions taken**

24. (1) A person who in a forestry area drives, uses or controls a machine is guilty of an offence, unless:

- (a) a spark arrester that is in a serviceable condition is securely fixed to the exhaust of the machine; and
- (b) the fuel, electrical and braking systems and all combustion chambers, manifolds, exhaust pipes and expansion chambers of the machine and their joints are in all respects in safe working order; and
- (c) the machine is free of surplus oil, dust impregnated with oil and vegetable matter.

Maximum penalty: 20 penalty units.

(2) In subclause (1) (a), "machine" does not include a motor vehicle.

#### **Offence to store liquid fuel in a forestry area unless precautions taken**

25. (1) A person who, while in a forestry area, stores liquid fuel is guilty of an offence, unless the fuel is stored:

- (a) under, or for the purposes of carrying out an activity authorised by, a licence, permit or other authority issued or granted by the Commission; and
- (b) in accordance with any conditions relating to the storage of liquid fuel imposed by the licence, permit or authority.

Maximum penalty: 20 penalty units.

(2) This clause does not apply to liquid fuel stored in the fuel tank of a machine.

#### **Offence to refuel machine near flammable vegetation**

26. A person must not, while in a forestry area, refuel a machine except at a location where the ground is clear of all flammable vegetation for a distance of at least 1.5 metres from every part of the machine.

Maximum penalty: 20 penalty units.

#### **Can dangerous operations in a forestry area be stopped?**

27. (1) An authorised officer who believes that a machine that is in such mechanical condition as to create a danger of fire:

- (a) is being used in a forestry area; or
- (b) is being used in such a way as to create such a danger,

may require the person who is using the machine to stop using it until such time as an authorised officer considers it can be safely used without creating such a danger.

(2) A person who fails to comply with a requirement made to the person under this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

(3) In this clause, “using” includes operating.

**What measures are to be taken to prevent fire from occurring in a forestry area?**

28. (1) If a building or group of buildings located in a forestry area are used in connection with forest operations, a person who is carrying on forest operations in the area must:

- (a) surround the building or group of buildings with a road or fire break that is cleared of all flammable material to a width of not less than 4.5 metres; and
- (b) ensure that the road or fire break is adequately maintained; and
- (c) carry out or cause to be carried out such burning or other protective operations in the vicinity of the building or group of buildings as an authorised officer directs from time to time; and
- (d) ensure that:
  - (i) all flammable material lying within 1.5 metres of the building or group of buildings is removed; and
  - (ii) the area is kept clear of all flammable matter.

(2) A person who fails to comply with this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

(3) In this clause:

“building” includes a hut, tent, caravan and temporary dwelling;

“forest operations” includes sawmilling and logging.

**Can a person be directed to stop carrying on an activity in a forestry area?**

29. (1) An authorised officer may direct a person to stop carrying on an activity in a forestry area if the officer believes that the weather conditions are such that continuance of the activity is likely to cause ignition or the spread of fire.

(2) A person to whom such a direction has been given must:

- (a) immediately comply with the direction; and
- (b) must not resume the activity until an authorised officer has permitted it to be resumed.

(3) A person who contravenes subclause (2) is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) This clause applies to a person to whom a direction under this clause is given even if the direction is inconsistent with the conditions or limitations specified in a licence, permit, forest lease or other authority issued or granted to the person under the Act or this Regulation.

**When must a person extinguish a fire in a forestry area?**

**30. (1)** A person who has lit or used a fire in a forestry area must not leave the site of the fire, temporarily or otherwise, unless the fire is completely extinguished or unless another person has undertaken to remain at that site and to tend the fire or completely extinguish it.

**(2)** A person does not contravene subclause (1) only because he or she leaves the site of the fire temporarily in order to report the escape or escalation of the fire to an employee of the Commission or to obtain help.

**(3)** A person who has lit or used a fire in a forestry area must, if directed to do so by an authorised officer, take all reasonable steps to extinguish the fire.

**(4)** A person who has lit or is using a fire in a forestry area must, if the fire escapes from the site where it was lit or escalates so as to endanger any other person or any property, immediately take all reasonably practicable measures to ensure that the fire is extinguished.

**(5)** A person who contravenes a provision of this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

**What duties do holders of written authorities have in a forestry area?**

**31. (1)** A person who holds a licence, permit or forest lease in respect of part of a forestry area, or who is acting in accordance with an authorisation in force under section 30I of the Act which relates to a forestry area:

- (a) must take all reasonable precautions to prevent unauthorised damage by fire to the area; and
- (b) must, on becoming aware of an outbreak of fire within the area, ensure that the outbreak is immediately reported to an employee of the Commission; and
- (c) must attempt to extinguish the fire or, if it cannot be extinguished, must attempt to prevent the fire from spreading.

**(2)** A person who fails to comply with a requirement of this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

**Division 4—Camping****Can camping in a forestry area be prohibited?**

**32. (1)** The Commission may, by displaying a notice to that effect in a conspicuous position in or in the immediate vicinity of a forestry area:

- (a) prohibit persons from camping in the area; or
- (b) permit persons to camp in the area but only in accordance with conditions specified in the notice.

**(2)** An authorised officer may give directions to a person who is camping or proposing to camp in the forestry area as to the number of persons who are allowed to camp and as to the location or removal of the camp. The directions must not be inconsistent with the conditions specified in the notice displayed in relation to that area.

- (3) A person who contravenes:
- (a) a prohibition or conditions specified in a notice displayed in accordance with subclause (1); or
  - (b) a direction given in accordance with subclause (2),
- is guilty of an offence.
- Maximum penalty: 20 penalty units.

**Can charges for camping in forestry areas be imposed?**

33. (1) The Commission:
- (a) may impose and collect charges for camping in a forestry area; and
  - (b) may display notices at or in the vicinity of a road that provides access to the area to the effect that persons are prohibited from camping in the area unless they have paid to the Commission or an authorised officer the requisite camping charge.
- (2) If a notice is displayed in accordance with subclause (1) in relation to a forestry area, a person must not camp in the area, unless the requisite camping charge has been paid to the Commission or to an authorised officer.
- Maximum penalty: 20 penalty units.
- (3) A court may, in addition to imposing a penalty for a contravention of this clause, make an order for the payment of the charge to which the contravention relates.

**PART 4—LICENCES, PERMITS AND FOREST LEASES**

**Division 1—Provisions applicable to all written authorities**

**Definition**

34. In this Division:
- “written authority” means any of the following:
- a timber licence;
  - a products licence;
  - a forest materials licence;
  - a contractor’s licence;
  - an operator’s licence;
  - a sawmill licence;
  - a clearing licence;
  - a grazing permit;
  - an occupation permit to occupy land for a purpose specified in section 31 (1A) of the Act;
  - a forest lease of land within a State forest;
  - a hunting permit in respect of land referred to in section 32B of the Act;
  - a special purposes permit in respect of land referred to in section 32F (2) of the Act.

**Where is an application for a written authority to be lodged?**

35. (1) Except as otherwise provided by this clause, an application for a written authority relating to Crown-timber land must be lodged at the office of the District Forester for the District in which the land is located.

However, an application for a special purposes permit to authorise the carrying out of an activity referred to in clause 59 (1) (d) may be lodged at the office of the Wood Technology and Forest Research Division of the Commission.

(2) An application for a sawmill licence must be made to the Commission.

(3) An application for a clearing licence to clear trees from Crown-timber land in the Western Division (other than Crown-timber land that is a State forest or timber reserve) must be lodged at the office of the Western Lands Commissioner.

(4) Applications for written authorities may also be lodged at any other office approved by the Commission.

#### **In what form must an application for a written authority be?**

36. (1) An application for a written authority must be made in the approved form, except as otherwise provided by this clause.

(2) An application for a clearing licence to clear trees from Crown-timber land in the Western Division (other than Crown-timber land that is a State forest or timber reserve) is not required to be in an approved form but must be made in writing.

(3) An application for a special purposes permit is not required to be in an approved form but must be in writing and must specify:

- (a) the kind of activity to be carried out under the permit; and
- (b) the place at which, and the period during which, it is to be carried out; and
- (c) if applicable, the number of participants and the route to be taken; and
- (d) such other particulars as the Commission considers necessary to determine the application.

(4) An approved form of an application containing directions for its completion must be completed in accordance with those directions.

(5) The Commission may also require an applicant for a written authority to provide it with such further particulars with respect to an application as it considers necessary to determine the application.

(6) The Commission may refuse an application for which a form of application is required if:

- (a) subclause (4) is not complied with; or
- (b) a requirement under subclause (5) is not complied with within a reasonable period; or
- (c) the application is not accompanied by any application fee required by this Regulation to accompany the application.

#### **In what cases do application fees have to be paid?**

37. (1) An application:

- (a) for a sawmill licence; or
  - (b) for a hunting permit in respect of land referred to in section 32B of the Act; or
  - (c) for a forest lease of land within a State forest,
- must be accompanied by the prescribed application fee.

(2) An application for an occupation permit to occupy land for a purpose specified in section 31 (1A) of the Act must be accompanied by the prescribed application fee, unless the Commission waives payment of that fee.

(3) If an application referred to in subclause (1) is refused or withdrawn, the Commission may nevertheless retain the application fee or such part of it as the Commission determines.

#### **When is the fee for a written authority to be paid?**

38. (1) The prescribed fee for a written authority must be paid before the authority is issued or granted.

(2) The Commission may, as a condition of issuing a grazing permit, require the payment of a fee for agistment, as assessed by the Commission.

#### **Can the Commission refuse to issue a written authority?**

39. (1) The Commission may refuse to issue or grant a written authority for any reason that it considers appropriate.

(2) In particular, the Commission may refuse an application for the issue, grant or renewal of a written authority, unless the applicant has deposited with it an amount of money as a guarantee for the payment of any amount (other than a penalty) that may become payable to the Crown or the Commission as a consequence of a contravention of any of the conditions or limitations of the authority.

#### **In what form is a written authority to be?**

40. (1) A written authority is to be in a form determined by the Commission, subject to this clause.

(2) A timber licence, products licence or forest materials licence must describe the locality from which the relevant timber, products or forest materials specified in the licence is or are authorised to be taken.

(3) A grazing permit must specify:

- (a) the number and kind of animals to be agisted on the land described in the permit; and
- (b) the weekly rate of agistment per head.

#### **Can a written authority be varied?**

41. (1) The Commission may, by notice in writing served on the holder of a licence, add conditions or limitations to, or vary or revoke any existing conditions or limitations of, the licence. However, any conditions or limitations so added or varied are void in so far as they are inconsistent with conditions or limitations of the licence imposed by the Act or by this Regulation.

(2) A notice served under this clause may be served personally or by post but is not effective until 1 month after the day of service.

**Can a written authority be transferred?**

42. (1) An application for the Commission's consent to the transfer of a written authority in accordance with section 34 of the Act must:

- (a) be made in the approved form; and
- (b) be lodged at the office of the District Forester for the District in which the land or sawmill to which the application relates is located; and
- (c) be accompanied by the prescribed consent fee; and
- (d) such stamp duty (if any) as is payable in relation to the transfer.

(2) The Commission may require the written authority concerned to be lodged with an application or at some later time.

(3) An application can be withdrawn at any time before the Commission notifies the transferor that the consent has been granted.

(4) If an application is withdrawn, the Commission may, at its discretion, retain all or part of the prescribed application fee towards meeting any costs incurred in dealing with the application.

**Note.** Section 34 of the Act provides that a licence, permit or forest lease is transferable only with the consent of the Commission.

**Can consent to a transfer of a written authority be refused?**

43. (1) The Commission may refuse consent to the transfer of a written authority for any reason that it considers appropriate.

(2) In particular, the Commission may refuse its consent to the transfer of a written authority in respect of which the transferor owes an amount to the Commission, unless the Commission is satisfied that arrangements have been made for the payment of that amount.

**Commission to record consent to transfer**

44. If the Commission consents to the transfer of a written authority, it must record the consent by an appropriate endorsement:

- (a) either on the authority or by attaching to it a document containing the endorsement; and
- (b) in the records of the Commission.

**Can a person obtain a duplicate written authority?**

45. (1) A person who claims that a written authority of which the person is the holder has been lost or destroyed may apply in writing to the Commission for a duplicate written authority. An application must be accompanied by the fee (if any) fixed by the Commission.

(2) On receipt of such an application, the Commission must, if satisfied:

- (a) that the written authority concerned has been lost or destroyed; and
  - (b) that the applicant is the person entitled to hold that authority,
- issue the applicant with a duplicate of that authority.

## Division 2—Timber, products and forest materials licences

### Licence to specify royalty

46. (1) A licence must contain particulars (current at the time of issue of the licence) of the royalty which must be paid, or of the rate or rates at which the royalty must be paid, in respect of the timber, products or forest materials authorised to be taken by the licence.

(2) In this clause, “licence” means a timber licence, products licence or forest materials licence.

## Division 3—Contractors’ and operators’ licences

### Persons who are not holders of contractors’ or operators’ licences not to be engaged or employed

47. (1) The holder of a timber licence, products licence or forest materials licence, or a party to a sale agreement, must ensure:

- (a) that every timber contractor engaged by the holder to cut, obtain or remove timber, products or forest materials for the purpose of the licence or agreement is the holder of a contractor’s licence; and
- (b) that every person (not being a timber contractor) engaged or employed to cut, obtain or remove timber, products or forest materials for that purpose is the holder of an operator’s licence.

(2) A timber contractor who is engaged by the holder of a timber licence, products licence or a forest materials licence, or a sales agreement, for the purpose of the licence or agreement:

- (a) must not:
  - (i) cut, obtain or remove timber, products or forest materials; or
  - (ii) authorise or direct any other person to cut, obtain or remove timber, products or forest materials,

for that purpose, unless the contractor is the holder of a contractor’s licence; and

- (b) must not engage or employ any other person to cut, obtain or remove timber, products or forest materials for that purpose, unless the other person is the holder of an operator’s licence.

(3) A person who (not being a timber contractor) is engaged or employed:

- (a) by the holder of a timber licence, products licence or forest materials licence; or
- (b) by a party to a sale agreement,

must not cut, obtain or remove timber, products or forest materials for the purpose of the licence or agreement, unless the person is the holder of an operator’s licence.

(4) A person who contravenes this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

(5) In this clause:

“employed” means employed under a contract of service;

“engaged” means engaged under a contract for the performance of services;

**“timber contractor”** means a person who operates as a contractor to cut, obtain or remove timber, products or forest materials and who engages or employs one or more other persons to perform the work involved.

#### **Commission may issue contractor’s or operator’s licence**

48. The Commission may issue a contractor’s licence or an operator’s licence for such period, and subject to such conditions and limitations, as it thinks fit.

#### **Can a contractor’s or operator’s licence be suspended or cancelled?**

49. The Commission:

- (a) may suspend the operation of a contractor’s licence or an operator’s licence if it believes on reasonable grounds that a condition or limitation of the licence has been contravened; and
- (b) may cancel the licence if, after giving the holder of the licence an opportunity to be heard, it finds the condition or limitation to have been contravened.

### **Division 4—Sawmill licences**

#### **What does a sawmill licence allow its holder to do?**

50. (1) A sawmill licence authorises the holder, subject to this Regulation and to the conditions and limitations of the licence, to work a mill for the sawing and treatment of timber only at the site specified in the licence.

(2) However, the Commission may, on the application in writing of the holder of the licence to vary the site of the mill specified in the licence, agree in writing to the relocation of that site.

(3) If the Commission has agreed to the relocation of the site of a sawmill to another site, that other site is taken to be the site of the mill specified in the sawmill licence.

#### **What does the holder of a sawmill licence have to do to renew the licence?**

51. (1) An application for the renewal of a sawmill licence must be made to the District Forester for the District in which the site of the sawmill is located.

(2) The prescribed fee for renewal of a sawmill licence must be paid before the licence is renewed.

(3) The Commission may refuse to renew a sawmill licence for any reason that it considers appropriate.

#### **Circumstances in which a non-licensed sawmill can be worked**

52. (1) For the purposes of section 29 (1) (b) of the Act, the prescribed circumstances are that, during the period for which the permission is in force, the person to whom permission is granted will use the timber sawn or treated at the mill concerned only for that person’s own use and not for sale.

(2) A person seeking permission for those purposes must apply to the Commission in writing.

(3) The prescribed fee for the permission must be paid before the permission is granted.

(4) The Commission may refuse to grant the permission for any reason that it considers appropriate.

**Note.** Section 29 of the Act prohibits a person from working a mill for sawing or treating timber except under the authority of a sawmill licence or in accordance with the written permission of the Commission.

### **Division 5—Clearing licences**

#### **Is a fee payable for a clearing licence?**

53. (1) The Commission may, as a condition of issuing a clearing licence to clear trees from Crown-timber land located in the Eastern and Central Division or from a State forest or a timber reserve located in the Western Division, require the payment of a fee to meet the costs of dealing with the application and to be incurred in supervising the operations to be undertaken under the authority of the licence.

(2) The fee is to be an amount in accordance with a scale prescribed by the Commission, but must not exceed \$600.

(3) The following persons are exempt from paying a fee for a clearing licence referred to in subclause (1):

- (a) a rural lands protection board in respect of a clearing licence relating to a travelling stock reserve, stock holding area or stock watering place that is under the board's control;
- (b) the trustee of a reserve in respect of a clearing licence relating to that reserve;
- (c) a person who applies for a clearing licence for the purpose only of clearing a fence line;
- (d) the owner of purchase-tenure land which is subject to a profit à prendre under section 25F (1) of the Act in respect of a clearing licence for the treatment of any forestry area on which, in the opinion of the Commission, operations under the profit à prendre have been completed;
- (e) a lessee under a lease of land from the Crown, where the licence is issued to enable timber to be cleared in order to allow improvements on the land to be erected in accordance with the conditions of the lease.

**Note.** Section 25F of the Act deals with the Crown's rights to timber and products on purchase-tenure land. The expressions "timber" and "products" are defined in section 4 of the Act.

#### **Does a clearing licence authorise further clearing operations?**

54. If:

- (a) the Commission has issued a clearing licence authorising the clearing of trees on Crown-timber lands located in the Eastern and Central Division or on a State forest or timber reserve located in the Western Division; and
- (b) further work is proposed to be carried out within 10 years from the date of issue of the licence for the purpose of keeping the land concerned cleared of trees,

the licence also authorises the holder to carry out that work, but only if the holder:

- (c) has, before starting the work, notified the Commission of the holder's intention of carrying out the work; and
- (d) carries out the work in accordance with any directions given by an authorised officer.

### **Division 6—Occupation permits**

#### **Can an occupation permit be suspended?**

55. If an occupation permit provides for the payment of rent for a specified period before the beginning of the period, the permit is taken to be suspended during any part of the period for which the rent remains unpaid.

### **Division 7—Forest leases**

#### **Applications to vary the conditions of a forest lease**

56. (1) A lessee under a forest lease who wishes to have a condition of the lease varied must apply in writing to the District Forester for the District in which the leased land is located.

(2) Such an application must be accompanied by the prescribed fee.

(3) The fee is not refundable to the applicant even if the application is refused.

#### **Can a forest lease be surrendered?**

57. The lessee under a forest lease may apply to the Commission in writing to surrender of the lease. The Commission must, on receipt of such an application, accept the surrender of the lease, unless the lessee is in arrears with the payment of rent or is otherwise in breach of the terms of the lease.

### **Division 8—Hunting permits**

#### **What conditions apply to a hunting permit?**

58. (1) It is a condition of a hunting permit that the holder of the permit must not use a means of hunting other than one specified in the permit.

(2) A person claiming to be the holder of a hunting permit must, on demand by a police officer or an employee of the Commission, produce the permit for inspection.

(3) A person who fails to comply with such a demand is guilty of an offence.

Maximum penalty: 20 penalty units.

### **Division 9—Special purposes permits**

#### **Activities prescribed for the purposes of section 32F of the Act**

59. (1) For the purposes of section 32F (1) of the Act, the following are prescribed activities:

- (a) a trial, rally, water sport or similar activity involving:

- (i) the demonstration of motor vehicles, motorised equipment or water craft of any kind; or
  - (ii) competition between participants in the use, control, performance or navigation of any such vehicles, equipment or craft;
- (b) a tour, trail-ride, safari or other similar activity conducted for reward (whether or not including camping) involving the use of:
- (i) a motor vehicle, aircraft or water craft of any kind; or
  - (ii) a cycle or a horse or beast of burden,
- and designed to make use of the environment or facilities of a State forest, timber reserve or flora reserve;
- (c) selling, letting out on hire or otherwise providing (whether or not for profit) goods, services or equipment to visitors to a State forest, timber reserve or flora reserve (except where the selling, letting out on hire or providing is done by a person in accordance with the conditions of a forest lease or an occupation permit);
- (d) a research project or a scientific or other investigation or survey;
- (e) taking photographs, or making motion pictures, videotape or sound recordings, for advertising or other commercial purposes;
- (f) carrying out market research.

(2) However, an activity is not prescribed for the purposes of section 32F of the Act if it is being carried out by a person who is for the time being exempted by the Commission from having to comply with section 32G of the Act in relation to it.

(3) The visit of a tourist vehicle (such as a bus) to a State forest, timber reserve or flora reserve is not an activity so prescribed unless the visit is promoted as featuring the environment or facilities of the forest or reserve.

**Note.** Section 32F of the Act enables a special purposes permit to be granted authorising its holder to engage in or conduct a "prescribed activity".

### **Can a special purposes permit be revoked?**

60. (1) The Commission may, having regard to the state of the weather, risk of fire or any other factor that it considers relevant, revoke a special purposes permit by giving notice to the holder of the permit that it is revoked.

(2) If a special purposes permit is revoked under this clause, the Commission may refund all or part of the fee paid for the permit.

## **PART 5—DEALINGS WITH TIMBER, PRODUCTS AND FOREST MATERIALS**

### **Division 1—Branding of timber**

#### **When must timber be branded?**

61. (1) A person who removes timber from land on which it was cut or obtained is guilty of an offence, unless the timber:

- (a) has been branded with the owner's brand and the letters "PP"; or
- (b) has been marked or identified in some other manner directed or approved by the Commission for the purposes of this clause.

Maximum penalty: 20 penalty units.

(2) This clause does not apply to the removal of timber from Crown-timber lands.

#### **Offence to misrepresent brands**

62. A person who:

- (a) applies the letter "P", or causes that letter to be applied, to timber cut or obtained on Crown-timber lands; or
- (b) represents timber to be, or not to be, timber cut or obtained on Crown-timber lands knowing that the timber has not or has been so cut or obtained,

is guilty of an offence.

Maximum penalty: 20 penalty units.

#### **Prescription of Commission brands**

63. (1) The brands comprising a broad arrow, and a broad arrow with the letters "FC" or "RP" (with or without numbers or other symbols), are prescribed as brands to be used by employees of the Commission and persons acting with the authority of the Commission, for the purposes of branding trees, stumps, logs, poles and prescribed timber.

(2) A person who uses, for the purpose of branding trees, stumps, logs, poles or prescribed timber:

- (a) a brand prescribed by subclause (1); or
- (b) any brand that consists partly of a brand so prescribed,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(3) Subclause (2) does not apply to a person referred to in subclause (1).

#### **Offence to make, use or possess branding instruments unlawfully**

64. (1) A person who, without the approval of the Commission:

- (a) uses or has possession of an instrument designed for use by employees of the Commission for the purpose of branding timber; or
- (b) makes, uses or has possession of an instrument purporting to be an instrument so designed,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) This clause does not apply to an employee of the Commission.

#### **Offence to deface brands on trees, stumps or prescribed timber**

65. A person who defaces, destroys or removes an identifying brand comprising a broad arrow (with or without letters, numerals or other symbols) branded or marked on timber (including a tree or tree stump) by or at the direction of an employee of the Commission, except when lawfully processing the timber, is guilty of an offence.

Maximum penalty: 20 penalty units.

## Division 2—Miscellaneous

### When must royalty or purchase price be paid?

66. (1) The holder of a timber licence, products licence or forest materials licence, or the purchaser of timber or products under a sale agreement, must pay to the Commission the amount of royalty due under the licence, or the purchase price payable under the agreement:

- (a) within the period specified in any account issued by the Commission which requires payment of that amount or purchase price; or
- (b) within such extended period as the Commission may allow.

(2) A person who, being the holder of a timber licence, products licence or forest materials licence, or the purchaser of timber or products under a sale agreement, fails to comply with subclause (1) is guilty of an offence.

Maximum penalty: 20 penalty units.

### Offence to remove certain timber without the Commission's permission

67. (1) A person who is entitled:

- (a) to take timber or products on or from Crown-timber land otherwise than under the authority of a timber licence or products licence; and
- (b) to use the timber or products for the purpose of building or fencing or any other purpose,

may remove the timber or products from that land, but only with the written permission of the Commission.

(2) A person referred to in subclause (1) who removes timber or products from Crown-timber land otherwise than in accordance with that subclause is guilty of an offence.

Maximum penalty: 20 penalty units.

(3) In giving permission for the removal of timber or products, the Commission may impose such conditions and limitations as it considers appropriate.

## PART 6—ENFORCEMENT

### Division 1—Offences

#### Offence not to comply with directions of an authorised officer

68. (1) A person to whom an authorised officer gives a direction:

- (a) relating to the taking of timber or products by another person on or from Crown-timber lands; or
- (b) relating to the taking of forest materials by another person from a State forest,

must comply with the direction.

(2) A person who, without lawful excuse, fails to comply with this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

**Offence to obstruct the Commission, authorised officers and others**

69. A person who, in a State forest, timber reserve or flora reserve, intentionally or recklessly obstructs or interferes with the lawful activities of:

- (a) the Commission, its employees or agents; or
- (b) an authorised officer; or
- (c) a person acting under the authority of a lease, licence, permit, delegation or other authority from the Commission,

is guilty of an offence.

Maximum penalty: 20 penalty units.

**Offence not to comply with requirement for certain information**

70. (1) An authorised officer may require a person who deals with timber, products or forest materials to provide the Commission with a statement in an approved form:

- (a) giving details of the quantity and description of timber, products or forest materials dealt with, or hewn, sawn or otherwise treated, or transported or consigned by road, rail or water by the person concerned during a specified period; and
- (b) disclosing the land (whether Crown-timber lands, other Crown lands or other lands) from which the timber, products or forest materials has or have been cut, obtained, removed or taken delivery of, and the place to which the timber, products or forest materials were consigned.

(2) A person to whom such a requirement is made must comply with the requirement within the period specified by the authorised officer who made the requirement.

(3) The person must also, if requested to do so by an authorised officer, support the statement with a declaration as to its correctness.

(4) A person who:

- (a) without lawful excuse, fails to comply with a requirement or request made under this clause; or
- (b) in purporting to comply with the requirement or request, makes a statement that is, to the person's knowledge, false or misleading in a material respect,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(5) In this clause, "deals with", in relation to timber, products or forest materials, includes dealing with them by cutting, obtaining, removing and taking delivery of them.

**Offence not to comply with requirement to provide forestry statistics**

71. (1) The Commission may, by notice in writing, require a person (whether a principal or agent) who is engaged in dealing in timber or products to provide it with a statement showing the quantity and description of timber or products that the person has dealt with during the period specified in the request.

(2) A person to whom such a requirement is made must comply with the requirement within the period specified by the Commission.

- (3) A person who:
- (a) without lawful excuse, fails to comply with a requirement made under this clause; or
  - (b) in purporting to comply with the requirement, makes a statement that is, to the person's knowledge, false or misleading in a material respect,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) In this clause, "**dealing**" includes buying, selling, milling and treating.

#### **Offence for a forest officer to trade in timber, products or forest materials**

72. An employee of the Commission who, except with the prior approval of the Commission:

- (a) trades as principal or agent in timber, products or forest materials; or
- (b) does any act under an interest held by the employee under a licence or agreement that authorises the taking, removal or sale of timber, products or forest materials,

is guilty of an offence.

Maximum penalty: 20 penalty units.

#### **Offence to contravene conditions and limitations of licences, permits and other authorities**

73. Any person who contravenes a condition or limitation of a licence, permit, forest lease or other authority issued or granted under the Act or this Regulation is guilty of an offence.

Maximum penalty: 20 penalty units.

### **Division 2—Provisions relating to penalty notices**

#### **Prescribed offences under section 46A of the Act**

74. For the purposes of section 46A (2) (b) of the Act, the following offences are prescribed:

- (a) offences under sections 27 (1), 29, 32, 32C (2), 32G, 38A (4), 38B (3) and 45 of the Act; and
- (b) all offences against this Regulation.

#### **Prescribed amount of penalty under section 46A of the Act**

75. For the purposes of section 46A (2) (c) of the Act, the prescribed amount of penalty for an offence dealt with under section 46A of the Act is \$100.

**Note.** Section 46A of the Act allows an authorised officer to serve a penalty notice on a person who is alleged to have committed a prescribed offence against the Act or the regulations.

## PART 7—MISCELLANEOUS

## Notes in text

76. Notes in the text of this Regulation are explanatory notes only and do not form part of this Regulation.

## Repeal and savings and transitional provisions

77. (1) The Forestry Regulation 1983 is repealed.

(2) Schedule 3 has effect.

## SCHEDULE 1—FEES

(Cl. 3 (1), 37, 38, 42, 48, 51, 52, 56)

Column 1	Column 2	Column 3
<i>Description of licence, permit, lease or other matter for which a fee is payable</i>	<i>Clause no.</i>	<i>Amount of fee</i>
Application for a sawmill licence	37	\$120
Application for an occupation permit where no on-site inspection is required	37	\$80
Application for an occupation permit where an on-site inspection is, in the opinion of the appropriate District Forester, required	37	\$200
Application for a forest lease where no on-site inspection is required	37	\$80
Application for a forest lease where an on-site inspection is, in the opinion of the appropriate District Forester, required	37	\$200
Timber licence	38	\$75 for a licence the duration of which is not more than 3 months \$110 for a licence the duration of which is more than 3 months but not more than 6 months \$140 for a licence the duration of which is more than 6 months but not more than 9 months

		\$160 for a licence the duration of which is more than 9 months but not more than 12 months
		For a licence the duration of which is more than 12 months—\$160 for each year, or part of a year, of the duration of the licence
Products licence	38	\$70 for a licence the duration of which is not more than 3 months
		\$90 for a licence the duration of which is more than 3 months but not more than 6 months
		\$105 for a licence the duration of which is more than 6 months but not more than 9 months
		\$120 for a licence the duration of which is more than 9 months but not more than 12 months
		For a licence the duration of which is more than 12 months—\$120 for each year, or part of a year, of the duration of the licence
Forest materials licence	38	\$70 for a licence the duration of which is not more than 3 months
		\$90 for a licence the duration of which is more than 3 months but not more than 6 months

			\$160 for a licence the duration of which is more than 9 months but not more than 12 months
			For a licence the duration of which is more than 12 months—\$160 for each year, or part of a year, of the duration of the licence
Products licence	38		\$70 for a licence the duration of which is not more than 3 months
			\$90 for a licence the duration of which is more than 3 months but not more than 6 months
			\$105 for a licence the duration of which is more than 6 months but not more than 9 months
			\$120 for a licence the duration of which is more than 9 months but not more than 12 months
			For a licence the duration of which is more than 12 months—\$120 for each year, or part of a year, of the duration of the licence
Forest materials licence	38		\$70 for a licence the duration of which is not more than 3 months
			\$90 for a licence the duration of which is more than 3 months but not more than 6 months

		\$105 for a licence the duration of which is more than 6 months but not more than 9 months
		\$120 for a licence the duration of which is more than 9 months but not more than 12 months
		For a licence the duration of which is more than 12 months—\$120 for each year, or part of a year, of the duration of the licence
Sawmill licence or any renewal of a sawmill licence	38, 51	\$150 for each year ending 31 December, or any part of a year, of the duration of the licence
Grazing permit	38	\$5 per month, or part of a month, of the duration of the permit
Hunting permit	38	\$15 per month, or part of a month, of the duration of the permit
Transfer of forest lease	42	\$50
Transfer of occupation permit	42	\$50
Transfer of sawmill licence	42	\$100
Transfer of timber licence, products licence or forest materials licence	42	\$100
Contractor's licence	48	\$20 for a licence the duration of which is not more than 3 months
		\$35 for a licence the duration of which is more than 3 months but not more than 6 months

		\$45 for a licence the duration of which is more than 6 months but not more than 9 months
		\$50 for a licence the duration of which is more than 9 months but not more than 12 months
Operator's licence	48	\$15 for a licence the duration of which is not more than 3 months
		\$20 for a licence the duration of which is more than 3 months but not more than 6 months
		\$25 for a licence the duration of which is more than 6 months but not more than 9 months
		\$30 for a licence the duration of which is more than 9 months but not more than 12 months
Permission to work a sawmill	52	\$75 for each year ending 31 December, or any part of a year, of the duration of the licence
Application to vary a condition of a forest lease where no on-site inspection is required	56	\$50
Application to vary a condition of a forest lease where an on-site inspection is, in the opinion of the appropriate District Forester, required	56	\$150



**Notices**

4. Any notice erected for the purpose of a provision of the repealed Regulation is, if it was being displayed immediately before the commencement of this Regulation, taken to be displayed under and for the purposes of any corresponding provision of this Regulation.

**Districts, Regions and Areas**

5. (1) A district or region designated by the Commission for the purposes of the repealed Regulation, as in force immediately before the commencement of this Regulation, is, until varied or replaced by the Commission, taken to be a district or region so designated for the purposes of this Regulation.

(2) Any act, matter or thing done or omitted to be done by a Regional Forester in relation to a Region before the repeal of the repealed Regulation is, in so far as the act, matter or thing could be done or omitted to be done by a General Manager of a Region under this Regulation, taken to have been done or omitted to be done by the General Manager of the Region.

(3) Any act, matter or thing begun, or in force, in relation to an area (as defined in clause 13 of the repealed Regulation) but not completed before the commencement of this Regulation may, if it could be done under this Regulation in relation to a forestry area, be completed under this Regulation in relation to the area.

**Written authorities**

6. A written authority issued or granted under a provision of the repealed Regulation, and having effect immediately before the commencement of this Regulation, continues to have effect as if it were issued or granted under the corresponding provision of this Regulation.

**Applications**

7. An application for a written authority made before the repeal of the repealed Regulation and not disposed of before the commencement of this Regulation is taken to be an application for the corresponding authority under this Regulation.

**Fees and royalties**

8. Any fee or royalty payable under the repealed Regulation but not paid before the commencement of this Regulation is recoverable in a court of competent jurisdiction as a debt due to the Commission.

**Records**

9. Any record kept for the purposes of a provision of the repealed Regulation is taken to be a record kept for the purposes of the corresponding provision (if any) of this Regulation.

**Authorisations under clause 81 of the repealed Regulation**

10. Any authorisation given by the Commission under clause 81 of the repealed Regulation, and having effect immediately before the commencement of this Regulation, is taken to be a written permission given by the Commission for the purposes of clause 67 of this Regulation.

**Other acts, matters and things**

11. (1) Any act, matter or thing done or omitted to be done by an authorised person under or for the purposes of a provision of the repealed Regulation, and having effect immediately before the commencement of this Regulation, is taken to have been done or omitted to be done by an authorised officer under or for the purposes of the corresponding provision (if any) of this Regulation.

(2) Any other act, matter or thing done or omitted to be done under or for the purposes of a provision of the repealed Regulation, and having effect immediately before the commencement of this Regulation, is taken to have been done or omitted to be done under or for the purposes of the corresponding provision (if any) of this Regulation.

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EXPLANATORY NOTE

The replacement Regulation supplements the provisions of the Forestry Act 1916. It deals with the following matters:

- (a) the establishment and organisation of State forests and flora reserves (Part 2);
- (b) the control and management of State forests, timber reserves and flora reserves, including controlling fires and camping (Part 3);
- (c) timber, products and forest materials licences, contractors' and operators' licences, sawmill licences, clearing licences, grazing permits, occupation permits, hunting permits, special purposes permits and forest leases (Part 4);
- (d) the branding of timber (Division 1 of Part 5);
- (e) miscellaneous matters, including royalty and other payments under the Act (Division 2 of Part 5);
- (f) offences and provisions relating to penalty notices issued under the Act (Part 6).

This Regulation is made under the Forestry Act 1916, including section 41 (the general regulation-making power) and is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.