

PAPUA.



TIMBER ORDINANCE, 1909-1917.^(a)

An Ordinance to Amend and Consolidate the Law relating to Indigenous Timber.

[L.S.]

J. H. P. MURRAY.

[RESERVED 2ND JUNE, 1909;
ASSENTED TO 31ST AUGUST, 1909.]^(b)

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as *The Timber Ordinance (Consolidated) of 1909.*^(a) Short title.

In its construction Crown land means land vested in His Majesty. Land which has been leased and land in respect of which an application for a lease has been approved by the Lieutenant-Governor in Council are not included in the term. Interpretation

PART I.—GENERAL.

2. If the native owners are willing to dispose of the timber growing on any land it shall be lawful for the Lieutenant-Governor to acquire the right of felling cutting removing and disposing of the timber upon such terms as may be agreed upon between him and the owners and thereupon it shall not be lawful for any person by purchase or other dealing with the owners of the land to acquire any interest in the timber either while it is standing or after it has been felled but the exclusive right of felling cutting Purchase of timber rights from natives.

(a) The *Timber Ordinance, 1909-1917*, comprises *The Timber Ordinance (Consolidated) of 1909* (No. 28 of 1909), as amended by the *Timber Ordinance, 1917* (No. 1 of 1918), and as so amended may be cited as the *Timber Ordinance, 1909-1917*. See Ordinance No. 1 of 1918, s. 1 (3).

(b) This is the date of assent to *The Timber Ordinance (Consolidated) of 1909*. The assent was notified in *Gazette* No. 43 of 6th October, 1909; the *Timber Ordinance, 1917*, was assented to on 6th December, 1917, and such assent was notified in *Gazette* No. 2 of 6th February, 1918.

removing and disposing of the timber shall vest in His Majesty and those claiming under him who for the purpose of felling cutting removing and disposing of the timber shall have the right of entering upon the land and of erecting such buildings saw-mills and machinery as may be necessary.

Inspectors
may be
appointed.

3. The Lieutenant-Governor may from time to time appoint persons to be called timber inspectors ; inspectors may be appointed for the Territory or for a district or districts or for part of a district.

Timber not to
be cut on
native lands
without the
consent of
the owners.

4. It shall not be lawful to cut timber on native lands without the consent of the native owners approved by a magistrate a timber inspector or an officer of the Department for Native Affairs.

Timber
permits.

5. No person shall cut timber growing or standing on on Crown or native-owned lands—

- (1) for the purpose of sale or export ;
- (2) for the purpose of using it in the construction of a building which is being erected by him under a contract or for the purpose of sale or lease ;
- (3) for any other commercial purpose except the supply of firewood for domestic use

unless he holds a timber permit. A timber permit may be issued by a resident magistrate or assistant resident magistrate or by any person authorized by the Lieutenant-Governor and shall remain in force for six or twelve months and may be renewed. A fee at the rate of Ten pounds a year shall be paid on issue and renewal.

Servants of the holder of a permit need not have a permit. Only one member of a partnership need have a permit.

Permits shall be to the effect of the Form A in the schedule hereto.

Protected
area.

6. The Lieutenant-Governor may by Proclamation in the *Gazette*—

Certain timber
may be
protected.

- (1) declare a described area of Crown land to be a protected area. No timber shall be cut in a protected area ;

- (2) declare that timber of a specified kind shall not be cut within a described area and thereupon no person shall cut timber of the kind specified within the described area.

The penalty for a breach of this section shall be a fine not exceeding Fifty pounds or in the alternative imprisonment with or without hard labour for a period of not more than six months.

7. It shall not be necessary for a native to have a permit but it shall not be lawful for any person without a permit to purchase timber from a native for any of the purposes enumerated in Section 5. Right of native to cut timber.

8. There shall be paid a royalty on all timber that is exported; the amount of the royalty may be fixed by regulation under this Ordinance but shall not in any case exceed Seven shillings and sixpence per thousand superficial feet. Royalty.

The royalty shall be paid by the person by whom or on whose behalf it is exported.

PART II.—TIMBER RESERVES AND LICENCES.

9. The Lieutenant-Governor may by Proclamation in the *Gazette* declare any Crown land to be a timber reserve but a timber reserve shall not extend within five miles of any shaft or other mining work on a proclaimed gold or mineral field. Timber as to which rights have been acquired by the Lieutenant-Governor under Section 2 of this Ordinance shall for the purpose of this Ordinance and the regulations thereunder be deemed to be comprised in a timber reserve. No timber shall be felled or cut upon a timber reserve except by a licensee under this Ordinance. The licensee must also be the holder of a timber permit. Crown land may be declared timber reserve.

10. The Lieutenant-Governor may grant licences in respect of any timber comprised in a timber reserve giving the licensee the exclusive right save as hereinafter mentioned to fell cut remove and dispose of the timber. A timber licensee shall also for the purpose of felling cutting and removing the timber have the right of entering upon Licence to cut timber in timber reserve.

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the land on which it is growing and of erecting such buildings saw-mills and machinery as may be necessary. Such licences are hereinafter called timber licences. The area over which a timber licence extends may be surveyed by direction of the Commissioner for Lands at the expense of the licensee.

Application
for licence.
Amended by
1 of 1918, s. 2.

11. Application for a timber licence shall be made to the Commissioner for Lands and shall be accompanied by a deposit of the whole or such portion of the first year's rent of the estimated area as may be prescribed which shall be returned if the application is refused by the Lieutenant-Governor. The area shall pending survey be taken to be as estimated by the Commissioner for Lands.

Rent.

Rent shall be paid by a timber licensee and shall be at the rate of Ten shillings for each hundred acres or fraction thereof included in the area over which the licence extends.

Rent shall be paid in advance at such time and in respect of such periods as may be prescribed by regulations. Such regulations may alter the periods and times in respect of and at which rent is made payable under any timber licences granted under this Ordinance prior to the making of such regulations and thereafter rent in respect of such last-mentioned licences shall be paid in accordance with such alteration.

Term and
area.

12. Timber licences shall be granted for a term of not less than one year and not more than twenty-five years. No licence shall extend over an area of more than seventy-five thousand acres.

A timber licence shall not be assignable without the consent of the Lieutenant-Governor.

Resumption
for public
purposes.

13. The Lieutenant-Governor may if any part of the area over which a licence extends is at any time required for a township site or for any other public purpose give notice thereof to the licensee specifying the part required and thereafter cause a notice to that effect to be published in the *Gazette* and after the expiration of six months from the publication of the notice the rights of the licensee shall cease as regards all timber standing or growing upon the part of the area so specified. The Lieutenant-Governor may also order a corresponding reduction in rent.

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14. Subject as hereinafter provided the applicant for a timber licence shall within one year from the date of the approval of his application or within such longer period as the Lieutenant-Governor may decide erect within the area over which the licence extends a substantial and fully-equipped saw-mill plant of power proportional to the area (the proportion to be fixed by regulation) and shall keep it in good working order during the whole term of the licence.

Saw-mill to be erected.

The saw-mill may with the consent of the Lieutenant-Governor be erected outside the area over which the licence extends and one saw-mill may with the consent of the Lieutenant-Governor be erected in respect of more than one area.

The consent may in either case be subject to such conditions as the Lieutenant-Governor may approve.

14A
15. The licensee shall have authority to construct railways and tramways on Crown lands over which the licence extends subject to the consent of the Lieutenant-Governor and such conditions as to the carriage of passengers and merchandise and otherwise as he may approve.

Exemption from obligation to erect
Railways and tramways.

16. Leases under *The Land Ordinance of 1906* and amending Ordinances may be granted by the Lieutenant-Governor of Crown land proclaimed as a timber reserve subject to the following conditions:—

Leases under *The Land Ordinance of 1906* of land comprised in a timber reserve

- (1) The applicant shall state in his application whether he intends to use the land for agricultural or pastoral purposes or both and if he intends to use it for both what proportion of the land he intends to devote to those purposes respectively;
- (2) the Land Board in dealing with the application may impose such conditions as may seem expedient as regards the preservation of timber and may also impose agricultural improvement conditions as to part of the land and pastoral improvement conditions as to the rest according to the applicant's intention as stated by him in his application. These conditions if approved by the Lieutenant-Governor shall be

inserted in the lease; on breach of any of them the land may be forfeited as provided in *The Land Ordinance of 1906*.

Lease under
*The Land
Ordinance of
1906* of land
held under
timber licence.

17. A lease under *The Land Ordinance of 1906* and amending Ordinances may be granted of Crown land over which a timber licence extends subject to such conditions as the Lieutenant-Governor may consider necessary for the protection of the rights of the licensee. The conditions shall be inserted in the lease and non-performance of any of them shall at the option of the Lieutenant-Governor to be exercised by notice in the *Gazette* cause a forfeiture of the lease.

Right of entry
to see if
conditions
performed.

18. Any resident magistrate or assistant resident magistrate and any person thereunto authorized by the Lieutenant-Governor may enter upon any area over which a licence extends and may inspect at any time any books and records kept by or on behalf of the licensee for the purpose of seeing if the conditions of this Ordinance and the regulations made thereunder are being complied with.

Such magistrate or person as aforesaid shall have the same powers with regard to the premises occupied by any exporter of timber and the books or records kept by him or on his behalf.

Any person who interferes with or obstructs a magistrate or person in the exercise of the powers hereby conferred is liable to a penalty not exceeding Fifty pounds or in the alternative six months' imprisonment with or without hard labour.

PART III.—SANDALWOOD AND RUBBER.

Sandalwood
trees
measuring less
than eighteen
inches in girth
not to be cut.

19. Subject to any regulations which may be made under the provisions of this Ordinance it shall be unlawful to cut any tree of the kind commonly called and known as sandalwood the trunk of which at the height of one foot from the surface of the ground measures less in circumference than eighteen inches.

Sandalwood to
be marked
stripped and
stacked within
three months
from date of
cutting.

20. Sandalwood which has been felled on Crown land or land owned by natives shall be stripped of bark and sapwood and stacked in heaps. Sandalwood which remains unstacked for more than three months from the date upon which it was cut is timber cut in contravention of this Ordinance.

Sandalwood which has been felled on Crown land or land owned by natives shall be legibly marked or branded with figures and letters not less than two inches in length showing the date on which it was felled and the initials of the person by whom or on whose behalf it was felled. The stump also if any be left shall be marked in the same way.

Timber to be marked.

Sandalwood which has been so felled as aforesaid and which is not so marked or branded is timber cut in contravention of this Ordinance.

Any person who fraudulently obliterates defaces or alters a brand or mark is liable to imprisonment with hard labour for a period not exceeding six months.

21. It shall not be lawful for any person—

- (1) to cut sandalwood or to collect or buy it from natives; or
- (2) to collect or buy tree-rubber from natives or to tap or cut any indigenous rubber-producing trees

Sandalwood and rubber getters to be licensed.

unless he is licensed as hereinafter provided.

This section shall not apply to natives. A person who is partly of Papuan descent and partly of descent other than Papuan shall be considered a native.

Servants of a licensee need not have a licence; only one member of a partnership need have a licence.

22. Any resident magistrate or assistant resident magistrate or other person duly authorized by the Lieutenant-Governor may issue a licence to the effect of the form in Schedule B to any person who wishes to cut sandalwood or to collect or buy it from natives and a licence to the effect of the form in Schedule C to any person who wishes to collect or buy tree-rubber from natives or to tap or cut indigenous rubber-producing trees. No other licence shall be necessary for the purposes aforesaid.

Licence, by whom granted.

No person shall have an absolute right to a licence and the magistrate or person authorized as aforesaid may refuse a licence to any person without assigning any reason.

23. The licence shall remain in force for six or twelve months and may be renewed. The fee payable on the issue or renewal of a licence shall be at the rate of Two pounds a year.

Penalty for cutting or buying sandalwood or getting rubber without a licence.

24. Except as hereinafter provided any person who cuts sandalwood or collects or buys sandalwood from a native or who collects or buys tree-rubber from a native or taps or cuts an indigenous rubber-producing tree without being licensed as aforesaid shall on summary conviction be liable to a penalty not exceeding Twenty pounds or to imprisonment for a period not exceeding three months.

Sandalwood and rubber trees may be cut without licence upon a person's own land.

25. Any person may without a licence cut sandalwood and tap or cut rubber-producing trees growing upon land lawfully occupied by him under the provisions of any Ordinance.

Penalty for destruction of rubber tree.

26. Any person who without reasonable excuse destroys an indigenous rubber-producing tree not being a tree which is growing on land lawfully occupied by him under the provisions of one of the Land Ordinances either wilfully or by careless or reckless cutting or tapping is liable to a penalty not exceeding Twenty pounds or in the alternative to imprisonment for a period not exceeding three months.

PART IV.—PENALTIES, ETC.

Penalty for breach of Ordinance.

27. Any person who acts in contravention of any of the provisions of this Ordinance or of any regulation or Proclamation thereunder shall where no penalty is expressly provided be liable to a fine of not more than One hundred pounds and any timber cut in contravention of this Ordinance may be seized and may after the expiration of one month from the publication of notice of seizure in the *Gazette* be sold by the Crown and the proceeds of the sale shall be paid into the public revenue.

Seizure of timber.

Owner may reclaim timber that has been seized.

The owner of timber so seized as aforesaid may at any time within the month reclaim it upon payment to the officer who seized it or to the resident magistrate of the Division of all expenses which were incurred in connection therewith and an additional sum of Ten pounds. Timber seized by the Crown shall be marked with a broad arrow.

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Any person who wilfully and without reasonable excuse removes timber which has been seized by the Crown shall be liable to a penalty of twice the value of the timber and in addition to a penalty not exceeding Five pounds; and any person who wilfully obliterates defaces or alters the mark shall be liable to a penalty of not more than Twenty pounds and not less than Five pounds and in addition may be imprisoned with or without hard labour for a period not exceeding two months.

Penalty for removing timber that has been seized.

28. Nothing in this Ordinance shall affect the validity of any permit or licence already issued.

Existing licences not invalidated.

^{28A}**29.** The Lieutenant-Governor may make regulations for the purpose of carrying out matters of detail under this Ordinance and in particular—

Regulations.

- (1) for fixing the amount of royalty to be paid;
- (2) for fixing the sizes at which trees may be cut either on a timber reserve or elsewhere;
- (3) for prescribing the books and records to be kept and the returns to be made by timber licensees and saw-mill owners by exporters of timber and by contractors and others taking delivery of timber;
- (4) for providing for declarations as to the quantity and description of timber obtained hewn sawn or otherwise treated;
- (5) for compelling licensees to take from all trees cut down all the timber fit for use and for preventing unnecessary injury to or destruction of timber generally;
- (6) for the plantation of trees;
- (7) for the prevention of fires;
- (8) prohibiting trespassing in timber reserves and regulating access thereto and protecting roads in timber reserves;
- (9) for compensation for damage to native buildings or gardens;
- (10) for preventing the obstruction of waterways;
- (11) for regulating the conformation of areas over which a licence shall be granted and the manner in which they shall be surveyed.

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On publication in the *Gazette* the regulations shall have the force of law. They may provide penalties for breach not exceeding in any case Twenty pounds or imprisonment with hard labour for six months.

Recovery of penalties.

30. Penalties under the Ordinance or the regulations may be recovered before a court of summary jurisdiction.

Repeal.

31. The enactments specified in Schedule D are repealed.

SCHEDULES.

Schedule A.

SCHEDULE A.

PERMIT TO CUT TIMBER.

The Timber Ordinance (Consolidated) of 1909.

Place : _____ Date _____, 19 .

A.B., of _____, is permitted to cut timber for _____ from date

Signed :

Date :

This permit may be renewed.

Schedule B.

SCHEDULE B.

SANDALWOOD LICENCE.

The Timber Ordinance (Consolidated) of 1909.

Place : _____ Date : _____, 19 .

A.B., of _____, is licensed to cut sandalwood and to collect and buy sandalwood from natives for _____ from the above date.

Signed :

This licence may be renewed.

Schedule C.

SCHEDULE C.

RUBBER LICENCE.

The Timber Ordinance (Consolidated) of 1909.

Place : _____ Date : _____, 19 .

A.B., of _____, is licensed to collect rubber and to tap and cut indigenous rubber-producing trees for _____ from the above date.

Signed :

This licence may be renewed.

Schedule D.

SCHEDULE D.

The Indigenous Timber Ordinance of 1892.

The Indigenous Timber Ordinance of 1903.

The Timber Ordinance of 1907.

The Sandalwood and Rubber Ordinance of 1907.

The Timber Ordinance of 1908.