

FORESTRY ORDINANCE 1936-1937.⁽¹⁾

An Ordinance to provide for the Conservancy and Management of Forests and for other purposes.

BE it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1935*, as follows:—

1. This Ordinance may be cited as the *Forestry Ordinance 1936-1937*.⁽¹⁾

Short title.
Amended by
No. 3 of 1934,
s. 50.

2. This Ordinance shall commence on a date to be fixed by the Administrator by notice in the *New Guinea Gazette*.⁽¹⁾

Commencement.

3.—(1.) The Ordinances set out in the Schedule to this Ordinance are repealed.

Repeal.

(2.) Notwithstanding the repeal effected by this section, a permit or a licence issued or granted under the *Timber Ordinance 1922-1931* shall continue in force for the period comprising the residue of the term for which it was issued or granted.

4. In this Ordinance, unless the contrary intention appears—

Definitions.

“Administration land” includes all lands the right, title, estate, interest, control, or prerogatives of the Government in, over, or to which passed to the Commonwealth in the terms of the *Laws Repeal and Adopting Ordinance 1921-1936*,⁽²⁾ and all lands vested in the Administration, and all native-owned lands declared under section nine of this Ordinance to be “Administration land” for the purposes of this Ordinance, but does not include lands which have been granted in fee simple or lawfully con-

(1) The *Forestry Ordinance 1936-1937* comprises the *Forestry Ordinance 1936*, as amended by the other Ordinance referred to in the following Table:—

ORDINANCES OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of assent by Administrator.	Date of reservation by Administrator.	Date on which assent of Gov.-Gen. in Council published in <i>N.G. Gaz.</i>	Date on which came into operation.
<i>Forestry Ordinance 1936</i> (No. 46 of 1936)	—	5.8.1936	30.9.1936	15.9.1937 (<i>N.G. Gaz.</i> of 15.9.1937)
<i>Forestry Ordinance 1937</i> (No. 30 of 1937)	25.8.1937	—	—	15.9.1937 (Sec. 2, <i>Forestry Ordinance 1937</i>)

(2) Now the *Laws Repeal and Adopting Ordinance 1921-1939*.

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tracted to be so granted or lands dedicated to any public purpose;

“firewood” includes parts of trees of all species made up into bundles, billets, or loads, or cut up in the manner used to cut wood for burning, and refuse wood generally;

“Forest Inspector” means a Forest Inspector appointed under this Ordinance;

“Forest Officer” means a Forest Officer appointed under this Ordinance;

“forest produce” means growing or dead trees, whether standing or fallen, and any part thereof and any product thereof, and any other vegetable growth, whether alive or dead; and in any Territory forest or any timber reserve includes stone, gravel, limestone, lime, salt, sand, loam, and brick earth, but does not include oil or any gold or silver or metal or mineral;

“licence” means a licence granted under this Ordinance;

“permit” means a permit granted under this Ordinance;

“Regulations” means regulations made under this Ordinance;

“reserved trees” means trees declared under this Ordinance to be reserved trees;

“Secretary” means the Secretary for Lands, Surveys, Mines, and Forests;

“Territory forest” means land dedicated under this Ordinance as a Territory forest;

“this Ordinance” includes any regulations made under this Ordinance;

“timber” includes fallen trees, felled trees, and all wood whether sawn, hewn, split, or otherwise fashioned;

“timber reserve” means land declared under this Ordinance to be a timber reserve;

“tree” includes trees, shrubs, bushes, seedlings, saplings, and re-shoots of all kinds and of all ages.

Preservation of
rights under
Ordinances.

5. Except as otherwise expressly provided in this Ordinance, nothing in this Ordinance shall affect the rights of any person under the *Land Ordinance* 1922-1935,⁽³⁾ the *Mining Ordinance* 1928-1936,⁽⁴⁾ the *Miners' Homestead Leases Ordinance* 1928-1933,⁽⁵⁾ the *Mineral Oil and Coal Ordinance* 1928-1929,⁽⁶⁾ and the *Petroleum Ordinance* 1936.⁽⁷⁾

(3) Now the *Land Ordinance* 1922-1941.

(4) Now the *Mining Ordinance* 1928-1940.

(5) Now the *Miners' Homestead Leases Ordinance* 1928-1938.

(6) Repealed and replaced by the *Petroleum Ordinance* 1936.

(7) Repealed and replaced by the *Petroleum (Prospecting and Mining) Ordinance* 1938-1939.

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6.—(1.) The Secretary shall, under the Administrator, be charged with the administration of this Ordinance. Powers of Secretary.

(2.) The Secretary shall, in addition to any powers conferred upon him by this Ordinance, have throughout the Territory the powers conferred by this Ordinance upon a Forest Officer and a Forest Inspector.

7. Subject to the *Public Service Ordinance 1922-1936*,⁽⁸⁾ the Governor-General may appoint any person who has obtained the degree or diploma of a forest school recognised by the Governor-General, to be a Forest Officer. Appointment of Forest Officer.

8. Subject to the provisions of the *Public Service Ordinance 1922-1936*,⁽⁸⁾ the Administrator may appoint an officer of the Public Service of the Territory or a European member of the New Guinea Police Force, to be a Forest Inspector. Appointment of Forest Inspector.

9.—(1.) If the native owners are willing to dispose of the timber growing on any land, the Administrator may acquire the right of felling, cutting, removing, and disposing of the timber upon such terms as may be agreed upon between him and the native owners; and thereupon no person, by purchase or other dealing with the native owners of the land, shall, except as in this Ordinance provided, acquire any interest in the timber, either while it is standing or after it has been felled, but the exclusive right of felling, cutting, removing, and disposing of the timber shall vest in the Administrator and those claiming under him, who, for the purpose of felling, cutting, removing, and disposing of the timber, shall, subject to this Ordinance, have the right of entering upon the land and of erecting such buildings, sawmills, and machinery as may be necessary. Purchase of timber rights from natives.

(2.) The Administrator may, by notice⁽⁹⁾ in the *New Guinea Gazette*, declare any land as to which timber rights have been acquired under the last preceding sub-section to be Administration land for the purposes of this Ordinance.

10. The Administrator in Council may, by proclamation⁽¹⁰⁾ in the *New Guinea Gazette*, dedicate as a Territory forest any Administration land. Dedication of Territory forests.

11. The Administrator in Council may, by proclamation⁽¹¹⁾ in the *New Guinea Gazette*, declare any Administration land to be a timber reserve. Declaration of timber reserve.

(8) Now the *Public Service Ordinance 1922-1940*.

(9) A Table containing particulars of notices made pursuant to Section 9(2) is printed on p. 2195 and the notices are printed immediately after the Table.

(10) No proclamation has been published in *N.G. Gaz.*

(11) No proclamation has been published in *N.G. Gaz.*

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Declaration of reserved trees.

12. The Administrator may, by notice⁽¹²⁾ in the *New Guinea Gazette*, declare any trees or any species or classes of trees to be reserved trees.

Leases etc. within Territory forests.

13. A lease, licence, or authority to occupy land within a Territory forest shall not be granted, extended, or renewed under the *Land Ordinance* 1922-1935,⁽³⁾ unless by direction of the Administrator in Council and subject to such conditions as are prescribed.

Permits and licences.

14.—(1.) Subject to this Ordinance, the Administrator may grant permits and licences to take and contract for the sale of forest produce on Administration land within a Territory forest or a timber reserve or on other Administration land.

(2.) Licences may be granted by the Secretary or by an officer authorized by him by notice⁽¹³⁾ in the *New Guinea Gazette*.

Form and effect of permit.

15.—(1.) A permit shall be in the prescribed form, and shall, subject to this Ordinance and the covenants, terms, and conditions expressed in the permit, confer on the holder the exclusive right to take and remove any forest produce therein specified on and from that portion of a Territory forest, a timber reserve, or other Administration land therein defined.

(2.) A permit shall, subject to this Ordinance and the covenants, terms, and conditions expressed in the permit, confer on the holder the right—

- (a) to occupy the land therein defined as the site of a saw-mill or of other buildings, as a timber depot, for growing fodder for cattle used in the exercise of the rights conferred by the permit, and for any other purpose approved by the Administrator;
- (b) to work a mill for the sawing and the treatment of timber;
- (c) to make roads and construct and work tramways, and, with the approval of the Administrator, to extend such roads and tramways upon Administration land beyond the boundaries of the permit area; and
- (d) to graze and water cattle, subject to existing rights.

(3.) The term of a permit shall not exceed ten years, but may be renewed.

(3) Now the *Land Ordinance* 1922-1941.

(12) No notice has been published in *N.G. Gaz.*

(13) Pursuant to Section 14, the Secretary, by notice dated 11.10.1937 and published in *N.G. Gaz.* of 15.10.1937, authorised (in addition to one individual specified by name) the persons for the time being holding the offices of District Officer administering the Districts of Morobe, Madang, Sepik, Manus, New Ireland and Kieta, and the persons for the time being holding the offices of Assistant District Officer at Lae, Aitape, Namatanai, Buka Passage, Gasmata, Talasea and Kokopo, to grant licences. In addition, by two subsequent notices dated 15.6.1938 and published in *N.G. Gaz.* of 30.6.1938 and dated 5.4.1939 and published in *N.G. Gaz.* of 15.4.1939 respectively, three other persons were authorised individually by name to grant licences.

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(4.) Every permit shall be granted subject to the payment by the holder of the prescribed royalties for all forest produce taken thereunder.

(5.) A permit shall be granted subject to such additional covenants, terms, and conditions as the Administrator thinks fit in any particular case and are expressed in the permit.

Sub-section (5) added by No. 30 of 1937, s. 3.

16. The royalty on timber and other forest produce shall be assessed in the manner prescribed.

Assessment of royalty.

17.—(1.) A licence shall be in the prescribed form, and shall, subject to the covenants, terms, and conditions expressed in the licence, authorize the licensee, in common with other licensees, to take and remove forest produce, therein specified, on Administration land within a Territory forest or a timber reserve or on other Administration land.

Form and effect of licence.

(2.) A licence may be granted subject to the payment of the prescribed fees, or the prescribed royalties for all forest produce taken thereunder.

(3.) A licence shall be granted subject to such additional covenants, terms, and conditions as the Administrator thinks fit in any particular case and are expressed in the licence.

Sub-section (3) added by No. 30 of 1937, s. 4.

18. A permit or a licence shall not be transferred except with the consent in writing of the Administrator.

Permit or licence not to be transferred without consent.

19.—(1.) All forest produce obtained under the authority of a permit or a licence shall be removed from the Territory forest, the timber reserve, or the other Administration land therein defined, during the currency of the permit or licence, unless the time for removal is extended by the Administrator on such conditions, if any, as he may think fit.

Forest produce to be removed during currency of permit or licence.

(2.) Any forest produce not so removed from a Territory forest, a timber reserve, or other Administration land shall be forfeited to the Administration, and may be disposed of by the Administrator.

20. Every permit and every licence shall be liable to forfeiture for default in payment of the fees or royalties payable thereunder, or on breach or non-observance by the holder of any of the provisions of this Ordinance relating thereto, or of any of the covenants, terms, or conditions expressed therein.

Forfeiture.

21.—(1.) 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 *New Guinea Gazette*, be sold by the Administration; and the proceeds of the sale shall be paid into the Public Account of the Territory.

Power to seize and sell timber.

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(2.) Timber seized by the Administration under this Ordinance shall be marked with a prescribed mark.

(3.) Any person who wilfully and without reasonable excuse or authority removes timber which has been seized by the Administration under this Ordinance shall be guilty of an offence.

Offences.

22. Any person who—

- (a) without lawful authority, fells, cuts, injures, destroys, obtains, or removes, in, on, or from, a Territory forest, a timber reserve, or other Administration land, any forest produce;
- (b) lights or kindles a fire within the boundaries of a Territory forest or timber reserve and leaves the fire without taking due precaution against its spreading or causing injury;
- (c) counterfeits upon, or unlawfully affixes to, any forest produce a mark used by Forest Officers or Forest Inspectors to indicate that such produce is the property of the Administration, or that it may be lawfully cut or removed, or that it has been inspected and passed as suitable for export;
- (d) without due authority, makes or causes to be made, or uses or causes to be used, or has in his possession, a brand or stamp which resembles, or purports to be, a brand or stamp such as is usually used by Forest Officers or Forest Inspectors;
- (e) unlawfully alters, obliterates, defaces, pulls up, removes or destroys any boundary mark, or any stamp, mark, sign, licence, permit, or order used or issued by the Administrator or the Secretary or any Forest Officer or any Forest Inspector;
- (f) unlawfully cuts, breaks, throws down, or in any way destroys or damages any building, fence, or gate, in or enclosing any Territory forest, or unlawfully cuts through or breaks down or otherwise destroys the bank, dam, or wall of any part of any natural or artificial reservoir or pond of water within or partly within and adjoining any Territory forest;
- (g) exercises compulsion upon any Forest Officer or any Forest Inspector by violence or threats, or corrupts or attempts to corrupt, by promises, offers, gifts, or presents, any Forest Officer or any Forest Inspector, for the purpose of obtaining a favourable report, recommendation, certificate, valuation, or royalty assessment, whether in respect of any place, employment, sale, auction, permit, licence, lease, authority,

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or any other benefit whatsoever, or for the purpose of obtaining abstention on the part of any Forest Officer or any Forest Inspector from any act which forms part of his duties, or refuses or fails to comply with any lawful direction of a Forest Officer or a Forest Inspector;

- (h) knowingly furnishes the Secretary, a Forest Officer, or a Forest Inspector with a false or incorrect statement of any forest produce felled, cut, split, sawn, or removed by him or by any agent or employee of his on which fees, royalties, or charges are payable to the Administration; or
- (i) knowingly makes, or causes to be made, in any book, return, declaration, or statement required by the Regulations to be kept or made, any entry or writing which is false in any material particular,

shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for twelve months.

23. Any person found within any Territory forest or any timber reserve, or in the vicinity thereof, and having in his possession any forest produce, who, on being thereunto required by a Forest Officer or a Forest Inspector, refuses or fails to give an account to the satisfaction of the officer of the manner in which he became possessed of the forest produce, shall be guilty of an offence and shall be liable to a penalty of not exceeding Ten pounds, and the forest produce shall be forfeited.

Unlawful possession of forest produce.

24.—(1.) The Secretary, and any Forest Officer or any Forest Inspector, may enter upon the land held or occupied by virtue of a permit, licence, or other authority under this Ordinance or under any Ordinance repealed by this Ordinance, for the purpose of making inspections, carrying out sylvicultural operations, or other forest work, and preventing or suppressing fires.

Power to enter and inspect land.

(2.) Any person who obstructs or hinders the Secretary or any Forest Officer or any Forest Inspector in the exercise of his powers under this section shall be guilty of an offence.

25. Any person who commits an offence against, or contravenes any provision of, this Ordinance, shall—

General penalty.

- (a) where no other penalty is provided, be liable in respect of the offence or contravention, on summary conviction, to a penalty of not exceeding Fifty pounds or imprisonment for not exceeding six months; and
- (b) in any case, on conviction, be liable for any loss or dam-

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age caused by the offence or contravention in addition to the penalty for the offence or contravention, and such loss or damage may be awarded by the court in fixing the penalty, and may be recovered in the same manner as a pecuniary penalty.

Receiving forest produce unlawfully obtained.

26. Any person who receives any forest produce knowing it to have been unlawfully obtained, shall be guilty of an offence.

Seizure and sale of forest produce when offence believed to have been committed.

27.—(1.) Where there is reason to believe that an offence has been committed in respect of any forest produce, the forest produce may be seized by a Forest Officer or a Forest Inspector and stamped or marked with a distinctive mark, and shall thereupon become and remain the property of the Administration until the title of a lawful owner is established.

(2.) Any forest produce seized under this section may be sold or otherwise disposed of as the Secretary may direct, and the proceeds of any such sale shall be paid into the Public Account of the Territory, subject to the claim to the proceeds of any lawful owner of the forest produce.

Forest produce deemed to be property of Administration until contrary proved.

28. When in any proceeding under this Ordinance a question arises as to whether any forest produce is the property of the Administration, the forest produce shall be presumed to be the property of the Administration until the contrary is proved.

Forest Officer or Forest Inspector may conduct prosecutions.

29.—(1.) Any Forest Officer or any Forest Inspector may lay informations and conduct prosecutions for offences under this Ordinance, and the Secretary may sue for and recover fees, royalties, and charges due and payable under this Ordinance.

(2.) In any prosecution or proceeding under this Ordinance, no proof shall be required of the appointment of the Secretary or any Forest Officer or any Forest Inspector or of any authority, whether general or special, of such officer to prosecute or to take any proceedings or to sue.

Unbranded timber liable to seizure.

30.—(1.) A Forest Officer or a Forest Inspector may, pending inquiry, seize and detain unbranded timber in course of conveyance without a permit in writing from a Forest Officer or a Forest Inspector, and no damages shall be recoverable with regard to such seizure or detention should it afterwards appear that such timber has not been removed in contravention of the provisions of this Ordinance.

(2.) All unbranded timber in course of conveyance without a permit, seized and detained under the last preceding sub-section, shall be deemed to be the property of the Administration in the absence of proof to be furnished by the person in charge of such timber that it is private property.

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31. All forest produce cut or obtained upon which any royalties, dues, or charges are payable under this Ordinance, shall, until the payment thereof, remain the property of the Administration, and may be seized and detained or removed by any Forest Officer or any Forest Inspector until such royalties, dues, and charges have been paid, and, in default of payment within twenty days of seizure, may be disposed of.

Certain forest produce to be property of Administration until royalty etc. paid.

32. On the complaint on oath of any Forest Officer or any Forest Inspector stating his belief that forest produce liable to the payment of any royalties, dues, or charges, is secreted in any place other than a Territory forest or a timber reserve, any Justice of the Peace may issue a warrant to search for the forest produce.

Search warrant for forest produce.

33. No matter or thing done by the Secretary or any Forest Officer or any Forest Inspector *bona fide* in the exercise of his powers or in the performance of his duties under this Ordinance shall subject such officer to any personal liability in respect thereof.

Protection of officers.

34.—(1.) The Administrator may, by notice⁽¹⁴⁾ in the *New Guinea Gazette*, declare that any species or classes of timber specified in the notice shall not be exported until after such timber has been inspected and the permission of the Administrator to the exportation thereof has been obtained.

Export of certain timber prohibited except under permission.

(2.) Any person who exports any such timber which does not bear a mark or brand, to be affixed by a Forest Officer or a Forest Inspector, indicating that such permission has been given, shall be liable to a fine of Thirty shillings per hundred superficial feet of timber exported.

35. The Administrator in Council may make regulations,⁽¹⁵⁾ not inconsistent with this Ordinance, prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and in particular prescribing matters providing for and in relation to—

Power to make regulations.

- (a) the management of Territory forests, timber reserves, and forests on Administration land, and the regulation of the cutting, removal, hewing, and sawing of timber, and the cutting, hewing, stripping, tapping, and removal of other forest produce;
- (b) the forms of permits, licences, and other authorities under this Ordinance, and regulating the manner of applying for, granting, issuing, registering, and transferring them and the covenants, terms, and conditions under which they shall be held, determined, cancelled, or withdrawn;

Paragraph (b) amended by No. 30 of 1937, s. 5.

(14) No notice has been published in *N.G. Gaz.*

(15) See the *Forestry Regulations*, printed on p. 2179.

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- (c) the procedure for the sale by auction or by tender of forest produce, and enabling upset prices or minimum royalties to be fixed;
- (d) the assessing of royalty on forest produce;
- (e) the manner of doing or performing anything by this Ordinance required to be done or performed;
- (f) the fees or deposits to be paid with any application or tender;
- (g) the rate or amount of rents, fees, royalties, dues, and charges payable in respect of permits, licences, and other authorities under this Ordinance and fees to be paid to the Administration in respect of services rendered by Forest Officers or Forest Inspectors;
- (h) the fees, if any, which shall be payable in respect of any matter;
- (i) regulating the exercise of the powers conferred by permits, licences, and other authorities under this Ordinance, including the protection and preservation of trees, and the cutting, marking, and removing of timber and other forest produce;
- (j) the making of declarations or statements in writing as to the quantity and description of forest produce obtained, held, removed, hewn, sawn, or otherwise treated, consigned, or exported, and as to the place where any forest produce was obtained and as to the place to which it was, or is intended to be, consigned;
- (k) the inspecting of forest produce for export and for local use, and the forms and certificates to be used, and the brands or marks to be used;
- (l) rules for the grading of timber for export and for local use;
- (m) regulating or prohibiting the export of species or classes of timber or other forest produce;
- (n) prohibiting the cutting of reserved trees;
- (o) the kinds, sizes, and quantities of any forest produce which may be cut or removed in or from any Territory forest, timber reserve, or other Administration land, and prohibiting the removal of any forest produce until branded by a Forest Officer or a Forest Inspector, if so prescribed;
- (p) the mode in which any forest produce is to be branded or marked, and the mode in which such brands or marks shall be registered;

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- (pa) the establishment of depots where timber and other forest produce may be deposited and stored, the charges for depositing and storing timber and other forest produce in such depots, the regulation and management of such depots, and the detention of timber or other forest produce in such depots until the royalty or other charges on the timber or other forest produce are paid;
- (q) requiring the holder of any permit, licence, or other authority under this Ordinance, or of any permit or licence issued or granted under any Ordinance repealed by this Ordinance, to produce for inspection by the Secretary, or any Forest Officer or any Forest Inspector, all books of account, returns, and other documents to enable the royalties payable to be ascertained;
- (r) regulating or prohibiting the burning off of forest produce and the lighting and use of fires within any Territory forest or timber reserve or within any specified portion thereof;
- (s) regulating traffic through Territory forests and timber reserves, and the prevention of trespass in any portion of a Territory forest or a timber reserve;
- (t) enabling Forest Officers or Forest Inspectors to give directions regarding the road or track in or by which any forest produce may be removed or taken through any part of a Territory forest, a timber reserve, or other Administration land, and the manner of such removal or taking, and requiring such directions to be observed;
- (u) reserving any area of a Territory forest, a timber reserve, or other Administration land from the operation of any permit, licence, or other authority under this Ordinance;
- (v) reserving from the operation of any permit, licence, or other authority under this Ordinance any area of a Territory forest, a timber reserve, or other Administration land required for the agistment of draught cattle used by any person holding a permit, licence, or other authority under this Ordinance;
- (w) prohibiting, except under permit, the depasturing of cattle within and regulating the passage of cattle through a Territory forest;
- (x) authorizing Forest Officers or Forest Inspectors to stop, detain, or seize any forest produce within the bow-

Paragraph
(pa) inserted
by No. 30 of
1937, s. 5.

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- daries of any Territory forest, timber reserve, or other Administration land, or on any public highway within or abutting on any Territory forest, timber reserve, or other Administration land;
- (y) requiring the holders of permits, licences, and other authorities under this Ordinance to register in the Secretary's office and retain the use of a brand whereby timber cut in or proceeding from their holdings may be distinguished from any other timber;
 - (z) the registration of sawmills and other factories or industrial plants dependent on supplies of forest produce;
 - (ba) regulating the purchase of forest produce from natives by persons other than natives;
 - (bb) the form of authority to purchase forest produce from the owners of native-owned land, and the conditions subject to which such authority may be granted;
 - (bc) the protection of forest produce on Administration land and native-owned land, and regulating the cutting, hewing, sawing, or other methods of conversion of such forest produce; and
 - (bd) the imposition of penalties not exceeding Fifty pounds for breaches of regulations made under this section.

Regulations
may be general
or restricted
in scope.

36. Regulations made under this Ordinance may be of general application or may be limited to a particular area or restricted in their operation to Territory forests, timber reserves, Administration land, or native-owned land, or to certain species of timber or other forest produce.

THE SCHEDULE.

The *Timber Ordinance* 1922.
The *Timber Ordinance* (No. 2) 1922.
The *Timber Ordinance* 1926.
The *Timber Ordinance* 1931.
