

# Samoa Consolidated Legislation

---

## Forests Act 1967

### LAWS OF WESTERN SAMOA

#### FORESTS

#### ANALYSIS

Title

#### PART I PRELIMINARY

1. Short title
2. Interpretation

#### PART II ADMINISTRATION

3. Forestry Division
4. Chief Forest Officer and other officers and employees
5. Status of Chief Forest Officer and other officers
6. Officers not eligible to hold license, etc., over forest land
7. Protection of forest officers
8. Functions of the Forestry Division
9. Powers of the Minister
10. Delegation of powers
11. Receipts and payments
12. Working plans

#### PART III STATE FOREST LAND

13. Land purchased or taken under section 9 to be State forest land
14. Land may be set apart as State forest land
15. Status of land set apart as state forest land
16. Revocation or alteration of status of State forest land
17. Errors of description in proclamations may be amended
18. Exchange of land
19. Fencing or demarcation of State forest land
20. State forest land not to be dealt with except pursuant to this Act
21. Maps of forest land to be prepared and recorded

**PART IV  
LICENCES, LEASES, PERMITS, ETC.**

22. Power to grant licenses, leases, permits, etc.
23. Improvements
24. Licenses
25. Leases
26. Permits and rights
27. Enforcement of obligations under licenses and leases over forest land
28. Enforcement of obligations under permits, rights and authorities over State forest land
29. Forfeiture of forest produce not removed during currency of license
30. Production of license, etc., on demand
31. Power of entry on land

**PART V  
FOREST PRODUCE**

32. Forest produce presumed to be the property of the State
33. Property in forest produce not to pass until paid for
34. Power to seize forest produce
35. What constitutes a seizure
36. Procedure subsequent to seizure
37. Disposal of forfeited produce
38. Power to sell by auction without licence

**PART IV  
PROTECTION AGAINST FIRE**

39. Prohibition or control of fires, etc., during extreme fire hazard
40. Causing fire to spread to forest land or leaving fire in open without precautions
41. Offence to leave burning or smouldering substance
42. Right holders to provide fire fighting equipment
43. Duty to endeavour to extinguish fires
44. Offence not to comply with sections 42 or 43
45. Requisition of assistance to extinguish fires
46. Costs of fire fighting

**PART VII  
FURTHER OFFENCES**

47. False entries or returns
48. Unlawful cutting or removal of forest produce
49. Unlawful interference with property of state
50. Offences with respect to animals, etc., on or in forest land
51. Offences with respect to forest officers
52. Other offences

**GENERAL AS TO OFFENCES**

53. Proof of lawful authority
54. General penalty for offences
55. Liability for loss or damage
56. Confiscation of property used in commission of offence
57. Limitation of proceedings
58. Compounding of offences

## **PART VIII PROTECTED LAND**

59. Land may be declared protected land
60. Status of protected land
61. Restrictions on dealings with protected land
62. Offences
63. Compensation

## **PART IX FORESTRY DIVISION ADMINISTRATION OF PRIVATE FORESTS**

64. Minister may **act** as trustee for owner of private forest on freehold land
65. Method of making customary land available for forestry
66. Licence or lease of customary land to be granted by Minister of Lands
67. Substitution of Minister and Director for Minister and Director of Lands

## **PART X MISCELLANEOUS**

68. Historic places
69. Annual report
70. Control of injurious importations and exportations
71. Regulations as to control and eradication of diseases affecting trees, etc.
72. Specified Ordinance not affected
73. Regulations
74. Remuneration and allowances of committee members
75. Repeals, amendments and savings

---

## **THE FORESTS ACT 1967**

**1967, No. 12**

**An Act to consolidate, amend, and extend the law relating to the conservation, protection and development of the natural resources of Western Samoa, especially soil, water and forest, and to enable effect to be given to the following principles and objectives, -**

- (a) To maintain, and establish where necessary, areas of forest adequate to protect the climate, soil and water resources of the country;**

**(b) As far as possible to provide, on a sustained yield basis, the forest produce requirements of the people and the industry of the country and to encourage an export trade; and**

**(c) To ensure the best use of all forest lands for the general benefit of the country**

[12 December 1967]

## **PART I PRELIMINARY**

**1. Short title - This Act may be cited as the Forests Act 1967.**

As to the powers of the Director to maintain the standard of primary produce exported, see the Produce Export Ordinance 1961. See also s. 70 of this **Act**. As to overhanging coconut trees, see s. 15 of the General Laws (No. 2) Ordinance 1932 under title General Laws.

**2. Interpretation - In this Act, unless the context otherwise requires, -**

"**Act**" includes Ordinance:

"Cabinet" means the Cabinet of Western **Samoa**:

"Cattle" includes oxen, bulls, steers, cows, horses, stallions, geldings, mares, asses, mules, goats, sheep, rams, wethers, ewes, pigs, boars, sows, all browsing animals, and all the young of all the foregoing animals; and such other animals as the Minister may by notice in the *Western Samoa Gazette* and the Savali declare to be cattle:

"Chief Forest Officer" means the officer-in-charge of the Forestry Division, appointed pursuant to section 4 of this **Act**:

"Constable" includes any member of [the Police Service]:

"Constitution" means the Constitution of Western **Samoa**:

"Department" means the Department of Agriculture, Forests and Fisheries:

"Director" means the Director of Agriculture, Forests and Fisheries:

"Dues" means money owing or payable:

"Employee", in relation to the Public Service, means a person employed therein whether on the permanent staff or as a probationer or temporarily, whether full time or part time, and who is remunerated by salary or wages:

"Fees" include money payable to the Government or any person as remuneration for services rendered or to be rendered or as consideration for the grant of any permit, right, authority or other privilege:

"Firewood" means wood intended for, and used for, consumption only as fuel:

"Forest land" means, -

(a) State forest land; or

(b) Public or customary land which is subject to a licence or lease to the Minister or any other person for any purpose of forestry; or

(c) Freehold land which is subject to a licence or lease to the Minister or any other person for any purpose of forestry, or in respect of which the Minister is a trustee under Part IX of this **Act**:

"Forest officer" means any member of [the Public Service] appointed by the Director to exercise any of the powers vested in a forest officer by this **Act** and includes the Director and the Chief Forest Officer:

"Forest produce" includes all trees and other plants and the produce of trees and other plants, and also includes earth, sand and minerals when found in or removed from any forest land:

"Forestry" means the application of business methods and technical forestry principles to operations on lands for the establishment, culture, protection and maintenance of forests or for the production, extraction or conversion of forest produce, including the provision of access to such lands:

"Forestry Division" or "Division" means the Division of the Department constituted by section 3 of this **Act**:

"Government" means the Government of Western **Samoa**:

"Land" includes estates and interests in land and licences, easements and profits à prendre over or in respect of land:

"Land Board" means the Land Board established by section 6 of the Land Ordinance 1959:

"Lawful authority" means the prior written authority of a forest officer, or a prior written licence or lease granted by the Minister of Lands for forestry under this or any other **Act**, or a prior written permit, right or other authority granted by the Minister under this **Act**:

"Licence" or "lease" includes a sub - licence or a sublease, as the case may be:

"Minister" means the Minister of Agriculture, Forests and Fisheries in his capacity as Minister of Forests:

"Prescribed" means prescribed by this **Act** or regulations:

"Purpose of forestry" includes the protection of climate, soil conservation, **water conservation and storage (whether for water** supply, irrigation or generation of electricity), scenic, amenity, recreational, scientific and sanctuary purposes, and the production, extraction and conversion of timber and other forest produce;

"Regulations" mean regulations made under this **Act**:

"Rent and royalties", in relation to any licence or lease of any forest land or any permit, right or authority in respect of any State forest land, includes all purchase money, rent, royalties, stumpage, fees, dues and other charges payable thereunder, whether in respect: of forest produce or otherwise:

"River" includes any stream, canal, creek, other channel, and lake, whether natural or artificial:

"Royalty" means a prescribed or agreed fee for forest produce payable to the owner of the forest:

"State" or "Western **Samoa**" means the Independent State of Western **Samoa**:

"State forest land" means land set apart as State forest land by or under this **Act**:

"Timber" means any tree or part of any tree which has been felled or has fallen and all wood whether sawn, split, hewn, hollowed out or otherwise fashioned:

"Trees" include not only timber trees but trees of all kinds, shrubs, bushes, ferns, plants, seedlings, saplings, cuttings, suckers, and shoots of every description, and any part of a tree:

"Working plan" means a written plan which regulates the work to be performed for forestry purposes on a specified area of land.

Cf. 1949, No. 19, s. 2 (N.Z.)

"Constable": In this definition, the reference to the Police Service was substituted for a reference to the Police (which had been substituted for a reference to the Police Force by s. 3 (3) of the Police **Act** 1969) by s. 3 (3) of the Police Service **Act** 1977.

"Forest officer": In this definition, the reference to the Public Service was substituted for a reference to the Western Samoan Public Service by s. 4 of the Public Service **Act** 1965.

## **PART II ADMINISTRATION**

**3. Forestry Division** - There is hereby established a Division of the Department to be known as the Forestry Division.

**4. Chief Forest Officer and other officers and employees** - (1) There shall be appointed from time to time a Chief Forest Officer.

(2) The Chief Forest Officer shall be in charge of the Forestry Division, subject to the control of the Minister and subject thereto of the Director.

(3) There may from time to time be appointed such other officers and employees as may be necessary for the administration of the Forestry Division.

**5. Status of Chief Forest Officer and other officers** - (1) The Chief Forest Officer and any other officer of the Division may from time to time be either, -

(a) An officer of the Public Service; or

(b) A person made available for the office by the United Nations or any specialised agency of the United Nations under its Operations Executives or OPEX Scheme; or

(c) A person whose service is honorary so far as the Government is concerned.

(2) A person appointed under paragraph (b) of subsection (1) of this section shall be appointed by the Public Service Commission as a contract officer of the Public Service, without any right to participate in any superannuation scheme provided or subsidised by the Government, and otherwise subject to all legislation for the time being applicable to contract officers of the Public Service, for such term and on such conditions as shall be agreed upon between the Public Service Commission and the person appointed or between the Government and the United Nations or the specialised agency thereof by which such person is made available for the office; and his appointment shall not be subject to appeal.

(3) A person appointed under paragraph (c) of subsection (1) of this section shall be appointed by the Head of State, acting on the advice of the Prime Minister, given after the Prime Minister has consulted the Public Service Commission, and the appointment of such a person shall be without any right to participate in any superannuation scheme provided or subsidised by the Government, and otherwise for such term and on such conditions as shall be agreed upon between the Prime Minister and the person appointed or between the Government and the United Nations or the specialised agency thereof or the other international body or the Government of another country or the other body or agency by which such person is made available for the office; and his appointment shall not be subject to appeal; and the person appointed shall not be deemed to be in the Public Service so long as his service continues to be honorary so far as the Government is concerned.

Cf. 1965, No. 26, s. 16

**6. Officers not eligible to hold licence, etc., over forest land** - No forest officer in his personal capacity shall hold or be interested in any licence or lease of or in respect of any forest land, or any permit, right or other authority of or in respect of any State forest land; and no such officer in his personal capacity shall, whether as principal or agent, trade in, or be interested in any contract or agreement for the working or removal of any forest produce from any forest land; and no such officer in his personal capacity shall hold or have any interest in any shares in any company which does anything which under this section it is unlawful for that officer to do.

Cf. 1949, No. 19, s. 12 (N.Z.)

**7. Protection of forest officers** - No matter or thing done by any forest officer or other employee of the Forestry Division in good faith in the exercise of his powers or in the performance of his duties under this **Act** shall subject that officer or other employee to any personal liability in respect thereof, but nothing in this section shall affect any liability of the Government.

Cf. 1949, No. 19, s. 13 (N.Z.)

**8. Functions of the Forestry Division** - The Forestry Division, subject to the provisions of this **Act**, shall, -

(a) Have the primary responsibility for the administration of this **Act** and for carrying out the Government's forest policy in respect of forest land; and

(b) Have the primary control and management of -

(i) All State forest land, for whatever purpose of forestry it is held or used; and

- (ii) The establishment, culture, protection and maintenance of forests on forest land, and the production, extraction, conversion, transport, sale, or other disposal of forest produce from forest land; and
  - (iii) Making requests to the Minister of Lands as to the covenants, conditions and stipulations as to forestry desired to be included in licences and leases to be granted by that Minister under this or any other **Act**; and
  - (iv) The granting of permits, rights and authorities over State forest land under this **Act**; and
  - (v) The collection and recovery of all rent and royalties payable under permits, rights and authorities granted in respect of State forest land, and of all other revenues of the Minister or the Forestry Division except those payable under licences or leases; and
  - (vi) The enforcement of all other covenants, conditions and stipulations of licences, leases, permits, rights and authorities of or in respect of forest land to any person other than the Minister; and
  - (vii) Such farming of State forest land as is not prejudicial to forestry; and
  - (c) Observe weather and other conditions for the purpose of giving warning of the imminence of fire hazard conditions or giving any information in relation thereto.
- Cf. 1949, No. 19, s. 14 (N.Z.); 1955, No. 44, s. 17 (N.Z.)

**9. Powers of the Minister** - (1) The Minister from time to time may exercise any power reasonably required for the performance of any function of the Division, or the administration of this **Act**, and, without prejudice to the generality of those words, may -

- (a) Subject to the Survey Ordinance 1961, prepare and carry out forest surveys, including surveys necessary for the demarcation of forests, for working plans, for determination of growth yield and other trends, for soil or **water** conservation, and for timber assessments:
- (b) Acquire such land, or control over such land, as he considers to be needed for forestry or any purpose thereof, and by such means as the law permits, including, -
  - (i) Accepting appointment as trustee of any freehold land pursuant to section 64 of this **Act**;
  - (ii) Arranging for the Minister of Lands to purchase, or to take under the Taking of Land **Act** 1964, any freehold land;
  - (iii) Arranging for the Minister of Lands to take, under the Taking of Land **Act** 1964, any customary land;
  - (iv) Arranging for the Minister of Lands to license or lease, under the Alienation of Customary Land **Act** 1965, any customary land, either to the Minister or to any other person:
- (c) Use and develop any State forest land for administrative, industrial, residential or storage uses in connection with any State forest or any forest produce; for quarantine grounds or quarantine depots; for providing access; for the carrying on of farming operations incidental to the management and operation of State forest land; or for any purpose of forestry:
- (d) Make provision for the establishment, culture, protection, maintenance, management and utilisation of forests on any forest land and for purposes incidental thereto:
- (e) Co - ordinate the policies and activities of the Forestry Division and other Government Departments and Divisions, public bodies and persons in relation to forestry and the purposes thereof:

(f) Train forest officers and employees, conduct forest research work, and collect and disseminate forestry information:

(g) Prepare and issue plans and publications for the advancement of forestry:

(h) Make provision for the setting up of such advisory committees as he thinks fit after consultation with those affected:

(i) Purchase any forest produce:

(j) Sell or otherwise dispose of any forest produce by public auction or tender or private contract, at such prices or at such rates, and subject to such conditions as he may determine:

(k) Establish and carry on any operations or industry relative to the felling, cutting, extraction, removal, conversion, manufacture, transport, distribution, or sale of timber, other forest produce, or products derived from forest produce, and erect, purchase, rent, or lease any buildings, machinery, or plant required in connection therewith:

(l) Enter into any contract or agreement for the carrying out of any of the purposes of this **Act**:

(m) Carry on any farming operations incidental to the management of any forest.

(2) All documents which require to be executed for the purposes of this **Act** by or on behalf of the State may be executed by the Minister of Lands or the Minister as elsewhere provided by this **Act**, and, if so executed, shall be valid and effectual as to execution.

Cf. 1949, No. 18, s. 15 (N.Z.)

**10. Delegation of powers** - (1) Sections 9 and 10 of the Agriculture, Forests and Fisheries Ordinance 1959 shall apply to this **Act** and to all powers exercisable under this **Act** or the regulations.

(2) The Chief Forest Officer shall have power to delegate in the same way and subject to the same conditions as those prescribed in that section 10 for delegation by the Director.

**11. Receipts and payments** - (1) All money received by the State from the operation of this **Act** or payable by the State under this **Act** shall be paid into or from the Public Account and shall be credited or debited, as the case may be, to such fund or account as may be prescribed and subject thereto as may be determined from time to time by the Minister of Finance.

(2) All money payable by the State under this **Act** shall be paid out of money from time to time appropriated by Parliament for the purpose.

Cf. 1949, No. 19, s. 16 (N.Z.)

**12. Working plans** - (1) The Director shall from time to time cause to be prepared working plans for all forest land.

(2) Every working plan to which this section applies shall, subject to any rights existing when the working plan comes into operation, regulate as hereinafter provided the management of the forest and land described in the working plan for such period as may be stated in the working plan and in conformity with the objects of management therein stated.

(3) Every such working plan shall specify with respect to the working plan period -

(a) The silvicultural operations to be carried out;

(b) The maximum area from which forest produce may be exploited or the maximum quantity of forest produce that may be exploited or both, as the Director thinks fit;

(c) The protection, development and reforestation operations to be carried out; and

(d) Such other [matters as](#) the Director thinks fit.

(4) Every working plan shall be subject to the approval of the Minister and acceptance by any licensee or prospective licensee over the forest and land to which the plan relates, and, when so approved and accepted, shall have effect according to its tenor from a date specified therein, and shall not be altered save by the Minister, after considering a recommendation of the Director and with the acceptance of any such licensee or prospective licensee.

Cf. 1949, No. 19, s. 26 (N.Z.)

### **PART III STATE FOREST LAND**

**13. Land purchased or taken under section 9 to be State forest land** - All freehold or customary land purchased or taken by the Minister of Lands for forestry or any purpose thereof pursuant to section 9 of this **Act** or the corresponding provisions of any previous **Act or the Taking of Land Act 1964** shall be deemed to be set [apart as](#) State forest land.

Cf. 1949, No. 18, s. 15 (4) (N.Z.)

**14. Land may be set apart as State forest land** - The Head of State, acting on the advice of Cabinet, given after considering a recommendation of the Land Board, may, by proclamation, set apart as State forest land any land for the time being considered to be suitable for any purpose of forestry, being -

(a) Any public land not held in trust for any purpose inconsistent with this **Act**; or

(b) Any estates or interests in, or easements or profits à prendre over, any other land, for the time being vested in the State or the Minister and not held in trust for any purpose inconsistent with this **Act**.

Cf. 1949, No. 19, s. 18 (1) (N.Z.)

**15. Status of land set apart as State forest land** - (1) The setting apart by or under this **Act** of any public land as State forest land shall operate as the setting aside thereof for a public purpose within the meaning of the definition of the term "Government land" in section 2 of the Land Ordinance 1959.

(2) The Head of State, acting on the advice of Cabinet, given after considering a recommendation of the Land Board, may, in the proclamation setting apart any land as State forest land or in any other proclamation, declare that the State forest land described therein is to be held and administered for any one or more of the purposes of forestry.

**16. Revocation or alteration of status of State forest land** - (1) Subject to sections 17 and 18 of this **Act**, the setting apart by or under this **Act** of any land as State forest land, or any declaration of the purposes of forestry for which any State forest land is to be held and administered, shall not be revoked or altered, except by a proclamation by the Head of State, acting on the advice of Cabinet, given after considering a recommendation of the Land Board, or, where the State forest land is only an estate or interest in land, or licence, easement or profit à prendre over land, by the expiration or determination thereof or the exclusion of land therefrom.

(2) Without restricting the discretion of the Head of State, acting as aforesaid, under subsection (1) of this section, such a proclamation revoking the setting apart of any land as State forest land may be made when the Head of State, acting as aforesaid, is satisfied that the land has become less suitable for any purpose of forestry than for settlement or development purposes or for setting apart as a reserve for any desirable purpose other than a purpose of forestry.

(3) The effect of any proclamation merely revoking the setting apart of any public land as State forest land shall be that that land shall cease to be State forest land and shall become Government land available for lease, reservation or other disposition under the provisions of the Land Ordinance 1959.

(4) The revocation or alteration by proclamation of the status of any land as State forest land, or of the purposes of forestry for which it is held and administered, shall be without prejudice to any licence, lease, permit, right or authority to which the land is for the time being subject.

Cf. 1949, No. 19, s. 20 (N.Z.)

**17. Errors of description in proclamations may be amended** - (1) Notwithstanding anything to the contrary in section 15 or 16 of this **Act**, where in any proclamation under this **Act** there has been made any error of description (whether with respect to the boundaries or area of the land to which the proclamation relates, or otherwise howsoever) the Head of State, acting as aforesaid, may revoke the proclamation and issue in its place a fresh proclamation with amended particulars and descriptions; or may by a further proclamation partially revoke the original proclamation and substitute other provisions.

(2) Every fresh proclamation or amending proclamation issued under this section shall take effect as from the date on which the original proclamation was intended to take effect, and as from that date the original proclamation, to the extent to which it has been so revoked, shall be absolutely void and of no effect as if it had not been issued or made.

Cf. 1949, No. 19, s. 21 (N.Z.); 1928, No. 21, s. 27 (N.Z.)

**18. Exchange of land** - (1) Notwithstanding anything to the contrary in section 15 or 16 of this **Act**, it shall be lawful for the Head of State, acting on the advice of Cabinet, whenever Cabinet deems it expedient in the public interest to do so, and is satisfied that it is not prejudicial to forestry, to grant any area of public land which is State forest land as freehold or customary land in exchange for any other freehold land and on any such exchange to pay or receive any sum by way of equality of exchange.

(2) All land acquired by the State by any such exchange shall be deemed, as from the date of its acquisition, to be set apart as State forest land under this **Act**.

(3) Any land granted by the Head of State by any such exchange shall cease to be State forest land, and shall become either freehold land or customary land in accordance with the terms of the grant.

Cf. 1949, No. 19, s. 22 (N.Z.)

**19. Fencing or demarcation of State forest land** - The Minister may from time to time take such steps as he may think fit for the fencing, or, subject to the Survey Ordinance 1961, the demarcation, of any State forest land, or of any subdivision thereof.

Cf. 1949, No. 19, s. 23 (N.Z.)

**20. State forest land not to be dealt with except pursuant to this Act** - Except as provided in any other Act, State forest land and the timber and other forest produce thereon or therein shall not be dealt with otherwise than in conformity with this Act.

Cf. 1949, No. 19, s. 24 (N.Z.)

**21. Maps of forest land to be prepared and recorded** - (1) Subject to the Survey Ordinance 1961 and the Alienation of Customary Land Act 1965, maps of all forest land, certified under the hand of the Director of Lands, shall be deposited in the Head Office of the Forestry Division as soon as possible after the land becomes forest land, and fresh maps of any such land shall be so certified and deposited from time to time as may be necessary.

(2) Every map so deposited shall relate to such piece or pieces of forest land as the Director thinks fit.

(3) Where any land shown on any such map ceases to be forest land the map shall be altered accordingly; and where the Director desires that any map shall cease to relate to any land, or shall relate to any other land, the map shall be altered accordingly. Every alteration under this subsection shall be certified by the Director of Lands.

(4) Every such map shall be open to public inspection at the prescribed times free of charge during the first 3 months after being so deposited and thereafter on payment of the prescribed fee.

Cf. 1949, No. 19, s. 25 (N.Z.)

#### **PART IV LICENCES, LEASES, PERMITS, ETC.**

**22. Power to grant licences, leases, permits, etc.** - (1) The Minister of Lands may grant licences or leases over or in respect of any class of land under and subject to this or any other Act, and the Minister may grant permits, rights or authorities, in respect of any State forest land, under and subject to this Act, to any person, for any purpose of forestry:

Provided that no licence, lease, permit, right or authority shall be so granted if it is inconsistent with any existing licence, lease, permit, right, or authority in respect of the same land:

And provided further that no licence, lease, permit, right or authority shall confer on the grantee any right to any minerals which may be found on or in any State forest land:

And provided further that, where the forest land is held by the Minister under trusteeship appointment, licence or lease, no licence, lease, permit, right or authority shall be granted by the Minister of Lands or the Minister for a longer term than the term of the trusteeship appointment, licence or lease under which the Minister holds the land.

(2) Every licence, lease, permit, right, or authority granted under this Act shall be granted subject to the payment by the grantee of such rent and royalties, and to such covenants, conditions and stipulations as may be prescribed, and subject thereto as may be agreed.

(3) Unless otherwise agreed, every licence, lease, permit, right or authority granted under this or any other **Act** for any purpose of forestry shall be subject to an implied covenant by the grantee that he will not, during the term of his licence, lease, permit, right or authority, assign, transfer, demise, sublicense, sublet, set over or mortgage, or otherwise by any **act** or deed procure the land therein mentioned or any part thereof to be assigned, transferred, demised, sublicensed, sublet, set over or mortgaged to any person whomsoever without the prior consent in writing of the Minister of Lands in the case of a licence or lease or the Minister in the case of a permit, right or authority.

(4) Such consent to an assignment or transfer shall not be unreasonably withheld where the proposed assignee or transferee is responsible and financial, but as conditions of granting his consent the Minister of Lands or the Minister, as the case may be, may require the proposed assignee or transferee to enter into a deed of covenant with the Minister of Lands or the Minister, as the case may be (to be prepared by the Minister of Lands or the Minister, as the case may be) to perform and observe the covenants, conditions and stipulations of the licence, lease, permit, right or authority and on the part of the grantee to be performed or observed, and may require the payment of a reasonable sum in respect of any legal or other expenses incurred by the Minister of Lands or the Minister, as the case may be, in the matter.

Cf. 1949, No. 19, s. 30 (N.Z.)

**23. Improvements** - Unless otherwise agreed, no compensation shall be payable to a licensee or lessee on the expiry or determination of a licence or lease granted for any purpose of forestry under this or any other **Act** for any improvements effected on the land comprised therein; but the licensee or lessee shall be entitled, at any time before or within 4 months after the expiry or determination of his licence or lease, to remove any buildings, fences, or other improvements effected or acquired by him conditional on restoring the land to its original condition as near as may be, or to dispose of them to an incoming licensee or lessee:

Provided that, where the licence or lease is over or of State forest land, the Minister of Lands, after consulting the Minister and obtaining a valuation from a valuer appointed by the Government, shall have the right within the last 2 years of the licence or lease but not later than 6 months before the expiry thereof to notify the licensee or lessee that the Minister of Lands intends at the expiry or determination of the licence or lease to purchase any such improvements at a price to be fixed, in default of agreement, by arbitration, and in any such case the improvements specified in the notice shall be the property of the State at the expiry or determination of the licence or lease, and shall not after the notice be removed from the land by the licensee or lessee.

Cf. 1949, No. 19, s. 32 (4) (N.Z.)

**24. Licences** - (1) A licence under the Alienation of Customary Land **Act 1965** or **this Act** or both may confer on the licensee, subject to this **Act** and the regulations, and to conditions to be specified in the licence, rights to enter upon the forest land therein defined and to carry out all operations necessary or convenient for the obtaining, extraction, conversion and removal of such timber and other forest produce and any other purpose of forestry as may be specified therein.

(2) Each licence of freehold or customary land for any purpose of forestry shall provide for payment of a royalty or stumpage, which shall be paid to the Director of Lands in trust subject to this **Act** for the owners in the case of freehold land, and subject to the Alienation of Customary Land **Act 1965**, for the beneficial owners in the case of customary land, and a fee for forestry services, which shall be paid to the Director of Lands as revenue of the Government, and which shall be at the rate of one half of the rate of royalty or stumpage:

Provided that the Head of State, acting on the advice of Cabinet, may by Order at any time for any licence or for any period of the term of any licence reduce the rate of the fee for forestry below that of one half of the rate of royalty or stumpage.

(3) Except with the prior written authority of the Minister in any case of freehold land or of the Minister of Lands in any case of customary land, no tree which is, or was before felling, growing on or in any freehold or customary land may be sold or otherwise exploited for the commercial production of timber or other forest produce except under and in pursuance of a licence granted by the Minister of Lands as agent for the owners in the case of freehold land or trustee for the beneficial owners in the case of customary land.

Cf. 1949, No. 19, s. 31 (N.Z.)

As to certain covenants as to forestry where leases and licences are issued under the Alienation of Customary Land **Act** 1965, see s. 4 of that **Act**.

**25. Leases** - (1) Leases under this or any other **Act** may be granted in respect of any forest land for any purpose of forestry or for any purpose which in the opinion of the Minister is not prejudicial to forestry.

(2) Without restricting the generality of subsection (1) of this section, such leases may be granted for the following purposes, namely:

(a) For grazing and other purposes of a like nature:

(b) For establishing and managing forests:

(c) As sites for mills or factories and appurtenances thereto for the conversion, drying, processing and storing of forest produce:

(d) As sites for yards, roads, tramways, railways and incidental purposes:

(e) As sites for tents or buildings for the use of persons holding licences, permits, rights or authorities over forest land or their employees:

(f) For any purpose of recreation, in the case of any State forest land which is held and administered wholly or in part for recreation purposes.

Cf. 1949, No. 19, s. 32 (N.Z.); 1964, No. 29, s. 3 (N.Z.)

For implied covenants by lessees under the Land Ordinance 1959 regarding preservation of timber on government land, see s. 64 of that Ordinance. See also the note to s. 24 of the Forests **Act** 1965.

**26. Permits and rights** - A permit or right granted under this **Act** may confer on the holder, according to its tenor, the power or right to enter upon any State forest land and to construct and maintain a road, tramway, railway or other utility or do all such things thereon subject to such conditions as may be specified in the permit or right, not being prejudicial to forestry or to the powers or rights conferred on any other person by any existing licence, lease, permit, right or authority granted under this or any other **Act**:

Provided that no such permit or right shall confer on the grantee any right to pass over or otherwise use any other land except with the consent of the owner of such land.

Cf. 1949, No. 19, s. 33 (N.Z.)

**27. Enforcement of obligations under licences and leases over forest land** - Where any licence or lease has been granted by the Minister of Lands over or in respect of any forest land,-

(a) The Minister of Lands shall have the duty of taking, and is hereby empowered to take, all necessary proceedings to enforce the payment of all rent and royalties payable thereunder and in respect of breaches of each obligation so to do, and, unless otherwise agreed, the Minister of Lands may forfeit the licence or lease for any such breach, or suspend the licence or lease until the breach is remedied; and

(b) The Minister shall have the duty of taking, and is hereby empowered to take all necessary proceedings to enforce the performance or observance of all other covenants, conditions and stipulations expressed or implied therein, and on the part of the licensee or lessee to be performed or observed, and in respect of breaches thereof, and, unless otherwise agreed, the Minister of Lands may forfeit the licence or lease for any such breach, or suspend the licence or lease until the breach is remedied, and shall either forfeit or suspend the same when requested so to do by the Minister.

**28. Enforcement of obligations under permits, rights and authorities over State forest land** - Where any permit, right or authority has been granted over or in respect of any State forest land, whether the land was set apart as State forest land before or after the grant, the Minister shall have the duty of taking, and is hereby empowered to take, all necessary proceedings to enforce the payment of all rent and royalties payable thereunder, and the performance or observance of all other covenants, conditions and stipulations expressed or implied therein, and on the part of the holder thereof to be performed or observed, and in respect of breaches thereof, and, unless otherwise agreed, the Minister may forfeit the permit, right or authority for any such breach, or suspend the permit, right or authority until the breach is remedied.

Cf. 1949, No. 19, s. 37 (N.Z.)

**29. Forfeiture of forest produce not removed during currency of licence** - (1) A licensee or holder of a permit, right or other authority over or in respect of any forest land, upon application by him in that behalf, may be granted by the Minister a period not exceeding 30 days from the expiration or determination of his licence or other authority, or of any extension or renewal thereof, for the purpose of removing any forest produce felled, cut, or otherwise taken during the currency of his licence or other authority or of any extension or renewal thereof.

(2) All forest produce obtained pursuant to a licence or other authority under this **Act** and not removed from the land in respect of which the licence or other authority was granted during the currency of the licence or other authority or of any extension or renewal thereof, or of any period allowed under subsection (1) of this section, shall be forfeited to the owner.

(3) Nothing in this section shall be deemed to relieve the licensee or holder of his liability to pay any rent or royalties due in respect of such forest produce.

Cf. 1949, No. 19, s. 39 (N.Z.); 1953, No. 17, ss. 29, 30 (Fiji)

**30. Production of licence, etc., on demand** - (1) Every person who does on any forest land any **act** for which under the provisions of this **Act** a licence, lease, permit, right or other authority is required, or which will be an offence if done without lawful authority, shall produce the appropriate licence, lease, permit, right or other authority authorising him to do the **act** within a reasonable time after he is required to do so by a constable or forest officer; and every person who refuses or fails to do so commits an offence against this section.

(2) Any constable or forest officer who finds any person committing, or reasonably suspects any person of committing, any breach of the provisions of this **Act**, or of the regulations, may require that person to give his name and address, and if the constable or forest officer has reasonable ground to suppose that the name or address given is false may require evidence of the correctness thereof; and every person who refuses or fails to give his name and address or evidence of the correctness thereof, or who gives a false name or address or

false evidence with respect to his name or address, commits an offence against this section.

(3) Every person who commits an offence against this section shall be liable to a fine not exceeding \$40.

Cf. 1949, No. 19, s. 41 (N.Z.)

**31. Power of entry on land** - (1) Any forest officer, and any person authorised in writing in that behalf by the Chief Forest Officer, may enter upon any land in respect of which any licence, lease, permit, right or authority has been granted for any purpose of forestry under this or any other **Act**, or upon any protected land, for the purpose of making inspections, or carrying out silvicultural operations or other forest work; and may enter upon any such land or any public land for the purpose of preventing or detecting offences against this **Act**, or for preventing or suppressing or investigating the origin of fires endangering any forest land.

(2) Any person who obstructs or hinders any forest officer or other person authorised as aforesaid in the exercise of his powers under this section commits an offence against this **Act**.

Cf. 1949, No. 19, s. 42 (N.Z.)

## **PART V FOREST PRODUCE**

**32. Forest produce presumed to be the property of the State** - When in any proceedings under this **Act** a question arises as to whether any forest produce is the property of the State, that produce shall be presumed to be the property of the State until the contrary is proved.

Cf. 1949, No. 19, s. 27 (N.Z.)

**33. Property in forest produce not to pass until paid for** - Unless otherwise agreed, all forest produce owned by the State upon which any rent or royalties are payable to the Government or the State or any Minister under this **Act** or the regulations or any instrument shall, until the payment thereof, remain the property of the State, and may be seized and detained by any forest officer until payment and, in default of payment within one month of the due date, may be disposed of as the Minister may direct.

Cf. 1949, No. 19, s. 28 (N.Z.); 1936, No. 46, s. 31 (New Guinea); 1964, No. 29, s. 2 (N.Z.)

**34. Power to seize forest produce** - (1) Where any constable or forest officer has reason to believe that any forest produce has been cut, removed or otherwise dealt with contrary to any provision of this **Act**, or that **any other offence under this Act** in respect of any forest produce has been committed, or that any forest produce has been abandoned, he may examine and seize that produce, and for that purpose if authorised so to do by a search warrant issued by a Magistrate or Fa'amasino Fesoasoani may enter any land or building, doing as little damage thereto as may be.

(2) While any forest produce is in course of conveyance, any constable or forest officer may do all or any of the following things:

(a) He may stop and enter any vehicle or vessel carrying the produce and detain that vehicle or vessel for so long as is necessary for the purposes of this section;

(b) He may examine the produce;

(c) He may require the person in possession of the produce to explain his right to be in possession of the produce and, if that person refuses or fails to give a satisfactory explanation, may seize the produce.

(3) Where any forest produce is seized under the foregoing provisions of this section the constable or forest officer who seizes it may require the person in charge of any vehicle or vessel on which it is loaded to take it to such reasonably convenient place as he may specify and there to unload it.

(4) Every person who fails to do any **act** which he is required to do under subsection (3) of this section within a reasonable time commits an offence against this **Act**.

(5) Where any forest produce is seized under the foregoing provisions of this section it shall become and remain the property of the State until the claim of a lawful owner is established.

Cf. 1949, No. 19, s. 43 (N.Z.)

**35. What constitutes a seizure** - Either the branding or marking of any timber or other forest produce with a distinctive mark, or the affixing thereto of a written and signed notice of seizure, by a constable or forest officer for the purpose of section 34 of this **Act**, shall constitute a seizure for the purposes of that section, and any person who thereafter, without the written permission of the person making the seizure or of a Magistrate, removes or interferes with the timber or other forest produce seized commits an offence against this **Act** and shall be liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$100.

Cf. 1949, No. 19, s. 43 (N.Z.)

**36. Procedure subsequent to seizure** - (1) When any timber or other forest produce has been seized under section 34 of this **Act**, the person making the seizure shall forthwith give written notice of the seizure to all persons in possession of, or owning, or reasonably believed to own, the timber or other forest produce, and shall also file a notice of seizure in the office of the Magistrate's Court nearest to the place of seizure.

(2) Notice in writing of the seizure shall also be posted forthwith in the police station, and in the Forestry Division or other public Government office, nearest to where the seizure was made.

(3) If within 14 days after the affixing, giving, filing and posting of notices as aforesaid no one claims to be the owner of the timber or other forest produce, a Magistrate shall, upon application being made in that behalf, either order the seized timber or other forest produce to be forfeited to the State, or make such order as he thinks just vesting the same in any person.

(4) Notwithstanding anything contained in the foregoing provisions of this section the Minister may order at any time the release of any produce seized and the withdrawal of any notice of seizure in respect of the produce, which shall thereupon cease to be the property of the State.

Cf. 1949, No. 19, s. 44 (N.Z.)

**37. Disposal of forfeited produce** - Any timber or other forest produce forfeited in pursuance of this **Act** may be sold or otherwise disposed of, on the recommendation of the Minister, as if they were public stores.

Cf. 1949, No. 19, s. 45 (N.Z.)

**38. Power to sell by auction without licence** - Any forest officer, in the performance of his duties and with the authority in writing of the Minister, may hold public auctions of forest produce, and may submit permits, rights or other authorities to public auction, without being the holder of any auctioneer's or other business

licence.

Cf. 1949, No. 19, s. 29 (N.Z.)

## **PART VI PROTECTION AGAINST FIRE**

**39. Prohibition or control of fires, etc., during extreme fire hazard** - (1) When weather or other conditions arise which, in the opinion of the Minister, present an extreme fire hazard in any area, whether forest land or not, so that an outbreak of fire therein would be likely to spread and endanger life and property, the Minister may publish, or cause to be published, by radio or newspaper or other effective means, an order in respect of such area, and for such period as he may specify, -

(a) Prohibiting the setting on fire, or causing or assisting to be set on fire, or aiding or abetting any other person to set on fire, in the open air, of any trees (whether standing or not), timber, grass, other plants whatsoever, debris from forest or land clearing operations or other combustible material whatsoever; or allowing those things to be done or continued only with the prior written authority of a forest officer, given or renewed after first publication of the order, and subject to such conditions as the forest officer may impose;

(b) Prohibiting in whole or in part any operation which the Minister thinks is likely to cause an outbreak of fire in the area; or directing that it be carried on or continued only with the prior written authority of a forest officer, given or renewed after first publication of the order, and subject to such conditions as the forest officer may impose;

(c) Prohibiting or restricting the entry of persons other than those who normally reside or work therein.

(2) Any order under this section shall come into force immediately it is first published and shall remain in force for such period (if any) as may be specified in the order or until revoked.

(3) Any order published under this section may be at any time amended or revoked by a subsequent order so published.

(4) A forest officer may in his discretion refuse to grant an authority in any case.

(5) Every authority to light a fire in the open air shall be subject to a condition that it shall not be lit while a heavy wind is blowing or if other circumstances are such that the fire would be likely to spread beyond the limits of the land on which it is authorised to be lit.

(6) Every person who fails to comply with any order published under this section, or with any condition subject to which any authority is given by a forest officer under this section, commits an offence against this **Act**.

(7) Nothing in this section or in any other section of this Part of this **Act**, or in any lawful authority, shall be held to relieve any person from liability for any actionable damage sustained by any other person in consequence of any **act**, matter or thing done by the first - mentioned person.

Cf. 1955, No. 44, ss. 20, 21 (N.Z.)

**40. Causing fire to spread to forest land or leaving fire in open without precaution** - (1) Every person commits an offence against this **Act** who at any time -

- (a) Causes or permits any fire anywhere to spread to any forest land, if any forest produce or other property on that forest land is thereby burnt or injured or is in danger of being burnt or injured, or the fertility of the soil of any of that forest land is thereby injuriously affected;
- (b) Lights or kindles anywhere in the open air any fire which could spread or cause injury to forest land, or assists, aids or abets the lighting or kindling of such a fire, and then leaves the fire without having taken due precaution against the fire spreading or causing injury to forest land.

(2) In any proceedings under this section, -

- (a) The averment that any land is forest land or State forest land shall be sufficient without proof of that fact, unless the defendant (the onus being on him) proves to the contrary; and
- (b) A map of the land certified under the hand of the Director of Lands shall be sufficient evidence of its contents without production of original records and without the personal attendance of the Director of Lands or proof of his signature.

Cf. 1949, No. 19, s. 46 (N.Z.); 1955, No. 44, s. 22 (N.Z.)

**41. Offence to leave burning or smouldering substance** - Every person commits an offence against this **Act** who, without lawful authority, or without complying with any condition set out in any such authority, throws, leaves, or drops any lighted match, pipe - ashes, lighted cigarette, lighted cigar, ashes from a gas producer, or other burning or smouldering substance on any land while an order is in force under section 39 of this **Act** covering that land, and omits before leaving the spot wholly to extinguish the fire of the burning or smouldering substance.

Cf. 1949, No. 19, s. 47 (N.Z.); 1955, No. 44, s. 23 (N.Z.)

**42. Right holders to provide fire fighting equipment** - (1) Every holder of any licence, lease, permit, right or authority over any forest land who is lighting any fire in the open air, or otherwise conducting on forest land or on any other land within one mile thereof any operation which is likely to present a fire hazard, shall take all such measures as may be prescribed and failing prescription as may be necessary to prevent the occurrence or spread as the case may be of any fire; and shall provide all such equipment as may be prescribed and failing prescription as is suitable and adequate for the purpose of fighting fires and for securing the safety of lives and property from fire on that land; and shall place the equipment in localities and upon sites where it will be readily accessible and convenient for use, and shall provide such structures and do all such things as may be necessary for the protection of the equipment, and shall maintain the equipment in good working order and condition and ensure that it is readily available, accessible and convenient for effective use at all times.

(2) Where any such holder is conducting any operation which in the opinion of any forest officer is likely to present a fire hazard and where in the opinion of the forest officer the provisions of subsection (1) of this section are not being wholly complied with, the forest officer may from time to time, by notice in writing, require the holder to take such measures within such time as may be specified in the notice for the purpose of complying with those provisions; and, if the holder fails to take such measures within such time, may himself take any such measures as appear to him to need taking urgently, and the cost of so doing if not paid on demand shall, subject to subsection (4) of this section, be at the expense of the holder and be recoverable in any Court of competent jurisdiction as a debt due to the State.

(3) Any person who is dissatisfied with any requirement of a forest officer under subsection (2) of this section may, within 14 days after notice thereof has been given, appeal in writing setting out the grounds of the appeal

to a Magistrate's Court presided over by a Magistrate.

(4) On any such appeal, the Court may cancel or vary the notice or may confirm it either absolutely or subject to such conditions and modifications as the Court deems just and may make an order as to the incidence of the cost of any measures taken by the forest officer, and each decision of the Court shall be final and conclusive.

(5) Pending decision of the appeal the notice shall be deemed to be suspended, except as provided in subsection (2) of this section.

Cf. 1949, No. 19, s. 48 (N.Z.); 1955, No. 44, s. 30 (N.Z.)

**43. Duty to endeavour to extinguish fires** - (1) Any person who becomes aware of a fire burning unattended in the open air on or within one mile of forest land, or on any other land while an order is in force under section 39 of this **Act** covering that land, shall immediately cease the work or other activity on which he is engaged or employed and shall do everything reasonably within his power to extinguish the fire, whether or not there is an immediate danger of it causing damage; and if he finds he is unable to extinguish the fire he shall forthwith cause the nearest available forest officer to be notified of the outbreak, and shall then continue so far as possible to endeavour to control or extinguish the fire until it is brought under control or extinguished or until he obtains the approval of a forest officer to desist.

(2) Where a fire breaks out on or within one mile of any area of forest land in respect of which any person holds any licence, lease, permit, right or authority, or along or within 20 chains of such portion of any route regularly traversed in the course of forestry operations in connection with that area as is on or within one mile of any forest land, that person and his servants, agents, and employees, if they discover or become aware of the outbreak of fire while they are on that area or on that portion of that route or within 5 miles of the boundary of that area or of any part of that portion of that route, shall immediately cease the work or other activity on which they are engaged or employed and shall do everything reasonably within their power to extinguish the fire whether or not there is an immediate danger of it causing damage; and if they find they are unable to extinguish the fire they shall forthwith cause the nearest available forest officer to be notified of the outbreak, and shall then continue so far as possible to endeavour to control or extinguish the fire until it is brought under control or extinguished or until they obtain the approval of a forest officer to desist.

(3) Where a fire is burning on land within one mile of any forest land and the fire is in danger of spreading to forest land, or where any fire which was not lit pursuant to a written authority of a forest officer is burning in the open air on any other land while an order is in force under section 39 of this **Act** covering that land, any occupier of the land on which the fire is burning and any person having any right or licence in respect of that land and all employees of any such occupier or person, if they discover or become aware of the fire while they are on the last - mentioned land or within 5 miles of the boundary of that land, shall immediately take all possible steps to extinguish it; and if they are unable without assistance to do so shall forthwith cause the nearest available forest officer to be informed of the existence and locality of the fire and shall then continue so far as possible to endeavour to control or extinguish the fire until it is brought under control or extinguished or until they obtain the approval of a forest officer to desist.

Cf. 1949, No. 19, s. 49 (N.Z.); 1955, No. 44, s. 31 (N.Z.)

**44. Offence not to comply with section 42 or 43** - Every person commits an offence against this **Act** who fails to comply in any respect with any provision of section 42 or 43 of this **Act** or with any requirement imposed under either of those sections.

Cf. 1949, No. 19, s. 50 (N.Z.)

**45. Requisition of assistance to extinguish fires** - (1) In the event of a fire occurring on or within one mile of any forest land, a forest officer may require any fit male person over the age of 18 years residing or working

on any forest land or within 5 miles of the boundary of any forest land on which the fire is burning or to which it is likely to spread to assist in extinguishing the fire.

(2) In exercising any power under the provisions of this section, the forest officer shall leave available a sufficient number of men to protect other property.

(3) All persons who, in response to an obligation imposed by this **Act**, endeavour to extinguish any fire or, in response to a requirement pursuant to this section, or by arrangement with the forest officer, render assistance, shall be deemed, for the purposes of the Workers' Compensation Ordinance 1960, while so acting, to be employed by the Forestry Division and to be being paid the same wage as a casual labourer employed by the Public Service Commission.

(4) Every person who without sufficient cause, the proof whereof shall lie on him, fails to comply immediately with the request of a forest officer under this section commits an offence against this **Act**.

Cf. 1949, No. 19, s. 51 (N.Z.)

As to subs. (3), the Workers' Compensation Ordinance 1960 was repealed by s. 62 (1) of the Accident Compensation **Act** 1978.

**46. Costs of fire fighting** - (1) In any case where there has been an outbreak of fire which has menaced any forest land, or anything thereon, or any other land referred to in section 43 of this **Act**, and which has been controlled or extinguished by a forest officer or other person duly required or authorised in that behalf, the whole or any portion of the costs incurred shall, if the Minister so determines, be payable by all or any of them the owner, licensee, lessee and occupier of the land on which the fire occurred or of any land containing property which was menaced by the fire and has been protected by the control or extinguishment thereof.

(2) In making any such determination, the Minister shall have regard to any negligence of any such owner, licensee, lessee or occupier and to such other factors as he shall think fit.

(3) Any costs so determined and recoverable by the Minister shall be recoverable in any Court of competent jurisdiction as a debt due to the State, and when recovered shall be paid into the Public Account to the credit of the Treasury Fund at such times and by such instalments as the Minister determines.

(4) If any owner, licensee, lessee or occupier is dissatisfied with any determination made by the Minister pursuant to subsection (1) of this section for the payment of costs incurred in the control or extinguishment of any fire, that owner, licensee, lessee or occupier may at any time within one month after notice of the Minister's determination has been given to him appeal against the determination in writing setting out the grounds of the appeal to a Magistrate's Court presided over by a Magistrate.

(5) On the hearing of the appeal the Court may confirm, cancel or amend the determination in such manner and in respect of such owners, licensees, lessees or occupiers as it thinks fit, and the decision of the Court shall be final and conclusive.

(6) Pending the determination of an appeal, the determination of the Minister appealed against shall be treated as suspended.

Cf. 1949, No. 19, s. 52 (N.Z.); 1955, No. 44, ss. 40, 42 (N.Z.)

## **PART VII FURTHER OFFENCES**

**47. False entries or returns** - Every person who knowingly or negligently makes or causes to be made, in any book, return, declaration or statement required by this **Act** or by the regulations to be kept or made, any entry or writing which is false in any material particular commits an offence and shall be liable to a fine not exceeding \$200:

Provided that if it be proved that the payment of rent or royalties payable to the State has been evaded, and that the false entry or writing has been made or used for any purpose in connection with the evasion, the Court may add to the fine imposed on the conviction a further penalty not exceeding 3 times the amount of the rent or royalties, the payment whereof shall be proved to have been so evaded.

Cf. 1949, No. 19, s. 54 (N.Z.)

**48. Unlawful cutting or removal of forest produce** - (1) Every person who, without lawful authority, fells, cuts, marks, lops, injures, damages, destroys, obtains or removes any forest produce in, on, or from any forest land commits an offence and shall be liable to imprisonment for a term not exceeding one month or a fine not exceeding \$200 or both.

(2) In addition to any penalty imposed under the foregoing provisions of this section there may be imposed a penalty not exceeding 3 times the value of the forest produce the subject - matter of the proceedings, and every such penalty shall be recoverable as a fine.

Cf. 1949, No. 19, s. 55 (N.Z.)

**49. Unlawful interference with property of State** - Every person who, without lawful authority, takes or interferes with or causes to be taken or interfered with any buildings, materials, tools, goods or chattels of any nature being the property of the State and being for the time being in or upon State forest land or in the possession of the Minister commits an offence and shall be liable to a fine not exceeding \$100.

Cf. 1949, No. 19, s. 56 (N.Z.)

**50. Offences with respect to animals, etc., on or in forest land** - Every person commits an offence and shall be liable to a fine not exceeding \$100 who, except pursuant to a lawful authority, on or in any forest land, -

(a) Liberates any animal;

(b) Allows any cattle owned by him or under his control to graze; or

(c) Fails to remove any cattle owned by him or under his control when required by notice from a forest officer so to do within such reasonable period as may be specified in the notice.

Cf. 1949, No. 19, s. 57 (N.Z.)

**51. Offences with respect to forest officers** - Every person commits an offence against this **Act** who -

(a) Offers violence to, or assaults, obstructs, threatens or attempts to intimidate, any forest officer or other person under the control of the Director while that officer or person is acting in the exercise of his powers or the discharge of his duties under this **Act**; or

(b) Gives or agrees to give or offers to any such officer or person, any gift or consideration as an inducement or reward for any **act** done or to be done, or any forbearance observed or to be observed, or any favour shown or to be shown, by that officer or person in or in relation to the exercise of such powers or the discharge of such duties as aforesaid; or

(c) Personates or falsely pretends to be a forest officer or other employee of the Forestry Division.

Cf. 1949, No. 19, ss. 59, 60 (N.Z.)

**52. Other offences** - Every person commits an offence against this **Act** who does any of the following things, namely -

(a) Counterfeits upon or unlawfully fixes, to any forest produce any mark appropriated for the use of forest officers;

(b) Without lawful authority, makes or causes to be made, or uses or causes to be used, or has in his possession, a brand, stamp or badge which resembles or purports to be a brand, stamp or badge such as is usually used by forest officers;

(c) Counterfeits or unlawfully issues any licence or other authority for the cutting, removal or sale of forest produce;

(d) Unlawfully alters, obliterates, defaces, pulls up, removes, damages or destroys any boundary mark, stamp, mark, sign, notice, poster, licence, lease, permit, right or other authority used or issued by any Minister or the Forestry Division or any forest officer or constable;

(e) Without lawful authority, enters any land while entry is prohibited;

(f) Without lawful authority, occupies, clears or breaks up any forest land for cultivation or any other purpose;

(g) Without lawful authority, erects any livestock enclosure or building on any forest land;

(h) Unlawfully destroys or damages any building, fence, gate, or other structure in, on, or enclosing any forest land;

(i) Without lawful authority, constructs or obstructs any road, path or waterway on or in any forest land;

(j) Negligently causes any unnecessary damage in felling any tree or in cutting, extracting or removing any forest produce;

(k) Without lawful authority, does or causes to be done any **act**, matter or thing for which lawful authority is required under this **Act**;

(l) Without lawful authority, removes from any forest land any forest produce without previously paying any rent or royalties payable in respect thereof;

(m) Knowingly or negligently furnishes any forest officer with a false or incorrect statement of any forest produce felled, cut, split, sawn or removed by him or by any person as his agent or employee, on which any rent or royalties are payable to the State; or

(n) Without lawful authority, receives any forest produce knowing the same to have been obtained without lawful authority.

Cf. 1949, No. 19, ss. 57, 60 (N.Z.); 1953, No. 17, s. 13 (Fiji)

## **GENERAL AS TO OFFENCES**

**53. Proof of lawful authority** - In any prosecution for an offence under this **Act**, the defendant shall be

presumed to have acted without lawful authority unless the defendant (the onus being on him) proves to the contrary.

Cf. 1949, No. 19, ss. 56, 60 (N.Z.)

**54. General penalty for offences** - Every person who commits an offence against this **Act** for which no penalty is provided elsewhere than in this section shall be liable -

(a) In the case of an individual, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$200 and, if the offence is a continuing one, to a further fine not exceeding \$20 for every day during which the offence continues, or to both such imprisonment and such fine;

(b) In the case of a body corporate, to a fine not exceeding \$500 and, if the offence is a continuing one, to a further fine not exceeding \$50 for every day during which the offence continues.

Cf. 1949, No. 19, s. 61 (N.Z.)

**55. Liability for loss or damage** - (1) Every person convicted of an offence under this **Act** shall be liable for any loss or damage caused by the **act** constituting the offence in addition to the penalty for the offence.

(2) The amount payable in respect of that liability may be awarded by the Court in fixing the penalty and may be recovered as a fine.

(3) In assessing the amount so payable the Court may take into account salaries, wages, and incidental expenses incurred in the investigation of the **act** constituting the offence and in remedying the damage caused by that **act** and all other relevant factors.

Cf. 1949, No. 19, s. 62 (N.Z.)

**56. Confiscation of property used in commission of offence** - When any person is convicted of an offence under this **Act** in respect of any forest produce, that forest produce and all tools, vessels, vehicles, conveyances and livestock used in the commission of the offence shall be liable, by order of the convicting Court, to confiscation.

Cf. 1953, No. 17, s. 19 (Fiji)

**57. Limitation of proceedings** - Any proceedings for an offence under this **Act**, or for the recovery of any penalty, fine or forfeiture imposed thereunder, may be commenced at any time within reasonable time from the time of the discovery of the offence.

Cf. 1949, No. 19, s. 63 (N.Z.)

**58. Compounding of offences** - (1) When the Minister is satisfied that any person has committed any specified offence under this **Act** (other than those created by paragraph (c) of section 51 and by section 52 of this **Act**), the Minister may accept from that person a sum of money by way of compensation for that offence, together with the forest produce (if any) in respect of which that offence has been committed:

Provided that such compensation shall not exceed 5 times the loss or damage which the Chief Forest Officer estimates to have been caused by the **act** constituting the offence or the maximum penalty for the offence (ignoring in either case the value of property which may be confiscated), whichever is the smaller.

(2) In any proceedings brought against any person for an offence under this **Act**, it shall be a good defence if

that person proves to the satisfaction of the Court that the offence has been compounded under this section.

Cf. 1953, No. 17, s. 20 (Fiji)

## **PART VIII PROTECTED LAND**

**59. Land may be declared protected land** - (1) The Head of State, acting on the advice of Cabinet, may, by proclamation, declare to be protected, for any period not exceeding 5 years under any one proclamation for all or any purpose of forestry, any land of any class which Cabinet considers for the time being to be suitable for such purpose or purposes (hereinafter in this Part of this **Act** referred to as protected land).

(2) The Head of State, acting on such advice, may, by proclamation, revoke or vary any proclamation declaring land to be protected land.

(3) The expiration or revocation of any proclamation declaring any land to be protected land shall not be any impediment to the issue by the Head of State, acting on the advice of Cabinet, of a further proclamation or successive further proclamations declaring all or part of that land to be protected land for any further period not exceeding 5 years under any one such further proclamation.

**60. Status of protected land** - Land which is declared to be protected land shall not become State forest land or vest in the State by force merely of the declaration but the declaration shall not be any impediment to the land being later set apart as State forest land.

**61. Restrictions on dealings with protected land** - (1) It shall not be lawful or competent for any person to make any alienation or disposition of any protected land other than public land or of any interest therein which would be permissible but for this section without the prior consent in writing of the Minister; and any alienation or disposition thereof purported to be made without such consent shall be null and void.

(2) It shall not be lawful for any owner of protected land, without the prior consent in writing of the Minister,

-

(a) To clear or break up any of that land for cultivation or any other purpose; or

(b) To fell or lop any tree growing in that land or remove any forest produce from that land, except for the construction or repair of a dwelling or supplementary building on land lawfully occupied by him for the permanent abode or use of himself and his family, or of fences on or around that land, or of his fishing stakes, or of his canoes or of his landing places, or for firewood to be consumed by himself or his family for domestic purposes.

Cf. 1953, No. 17, s. 11 (Fiji)

**62. Offences** - Every person commits an offence against this **Act** who fails to comply in any respect with any provision of section 61 of this **Act** or with any requirement imposed by the Minister as a condition of his consent thereunder.

Cf. 1953, No. 17, s. 13 (Fiji)

**63. Compensation** - (1) Any person having any estate or interest in any land other than public land which is declared to be protected land under this Part of this **Act** and which is injuriously affected by that declaration shall be entitled to a full and just compensation for the same from the Minister, to be ascertained in the

manner set out in Part III of the Taking of Land **Act** 1964:

Provided that no compensation shall be awarded or payable under this section unless an application has been made for the consent of the Minister under section 61 of this **Act** and the Minister has refused his consent, and in that event the amount of the compensation shall be limited to such injurious affection as shall have been caused by such refusal.

(2) Where any sum by way of compensation shall have been paid under this section, the amount thereof shall be deducted from any sum which may be payable by way of compensation in respect of any subsequent taking of the said land under the Taking of Land **Act** 1964.

Cf. 1964, No. 1, s. 25

## **PART IX FORESTRY DIVISION ADMINISTRATION OF PRIVATE FORESTS**

**64. Minister may act as trustee for owner of private forest on freehold land** - (1) The Minister may in his discretion accept appointment as the trustee of the Minister in charge of any other Department of State or any public body, corporation or person owning freehold land and having power to carry out any one or more of the purposes of establishing, managing or protecting any forest, managing or protecting any such freehold land used or intended to be used for or in connection with any forest or proposed forest, appraising, cutting and selling or utilising any timber or other forest produce, any other purpose of forestry, and making inspections and preparing reports for any such purpose as aforesaid.

(2) Any such Minister, public body, corporation or person owning freehold land and having power to carry out any such purpose may appoint the Minister to **act** as his trustee for that purpose for such period, on such terms and conditions, and at such remuneration, as may be agreed.

(3) Subject to the terms of the Minister's appointment as trustee, -

(a) All freehold land while under the management of the Minister pursuant to this section and that appointment shall be administered as if it were State forest land, and while so administered all the provisions of this **Act** shall apply with necessary modifications as if the freehold land were State forest land; and

(b) Without prejudice to the generality of paragraph (a) of this subsection, the Minister, -

(i) Shall have, for any purpose in connection with that freehold land, forest, timber or other forest produce, all the powers and authorities he would have if the land was State forest land, and the forest was on State forest land, and the timber and other forest produce were products of State forest land;

(ii) May ask the Minister of Lands as his agent, and the Minister of Lands is hereby authorised, to execute and issue such licences and leases as may be necessary to enable the Minister to exercise his powers and carry out his duties; and to collect all rent and royalties payable thereunder; and

(iii) May execute and issue in his own name as trustee for and on behalf of the other Minister, public body, corporation or person for whom he is acting such permits, rights and authorities as may be necessary to enable him to exercise his powers and carry out his duties.

(4) All expenses incurred by the Minister on behalf of any appointor under this section may be paid in the first place out of the Treasury Fund from money appropriated by Parliament for the purpose, and may be deducted by the Minister of Lands from any rent or royalties collected on behalf of the appointor, and all fees, commission and other money earned by the Minister or the Minister of Lands in respect of services rendered to the appointor under this section may be deducted by the Minister of Lands from any such rent or royalties and shall be paid into the Public Account to the credit of the Treasury Fund.

Cf. 1949, No. 19, s. 64 (N.Z.)

**65. Method of making customary land available for forestry** - (1) Any beneficial owner of customary land may apply in writing to the Director of Lands under the Alienation of Customary Land **Act** 1965, or vote in favour of a resolution at a meeting of beneficial owners convened under section 9A thereof, desiring the Minister of Lands as his trustee thereunder to grant a licence or lease over or in respect of the land for forestry to the Minister, or direct to any other person.

(2) In any such case the Minister of Lands shall cause the application to be notified to the Minister and, notwithstanding anything to the contrary in the Alienation of Customary Land **Act** 1965, shall not grant the licence or lease without the consent of the Minister, and shall include in the licence or lease to any person other than the Minister such covenants, conditions and stipulations as to forestry as shall be requested by the Minister, and collect all rent and royalties payable thereunder by the licensee or lessee.

**66. Licence or lease of customary land to be granted by Minister of Lands** - The Minister shall not himself grant any licence or lease over or in respect of any customary land of which he becomes licensee or lessee, but he may apply to the Director of Lands under the Alienation of Customary Land **Act** 1965 for the Minister of Lands to grant such a licence or lease for a term or terms not longer than the term or terms of the licence or lease held by the Minister, and if the Minister of Lands agrees so to do he shall include in the licence or lease such covenants, conditions and stipulations as to forestry as shall be requested by the Minister, and collect all rent and royalties payable thereunder by the licensee or lessee.

**67. Substitution of Minister and Director for Minister and Director of Lands** - After the registration of a licence or lease of any class of land or any interest therein for any purpose of forestry to any person other than the Minister, the licence or lease, and the provisions of this and every other **Act** in relation thereto, shall be read and construed, subject to section 27 of this **Act**, as if the Minister was substituted for the Minister of Lands and as if the Director was substituted for the Director of Lands in respect of all covenants, conditions and stipulations other than those involving the payment of rent and royalties by the licensee or lessee to the licensor or lessor.

## **PART X MISCELLANEOUS**

**68. Historic places** - When at any time the Minister is of the opinion that any place in any forest land is of historic, traditional, archaeological or national interest to Western **Samoa**, the Minister may, by notices in writing, require the owner of that land and any holder of any licence, lease, permit, right or authority in respect thereof, to preserve that place undamaged as far as possible for any specified period not exceeding 3 years until the Government has had time to decide and give effect to any further action which the Government thinks should be taken in respect thereof.

**69. Annual report** - (1) The Director shall include a report on the Forestry Division in each report furnished by him pursuant to section 14 of the Agriculture, Forests and Fisheries Ordinance 1959.

(2) The Director shall as soon as practicable after the end of each financial year cause to be prepared in such

form as the Minister of Finance may approve or direct, and included in his report on the Forestry Division, such statements of account showing the income and expenditure of the activities or operations conducted by the Forestry Division, or by the Department of Lands for any purpose of forestry, together with such balance sheets, as the Minister of Finance may approve or direct.

Cf. 1949, No. 19, ss. 16, 68 (N.Z.)

**70. Control of injurious importations and exportations** - (1) No person shall import into Western **Samoa** any tree, tree seed, timber or timber product except upon production of a certificate in writing from the department dealing with forestry of the Government of the country of origin certifying that the same does not contain and is unlikely to introduce any insect, fungus, bacterium or virus in any of the life stages of those organisms that may be injurious to or may cause an unhealthy condition in any tree, tree seed, timber or timber product.

(2) No person shall export from Western **Samoa** any tree, tree seed, timber or timber product which contains any insect, fungus, bacterium or virus in any of the life stages of those organisms that may be injurious to or may cause an unhealthy condition in any tree, tree seed, timber or timber product, or which does not comply with any export requirements as to grading, treating, drying, manufacture, and merchandising. Such requirements may be prescribed by the regulations, or by the Minister while no regulations are in force or in cases where the regulations do not apply.

(3) Any officer authorised in that behalf by the Minister may at any time enter into any vehicle or conveyance or upon any land or premises or on board any vessel or aircraft for the purpose of inspecting any tree, tree seed, timber or timber product, and shall have all such powers and authorities as he deems necessary for enabling him to enforce the provisions of subsections (1) and (2) of this section.

(4) If the authorised officer is of opinion that any of the said imports or exports are injurious or unhealthy or do not otherwise comply with any of the provisions of subsections (1) and (2) of this section, he may require the owner or his agent to remove them to such ground or depot as he may appoint for detention for the purpose of observation or he may require such imports or exports to be treated, disinfected, destroyed or otherwise disposed of.

(5) In the event of failure to comply with any such requirement the authorised officer may at the expense of the owner arrange for the necessary removal, treatment, disinfection, destruction or other disposition as the case may require, and any such expense may be recovered as a debt due to the State.

(6) For the purposes of this section the Head of State, acting on the advice of Cabinet, may from time to time make regulations not inconsistent with this **Act** for all or any of the following purposes:

(a) Appointing any specified ports or other places in Western **Samoa** to be the only ports or places of import or export for trees, tree seeds, timber or timber products:

(b) Appointing quarantine grounds or depots where trees, tree seeds, timber or timber products, and packages containing them or with which they have or may have come into contact, may be detained for the purpose of observation or for the purpose of being inspected, treated, disinfected, destroyed or otherwise disposed of:

(c) Authorising forest officers and such other persons as may from time to time be given authority in that respect to **act** as quarantine officers for the purposes of the regulations; and conferring on quarantine officers so authorised such powers and authorities as are deemed necessary to enable them to carry out the requirements of this **Act** and the regulations:

(d) Prescribing the charges that may be made for the inspection of trees, tree seeds, timber or timber products, or for the handling, treatment, disinfection, destruction or other disposal of

trees, tree seeds, timber or timber products which are found upon inspection to require such handling, treatment, disinfection, destruction or other disposal:

(e) Conferring such other powers and authorities as may be necessary or expedient for giving full effect to the provisions of this section and for the due administration thereof.

Cf. 1949, No. 19, s. 69 (N.Z.)

As to subs. (2), for other powers of the Director to maintain the standard of primary produce exported, see the Primary Produce Export Ordinance 1961.

**71. Regulations as to control and eradication of diseases affecting trees, etc.** - (1) For the purposes of this section "disease" means any disease which may affect trees, tree seeds, timber, forests or forest products, and which the Head of State, acting on the advice of Cabinet, from time to time declares to be a disease within the meaning of this section, whether or not caused by or consisting of the presence of any insect, fungus, bacterium or virus.

(2) The Head of State, acting on the advice of Cabinet, may from time to time make regulations for the purpose of eradicating or preventing the spread of any disease which may affect trees, tree seeds, timber, forests or forest products.

(3) Without limiting the general power conferred by subsection (2) of this section, regulations may be made under this section for all or any of the following purposes:

(a) Prescribing the treatment and measures to be adopted in respect of any trees, tree seeds, timber, forests, forest products, buildings or other structures, which are affected by disease or likely, in the opinion of any forest officer, to become affected by disease:

(b) Providing for the destruction of any trees, tree seeds, timber, forest products, debris from tree felling operations or refuse from sawmilling operations, in any case where the Chief Forest Officer is of the opinion that treatment may not completely destroy the disease, or that treatment has failed to destroy the disease, and that there is a reasonable prospect of eliminating the disease from Western **Samoa** by such destruction:

(c) Prohibiting or controlling the bringing into any specified portion of Western **Samoa** from any other portion or specified portion of Western **Samoa** of any trees, tree seeds, timber or forest products, which are diseased, or likely, in the opinion of any forest officer, to become diseased:

(d) Authorising forest officers at all reasonable times to enter on any land or premises where trees or forests are growing or tree seeds or timber or forest products are lying or stored or stacked for the purpose of inspecting the same or, in any case where default has been made in complying with any of the requirements of the regulations, for the purpose of carrying out those requirements at the expense of the person making default.

Cf. 1949, No. 19, s.70 (N.Z.)

**72. Specified Ordinance not affected** - Nothing in sections 70 and 71 of this **Act** shall affect the operation of the provisions of the Plants and Soil Importation (Disease Control) Ordinance 1950.

Cf. 1949, No. 19, s. 71 (N.Z.)

**73. Regulations** - (1) The Head of State, acting on the advice of Cabinet, may from time to time make

regulations not inconsistent with this **Act** for any purpose for which regulations are required or contemplated by this **Act**, and for giving full effect to the provisions of this **Act**.

(2) Without restricting the general words in subsection (1) of this section, regulations may be made under this section for all or any of the following purposes:

(a) Regulating the management of any forest land, and the cutting, hewing, sawing, or other methods of conversion of timber or other forest produce, and the burning or other disposal of logging and industrial waste and debris therefrom:

(b) Prescribing the forms of licences and leases over or in respect of forest land, and of permits, rights and authorities over State forest land; and prescribing also the method by which and the conditions subject to which the same may be renewed, extended, determined, cancelled, forfeited, surrendered, or withdrawn:

(c) Prescribing the procedure for the sale of forest produce by auction, tender or other method, and enabling upset prices or minimum charges to be fixed;

(d) Prescribing the fees or deposits to be paid with any application or tender:

(e) Prescribing the amounts of rent and royalties payable in respect of licences and leases over or in respect of forest land, and of permits, rights and authorities over State forest land; and any covenants, conditions, and stipulations to be contained therein; and prescribing fees or charges to be paid to the Director in respect of services rendered by forest officers:

(f) Regulating the exercise of the rights conferred by licences and leases over or in respect of forest land, and by permits, rights, and authorities over State forest land; making provision for the protection and preservation of trees, timber, and other growth; and regulating the measurement, appraisal, cutting, marking, and removal of timber and other forest produce:

(g) Prescribing the mode in which any forest produce is to be branded or marked for any purpose whatsoever; and providing for the registration of brands or marks:

(h) Prescribing the books and records to be kept and the returns to be made unless otherwise agreed by the holders of licences and leases over or in respect of forest land, and of permits, rights, and authorities over State forest land, by producers and distributors, and by persons directly or indirectly taking delivery of timber or other forest produce, cut, hewn, sawn, acquired, converted, held or disposed of by them:

(i) Requiring the persons described in paragraph (h) of this subsection to produce for inspection by the Director, or any person acting with the authority of the Director, all books of account, returns, and other documents connected with any of the operations described in that paragraph (h):

(j) Prescribing means for preventing or extinguishing fires on forest land in lieu of or in addition to those set out in this **Act**:

(k) Regulating or prohibiting, or authorising constables, traffic officers, forest officers, licensees or lessees to regulate or prohibit, the use of any public road or of any track on or within one mile of forest land while a fire is in progress or fire fighting operations are proceeding in the vicinity, or at other times and for other purposes:

(l) Prescribing the measures to be taken and the equipment and fire patrols to be provided and maintained, by sawmillers and other persons engaged in industrial operations on forest land or any other land within one mile of any forest land for preventing or extinguishing fires or for diminishing the danger to life and property arising from fires:

(m) Prescribing procedure for stopping, detaining or seizing any forest produce:

(n) Providing that no sawmill or other related factory or industrial plant on any class of land may be erected or operated without the prior written authority of the Minister or unless it is registered and prescribing the mode of registration and the fees to be paid therefor and the conditions for the continuance of registration or re - registration:

(o) Regulating the establishment and conduct of recreation and camping areas on State forest land, and prescribing the terms and conditions on which the same may be used and fees to be paid in respect thereof:

(p) Constituting, or providing for the constitution, appointment, or election of advisory committees, and defining the functions of any such committee:

(q) Regulating the type, design, layout and equipment of any sawmill or related factory or industrial plant which are erected or to be erected on any class of land, and of any associated workers' dwellings, amenities, conveniences, and services:

(r) Prescribing requirements unless otherwise agreed as to the measuring, appraising, grading, treating, drying, manufacture and merchandising of trees, tree seeds, timber or timber products:

(s) Prescribing requirements or conditions, unless otherwise agreed, in respect of the use, naming, manufacture, drying, treating, grading, handling, storing, sale, supply, transport by land or sea, distribution and disposal of timber and manufactured timber products, either generally or in respect of any specified area, timber, grade or kind of timber or manufactured timber product:

(t) Restricting, preventing or regulating the use, sale, export or disposal of timbers which are in short supply or which require to be conserved:

(u) Prescribing penalties, not exceeding those which may be imposed under section 54 of this **Act**, for the breach of any regulations under this **Act**, or of the conditions of any licence or lease over or in respect of forest land, or of any permit, right or authority over State forest land:

(v) Regulating the management of any land reserved for any purpose of forestry, and the conditions subject to which the public may use such land:

(w) Regulating the management of any protected land:

(x) Regulating the floating of timber or forest produce in harbours or otherwise on the territorial waters of Western **Samoa** or on rivers, and the storing thereof on harbour or sea shores or river banks:

(y) Generally prescribing fees payable under this **Act** or the regulations.

(3) Regulations made under this **Act** may be so made as to apply generally throughout Western **Samoa** or within any specified part or parts thereof, or within the whole of Western **Samoa** except such part or parts as may be specified in the regulations.

Cf. 1949, No. 19, s. 72 (N.Z.); 1953, No. 17, s. 36 (Fiji)

**74. Remuneration and allowances of committee members** - (1) There may be paid, from money appropriated by the Legislative Assembly for that purpose, to each member of any advisory committee appointed pursuant to paragraph (p) of subsection (2) of section 73 of this **Act** who is not a fulltime salaried employee of the Government:

(a) Any travelling expenses reasonably incurred by him in respect of the performance of his duties as a member of the advisory committee; and

(b) Such sum as Cabinet from time to time approves in respect of each day or part of a day which such member spends upon the business of the advisory committee.

(2) Any such approval may be expressed to come into force from, before, on or after the date thereof, and if not so expressed shall come into force on the date thereof.

**75. Repeals, amendments and savings** - (1) *This subsection substituted a new paragraph for para. (b) of s. 4 of the Agriculture, Forests, and Fisheries Ordinance 1959.*

(2) *This subsection amended ss. 13(1) and 22 (1) of the **Water Act 1965.***

(3) The Forestry Regulations 1963 are hereby revoked.

(4) The revocation of those regulations shall not affect any document made or any thing whatsoever done under those regulations, and every such document or thing, so far as it is subsisting or in force at the time this **Act** comes into force, shall continue and have effect as if those regulations had not been revoked.

The Forests **Act** 1967 is administered in the Department of Agriculture, Forests and Fisheries.

## **REGULATIONS APPLYING TO FORESTS**

### **Forests Regulations 1969 (W.S.R. 1969/5)**

---

#### **THE FOREST REGULATIONS 1969**

**HIS HIGHNESS, MAILIETOA TANUMAFILI II, HEAD OF STATE**

**At the Government House at Apia this 17<sup>th</sup> day of April 1969**

PURSUANT to the Forests **Act** 1967, the Head of State, acting on the advice of Cabinet, hereby makes the following regulations.

#### **ANALYSIS**

1. Title
2. Interpretation

#### **COLLECTION OF FOREST PRODUCE**

3. Minimum girth for felling trees
4. Protection to fruit trees
5. Trees to be felled at a specified height
6. How trees to be cross- cut

7. Control of licence areas
8. Felling of merchantable trees
9. Conditions for felling of trees for construction of extraction routes and buildings
10. Boundaries to be clearly defined and maintained
11. Not more than one licence, etc., to be granted
12. Form of permit to take forest produce
13. Royalties and fees

### **REMOVAL OF FOREST PRODUCE**

14. Time limit for removal of forest produce
15. Checking of forest produce taken
16. Property marks
17. Surcharge

### **EXPORT OF TIMBER**

18. Inspection of timber for infection by fungus or insect
19. Refusal of timber inspector to inspect timber
20. Restrictions on timber exports

### **SAWMILLS**

21. No sawmill to open without authority and registration

### **GENERAL**

22. Offences and penalties
  23. Review of discretion
- Schedules

---

### **REGULATIONS**

**1. Title** – These regulations may be cited as the Forests Regulations 1969.

As to overhanging coconut trees, see s. 15 of the General Laws (No. 2) Ordinance 1932 under title General Laws.

**2. Interpretation** - (1) In these regulations, unless the context otherwise requires, -

"Approved" means approved by the Chief Forest Officer:

"Fell" includes burn, injure and remove:

"Fruit tree" includes any wild tree Mango (*Mangifera* spp.), Lama (*Aleurites* spp.), Sea - Sea (*Parinari* spp.), Vi Vao (*Reynoldsia* spp.) and any other species producing edible fruits:

"Height" means the distance parallel with the vertical axis of a tree, measured on the side of the tree on which the ground is highest:

"Licence area" means any land covered by any licence, lease, permit, right or authority granted under section 22:

"Merchantable log" means a straight log not less than 9 feet long and not less than 3 feet 6 inches midgirth under bark:

Provided that, -

(i) Any log with the following or less than the following deviations from the straight shall be considered straight, that is to say -

(a) For logs 9 and not exceeding 11 feet in length the maximum deviation shall be 2 ½ inches; and

(b) For logs exceeding 11 feet in length one inch shall be added to the maximum deviation cited in subparagraph (a) of paragraph (i) of this proviso for every 3 feet, or part of 3 feet, of additional length:

(ii) The above allowances refer to logs that deviate from the straight in one direction only, and if a log deviates from the straight in 2 opposite directions, the log shall be classed as straight if the sum of the maximum deviations from the straight in each direction is not greater than the allowances stated above:

(iii) A log shall not be classed as merchantable:

(a) If its volume is reduced by more than one third by branch knots exceeding 3 inches in diameter, shakes, shatters and decay; or

(b) If its heart is spongy, brittle or hollow, unless it has an average thickness of not less than 5 inches of sound timber when measured in a radial direction; and

(c) For the purposes of this paragraph (iii), defects caused by fungi or insects that have occurred after the tree has been felled shall be ignored:

(iv) If a tree is not so cross - cut as to ensure that as much merchantable timber as possible is obtained from it, its merchantable content shall be assessed as if it had been so cross - cut:

"Merchantable tree" means a reasonably accessible tree of any kind, from which at least one merchantable log can be obtained:

"Merchantable timber" includes merchantable logs and all pieces of sound timber capable of being incorporated with and removed as part of a merchantable log:

"Sawmill" means any plant capable of converting round and rough hewn timber including circular, band, gang and chain saws and peeling, slicing, chipping or other conversion methods:

"Section" means a section of the **Act**:

**"The Act" means the Forests Act 1967.**

(2) A reference to a numbered form is a reference to a form so numbered in the Second Schedule hereto.

## COLLECTION OF FOREST PRODUCE

**3. Minimum girth for felling trees** - No person holding a licence, lease, permit, right or authority to take timber granted under section 22 shall fell any trees if the girth of the tree, when measured above buttresses, or, in the case of a tree without buttresses, when measured at a height of 4 feet 3 inches above ground is less than such minimum girth as may be determined by the Chief Forest Officer for that tree, generally or in the particular area where it is growing, in a working plan or otherwise.

**4. Protection to fruit trees** - No person shall fell any tree in State forest land for the purpose of collecting fruit.

**5. Trees to be felled at a specified height** - (1) All trees felled under licence, lease, permit, right or authority shall be cut at a height not exceeding 12 inches, or in the case of a buttressed tree, immediately above the buttress.

(2) In addition to any penalty imposed by law for a breach of this regulation, royalties and fees shall be payable on all timber wasted by felling in contravention of this regulation.

**6. How trees to be cross - cut** - (1) All trees felled under licence, lease, permit, right or authority shall be cross - cut in such a manner as to ensure that as much merchantable timber as possible is obtained therefrom.

(2) In the event of non - observance of this regulation, royalties and fees shall be payable as if the tree had been so cross - cut.

**7. Control of licence areas** - Every holder of a licence, lease, permit, right or authority shall confine his operations for the time being to such part or parts of the licence area as the Chief Forest Officer may from time to time direct.

**8. Felling of merchantable trees** - (1) Subject to the provisions of regulation 3, the holder of a licence, lease, permit, right or authority to take timber unless such licence, lease, permit, right or authority specifies the kind or kinds of timber to be taken, shall fell all merchantable trees within his licence area, and shall not remove his operations from one part of his licence area to another until all merchantable trees in the first part have been felled and assessed for royalty.

(2) In addition to any other penalty imposed by law, royalty and fee to such amount as may be assessed by the Chief Forest Officer, not exceeding the agreed rates applicable to the licence, lease, permit, right or authority, shall be payable on any merchantable tree not felled.

**9. Conditions for felling of trees for construction of extraction routes and buildings** - Every holder of a licence may fell trees for the construction of extraction routes and buildings in connection with his operations in accordance with the following conditions:

(1) Trees within 100 feet of buildings and within 60 feet of the centre line of extraction routes may be felled, provided that these distances may be extended by the Chief Forest Officer where trees interfere with the construction or constitute a danger to any building or extraction route;

(2) In respect of all merchantable trees felled, royalties and fees will be payable;

(3) In respect of any other trees felled no royalty, fee or other charge will be payable;

(4) Notwithstanding that the felling of any tree may be prohibited by a licence condition, or working plan or law, no penalty will be imposed and no additional royalty or fee will be payable if the stump of any tree so

felled is situated within the distances set out in paragraph (1) above;

(5) Of all trees so felled, the licensee, when and as requisitioned by the Chief Forest Officer, will either remove and dispose of, or otherwise treat so as to render unsuitable for the breeding of rhinoceros beetles, all stems and branches which are not used in the construction of extraction routes or buildings and which are considered by the Chief Forest Officer to constitute breeding grounds for rhinoceros beetles.

**10. Boundaries to be clearly defined and maintained** - Every holder of a licence, lease, permit, right or authority shall ensure that the boundaries of his licence area, and of any part of his licence area directed under regulation 7, are clearly defined and maintained on the ground to the satisfaction of the Chief Forest Officer and the Director of Lands.

**11. Not more than one licence, etc., to be granted** - Except with the prior approval of the Minister of Lands in each case of a licence or lease, or of the Minister in each case of a permit, right or authority, not more than one licence, lease, permit, right or authority to take the same kind of forest produce shall be granted in respect of any one licence area.

**12. Form of permit to take forest produce** - A permit to take forest produce from State forest land may be in form 1.

**13. Royalties and fees** - The minimum rates of royalties and fees payable for produce taken under licences and leases over or in respect of forest land, and permits, rights and authorities over State forest land, shall be as set out in the First Schedule hereto.

## **REMOVAL OF FOREST PRODUCE**

**14. Time limit for removal of forest produce** - (1) Subject to section 29, all merchantable timber, and all other forest produce, collected under licence, lease, permit, right or authority, shall be removed from the licence area within one month of the date of felling or collection thereof, or within such longer period as the Chief Forest Officer may expressly permit in any particular case.

(2) In addition to any penalty imposed by law for a breach of this regulation, the licensee or other person committing the breach shall have no further right of property in any such timber or other forest produce not removed within the specified time, but shall remain liable for payment of royalties and fees.

**15. Checking of forest produce taken** - (1) The holder of any licence, lease, permit, right or authority to take timber, subject to any condition specified therein, shall, in respect of all forest produce cut or taken thereunder, before the forest produce is removed from the licence area, accurately complete or cause to be completed and sent to the Chief Forest Officer a statement in such form as may be supplied by the Chief Forest Officer.

(2) All forest produce cut or removed under licence, lease, permit, right or authority shall be taken for checking to a place endorsed on the licence, lease, permit, right or authority, or to such place as the Chief Forest Officer may from time to time approve (the place so endorsed or approved being hereinafter referred to as a "forest checking station") before it is taken elsewhere or used.

(3) The methods of measurement of timber and other forest produce for assessment of royalty and fee or other payments due under the **Act**, if not set out in the licence, lease, permit, right or authority in question, shall be in accordance with general instructions issued from time to time by the Chief Forest Officer.

(4) Any forest officer may refuse to measure any forest produce if it is presented for examination in such a manner that an exact measurement is unduly difficult.

(5) No forest produce shall be removed from any forest checking station to any other place unless the person actually removing it is in possession of a removal pass, in form 2, relating to such produce, issued under the hand of a forest officer and, if it is timber, unless it bears the prescribed Government hammermark denoting that it has been assessed for royalty.

(6) Measurements of timber and other forest produce for assessment of royalty and fee or other payments due under the **Act** shall be sent to the Chief Forest Officer as soon as possible after being made. As soon as possible after the end of each calendar month, the Chief Forest Officer shall send to the Director of Lands a summary of all measurements made during that month of the produce from areas held under licence or lease and of the royalty and fee payable in respect thereof.

**16. Property marks** - (1) Every holder of a licence to take timber shall apply to the Chief Forest Officer to register a mark as the distinguishing mark of such timber and pay the sum of \$5 as a registration fee:

Provided that the Chief Forest Officer may refuse to register any mark that is similar to, or likely to be confused with, a mark already registered by another licensee, or which in the opinion of the Chief Forest Officer is not suitable for the purpose of marking timber.

(2) All logs taken under licence shall, before removal from the licence area, be clearly hammer - marked at each end and the middle with the registered mark of the holder of the licence under which such logs were taken or removed.

**17. Surcharge** - (1) A surcharge of 5 per cent shall be payable on any amount payable under any permit, right or authority, by way of rent or royalties, if it remains unpaid for 15 days, or such longer period not exceeding 6 weeks as may be allowed by the Chief Forest Officer in any case, after the date when it becomes due and payable.

(2) Where no date is fixed for any payment to be made, it shall be deemed to become due and payable on the day after the day on which demand for its payment is served.

## **EXPORT OF TIMBER**

**18. Inspection of timber for infection by fungus or insect** - (1) When, by the laws of any importing country, an inspection certificate is required to certify that timber is apparently free from infection by fungi and insects, any person wishing to export timber to that country shall request inspection by a forest officer, who, if he is satisfied that there is no visible sign of such infection, may issue a certificate in form 3.

(2) No charge shall be made for such inspection or certificate, but the exporter shall pay the reasonable costs of transport incurred by the forest officer, or shall provide him with free transport.

**19. Refusal of timber inspector to inspect timber** - When any inspection is requested under regulation 18, the exporter shall present the timber in a manner convenient for inspection, and any forest officer may refuse to inspect any timber which, in his opinion, has not been presented in such manner:

Provided that any forest officer refusing to inspect timber in accordance with this regulation shall, without unnecessary delay, report the full circumstances of his refusal to the Chief Forest Officer, who may give such directions as he may deem appropriate.

**20. Restrictions on timber exports** - No kind of timber from any tree species shall be exported from Western Samoa, unless, -

(a) In the case of sawn timber, it is dipped in an approved solution of an approved timber preservative as soon as possible after being sawn, and air dried under cover for not less than one month or kiln dried prior to export;

(b) In the case of round or rough hewn timber, it -

(i) Is debarked and treated with an approved solution of an approved timber preservative as soon as possible after felling; or

(ii) Is stored in **water** as soon as possible after felling and until export.

## SAWMILLS

**21. No sawmill to operate without authority and registration** - (1) No sawmill for converting round logs or rough hewn timber shall be erected or operated without the prior written authority of the Minister, and unless it is for the time being registered under these regulations.

(2) A certificate of registration issued under this regulation shall be valid for a period not exceeding one year from the date of issue, and shall expire on the 31st day of December next after the date of issue.

(3) Each application for registration of a sawmill shall be made in writing to the Chief Forest Officer and shall be accompanied by evidence, certified by the Registrar of Land, that the applicant has (or can and will obtain) a registered title to the site from the Registrar of Land, by plans of all buildings which are intended to comprise the sawmill or be related or ancillary thereto, showing the layout of the machinery intended to be installed therein or used in connection therewith, and by a list of such machinery.

(4) Each application for a renewal of registration of a sawmill shall be made in writing to the Chief Forest Officer, and shall be accompanied by a list of the machinery installed in the sawmill or in any related or ancillary building or used in connection therewith.

(5) Each application for registration, or renewal of registration, of a sawmill shall also be accompanied by a fee of \$2 for each of the following machines included in the equipment -

(a) A sawbench capable of mounting a circular saw not less than 24 inches in diameter;

(b) A bandsaw of not less than one inch in width;

(c) A gangsaw of any size;

(d) A chainsaw capable of ripping logs; and

(e) Any machinery capable of slicing, peeling or chipping logs or hewn timber.

(6) A certificate of registration under this [regulation] shall be in form 4 and shall contain the conditions set out therein and may contain such other conditions as the Minister thinks fit.

In subclause (6) the word "regulation" has been substituted for the word "registration" pursuant to s. 3(f) of the Reprint of Statutes **Act** 1972.

## GENERAL

**22. Offences and penalties** - (1) Any person who -

- (a) Fells or injures any trees in contravention of regulation 3 or 4;
- (b) Fells any trees in contravention of regulation 5;
- (c) Fails to observe a direction given by the Chief Forest Officer under regulation 7;
- (d) Fails to remove forest produce from his licence area within the time specified in regulation 14; or

- (e) Fails to observe any provision of regulation 16 relating to property marks -

commits an offence and shall be liable in the case of an individual to imprisonment for a term not exceeding one month or to a fine not exceeding \$200, or in the case of a corporation to a fine not exceeding \$500.

(2) Any person who contravenes subclause (1), (2) or (5) of regulation 15 or subclause (1) of regulation 21 or any condition of his certificate of registration under subclause (6) thereof commits an offence and shall be liable in the case of an individual to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$200, or in the case of a corporation to a fine not exceeding \$500.

(3) Where an offence is a continuing offence the offender shall also be liable to a further fine for each day during which the offence continues, not exceeding \$20 in the case of an individual and not exceeding \$50 in the case of a corporation.

**23. Review of discretion** - The Chief Forest Officer may, of his own motion or on the application of any party aggrieved by the exercise of any discretion vested by these regulations in any forest officer, other than the Chief Forest Officer, made within 30 days from such exercise, review any discretion exercised by a forest officer under these regulations.

---

**SCHEDULES**

**FIRST SCHEDULE**

Regulation 13

**ROYALTIES AND FEES**

The appointments of minimum overall rates set out hereunder may be varied by an Order made by the Head of State, acting on the advice of Cabinet, under the proviso to subsection (2) of section 24.

**PRODUCE TAKEN UNDER LICENCE OR LEASE**

Minimum rates of royalties and fees for:

- (1) Round timber:

The minimum overall rate payable is 3 sene per cubic foot of timber apportioned as follows:

- (a) Payable as royalty and fee to the Director of Lands for the Government on timber from public land. - 3 sene per cubic foot;
- (b) Payable as fee to the Director of Lands for the Government on timber from customary or freehold land - 1 sene per cubic foot;
- (c) Payable as royalty to the Director of Lands for the beneficial owners of customary land or the owners of freehold land - 2 sene per cubic foot.

(2) Posts and poles:

The minimum overall rates by size classes are –

- (a) Large end girth of under 12” - 1.5 sene per linear foot;
- (b) Large end girth of 12” and under 2ft. - 3.0 sene per linear foot;
- (c) Large end girth of 2 ft and under 3 ft. - 4.5 sene per linear foot.

Apportioned as follows:

- (i) Payable as royalty and fee to the Director of Lands for the Government on timber from public land under (a) 1.5 sene; (b) 3.0 sene; (c) 4.5 sene per linear foot.
- (ii) Payable as fee to the Director of Lands for the Government on timber from customary or freehold land under (a) 0.5 sene; (b) 1.0 sene; (c) 1.5 sene per linear foot.
- (iii) Payable as royalty to the Director of Lands for the beneficial owners of customary land or the owners of freehold land under (a) 1.0 sene; (b) 2.0 sene; (c) 3.0 sene per linear foot.

(3) Firewood and charcoal:

The minimum overall rate payable is 12 sene per hundredweight apportioned as follows:

- (a) Payable as royalty and fee to the Director of Lands for the Government on produce from public land -12 sene per cwt;
- (b) Payable as fee to the Director of Lands for the Government on

produce from customary or  
freehold land - 4 sene per cwt;

(c) Payable as royalty to the Director of  
Lands for the beneficial owners  
of customary land or the  
owners of freehold land - 8 sene per cwt.

**PRODUCE TAKEN UNDER PERMIT, RIGHT OR AUTHORITY**

Produce	Minimum Overall Monthly Fee	Public land	Customary and Freehold land	
		Payable as royalty and fee to the Director of Lands for the Government	Payable as fee to the Director of Lands for the Government	Payable as royalty to the Director of Lands for the beneficial owner or owners
Round, rough hewn, or hand sawn timber Posts,	\$9.00	\$9.00	\$3.00	\$6.00
poles	\$6.00	\$6.00	\$2.00	\$4.00
Firewood charcoal				
Bamboo	\$3.00	\$3.00	\$1.00	\$2.00
Bark	\$1.50	\$1.50	\$0.50	\$1.00
	\$1.50	\$1.50	\$0.50	\$1.00

Other forests produce  
As specified in the permit, right or  
authority, according to produce.

**SECOND SCHEDULE**

Regulation 2

**Form 1**

Regulation 12

**PERMIT TO TAKE FOREST PRODUCE**

No. of permit .....

This permit authorises ..... of ..... to take within the land hereunder described, in the district  
of ..... such forest produce as is hereunder described during a period of ..... months from the  
date hereof, subject to the provisions of the Forests Act 1967, and the Forests Regulations 1969.

Description of land .....

.....

.....

Produce .....

This permit is subject to the payment by the grantee of royalties and fees as set out in the First Schedule to the Forests Regulations 1969, or as follows:

Date of Issue: ..... Date of Expiry: .....

Receipt No. ....

CONDITIONS: This permit is issued subject also to the conditions, if any, endorsed on the back hereof.

.....  
Forest Officer.

---

**Form 2**

**REMOVAL PASS**  
Regulation 15

*Forest Produce Removal Pass*

This pass authorises ..... to move past the forest checking station at ..... by truck No., ..... the forest produce detailed below, which has been taken under licence, lease, permit, right or authority No. .... issued to.....

.....

Dimensions  
.....

No. or Quantity

Length

Breadth of Girth

Thickness

Measured at ..... on ..... 19 .....

Destination: .....

Date of issue: .....

.....  
Forest Officer.

---

**Form 3**

Regulation 18

**CERTIFICATE OF INSPECTION**

(Issued under the Forests Regulations 1969)

This is to certify that the undermentioned timber has been inspected by a duly authorised officer of the

Forestry Division, and was, at the time of inspection, apparently free from infection by fungus or insects.

This certificate constitutes a permit to export the said timber, up to and including (date) ....., subject to proof of compliance with regulation 20, and subject to the exporter obtaining any other certificate or permit which may be required for such export.

*Description (Species, Quantity, Etc.)*

The Forestry Division has not inspected the quality of the timber and in no way certifies to its grade.

Name of Exporter: .....

Name of Consignee:.....

(Place) .....

Date of Inspection:.....

Date of issue of this Certificate: .....

.....  
Forest Officer.

---

**Form 4**  
Regulation 21

**CERTIFICATE OF REGISTRATION OF A SAWMILL**

(Issued under the Forests Regulations 1969)

This Certificate is authority for the erection on the site hereunder described of the sawmill hereunder described.

This certificate is also evidence that that sawmill has been registered and may be operated for the period from the date of issue of this certificate to the 31st day of December 19....., subject to the conditions set out hereunder –

I - Description of Approved Site:

(a) Survey district .....

(b) Area and other description of site.....

(c) Title to site (Land Register reference) .....

(d) Description of, and title to, log ponds .....  
.....

II - Description of Approved Sawmill and Machinery:

(a) Type of Mill as shown in approved plans .....

(b) Type, make, horse - power and number of engine .....  
.....

(c) Other machines:

(1) .....

(2) .....

(3) .....

(4) .....

(5) .....

(6) .....

(d) Minimum possible annual output (in tons) .....

III - Conditions:

(1) The owner shall comply with the Business Licences Ordinance 1960.

(2) The owner shall pay to the Chief Forest Officer a fee of \$2 a year (or for any part of a year) for each machine included in the equipment.

(3) No machinery shall be altered or added to, and no structural alteration or addition shall be made to any building, without the prior written permission of the Minister of Forests.

(4) The owner shall install and operate an incinerator large enough to burn all the waste - products from converting timber.

(5) In any year the output of the mill shall not fall below 50 percent of the minimum possible annual output as estimated above.

(6) The registration evidenced by this certificate may not be transferred without the prior written permission of the Minister of Forests.

(7) The owner will obtain a registered title to the said sawmill site within 6 months of the issue of this certificate.

(8) Special conditions: .....

.....

.....

(9) In the event of any breach of any of the above conditions, the Minister of Forests may cancel or refuse to renew the registration of the sawmill.

(10) This certificate does not entitle the owner to any rights to cut or collect timber.

Date of Issue: ..... Date of Expiry: .....

Annual fee: \$.....

.....  
MINISTER OF FORESTS  
WESTERN SAMOA

No. of Certificate: .....

MALIETOA TANUMAFILI, II.  
HEAD OF STATE

-----