Compliance

Stephen Walker

Tasmania's independent forest regulator administering the Forest Practices Act

• Advising • Researching • Monitoring • Enforcing
Overview of presentation

• The Compliance team – and our role
• Legislative basis
• Compliance
• Enforcement
• Continuous improvement
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• The Compliance team – and our role
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• Enforcement
• Continuous improvement
The Compliance team

• Manager Compliance
  • Stephen Walker (Launceston)

• Forest Practices Advisors
  • James Fergusson (Burnie)
  • Michael Rawlings (Burnie)

• FPA Scientists and Contractors
  • Biodiversity
  • Earth Sciences and Cultural Heritage

• Forest Practices Officers (FPOs)

• Chief Forest Practices Officer (CFPO)

• Board oversight
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Our collective role is:

• respond to enquiries
• monitoring and reporting
• investigations and enforcement
• training, education, review
• continuous improvement
Fig. 1. The hierarchy of compliance and enforcement provisions under the Tasmanian Forest Practices Act.

Overview of presentation

• The Compliance team – and our role
• Legislative basis
• Compliance
• Enforcement
• Continuous improvement
Legislative basis

• *Forest Practices Act 1985*
• Forest Practices Regulations 2017
• *Forest Practices Code 2015*
• forest practices plans (FPPs)
• Supporting tools (documents, software, instructions)
Legislative basis

- *Forest Practices Act 1985*
- *Forest Practices Regulations 2017*
- *Forest Practices Code 2015*
- *forest practices plans (FPPs)*
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- Compliance
- Enforcement
- Continuous improvement
Compliance

• Routine monitoring by FPOs
• Compliance reporting by Forest Practices Officers (FPOs)
• Formal monitoring and reporting by the FPA
Compliance

- Routine monitoring by FPOs
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Compliance

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Compliance reporting by FPOs

• s.25A Forest practices compliance reports
• Responsible person must lodge:
  • interim compliance report within 30 days after completion of each discrete operational phase (DOP)
  • final compliance report within 30 days after expiration of FPP
• Compliance Report lodged by FPO on behalf of the Applicant
Discrete Operational Phases (DOPs)

• Roading
• Timber Harvesting
• Reforestation
• Reforestation assessments
• Tree Fern Harvesting
• Non-commercial clearing
• Quarrying
## Compliance Report summary (2011-12 to 2015-16)

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Reports due</th>
<th>Reports lodged</th>
<th>No activity</th>
<th>Compliance (for reports lodged)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Fully complied</td>
<td>Not fully complied</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No further action required</td>
<td>Corrective action required (s41)</td>
</tr>
<tr>
<td>2015–16</td>
<td>1609</td>
<td>1371</td>
<td>108</td>
<td>1240</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>83%</td>
<td>7%</td>
</tr>
<tr>
<td>2014–15</td>
<td>1079</td>
<td>1056</td>
<td>78</td>
<td>834</td>
<td>134</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>85%</td>
<td>14%</td>
</tr>
<tr>
<td>2013–14</td>
<td>1270</td>
<td>1096</td>
<td>71</td>
<td>928</td>
<td>85</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>91%</td>
<td>8%</td>
</tr>
<tr>
<td>2012–13</td>
<td>747</td>
<td>696</td>
<td>29</td>
<td>591</td>
<td>66</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>93%</td>
<td>9%</td>
</tr>
<tr>
<td>2011–12</td>
<td>970</td>
<td>835</td>
<td>28</td>
<td>702</td>
<td>122</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>86%</td>
<td>15%</td>
</tr>
</tbody>
</table>

**Source:** FPA Annual Reports (2011-12 to 2015-16)
Compliance Report - examples

• Fully complied
  • A culvert on a road is located a few metres further from the previous culvert than the specified distance

• No further action required
  • Plantation stocking standard of 80% not met but site 66-75% occupied with established trees – little utility in infilling now with seedlings

• Corrective action required (s41)
  • Required to remove temporary log crossings

• Further investigation and action required
  • Substantial incursion into Class 4 machinery exclusion zone
Compliance

• Routine monitoring by FPOs
• Compliance reporting by Forest Practices Officers (FPOs)
• Formal monitoring and reporting by the FPA
Formal monitoring and reporting by the FPA

• s.4E(1) The Authority must, at least once in each financial year-
  ......  
(b) assess the implementation and effectiveness of a representative sample of forest practices plans

• s.4E(2) The Authority must, as soon as practicable after completing the assessment, prepare a report of its findings
Assessment program design

• Developed in line with Australian/New Zealand Standard AS/NZS ISO 19011:2003: *Guidelines for quality and/or environmental management systems auditing*.

• Based on a random sample of certified FPPs selected from the FPAs FPP database at various stages of completion over preceding three year period

• Program covers:
  • all aspects of forest planning and operational practices
  • a representative sample of FPPs undertaken by companies and agencies, and by individual forest owners or managers
  • FPPs prepared by a range of FPOs
Assessment coverage (2011-12 to 2015-16)

<table>
<thead>
<tr>
<th>Year</th>
<th>FPP/FPO Cover</th>
<th>Applicant Grouping</th>
<th>Operations</th>
<th>Forest Type</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FPPs</td>
<td>FPOs</td>
<td>SF / PTPZ</td>
<td>Private</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2015-16</td>
<td>57</td>
<td>30</td>
<td>24</td>
<td>10</td>
</tr>
<tr>
<td>2014-15</td>
<td>56</td>
<td>29</td>
<td>17</td>
<td>21</td>
</tr>
<tr>
<td>2013-14</td>
<td>50</td>
<td>25</td>
<td>19</td>
<td>16</td>
</tr>
<tr>
<td>2012-13</td>
<td>30</td>
<td>21</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>2011-12</td>
<td>55</td>
<td>26</td>
<td>17</td>
<td>21</td>
</tr>
<tr>
<td>Average</td>
<td>49.6</td>
<td>26.2</td>
<td>17.4</td>
<td>16.0</td>
</tr>
</tbody>
</table>

Source: FPA Annual Reports (2011-12 to 2015-16)
Assessment program design

The scoring system used for all questions in the assessment of forest practices plans

<table>
<thead>
<tr>
<th>Performance Rating</th>
<th>Description</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sound</td>
<td>Addressed all judgment criteria and achieved an acceptable result.</td>
<td>3.0</td>
</tr>
<tr>
<td>Below sound</td>
<td>Have not addressed all judgment criteria and/or implemented plan as prescribed, which may result in adverse impact.</td>
<td>2.0</td>
</tr>
<tr>
<td>Unacceptable</td>
<td>Non-compliant and has not adequately addressed judgment criteria or achieved an unacceptable result.</td>
<td>1.0</td>
</tr>
</tbody>
</table>
| Not assessable     | • The condition/situation does not occur e.g. high erodibility  
                      • Operations have has not commenced  
                      • Insufficient or no objective evidence to make a judgment | NA    |
Figure 1.7.1  Mean performance rating for all assessments by category 2015–16

Source: FPA Annual Report 2015-16
Figure 1.7.2  Mean performance rating for all assessments by category and forest manager 2015–16

Source: FPA Annual Report 2015-16
Independant assessment of FPPs (2011-12 to 2015-16)

% of operations rated as 'sound' or higher

Year

Source: FPA Annual Reports (2011-12 to 2015-16)
Independent assessment of FPPs - by manager (2011-12 to 2015-16)

% of operations rated as 'sound' or higher

Year

Source: FPA Annual Reports (2011-12 to 2015-16)
Overview of presentation

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Enforcement

• s.4G(1) The Authority is responsible for:
  (a) monitoring the degree of compliance with this Act and the Forest Practices Code
  (b) where it finds instances of non-compliance, causing appropriate enforcement action to be taken
Enforcement

• Section 41(1) notices
  • Issued by an FPO in order to request a person to comply with the provisions of an FPP or the Act.

• Section 41(2) notices
  • Follow up notice where an FPO believes a s41(1) notice has not been complied with and there is a continuing offence under the Act

• Warning letter
  • Not specified under the Act, but issue of a warning letter by the CFPO may be considered the most appropriate action after considering the circumstances

• Corrective and remedial action
Enforcement

• Prescribed fines – s47B
  • enables the FPA to issue fines to deal with certain breaches
  • three year statute of limitations

• Prosecution – s47(2)(3) – may be used by the FPA where:
  • a fine issued under s47B is not paid within the specified time period
  • other levels of sanction taken by the FPA are not complied with or resolved to
    the satisfaction of the FPA
  • an offence is considered by the FPA to be of a particularly serious or sensitive
    nature and the degree of sanction is best determined by the Court
  • an offence has been conducted where there is no option for the FPA to issue a
    fine under s47B of the Act
  • three year statute of limitations
Forest Practices Authority investigations of reported breaches 1995–2016

Investigations

Investigated and no breaches identified  Number of major breaches  Number of minor breaches

Source: Table 7.1.b.9, State of the forests Tasmania 2017
## Summary of enforcement actions over 5-year period (2011-12 to 2015-16)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No breach</td>
<td>25</td>
<td>10</td>
<td>17</td>
<td>12</td>
<td>11</td>
</tr>
<tr>
<td>Minor breach, no serious environmental harm</td>
<td>13</td>
<td>7</td>
<td>18</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>Notice issued to require corrective action or formal warning given</td>
<td>39</td>
<td>10</td>
<td>12</td>
<td>19</td>
<td>4</td>
</tr>
<tr>
<td>Penalty imposed</td>
<td>6</td>
<td>5</td>
<td>5</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Matters resolved by the courts</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Apparent breach but insufficient evidence or out of time to proceed</td>
<td>7</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Total completed investigations</td>
<td>92</td>
<td>36</td>
<td>55</td>
<td>44</td>
<td>32</td>
</tr>
<tr>
<td>Investigations in progress</td>
<td>32</td>
<td>50</td>
<td>34</td>
<td>24</td>
<td>12</td>
</tr>
<tr>
<td>Total investigations (completed and in progress)</td>
<td>124</td>
<td>86</td>
<td>89</td>
<td>68</td>
<td>44</td>
</tr>
</tbody>
</table>

**Source:** FPA Annual Reports (2011-12 to 2015-16)
## Summary of fines paid over 5-year period – by breach (2011-12 to 2015-16)

<table>
<thead>
<tr>
<th>Breach</th>
<th>No of Fines</th>
<th>Fine Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harvesting of timber contrary to FPP</td>
<td>10</td>
<td>$22,000 (\bar{x} = 2,200), $500 - $6,000</td>
</tr>
<tr>
<td>Harvesting of timber without FPP</td>
<td>8</td>
<td>$16,500 (\bar{x} = 2,063), $500 - $6,000</td>
</tr>
<tr>
<td>Clearing of trees without FPP</td>
<td>5</td>
<td>$10,000 (\bar{x} = 2,000), $1,500 - $3,000</td>
</tr>
<tr>
<td>Clearing of trees and harvesting of timber without FPP</td>
<td>3</td>
<td>$3,000 (\bar{x} = 1,000), $1,000 - $1,000</td>
</tr>
<tr>
<td>Total</td>
<td>26</td>
<td>$51,500 (\bar{x} = 1,816), $500 - $6,000</td>
</tr>
</tbody>
</table>

**Source:** FPA Annual Reports (2011-12 to 2015-16)
### Summary of fines paid over 5-year period – by responsible party (2011-12 to 2015-16)

<table>
<thead>
<tr>
<th>Responsible party</th>
<th>No of Fines</th>
<th>Fine Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Average</td>
</tr>
<tr>
<td>Landowner</td>
<td>13</td>
<td>$21,000</td>
</tr>
<tr>
<td>Contractor</td>
<td>9</td>
<td>$19,500</td>
</tr>
<tr>
<td>Company</td>
<td>3</td>
<td>$8,000</td>
</tr>
<tr>
<td>Individual</td>
<td>1</td>
<td>$3,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>26</strong></td>
<td><strong>$51,500</strong></td>
</tr>
</tbody>
</table>

**Source:** FPA Annual Reports (2011-12 to 2015-16)
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• The Compliance team – and our role
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• Continuous improvement
Continuous improvement

• Compliance
  • Apply more of a systems PDCA approach
  • Utilise root-cause analysis to a greater degree
<table>
<thead>
<tr>
<th>Roading</th>
<th>Independent Private</th>
<th>Industrial Freehold</th>
<th>PTPZL</th>
<th>Total for all tenures</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No</td>
<td>Av</td>
<td>No</td>
<td>Av</td>
</tr>
<tr>
<td>11. Have roads been located to minimise soil erosion and stream sedimentation?</td>
<td>10.0</td>
<td>3.0</td>
<td>2.0</td>
<td>3.0</td>
</tr>
<tr>
<td>19. Have Code statements been followed on steep country roads?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22. Have temporary crossings been confined to class 3 and 4 and dry class 2 watercourses and been properly removed and drained or upgraded?</td>
<td>2.0</td>
<td>3.0</td>
<td>1.0</td>
<td>2.0</td>
</tr>
</tbody>
</table>

**Source:** FPA Annual Report 2015-16
<table>
<thead>
<tr>
<th>Harvesting</th>
<th>Independent Private</th>
<th>Industrial Freehold</th>
<th>PTPZL</th>
<th>Total for all tenures</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No</td>
<td>Av</td>
<td>No</td>
<td>Av</td>
</tr>
<tr>
<td>33. Have snig track location and management effectively minimised damage to retained trees and protected soil and water values?</td>
<td></td>
<td></td>
<td>15.0</td>
<td>2.9</td>
</tr>
<tr>
<td>34. Have snig tracks been restored, including the removal of temporary crossings?</td>
<td></td>
<td></td>
<td>15.0</td>
<td>2.7</td>
</tr>
</tbody>
</table>

**Source:** FPA Annual Report 2015-16
Continuous improvement

• Compliance
  • Apply a more systematic approach to reviewing findings
  • Utilise root-cause analysis

• Enforcement
  • Systematic (risk based) prioritisation of investigations
  • Improve competency/performance with investigations/prosecutions
Thank you....