



Procedure for investigating the performance of FPOs

15 April 2019

The Forest Practices Authority is responsible for administering the Tasmanian *Forest Practices Act 1985* and the Forest Practices Regulations 2017. This document outlines the procedures that the Forest Practices Authority will use to investigate alleged unacceptable performance by Forest Practices Officers.

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ABBREVIATIONS

Act	Tasmanian <i>Forest Practices Act 1985</i>
board	The Board of the Forest Practices Authority
CFPO	Chief Forest Practices Officer
Code	<i>Forest Practices Code</i>
FPA	Forest Practices Authority
FPO	Forest Practices Officer
FPP	forest practices plan

See end of document for document control table.

Procedure for investigating the performance of FPOs

1. Preamble

The *Forest Practices Act 1985*, at section 39, provides for the appointment and revocation of forest practices officers (FPOs).

The Forest Practices Authority (FPA) will seek to maintain high standards of professionalism by FPOs through training, education and the fostering of a cooperative approach to forest practices matters. This is important to support the credibility of this co-regulatory system. The FPA will monitor the performance standard of FPOs through regular contact between FPOs and the Chief Forest Practices Officer (CFPO) and staff of the FPA. Formal monitoring and feedback will be provided by way of the periodic assessment of a sample of forest practices plans (FPPs).

The FPA sets high standards for FPOs and will act using this procedure to assess and respond to any instances of alleged unacceptable performance. In administering this procedure, the FPA will apply the principles of **natural justice** (an absence of bias and the right to be heard) and **equity** (being fair and impartial).

Unacceptable performance by an FPO is considered to be a deficiency in standards or behaviour in relation to an FPO carrying out statutory functions and/or exercise of powers under the Act or under delegation from the Authority. It relates to negligence and diligence as described in s. 39(3) of the *Forest Practices Act 1985*.

Section 39 of the Act contains clauses which are relevant to this procedure:

(2) The Authority may, by notice in writing, revoke a warrant authorizing a person to be a forest practices officer for the purpose of this Act and, upon service of the notice on that person, the authorization is revoked.

(2A) The revocation of a warrant authorizing a person to be a forest practices officer for the purposes of this Act also revokes, in the case of a person referred to in subsection (1)(b), the person's appointment as an officer under section 38(2) .

(3) For the purposes of subsection (2) , the Authority may at any time revoke the authorization of a person to be a forest practices officer for any reason it considers sufficient and, without limiting the generality of this, the Authority may revoke any such authorization on the grounds that the person concerned—

(a) has been negligent or not diligent in performing the duties and exercising the powers of a forest practices officer; or

(b) has been convicted of an offence against the Forest Management Act 2013 or this Act; or

(c) has been convicted, in Tasmania or elsewhere, of an offence involving dishonesty; or

(d) is physically or mentally incapable of adequately performing the duties or exercising the powers of a forest practices officer.

Revocation of a warrant or authorisation by the FPA would normally only be considered as a matter of last resort after natural justice and equity had been applied in a fair and reasonable manner according to the following procedure.

2. Investigation process

The following step-wise process will be adopted during the investigation and reporting process for any alleged unacceptable performance and any disciplinary process which may follow.

Stage 1 – Initiate the investigation

Instances of alleged unacceptable performance will initially be investigated by the CFPO (the investigator). The CFPO may delegate the role of investigator to a senior FPA staff member if there exists an actual or perceived conflict of interest or concerns of apprehended bias.

The investigator may collect evidence, including but not limited to undertaking a field inspection and/or conducting interviews, and may also be accompanied by relevant FPA staff members or specialists. The investigator may request a report in writing from the FPO with respect to any alleged unacceptable performance.

The FPO will normally be offered an opportunity to participate during the investigation, and may be supported and assisted by a person of their choice. The FPO will also be afforded an opportunity to respond to the investigator about any allegations of unacceptable performance that may have been put to the investigator, or are revealed during the investigation.

At this stage it is recommended the FPO informs their employer of the investigation (see section 6).

Stage 2 – Report on the investigation

Once the investigator has completed the investigation an investigation report will be prepared.

The FPO will be provided with a copy of the investigation report and given an opportunity to respond, within 30 days of receipt.

Stage 3 – Finalise the investigation

Where the investigator is satisfied that there is no evidence of unacceptable performance, or the matter is relatively minor and can be addressed through education and training, the FPO will be advised in writing and the investigation will be closed.

Where the investigator considers that there is evidence of unacceptable performance which may necessitate formal disciplinary action, the FPO will be advised in writing and the following hearing and determination process will occur.

3. Hearing and determination process

The investigator will provide a report (including summary evidence, conclusions and recommended actions) to the Board of the FPA (the board) at its next available meeting.

Stage 1 – Board hearing

- The FPO will be provided with any evidence supplied to the board, and will be invited to make a written submission to the board for its next meeting with respect to the matter and any alleged unacceptable performance. The FPO may choose to decline to make a written submission to the board.
- The FPO will be invited to appear before the board to present a case, and can be supported and assisted by a person of choice during the appearance. The FPO may choose to decline to appear before the board.
- The board will consider the supplied information and any written and verbal submissions provided by the FPO. The board may seek further information from any party before proceeding to consider a provisional determination.

Stage 2 – Board provisional determination

- Where the board determines that there is no reasonable information supporting unacceptable performance, the matter will be dismissed and the FPO will be advised accordingly.
- Where the board determines that there is reasonable evidence of unacceptable performance, proceed as follows:
 - A letter of **provisional determination** will be issued to the FPO, including a statement of reasons for the provisional determination, and inviting a submission about the provisional determination and any proposed disciplinary action.
 - Where the FPO accepts the provisional determination, the disciplinary action will be imposed from the date advised by the board.
 - Where the FPO does not accept the provisional determination, the FPO will be offered an opportunity to make a submission directly to the board – both in writing and via another appearance; assisted and supported by a person of choice, if desired, before the board proceeds to a final determination.

Stage 3 – Board final determination

- The board will consider any further submission and arguments prior to making a **final determination**.
 - A letter of final determination, including a formal Statement of Reasons, will be issued to the FPO, and the final determination will take effect immediately.

4. Rights of appeal

Any subsequent appeal to that determination could be made by the FPO in accordance with the *Judicial Review Act 2000*.

5. Involvement of CFPO

Where the CFPO conducts the investigation and prepares a report, the CFPO is entitled to present the case to the board, otherwise this will be done by the delegated FPA staff member.

The CFPO may take part in the board discussion of the matter. In the case where the CFPO informs the board of any perceived conflict of interest or accusation of apprehended bias, then the board will make a decision as to the involvement of the CFPO in the discussion.

The CFPO and/or the delegated FPA staff member who conducted the investigation may be present at any appearance before the board by the FPO under investigation.

The CFPO will not participate in any of the board's decisions.

6. Notification to employer

It is the responsibility of the FPO under investigation to notify his/her employer(s) that an investigation is underway. The FPO should inform the CFPO as soon as possible whether or not such notification has been made.

The purpose of the notification is to:

- give the employer an opportunity to support the FPO during the investigation process
- allow the employer, if they wish, to make representation to the CFPO during the investigation process; and/or
- allow the employer, if they wish, to make a submission to the board during the hearing and determination processes.

7. Imposition of penalties

In determining a response to any performance issues, the FPA board will take account of all relevant circumstances, including:

- the longevity of the appointment of the FPO
- the previous performance of the FPO
- any damage caused by the matters under review
- any previous unacceptable performance by the FPO
- the time period elapsed since any previous unacceptable performance.

Under Section 39 (3) of the Act, the FPA may at any time revoke the appointment of an FPO. However, for the specific grounds raised in Section 39(3)(a) of the Act, (i.e. the FPO has been negligent or not diligent in performing the duties and exercising the powers conferred on him/her), the FPA has adopted the following penalty guideline to deal consistently with instances of unacceptable FPO performance.

7.1 Forest Practices Officer – Planning (as per delegation made under s.43 of the Act)

Performance Issue	Occurrence	Indicative Penalty
Certification of substantially flawed FPP (or variation to FPP) not in accordance with <i>Forest Practices Code</i>	1 st	Up to three months suspension and/or warning and training/education support
	2 nd	Up to six months suspension
	3 rd	Revocation of delegation
Certification of ambiguous or poorly worded FPP (or variation to FPP) which could lead to contravention of the <i>Forest Practices Code</i> .	1 st	Warning and training/education support
	2 nd	Up to six months suspension
	3 rd	Revocation of delegation
Leaving out essential details on FPP cover page, map section or signature page.	1 st	Warning and training/education support
	2 nd	Warning
	3 rd	Up to three months suspension

7.2 Forest Practices Officer – Inspecting (as per appointment under s.39[1] of the Act)

Performance Issue	Occurrence	Indicative Penalty
When supervising, monitoring or inspecting an operation, allowing breaches of the FPP to occur or continue which could reasonably have been prevented by taking action such as verbal requests, written notices, or notifications.	1 st	Up to three months suspension and/or warning and training/education support
	2 nd	Up to six months suspension
	3 rd	Revocation of warrant and appointment
When making compliance or progress reports, failing to report instances of non-compliance that could reasonably have been detected.	1 st	Up to three months suspension and/or warning and training/education support
	2 nd	Up to six months suspension
	3 rd	Revocation of warrant and appointment

8. Administration

The FPA may elect to require training/education and/or peer support and/or other evidence of continuing professional development in conjunction with any other penalty.

After any revocation, the FPA will consider a fresh application for authorisation or delegation on its merits. In doing so the FPA may take into account successful completion by the FPO of relevant sections of the FPO training course and/or other education/training approved by the FPA.

9. Revocation – no involvement in forest practices

Where an FPO has no involvement in forest practices for two years, revocation will be initiated by the FPA unless good reasons exist for continuation. For the purposes of interpreting this provision, an absence from FPO planning/inspecting activity for two years shall not be deemed to occur where an FPO is able to demonstrate, to the satisfaction of the FPA, that they have completed:

- FPP peer review processes; and/or
- signing of FPP's as a landowner/applicant; and/or
- recognised continuing professional development (e.g. attendance every two years at FPO refresher training).

Document Control Log Table

Document Summary Information

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Version Control

Version	Date	Author(s)	Summary of changes
1.0	3 April 2019	Stephen Walker and Peter Volker	Document drafted by FPA Compliance Committee following consultation with FPAC/FPORG (see minutes of FPAC meetings held 3.7.18 and 7.2.19). Earlier version of this procedure was previously included as Appendix 10 of the FPA Investigation and Enforcement Protocols V. 2.8 November 2016.
2.0	12 April 2019	Stephen Walker	Document as approved by FPA board at meeting held on 12 April 2019.

Stages required for release outside FPA

Stages	Required/Not Required	Completed (date)
Compliance Manager	Required	3 April 2019
CFPO	Required	3 April 2019
FPAC	Required	Consulted on 3.7.18 and 7.2.19
Board	Required	12 April 2019