



FOREST PRACTICES AUTHORITY

Investigation and Enforcement Protocols

November 2016

The Forest Practices Authority is responsible for administering the Tasmanian *Forest Practices Act 1985* and the *Forest Practices Regulations 2007*. This document outlines the policy and procedures that the Forest Practices Authority will employ when conducting investigations of alleged breaches of the Act and provide guidelines for enforcement. The document is divided into two sections, the first dealing with investigation procedures and the second with enforcement policy.

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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
CoC	Certificate of Compliance
code	<i>Forest Practices Code 2000</i>
FPA	Forest Practices Authority
FPO	Forest Practices Officer
FPP	forest practices plan
RMPAT	Resource Management & Planning Appeal Tribunal

See end of document for document control table.

PART A INVESTIGATIONS POLICY AND PROCEDURES

A.1 Defining a formal investigation

The Forest Practices Authority (FPA) will formally commence an investigation where one or more of the following apply:

- a complaint is received (normally in writing but at the discretion of the FPA) from an identifiable person or authority detailing a specific allegation relevant to the *Forest Practices Act 1985* and the *Forest Practices Regulations 1997* and there are reasonable grounds to expect that a breach has occurred
- an allegation is made of a breach of the Act, *Forest Practices Code* or forest practices plan (FPP) that may involve environmental harm
- an allegation is made of a breach of an administrative or technical nature that may potentially undermine the effective functioning of the forest practices system
- the results of the FPA's monitoring and assessment program or a certificate of compliance report recommend follow up action by the FPA.

A formal investigation will not normally be commenced when:

- the complainant does not identify himself or herself
- a s.41(1) notice has already been issued by a Forest Practices Officer (FPO) and the matter is adequately dealt with by that notice
- a person is making general or unsubstantiated allegations about forest practices rather than providing specific details of an alleged complaint
- a report is received from an FPO detailing a minor breach that has resulted in negligible environmental harm and has not involved unacceptable procedures warranting action by the FPA (e.g. a tree accidentally felled across a harvesting boundary) or can be dealt with by s.41 notice.

In conducting investigations, the FPA will be mindful of the need to ensure that its limited resources are prioritised and deployed in an effective and efficient manner.

A.2 Authorised investigators

A.2.1 Forest Practice Authority investigators

The Chief Forest Practices Officer (CFPO) oversees the functions of the FPA and is responsible for the conduct of investigations by the FPA. The CFPO will nominate FPOs employed by the FPA to conduct investigations.

Only FPOs authorised under section 47 of the Forest Practices Act by the FPA are permitted to conduct formal interviews and lay complaints. The FPA may authorise officers outside of the FPA to conduct formal interviews and lay complaints.

Unlike many other government agencies and the police department, forest practices investigations typically involve alleged technical breaches of codes of practice, FPPs and planning requirements under the Forest Practices Act rather than acts of deliberate law-breaking. Therefore, in selection of investigators the CFPO will ensure that the officer has adequate experience in the forest industries and a good knowledge of the planning requirements of the Forest Practices Act and the *Forest Practices Code*. Additional training will be provided in investigation techniques and report preparation.

A.2.2 Forest Practices Officers

Section 40 of the Act permits FPOs, upon production of their warrant of authorisation, to enter any land where forest practices appear to have been carried out and determine if those practices have been conducted in accordance with a certified FPP.

Normally an FPO will conduct investigations on land that is related to their specific employment unless otherwise authorised by the CFPO. Typically an FPO who believes illegal forest practices are being undertaken on land outside of their normal jurisdiction would be expected to refer the matter to the CFPO.

FPOs will report all breaches of the Act to the FPA. An authorised officer of the FPA may conduct follow up investigations if the CFPO, or the Compliance Manager, require further information or in cases where further investigation by the FPO may represent a conflict of interest.

A.2.3 Forest Practices Authority specialists

Where natural and cultural values may have been involved in an alleged non-compliance, specialists from the FPA and other agencies may be required to assist with the investigation and provide advice on the impact of the non-compliance and any remedial action.

FPA specialists are not authorised under the Act to enter land and may only do so at the invitation of the landowner or with an FPO. Specialist reports will be prepared in conjunction with the investigation report of the relevant FPO and forwarded to the CFPO.

A.3 Overview of investigation procedures

A.3.1 Investigation process

The following outlines the general steps in the investigation process:

1. Complaint received and referred to an authorised FPA investigating officer.
2. The investigating officer makes a preliminary determination as to whether a formal investigation is warranted (see section A.1). If no *prima facie* case exists for a formal investigation, the matter is recorded on the general complaints file (FPA/06/107).
3. Where a minor breach has occurred with little-to-no environmental harm a s.41 notice can be issued and details stored in the s.41 database (section A.3.2). This database can also be used to record any s.41 notices forwarded in by FPOs.
4. Where a *prima facie* case exists an investigation file is created and the TRIM file number recorded against the relevant investigation number.
5. Available details are entered into investigations database and a summary sheet is attached to the inside of the investigation file.
6. An acknowledgment letter (Appendix 1) is sent to the complainant as soon as the investigation file is created. An email response can also be used in place of the template acknowledgement.
7. The Coverage database is checked and the FPP cover sheet is placed on the file (if a FPP exists).
8. A letter (Appendix 2) is forwarded to the responsible person (e.g. landowner) seeking an explanation for the alleged non-compliance issue by the investigating officer within two weeks of receiving initial complaint. A response within four weeks is required. Date of receipt of response is to be entered into the investigation database.

9. Investigation undertaken (see section A.4).
10. Investigation file note (Appendix 3) with recommendations made to CFPO/Board (see section A.4.7).
11. Enforcement procedures adopted (Part B, Appendix 8)
12. Critical dates entered into investigations database and monitored for compliance (e.g. fine payment dates, restoration dates, review dates, with status = ongoing monitoring).
13. Matter resolved: CFPO signs-off file and entered into database as status = closed.

A.3.2 Issuance of s.41 notices database

A report or s.41 notice received through:

- an FPO detailing a minor breach that has resulted in negligible environmental harm and has not involved unacceptable procedures warranting action by the FPA (e.g. a tree accidentally felled across a harvesting boundary); or
- a Certificate of Compliance indicating minor breach resulting in negligible environmental harm which can be corrected through issuance of a s.41 notice;

can be recorded in the s.41 database and monitored. This is to save administrative time and cost in raising a formal investigation. The s.41 database is to be regularly monitored by the Compliance Manager to ensure any actions required are followed through.

A.4 Investigation protocols

A.4.1 Receiving information about alleged breaches

Allegations may arise from a variety of sources including, but not limited to:

- FPOs and industry workers
- members of the public
- conservation organisations
- other state government departments
- local government
- FPA monitoring and assessment program
- certificates of compliance
- FPA staff.

All complainants should identify themselves for their information to be registered. The name of the complainant shall remain confidential unless the person agrees to the disclosure of their name.

Anonymous information will only be investigated at the discretion of the FPA.

Information about alleged breaches are preferred in writing and may be lodged by way of fax, email, letter, reports, certificates of compliance, or section 41 notice.

Verbal communications in person or by phone may be accepted, at the discretion of the FPA. FPA staff will make a record of any information that is received in a verbal form and filed (FPA/06/107).

Only the CFPO or FPA investigating officers will determine if an investigation file is to be established based on the criteria in section A.1. Administration staff will establish an investigation file on advice from the CFPO or investigating officer.

Administration staff will respond to a complainant as soon as possible after information is received in writing and let them know that the matter is being investigated and that they will be informed of the outcomes in due course. A sample standard response is provided as Appendix 1. Refer also to section A.5 for record keeping and file management.

A.4.2 Inter-agency cooperation

Inter-departmental cooperation will be encouraged. The FPA will advise relevant government departments and local government of investigations involving significant impacts on values managed by those authorities.

A.4.3 Ethical behaviour

The *State Service Act 2000* governs the ethical behaviour of state service employees. In addition to the provision of the State Service Act an investigator will:

- perform his/her duties with professionalism, diligence and integrity
- act honestly, reasonably and legally when exercising powers and provisions of the Act and regulations
- act with equity, sensitivity and cultural awareness when dealing with the public, industry and other staff by treating their affairs, including the matter under investigation, with dignity, respect, natural justice, confidentiality and privacy
- use government resources efficiently and economically
- avoid any real or potential conflicts of interest
- perform the duties of his/her office without fear, favour or bias.

The nature of the forest practices system in Tasmania is one of cooperation and education between the FPA and forest industry. The FPA conducts training courses and provides advice to people throughout the industry. As a result many persons in the industry become well known to FPA staff. It is essential that FPA investigators maintain the appropriate level of objectivity during investigations. Where a potential conflict of interest arises due to close association with an FPO, landowner or other person subject to investigation, the investigator must immediately raise the issue with the Compliance Manager or the CFPO. In these circumstances an alternative investigator will be appointed.

A.4.4 Initial contact with responsible persons

Normally a letter seeking information (Appendix 2) will be issued to those involved with alleged breaches of the Act to initiate investigation process. Once a response has been forwarded by those involved with alleged breaches, the investigating officer can decide if a follow up field visit is required, with general questioning about the nature of the alleged practices with those involved. It should be noted that this form of contact, without formal caution, is appropriate but that information obtained may not be admissible in Court. If required the investigator may also need to conduct a formal interview or obtain statements as described in section A.4.6.

A.4.5 Field investigation procedures

Landowners, including Forestry Tasmania and private industrial organisations, will be informed of a proposed field investigation, prior to it being conducted, unless it is determined that prior notice will compromise the subject of the investigation.

Landowners should be given an opportunity to attend a field inspection when the matter involves potential impacts on their land. In other cases the landowner may attend at the invitation of the investigating officer after consultation with other parties involved in the investigation.

An initial field inspection may be required to determine if there has been a *prima facie* breach of the Act. Additional field inspections may be required at a later date to gather more information. Formal interviews are not necessarily required at the initial inspection but should be considered where the case may result in legal action being taken by the FPA.

Where an investigator faces a potential threat of violence or intimidation, at least one witness should accompany the investigator or the police should be contacted for assistance.

A.4.6 Formal interviews and statements

Formal interviews of witnesses or suspects may be undertaken by officers authorised in writing by the Board of the FPA under section 47 of the Act. Generally written interviews will be conducted but there may be occasion to conduct a tape-recorded interview. The investigator needs to determine early in the investigation whether the matter is serious enough to warrant formal interviews.

A.4.6.1 Formal interview procedure

Preparation

- Organise a time and place of mutual convenience for the interview. Often this may be done in the field at the time of investigation.
- Indicate to the person involved the intention to undertake a formal interview. Mention that they are entitled to have a witness or other representation (e.g. legal) present.
- Preferably prepare questions ahead of the interview.
- If you have not been involved in the main part of the investigation, obtain from the lead investigator the main points of evidence that you are seeking from the interview.
- Take a copy of the Act, code and if applicable the FPP.
- Take Record of Interview form (Appendix 4) or equivalent.

Conduct of interview

Section 40 of the Act requires several procedures to be undertaken prior to asking questions in a formal interview. They are:

1. Show FPO authorisation to interviewee at the commencement of the interview.
2. Issue a caution to the interviewee as per Appendix 4a/4b.

The written interview proforma (Appendix 4a) details the information required from an interview including name and contact details of the interviewee, commencement and completion times of the interview. Set out questions prior to conducting the interview.

Do not number the questions, instead number sequentially during the interview. This is to allow for subsequent questions to be inserted that may be prompted during the interview process.

By necessity, the interview is recorded by hand. In order to present the outcome in a readily readable manner, it may be typed up and sent to the interviewee for signature. However, the signed, handwritten copy must be retained.

An audio interview (Appendix 4b) may also be used to obtain information. It is useful to complete an interview plan, listing obvious questions required to be asked, and prior to undertaking an audio interview.

In all cases, if a person being interviewed is under the age of 18 a parent or guardian must be present.

A.4.6.2 Statements

Statements may be obtained in a similar way to interviews. An interview is effectively a statement by the interviewee. Often statements may only be required from witnesses.

Statements by the person under investigation may only vary slightly in format to the interview approach in that the statement is a series of comments by the interviewee in their own words. The interviewer however would normally write the statement.

Note: Statements can be in the form of Statutory Declaration under the *Oaths Act 2001* or a witness statement. The difference between these documents is that a witness does not need to appear in Court if they have signed a written Statutory Declaration, when they may have to appear if recorded on a witness statement. A Statutory Declaration can only be used by the investigating officer if that officer is a state public servant with a minimum of five years permanently employed in the state service.

A suggested statement forms are is provided as Appendix 5 and 6.

A.4.7 Investigation file note

In virtually all cases the purpose of an investigation is to present a report to the CFPO and the board. The level of detail in the file note (Appendix 3) will depend upon the determined severity or sensitivity of the case. The information relayed should ensure the CFPO or board can adequately review the matter.

Investigation file notes include an evidence matrix which summarises the evidence against the essential elements of the relevant section of the legislation. This summaries evidence matrix may be extracted from a more detailed matrix developed during the investigation. Table 1 is an example of a details matrix for an allegation involving timber harvesting without a FPP.

Table 1: Evidence matrix. *Allegation: Harvesting of timber without an FPP under s.17 of the Act*

Element	Detail	Evidence
Date	date harvesting conducted	<ul style="list-style-type: none"> ▪ statements ▪ witnesses ▪ on-ground evidence
responsible person [s.17(d) carries out]	person or organisations involved	<ul style="list-style-type: none"> ▪ statements ▪ witnesses ▪ title info (if landowner) ▪ principal processor ▪ owner of equipment?
must not carry out the harvesting of timber [s.17(4)(b)]	trees felled, snigging conducted etc (what has happened)	<ul style="list-style-type: none"> ▪ statements ▪ witnesses ▪ on-ground evidence
without a certified FPP	No FPP	<ul style="list-style-type: none"> ▪ no FPP on database ▪ no FPP produced

All investigation file notes will conclude with conclusions and recommendations. They may vary from a brief 'No further action required' through to recommending prosecution. It is preferable to make recommendations correspond to conclusions drawn as per Table 2 for the above example.

Table 2: Example conclusions/recommendations layout for investigations file notes

<p>Conclusion 1 The Landowner caused harvesting of timber on his land without a FPP in breach of s.17etc</p>	<p>Recommendation 1 A fine be issued under section 47B of the Forest Practices Act</p> <p>Recommendation 2 A s. 41(1) notice be issued to the landowner to regenerate the area back to forest</p>
<p>Conclusion 2 The contractor conducted harvesting on the above land without a FPP in breach of s.17etc</p>	<p>Recommendation 3 A fine be issued under section 47B of the Forest Practices Act</p>

A.4.8 Briefs

A brief is a dossier of evidence and information supplied to the Prosecution Division of Tasmania Police in order to enable the prosecutor to initiate legal action. Generally an investigation would not need this level of detail, however if the case did go to prosecution then a brief should be developed prior to attending Court.

A brief should include:

- the allegation and relevant legislation
- a summary of the facts of the case
- a systematic and logical presentation of the evidence collected during the investigation
- the investigation report presented to the CFPO (if not duplicated by the summary in the brief).

Evidence typically required in forest practices investigations include:

- title information (to prove landholder if applicable)
- FPPs (if available)
- photos of the alleged breach
- statements and records of interview.

A.4.9 Release of information about an investigation

Information will generally not be released to any party while an investigation is underway, in order to:

- protect a person's right to natural justice, a fair hearing, or the legal process
- protect the privacy of others (complainants, witnesses etc)
- not prejudice any actions taken or future actions of the FPA.

Information on the findings and outcome of an investigation may be released at the completion of an investigation at the discretion of the CFPO. The FPA's annual report includes a summary of the outcomes of investigations conducted during the year that have resulted in fines or prosecution.

The FPA Chair and the CFPO are the spokespersons for the FPA. No other staff member is permitted to deal with the media, unless otherwise authorised. All media enquiries will be directed to the CFPO.

A.5 Record keeping and monitoring

Records of investigations are kept in two forms, an investigations file and in a computer database.

A.5.1 Investigation field book

All field notes will be recorded in lined books which contain numbered pages. Ink pens are to be used. Notes, diagrams and other notations entered are used as the basis of an 'aide de memoir' and therefore reflect the individual's preferences and styles. This book remains the property of an investigation officer; however notes should be scanned and placed on the appropriate investigation file.

A.5.2 Investigation files

Files are used to retain all correspondence, reports and evidence in hard copy and electronic format. They are the main tools for controlling the progress with an investigation. All file information will be electronically stored in the FPA's TRIM records system. Access to these files will be restricted to authorised staff.

A.5.3 Investigation database

All investigations are entered into the FPA's investigations database. Information entered on the database includes the source of complaint, details of the allegation, location information and outcomes.

The database is used to:

- monitor progress with each investigation, including critical dates such as the statute of limitations, compliance actions, remedial works and payment of fines
- produce regular reports on the outcomes of investigations for the board and the annual report
- maintain a record of offences by individuals and companies.

A.6 Review and reporting

A.6.1 FPA Board Investigations Committee

To ensure consistency and equity in the management of investigations, particularly for those investigations that are not submitted to the board of the FPA, a standing committee of the board will audit a sample of investigation files on a regular basis and provide a report to the board. The committee will comprise at least two directors of the board and will not include the CFPO.

A.6.2 Reporting

A summary of the outcomes of investigations will be included in the FPA's annual report. The Compliance Manager and the CFPO will review these protocols each year from the date of implementation and make recommendations for improvements to the board.

PART B ENFORCEMENT POLICY

B.1 Purpose of this policy

This policy applies to the enforcement of the provisions of the Forest Practices Act. It sets out the principles, criteria and measures that the FPA will use to enforce provisions of the Act.

B.2 Application

This policy is to guide decision making about the application of enforcement measures in relation to instances of alleged non-compliance with the Act. It does not relate to the application of other environmental controls under the Act such as the preparation of FPPs, development and review of the code or establishment of Private Timber Reserves.

Separate guidelines have also been included in this policy document on procedures for dealing with alleged poor performance by FPOs appointed under the Act (Appendix 10).

B.3 Legislative framework for forest practices in Tasmania

The FPA administers the Forest Practices Act. The CFPO is responsible for the day-to-day administration of the forest practices system.

Section 4G of the Act specifies the powers of the FPA with relation to monitoring and enforcement of the Act and code. It states:

- (1) *The Authority is responsible for –*
- (a) *monitoring the degree of compliance with this Act and the Forest Practices Code: and*
 - (b) *where it finds instances of non-compliance, causing appropriate enforcement action to be taken.*
- (2) *To discharge its responsibility under subsection (1)(b), the Authority may do any of the following:*
- (a) *through the chief forest practices officer and other persons who it authorizes for the purpose, cause complaints to be made in respect of offences under this Act;*
 - (b) *for the offences referred to in section 47B, exercise the Authority's powers under that section;*
 - (c) *have forest practices officers investigate instances of suspected non-compliance, with a view to having the officers exercise their powers under section 41;*
 - (d) *take, or cause to be taken, any other enforcement measures that may be authorized by this or any other Act.*

In exercising its enforcement functions, the FPA must also have regard to its statutory objectives, which require it, *inter alia*, to:

- *act in all matters in a manner that –*
 - (a) *best advances the objective of the State's forest practices system*
 - (b) *fosters a cooperative approach towards policy development and management in forest practices matters*
- *have an emphasis on consultation and education.*

Discretion exists as to when enforcement is required and which measures are appropriate for particular situations. This policy is intended to guide decision making in relation to enforcement.

The FPA is also responsible for appointing FPOs who are given various responsibilities in supervising forest practices and certifying FPPs. FPOs are therefore a key component of the self-regulatory component of the Act and the FPA must act to maintain the highest professional and ethical standards. The FPA may revoke an FPO's authorisation for instances of unacceptable performance. This policy gives guidelines as to when the FPA may consider revoking an FPO's warrant and provides for an appeal process for the FPO.

B.4 Principles

The following principles will be taken into account when considering whether enforcement action is required in the public interest.

B.4.1 Outcome focus

The objective of all enforcement action will be to achieve a defined and measurable outcome. As a first principle, the objective of enforcement actions under the forest practices system is to ensure that corrective actions are taken to rectify any actual or potential environmental harm, including measures to improve forest management systems and standards, and the knowledge and competence of persons operating within the forest practices system.

B.4.2 Proportionality

Enforcement action will be taken in proportion to the magnitude of the offence taking into account implications for the administration of the Act more generally.

B.4.3 Responsiveness and flexibility

Decisions on enforcement action will be responsive to the situation in both timing and extent with flexibility retained to respond to additional information or change in circumstances.

B.4.4 Transparency and clarity

All non-trivial breaches will be subject to enforcement consideration and this will be communicated to the alleged offender. A transparent process will determine the type of enforcement measure to be taken and any determination will be based upon rigorous investigation and evidence. The enforcement action will be clear to enable all parties to understand the basis for the compliance action.

B.4.5 Equity, fairness and consistency

Respect for the law requires that it is administered in a way that is fair, consistent and with equity. Persons apparently responsible for an alleged offence will be given an opportunity to respond to the allegation prior to the determination of enforcement action in accordance with the principles of natural justice.

B.4.6 Due Process

Enforcement action must be carried out within the limitations of the powers conferred under the Act and the processes provided under the Act, subsidiary legislation or published policy.

B.4.7 Cost effectiveness

Enforcement powers are to be exercised when they are likely to produce the desired outcome in a cost effective manner. The desired outcome includes meeting the other principles in this policy and the implications for the administration of the Act more generally (including consideration of deterrence and precedent) as well as the environmental outcome in a particular case. The FPA must also use its limited compliance resources and public funds in a financially responsible and sustainable manner.

B.4.7 Compatibility with other policy and legislation

Enforcement of forest practices issues should be carried out in a manner that is consistent with the wider requirements of government policy and other legislation that deal with sustainable forest management, land use planning and protection of the environment. The FPA will collaborate with other regulators as required to clarify the responsibility for investigations and enforcement actions and ensure that joint resources are used in an effective and efficient manner.

B.5 General criteria for enforcement

The need for enforcement action and the degree of response will be guided by the following criteria and in line with the principles listed in section B.4:

- Whether there has been a clearly identified *prima facie* breach of the Act, the *Forest Practices Code* or a certified FPP.
- The seriousness of the incident in terms of damage to the environment (including cultural heritage) or potential damage to the environment, including the impact on people. Seriousness may include severity of damage, extent, duration, reparability and location of damage.
- The implications for the administration of the Forest Practices Act and whether the incident has undermined an administrative process designed to minimise environmental harm or promote sustainable forest management.
- The intention of the person responsible for the alleged breach and whether it was unforeseeable, a deficiency in management systems or due diligence procedures, or a deliberate action.
- The cooperation of those involved in the breach and the degree to which corrective action and timely reporting were undertaken.
- The previous history of the person or organisation with regard to forest practices issues and the frequency of the alleged breach.
- The level of responsibility of the person or organisation involved in the breach considering that several parties may have been involved in the alleged breach.
- The degree to which the person or organisation has complied with previous notices or requests from the FPA (e.g. s.41(1) notices) or other relevant statutory bodies.
- The level of public concern and sensitivity of the issue.
- The level of enforcement approach adopted for similar incidents in the past, including decisions of the court system.
- Whether the non-compliance was caused by a large company or a natural person and the capacity of the party to undertake corrective action and pay monetary fines.
- Whether there were any aggravating or mitigating circumstances.

B.6 Enforcement measures

A range of enforcement measures are available to the FPA and its officers. The determination of the level of enforcement will be in line with the principles and general criteria outlined in sections B.4 and B.5 and further guided by the more specific details of this section. FPOs may issue notices under section 41(1) of the Act but the Board of the FPA will initiate more serious levels of enforcement such as fines or court action. The board, after seeking the advice of the CFPO, retains overall responsibility for setting the level of enforcement action in any matter.

B.6.1 Section 41 notices

Section 41(1) notice

Powers: Forest Practices Officers

Limitation: For FPPs, issue of notice while plan is in force or within 12 months of its expiry. For areas not under a FPP, they can only be issued with respect to forest practices as defined by the Act.

Form: Either orally or in writing. A standard form is issued by the FPA.

A section 41(1) notice may be issued by an FPO in order to request a person to comply with the provisions of a forest practices plan or the Act. Section 41(1) notices may be a stand-alone measure or applied in conjunction with other enforcement measures determined by the FPA.

Section 41(1) notices may be issued for a wide range of purposes. They are normally issued to:

- request improvements to a feature such as a road, landing or snig track to raise them to the standard required by the FPP or *Forest Practices Code*, for example installation of grips on snig tracks after completion of harvesting as per the requirements of the code;
- request improvements to practices that are below the standard required by the FPP or code, for example adherence to wet weather restrictions or felling prescriptions;
- request remedial action to areas damaged by forest practices contrary to the standard outlined in the FPP or code, for example repair of rutted snig tracks or removal of trees from a watercourse;
- cease any forest practices that are not covered by a FPP or exemption under the forest practices regulations.

For recording purposes, written s.41(1) notices are preferred, with the yellow copy forwarded to the FPA Compliance Section.

Section 41(2) notice

Powers: Forest Practices Officers under delegation

Limitation: Follow-up notice for non-compliance with section 41(1) request.

Form: Must be in writing and served on the person apparently in charge of operations.

Section 41(2) notices are a follow-up measure to a request made under section 41(1) where an FPO believes that the s.41(1) notice has not been complied with and there is a continuing offence under the Act. The Act defines that a notice may be issued to the person apparently in charge of the forest practices in question, to direct that person to do such one or more of the following as may be appropriate in the circumstances:

- *cease the forest practices specified in the notice;*
- *where in the opinion of the officer it is practicable and economically feasible to do so, repair any damage caused by the forest practices specified in the notice in the manner and within the period specified in the notice;*
- *carry out, within the period specified in the notice, such other work as may be specified in the notice;*
- *take, within the period specified in the notice, such actions as may be specified in the notice to ensure that the provisions of this Act are complied with.*

The person served with a section 41(2) notice may appeal to the Forest Practices Tribunal within two days of receiving the notice (refer to section B.6.6).

As with a s.41(1) notice, the yellow copy is forwarded to the FPA Compliance Section.

B.6.2 Warning Letter

Powers: Chief Forest Practices Officer

Limitation: No time limitation

Form: In writing.

The Forest Practices Act does not specify conditions for warning letters but the FPA may determine that a formal warning is the most appropriate action after considering the circumstances of an issue. Warning letters may be issued to individuals or organisations involved in forest practices that have not met the standard of a forest practices plan, the code or the Act. The FPA will consider issuing a warning rather than taking more serious action in circumstances where one or more of the following are relevant:

- in the opinion of the FPA environmental harm resulting from the alleged breach has been minor or, where there has been a minor administrative error, no serious compromise has been made of the effective functioning of the Act
- it is the first breach of that nature by the responsible person or organisation
- a section 41(1) or section 41(2) notice has been complied with but the FPA wishes to highlight the fact that further failure to meet the standard in the future may result in other enforcement action
- the evidence may not be sufficient to pursue stronger action but is adequate enough to warn about potential consequences for future incidents
- the person or organisation involved was not primarily responsible for an offence but contributed through inadequate systems or due diligence on their part
- the matter was caused by deficiencies in management systems or procedures, which if left uncorrected could lead to more serious or recurring breaches.

A warning letter will not be issued unless the potential recipient has been given an opportunity to submit evidence to the FPA during the course of the FPA's investigation.

B.6.3 Prescribed Fines

Powers: Board of the Forest Practices Authority

Limitation: Three years statute of limitation.

Form: In writing, detailing allegation, level of fine, other requirements and time period for payment (normally 30 days).

Section 47B of the Act enables the FPA to issue fines to deal with certain breaches of the Act. Prescribed fines may only be issued under section 47B for the offences listed in Table 3.

Table 3: List of offences for which the FPA may issue prescribed fines under Section 47B

Section	Summary of Offence	Maximum fine *
17(4)	Carrying out forest practices without a certified FPP	1000 penalty units
17(5)	Timber processor purchasing or acquiring timber from land where no FPP is in force	1000 penalty units
17(5A)	Harvesting of tree ferns not in accordance with FPP or failure to affix tag to stem of fern before removal from harvest area	1000 penalty units
18B(1)	Trading in tree ferns without tags issued by the FPA	150 penalty units
18B(3)	Failure to comply with a request from an FPO seeking information about tree fern trading	10 penalty units
21(1)	Contravention of a certified FPP	1000 penalty units
21(3)	Failure to restock a FPP area with trees	250 penalty units
41(5)	Failure to comply with a section 41(2) notice	100 penalty units
42(5)	Failure to comply with a section 41(2) notice as modified or confirmed by the Tribunal	100 penalty units

* At as 1 July 2010, 1 penalty unit = \$120

B.6.3.1 Considerations

Fines may be issued to both individuals and organisations. Under vicarious responsibility (s.47C) an organisation may be held responsible for an offence when the individual(s) responsible for the matter was working in their normal capacity for that organisation.

The FPA will consider a fine as the method of enforcement action for more serious offences involving (but not limited to) one or more of the following:

- repeated breaches by the same organisation or individual
- where, in the opinion of the FPA, significant environmental harm has resulted
- where, in the opinion of the FPA, the matter has the potential to seriously undermine the forest practices system
- deliberate and knowing breaches
- careless actions or serious deficiencies in management systems
- poor practices that compromise the objectives of the forest practices system of Tasmania as defined by the Act (Schedule 7) and in particular negatively influence sustainable management of Crown and private forests.

B.6.3.2 Determination of the level of fine

The FPA will determine the level of a fine issued under section 47B within the limitations of the Act and in accordance with the principles outlined in section B.4. The FPA may use a guide to help it determine the level of fine in a consistent manner. The current guide is provided in Appendix 9 and may be updated from time to time as approved by the board.

A prescribed fine as defined by s.47B of the Act means a fine of:

- (a) *such amount as the FPA determines is equal, or approximately equal, to twice the amount required to make good the damage done or any loss incurred by the commission of the relevant offence*
- (b) *if the relevant offence is of a particularly serious kind or it will not be possible or practicable to make good the damage done or any loss incurred by the commission of the relevant offence, such amount as the FPA determines will constitute an appropriate sanction and deterrent in the circumstances.*

B.6.4 Prosecution

Powers: As detailed in section 47 of the Act:

- (2) *A complaint in respect of an offence against this Act may be made by –*
 - (a) *the chief forest practices officer*
 - (b) *a police officer; or*
 - (c) *any other person who is authorised by the Authority, in writing, to make complaints under this Act*
- (3) *In the exercise of their powers and the performance of their functions under this section, the chief forest practices officer and the persons referred to in subsection (2)(c) are subject to the direction of the Authority.*

Limitation: Three years Statute of limitation.

Form: Summons issued by Tasmania Police or the Director of Public Prosecutions

The FPA may decide to undertake prosecution action in a court of law when:

- a fine issued under section 47B 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 section 47B of the Act (Table 4).

The FPA will consider the advice of Tasmania Police or the Director of Public Prosecutions before proceeding with prosecution action.

Table 4: List of offences where a Court of Law must determine the level of fine (FPA unable to issue fine under s.47B)

Section of Act	Offence	Max. Penalty
25A	Failure of a responsible person to submit a certificate of compliance (COC) within 30 days after the completion of each discrete operational phase of forest practices carried out under a FPP, or failure to submit a final COC within 30 days after of the expiry of the FPP	10 penalty units
25B	Failure to supply progress reports on operations under a FPP as required by the FPA in certain circumstances	10 penalty units
37(4)	Failure to comply with a summons from the forest practices tribunal	5 penalty units
40(3)	A person: (a) prevents or attempts to prevent an FPO from exercising their powers (b) hinders or obstructs an FPO (c) fails to comply with a request of an FPO for information	5 penalty units or 3 months imprisonment

B.6.5 Performance standards of Forest Practices Officers

The Act allows the Forest Practices Authority to revoke the authorization of a person to be an FPO at any time and for any reason it considers sufficient.

Reasons may include that the FPO has:

- been negligent or not diligent in performing the duties of an FPO
- been convicted of an offence under the *Forestry Act 1920* or *Forest Practices Act*
- has been convicted of an offence involving dishonesty
- is physically or mentally incapable of performing the duties of an FPO.

The FPA has a guide that outlines the procedures for addressing issues of poor performance by FPOs. The guide details the type of actions that may lead to disciplinary action, the level of action and appeal procedures. The policy is appended to this document (Appendix 10).

B.6.6 Forest Practices Tribunal

The Forest Practices Tribunal is provided for in the Act to allow an independent appeal process for objections to:

- private timber reserve applications or refusals
- approvals or revocations of forest practices plans and variations
- a requirement by the FPA, under section 25B, to provide a report on forest practices
- FPA requirements with regard to 3-year plans (s.29)
- a notice served under section 41(2).

Apart from an appeal for a notice issued under section 41(2), the Forest Practices Tribunal is not designed to deal with enforcement action. The registry of the tribunal is maintained at the Tasmanian Resource Management & Planning Appeal Tribunal.

PART C CERTIFICATE OF COMPLIANCE S.41 NOTICES

C.1 Certificate of Compliance

Under s.25A(2) of the Act, applicants of certified FPPs must lodge a final compliance report with the FPA within 30 days after the expiration date of their FPP. This purpose of lodging compliance reports is to ensure the ongoing monitoring of forest practices in Tasmania.

C.2 Certificate of compliance bi-annual process

The bi-annual certificate of compliance (CoC) involves the issuance of s.41 notices to applicants with expired plans and who have not lodged the final compliance report within the prescribed period. Procedures have been developed to ensure non-lodgement of CoCs is followed up.

Twice a year, typically 31 days after end-March and end-September, a report of expired FPPs will be generated from the FPA Coverage database.

From the report generation s.41(1) notices (appendix 11) will be sent to applicants identified as not lodging a compliance report on their expired FPP. A deadline of six weeks from date of issuance will be given for lodgement of the compliance report.

After the six week deadline elapsed, a second report will be generated, and s.41(2) notices (appendix 12) will be sent to applicants who have still not lodged a compliance report and that were issued a s.41(1) notice six week prior. A deadline of four weeks will be given for lodgement of the compliance report.

After the four week deadline has elapsed, a third report of all expired FPPs will be generated, for the purpose of identifying applicants that have not responded to the s.41(2) notice issued. This list will be passed onto the Compliance Manager, who will arrange for an FPO or FPOs to carry out compliance checks on a fair and reasonable commercial basis, and avoiding any potential conflict of interest with the persons responsible for the outstanding compliance report(s).

The Compliance Manager will forward a letter to (Appendix 13) to all applicants that had not responded to the issued s.41(2) notice, advising that an FPO has been appointed by the FPA and costs will be recovered from the applicant. A copy of this letter will be sent to the appointed FPO.

At the time of appointment, the FPO is to be advised that an invoice for costs to be paid by the FPA will be forwarded to the Compliance Manager for authorisation. The invoice must note details such as: FPP number; applicant name; cost per CoC lodgement (hours for site inspection/admin); and travel.

Once the invoice is authorised by the Compliance Manager, a request is to be forwarded to FPA Admin to raise an invoice against the applicant to recover costs (only) incurred through FPO. Supportive documents (e.g. copy of letter forwarded to the applicant) are to be forwarded with request for raising an invoice, which will be attached to the invoice to recover costs to the applicant.

Acknowledgements

The preparation of this document relied heavily upon previous work by others. The Department of Primary Industries, Parks, Water and Environment (DPIPWE) Investigations Standards and Procedures (2005) assisted in the preparation of Part A. The format and wording of the DPIPWE Enforcement Policy (2004) was largely used in Part B of this document. The DPIPWE policy refers to their reliance on the work of Dr Robinson and the Western Australian Department of Environment Protection.

Appendix 1 – Acknowledgement letter to complainant

[ON FPA LETTERHEAD]

Phone: 03 6233 7966
Fax: 03 6233 7954
Our ref: trim record/inv #

[Date]

Name
Address

Dear

The Forest Practices Authority has received your complaint by [phone/letter/fax/email] on date, regarding [short description, location].

An authorised officer of the FPA will investigate the matter at the earliest opportunity. Please be aware that some investigations can take substantial time to complete depending on their complexity, the legal process, and other factors.

You will be notified of the outcomes on completion of the investigation.

Chief Forest Practices Officer

Appendix 2 – Letter to landowner seeking explanation

[ON FPA LETTERHEAD]

Enquiries:

Phone: (03)

Fax: (03)

Email: @fpa.tas.gov.au

Our ref: TRIM record no.

[date]

Name

Address

Dear [salu],

The Forest Practices Authority has received information that the clearing or harvesting of trees has occurred on [PID, Location] without a certified Forest Practices Plan (FPP). You have been identified as the owner(s) of this land.

Section 17 of the *Forest Practices Act 1985* provides that the clearing or harvesting of trees must not be undertaken unless the activities are authorised under a certified forest practices plan or the activities are exempt from the requirement for a certified forest practices plan under the *Forest Practices Regulations 2007*. I enclose for your information an extract of the Regulations, detailing the circumstances under which a certified forest practices plan is not required.

In order to progress this investigation, I seek a statement from you as to whether or not any clearing or harvesting of trees has been undertaken on the above land by you or other persons within the last three years. This statement should be provided to the FPA by [DATE].

In the event you have cleared or harvested any trees, please advise the date and extent (e.g. hectares) and whether the activities were covered by a certified forest practices plan or were exempt under the Regulations. If clearing or harvesting is continuing and is not covered by a certified forest practices plan or by an exemption under the Regulations, you are formally requested under s.41(1) of the Act to immediately cease any and all harvesting, clearing, collecting, transporting, removing or disturbing any timber, trees or other vegetation, whether dead or alive upon the land.

Please feel free to contact me to discuss this matter.

Yours sincerely

[officer name & title]

Enc. 1 - Extract from Forest Practices Regulations 2007: r.4 Circumstances in which forest practices plan, &c., not required

Appendix 3 – Investigation file note

[ON FPA LETTERHEAD]

Investigating officer: Date: Investigation No: TRIM: Complainant contact details: Landowner contact details: Applicant contact details: FPP:	
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Background:

Insert brief details of who, what when, and what actions were undertaken.

Has a breach occurred? Yes/No

Responsible person under s.17(1) of Act and state why deemed responsible):	
Approximate date breach occurred (statute of limitations):	

If Yes, then under what section and details of offence (examples in italics):

Element	Details	Evidence
<i>s.17(4) clearing without a FPP</i>	<i>Clearing of non-vulnerable >1ha without a certified FPP Responsible person (if different from above) and why</i>	<i>No FPP in FPA database On-ground evidence (e.g. photos)</i>
<i>s.18(3) failure to comply with specifications in Code</i>	<i>Harvesting of SSR SSR was crossed at non-designated crossing SSR burnt and cultivated within 10m of watercourse Responsible person (if different from above) and why</i>	<i>Statements (e.g. Informed harvesting contractor Class 4 SSR within coupe was a MEZ) Witnesses On-ground evidence (e.g. photos depicting details listed)</i>
<i>s.21(1) failure to comply with FPP</i>	<i>Construction of class 4 road and harvesting of timber in a designated landslip zone Responsible person (if different from above) and why</i>	<i>FPP Section D: states no forest activity in landslip zone without prior approval from specialist. No approval was sought.</i>

If No, state if exempt activity and reasons for decision.

Are there any extenuating circumstances? Yes/No

If Yes, provide details of any defence; and provide comment on whether evidence support/refute defence.

Conclusions and Recommendations:

Examples of summarised conclusion(s) and recommended action(s):

<p>Conclusion 1 Offender/landowner conducted clearing of forest without any knowledge of the requirements of the Forest Practices Act 1985</p>	<p>Recommendation 1 No further action in regards to this matter to be undertaken;</p> <p>Recommendation 2 No further action in regards to this matter to be undertaken, however a letter to landowner stating future clearing requires FPP</p>
<p>Conclusion 2 Landowner has caused tree clearing without a FPP to occur on their property, with some clearing occurring within the last XX months</p>	<p>Recommendation 3 Deal with this matter under section 47B of the Forest Practices Act with no fine imposed subject to rehabilitation of the cleared area and a retrospective FPP;</p> <p>Recommendation 4 The CFPO/board determine a penalty or appropriate action given [insert details]</p>

Signed: [investigating officer]

DECISION	<p>Signed - Chief Forest Practices Officer Date:</p>
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Estimated investigation time (person hours)	Field	
	Office	
	Total	

I will now read these notes to you –

Do you acknowledge that I have read these notes to you?.....

Do you wish to read this document?

Do you agree that this is an accurate record of the questions I have asked and the answers you gave?

Do you have any complaints in the way you have been treated in this interview?

.....

.....

I invite you to acknowledge this document by signing it on each page and initialling any corrections.

Interview concluded at:

Interviewee signature:

Appendix 4b – Record of interview (audio) form

RECORD OF AUDIO INTERVIEW

Do you consent to have this audio interview recorded?

Note: If defendant refuses to consent to audio interview proceed with written interview, but record refusal to participate in the written interview.

This is an audio interview being conducted at: *State location of interview.*

By Authorised Officer: *State full name*

Here is my warrant of authorisation. *Show warrant card.*

Date and start time.

Witness

Present is: *Witness(es) name*

For the purpose of identification for the recording of this interview will you please state your full name and title.

Full name

Title

Defendant

For the purpose of this interview could you state your:

1. Full name
2. Address
3. Date of birth
4. Occupation

Allegation (*state the allegation*)

Do you understand this allegation?

I am an appointed and authorised officer under s.38 of the *Forest Practices Act 1985*, which allows me to exercise certain powers. I have reasonable grounds to believe that you have knowledge of information relating to the allegation I have just put to you. Therefore I am now requiring you, under s.40 of the *Forest Practices Act 1985* to answer the questions that I put to you in relation to this matter. Failure to do so is an offence and you may be charged with obstruction. Do you understand?

Do you want legal representation?

Are you an Aboriginal or Torres Strait Islander? *If answer is Yes: Do you want to have an interview friend in respect of that heritage?*

Have you in the last 48 hours taken any drugs or medication that may affect your fitness in respect to this interview today?

Do you feel fit to participate in this interview today?

Body of interview:

Who?

What?

Where?

When?

Introduce all exhibits with "for the purposes of the recording I am now showing [defendant name]" photograph, map, etc.

Is there anything else you wish to say regarding this matter?

Do you have any complaints in the way you have been treated in this interview?

Interview concluded at: *State finish time.*

Appendix 5 – Witness Statement form

STATEMENT

Name of Witness:

Date: Time:

Surname: First name:

Address:

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Age: DOB: Phone:

Occupation:

STATES:

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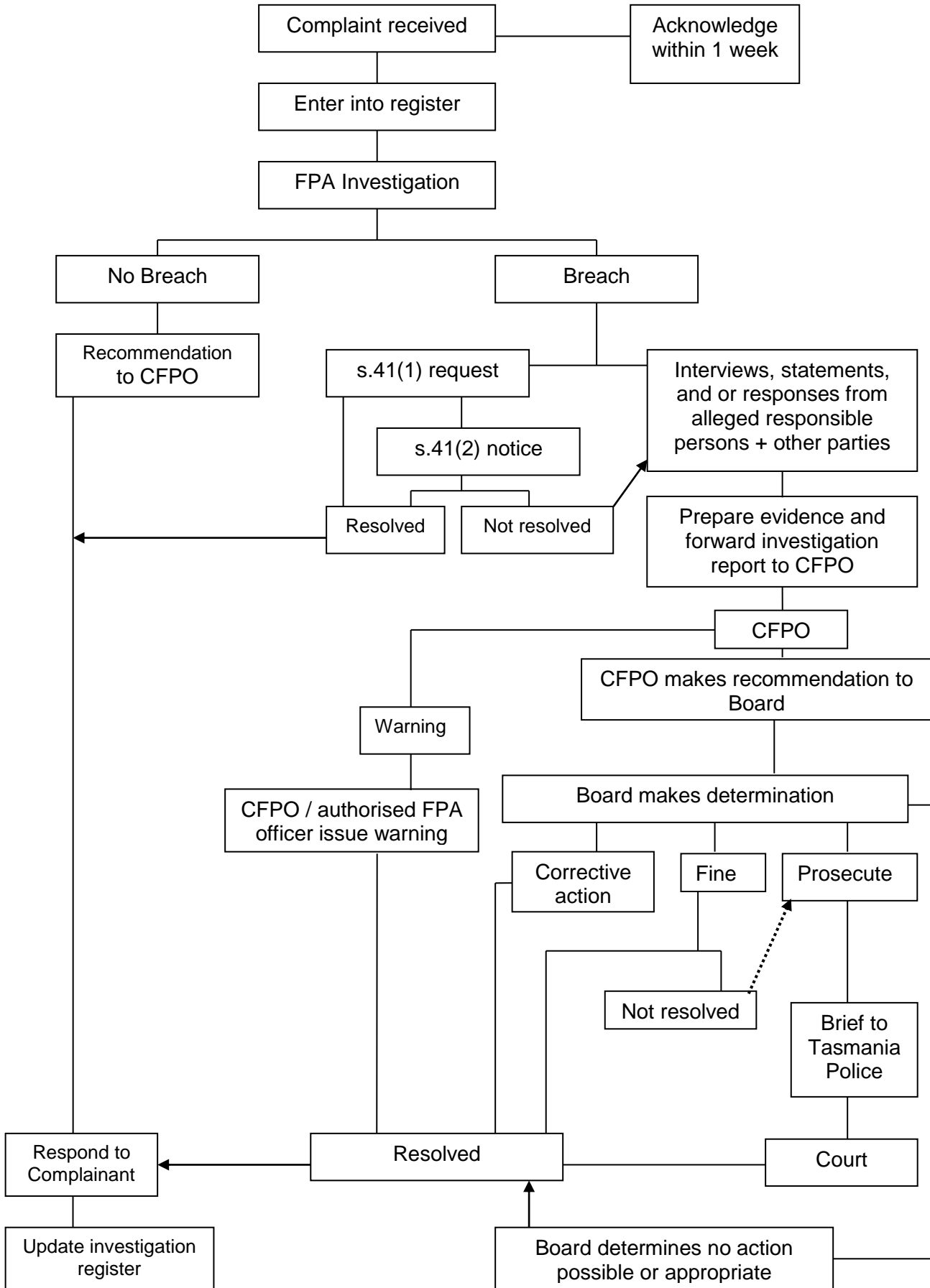
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Printed Name: Signature:

Appendix 7 – Investigation checklist

Collection of Evidence	
Evidence matrix completed?	
Formal interviews or statements obtained?	
Alleged responsible person / organisation given opportunity to respond to allegation? (may include interviews or statements)	
Photos taken and added to report?	
Copy of FPP obtained or FPP database checked?	
Copy of title information obtained?	
Input from specialists sought?	
Report	
Allegation clearly stated and consistent with interviews?	
Recommendations made?	
Name and date included?	
Critical dates for action identified and entered into database?	
Timeline added if required?	
If fines recommended	
Age, intelligence, previous offences, background, physical or mental health of the offenders and witnesses considered?	
Cost incurred by any party, making good the offence considered?	
FPA fines guideline used?	
Prescribed fine permissible under section 47B? (table 3, section B.6.3 of protocol)	
Other	
Salvage of illegally harvested timber considered as per section 47D of Act?	
Other relevant state or local government agencies advised?	

Appendix 8 – Investigations and Enforcement Procedures Overview



Appendix 9 – Guidelines for setting fines

<p style="text-align: center;">GUIDELINES ADOPTED BY THE FOREST PRACTICES AUTHORITY WITH RESPECT TO THE DETERMINATION OF PRESCRIBED FINES UNDER S.47B OF THE <i>FOREST PRACTICES ACT 1985</i></p>
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Purpose

The FPA seeks to deal with offences under the *Forest Practices Act 1985* in a manner which best furthers its objectives under s4B. Wherever appropriate, offences are dealt with through seeking the cooperation of offenders in advancing the objectives of the State's forest practices system through the making good of any damage done in the commission of the offence. Other options such as imposition of a prescribed fine or prosecution will be employed when necessary to best further the objectives. The FPA will seek to use the tools available to both make good the damage done in the commission of the offence and reduce the likelihood of further offending.

Making good

The nature and extent of the works required to make good will be determined according to the particular circumstances of each case and will typically involve those works necessary to restore the land and vegetation to the state in which it would have been had the offence not been committed. The works will seek to ensure that any offsite damage is made good and that the works on the land do not cause any ongoing adverse offsite impacts

In some cases it may not be practicable to require the restoration of the land and vegetation to its original state but rather to require restoration to that state which would have been the outcome had the works on the land been undertaken in accordance with a certified forest practices plan.

In some cases, making good on the land which was the subject of the offence may not be practicable. In such cases it is possible that the Authority may give consideration to that other works in another location which may yield better outcomes to further the objectives under s4B and so those works might offer a better solution to making good the damage done in the commission of the offence.

In most cases it will not be possible to make good the damage done immediately as long established vegetation communities or soil profiles on the land cannot be instantly reproduced. Making good will therefore typically involve initial works and ongoing management over an extended period.

Where a cooperative approach succeeds in making good any damage done, the FPA may conclude that there is no need to impose any additional penalty to best further its objectives.

Prescribed fines

In other cases the FPA may determine that an additional penalty is warranted in order to further its objectives through provision of an individual and community deterrent against behaviours which are contrary to the State's forest practices system. In those cases the FPA may elect to determine a prescribed fine under s47B as an alternative to prosecution.

In doing so the FPA will first seek to establish if it is possible and practicable to make good any damage done in the commission of the offence. If so then the FPA will determine a prescribed fine for the offence to be twice the sum estimated to be required to make good the damage. The FPA will determine the works and ongoing management required to make good and will estimate the associated works and management costs.

In cases where the offence is of a particularly serious nature or it is not possible or practicable to make good the damage or loss, the FPA will determine an amount of a prescribed fine which will constitute an appropriate penalty and deterrent. The FPA will have regard to the particular circumstances of the offence and the offender in determining the amount of the fine. The FPA will have regard to the Penalty Guideline below to assist it in its determination process by providing an indicative range which may constitute an appropriate fine for the particular offence.

PENALTY GUIDELINE		
Factor	Score	Guideline
Reparability	0	None required
	1	Recovery by natural processes
	2	Recovery by remedial action
Damage	0	No environmental harm
	1	Minor environmental harm
	2	More serious but localised environmental harm
	4	More extensive environmental harm
	10	Major and extensive environmental harm
Consent	0	Own land or landowner consent
	1	Inadvertently crossed tenure due to human error
	4	Operating on land without consent
Culpability	0	No knowledge of Act/forest practices system
	1	Lapse in otherwise good system
	2	Inadequate systems or precautions
	4	Very deficient systems
	8	Deliberate and knowing breach
Co-operation	-2	Prompt and open cooperation; pro-active approach
	0	Provided information as requested
	4	Suspected with-holding of information and/or failure to cooperate
Corrective actions and reporting	-2	Timely and effective corrective action taken and/or self-reported
	1	Corrective actions taken after direction given by FPA
	2	Corrective actions not taken in a timely manner
	5	Corrective actions not taken (where required)
Previous history	0	No previous history of poor performance
	1	Previous history of unrelated investigations and/or breaches
	4	Previous history of related investigations and/or breaches
Responsibility	1	Part responsibility
	2	Major responsibility
TOTAL SCORE		

Indicative penalty band categories 0 - 6 (\$0 to \$3,000), 12 (\$6,000), 18 (\$10,000), 22 (\$20,000), 30 (\$50,000) and 40 (\$135,000).

The FPA will consider the indicative fine band suggested by the application of the Penalty Guideline in finalising its determination of what constitutes an appropriate penalty and deterrent. While the FPA will seek to ensure that the amount of the fine is proportionate to the impact of the particular offence, it will have regard to the need for both individual deterrence and broader community deterrence.

In determining what constitutes an appropriate individual and community deterrence, the FPA will seek to ensure that the fines imposed counter any perception that it may be more efficient or effective to disregard the State's forest practices system.

The FPA will also have regard for costs already incurred or likely to be incurred in making good the damage done in the commission of the offence. These considerations may lead the FPA to determine a fine which falls outside the indicative band applied by the Penalty Guideline.

Appendix 10 – Procedures for investigating the performance of FPOs

1. Preamble

The Forest Practices Authority will seek to maintain high standards of professionalism by its Forest Practices Officers through training, education and the fostering of a cooperative approach to forest practices matters. The FPA will monitor the performance standard of its FPOs through regular contact between FPOs and the CFPO and staff of the FPA. Formal monitoring and feedback will be provided by way of the audit of Forest Practices Plans. The FPA sets high standards for its FPOs and will take appropriate action if these standards are not achieved. The FPA has a formal disciplinary policy with respect to poor standards. In administering this policy, the FPA will apply the principles of natural justice and equity. Guidelines with respect to appeals rights on disciplinary matters are provided below.

2. Investigation of alleged poor performance

Instances of alleged poor performance will be initially investigated by the CFPO. The CFPO may seek a field inspection with the FPO and may request a report in writing.

A report will be made to the FPA where the CFPO is of the opinion that the FPO's performance constitutes a disciplinary matter. In such cases, the CFPO will advise the FPO that the matter will be referred to the FPA.

3. Hearing process

The FPA will consider the report furnished by the FPO and any other relevant reports from the CFPO, specialists etc. The FPA may seek further information from any party as required.

Where the FPA determines that there is no case to answer, the matter will be dismissed and the FPO will be advised accordingly.

Where the FPA determines that there is a *prima facie* case of poor performance, the FPA will make a provisional decision in accordance with the disciplinary policy. The FPA will ask the FPO to 'show cause' why the decision should not be imposed.

- Where the FPO accepts the decision, the decision will be imposed from the date advised by the FPA.
- Where the FPO does not accept the decision, the FPO will be offered a case review. The case review will involve the Chair or a FPA member appointed by the Chair, CFPO or nominee and FPO. If the matter is mutually resolved at the case review, the FPO will be advised accordingly.
- Where the matter is not resolved at the case review, the FPO will be offered the option of a review of the matter by a committee of peers. The peer review committee will be nominated by the FPA and will comprise two or three experienced, senior FPOs (excluding the CFPO) and one independent person who has skills and knowledge of industrial relations and natural justice. The FPO may object to a person being appointed to the peer committee where the FPO believes that the nominee may have a conflict of interest. The Chair will consider any such objection and make a determination. The committee will only deal with the subject case of alleged poor performance and will determine whether the action taken by the FPO was consistent with the standard expected of an FPO or not. The role of the committee is not to review the previous history of performance of the FPO or to make judgement with respect to the penalty determined by the FPA. The committee will provide advice to the FPA, which will make a final decision. This decision is final.

4. Guide for the suspension, revocation or withdrawal of an FPO's warrant

It should be noted that under Section 39(3) of the *Forest Practices Act* the FPA may at any time revoke the appointment of an FPO. Any matter of complaint against an FPO will be considered by the FPA. 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 guide for dealing with FPO performance issues, noting that the FPA may take different action in relation to very serious instances of poor performance.

4.1 Forest Practices Officer (Planning)

- Certification of a substantially flawed FPP (or variation to a FPP) not in accordance with *Forest Practices Code*
 - 1st time - one month suspension
 - 2nd time - six month suspension
 - 3rd time - permanent revocation

- Approval of an ambiguous or poorly worded FPP (or variation to the FPP) which potentially could lead to contravention of the *Forest Practices Code*
 - 1st time - warning
 - 2nd time - six month suspension
 - 3rd time - permanent revocation

- Leaving out essential details on FPP cover page, map section or signature page
 - as next above

4.2 Forest Practices Officer (Inspecting and Planning)

- When in charge of supervising or monitoring an operation, allowing substantial breaches of the FPP to occur which could reasonably have been prevented
 - 1st time - one month suspension
 - 2nd time - six month suspension
 - 3rd time - permanent revocation

- When inspecting or monitoring operations, to allow breaches to continue by failing to take required action such as verbal requests or written notices, or failure to notify superiors
 - as next above

- When conducting an audit for the purposes of completing a certificate of compliance, failing to report instances of non-compliance that should reasonably have been detected
 - as next above

4.3. Other withdrawals

- Appointed as a Forest Practices Officer but no involvement in forest practices for two years
 - Automatic withdrawal unless good reason(s) exist for continuation

5. Counselling

In circumstances where a warning or one month suspension is issued the FPO concerned should be counselled in relation to his/her performance.

6. Retraining

Where lack of sufficient training is likely to have contributed to poor FPO performance, retraining or counselling is to be considered.

7. Procedure

The CFPO is to provide a report and recommendations to the FPA for a decision and advice to relevant FPOs by the FPA.

Appendix 11 – CoC s.41(1) notice (private independents)

ON FPA LETTERHEAD

DATE

«Applicant_Name»
«Applicant_Address»
«Town» «State» «Pcode»

Dear Applicant

A review of the FPA's records show that the Forest Practices Plan (FPP) «**FPP**» expired on «Plan_expiry_date» and the Certificate of Compliance (CoC) has not been lodged with the FPA.

Under Section 25A(2) of the *Forest Practices Act 1985* (the Act) it states that *“the responsible person for a certified forest practices plan [the applicant] must lodge a final compliance report with the Authority, in an approved form, within 30 days after the expiration of the period during which forest practices are authorised to be carried out under the plan...”*

This letter serves as a formal notice under s.41 of the Forest Practices Act requesting you to lodge a CoC with the FPA in order to meet your statutory responsibilities under the Act. A Forest Practices Officer (FPO) will be required to lodge the CoC on your behalf and the CoC **must be lodged by [date]**. Failure to comply with this request may result in enforcement action being taken by the FPA. A list of consulting FPOs who may be available to prepare the CoC can be downloaded from the FPA website <www.fpa.tas.gov.au> and under 'Consultancy'.

If you have previously lodged the CoC or requested a change in lodgement requirements, for instance an approved variation to the due date, please contact me to discuss.

Yours sincerely

Forest Practices Advisor

Appendix 12 – CoC s.41(2) notice

ON FPA LETTERHEAD

DATE

Name and address

NOTICE UNDER S.41(2) OF THE *FOREST PRACTICES ACT 1985*

In previous correspondence the FPA has provided you with formal notice under section 41(1) of the *Forest Practices Act 1985* of your requirement to lodge a Certificate of Compliance (CoC) for forest practices plan **FPP**. An extension of time to DATE FROM S.41(1) was granted for the lodgement. Our records indicate that no CoC has been received.

I am now formally issuing a section 41(2) notice under the Act. In issuing you with this notice you are directed to lodge a final compliance report with the FPA, in an approved form by DATE DUE which has been certified by a Forest Practices Officer stating:

- (a) whether or not the plan has been complied with; and
- (b) detail any areas of non-compliance with the FPP; and
- (c) if the plan enables tree ferns to be harvested, the number of tree ferns harvested.

A failure to comply with this notice is an offence under the Act.

I also advise that if you do not comply with this notice by the above date the FPA will engage a Forest Practices Officer to carry out a CoC assessment, and lodge that assessment. In taking this action the FPA will make use of the provisions of the Act under section 41, which allows the FPA to recover from you any costs and expenses that it incurs.

I take this opportunity to advise that under s.42 of the Act you may appeal the issuing of a section 41(2) notice as follows:

- (a) A person who is aggrieved by a notice served on him or her under s.41(2) may, within 2 days after the date of service of that notice on him or her, appeal to the Tribunal.
- (b) An appeal under s.42(1) shall be instituted by giving written notice to the registrar or in any other manner as may be prescribed.

The contact address of the Registrar of the Forest Practices Tribunal is PO Box 2036, Hobart Tasmania 7001.

I urge you to comply with this notice by engaging a Forest Practices Officer to undertake the CoC assessment. A list of consulting FPOs who can provide this service and are on the FPA's website <www.fpa.tas.gov.au/index.php?id=91>. If you wish to submit any information or have any questions in relation to this notice please contact me.

Yours sincerely

Forest Practices Advisor

Appendix 13 – Letter to applicant advising access to land

ON FPA LETTERHEAD

DATE

APPLICANT
ADDRESS

Dear

CERTIFICATE OF COMPLIANCE – ACCESS TO LAND

This is to advise that a Forest Practices Officer (FPO) will be visiting your [previously owned] property on [ADDRESS, PID] over the next few weeks to undertake a compliance inspection for Forest Practices Plan (FPP) [FPP]

As stated in a previous letter dated [s.41(2) letter date], you were required to comply with the s.41(2) notice by [due date for lodgement], otherwise the FPA would engage a FPO to carry out a compliance inspection and lodge a report with the FPA. In taking this action the Authority will make use of the provisions under s.41 of the *Forest Practices Act 1985*, which allows the FPA to recover from you any costs and expenses that it incurs.

If you have any queries regarding this action please contact Jo Field in our Launceston office.

Yours sincerely

Compliance Manager

Document Control Log Table

Document Summary Information

Document name	FPA investigation and enforcement protocols
Version	2.7
Trim record	2009/36130
Owner	Compliance section
Author(s)	Graham Wilkinson, Jo Field, Mick Schofield, and others
Release date	July 2010
Release Approved by	CFPO
Release status	Public document

Version Control

Version	Date	Author(s)	Summary of changes
1.0	2006	Craig Hawkins	Original draft document
2.0	Sept 2008	Aidan Flanagan	Revised draft document
2.1	29/07/2009	Graham Wilkinson	Reformatting and general text changes of draft document; stored in TRIM (2009/36130).
2.2	28/05/2010	Jo Field	Insert document changes table and abbreviations table, reformat document and general editing of entire draft document; inclusion section A.3.2.
2.3	8/06/2010	Jo Field	Review appendices
2.4	14/07/2010	Chris Grove	Style edit
2.5	20/07/2010	Graham Wilkinson, Jo Field	Review appendices 2 and 4; edit sections and finalise document.
2.6	01/02/2011	Chris Grove	Added hardcopy warning and document control information.
2.7	21/06/2011	Jo Field	Include Section C – Procedures for CoCs s.41 notices bi-annual process - signed off by the Board in May 2011.
2.8	11/11/2016	Tim Leaman	Incorporated changes to Appendix 9 (Penalty Guideline) as endorsed by the Board Sept 2015.

Stages required for release outside FPAs

Category of advice		
Stages	Required/not required	Completed (date)
FPO	Required	November 2016
CFPO	Required	November 2016
FPAC	Required	
Board	Required	September 2015