

8. Forestry Operations

Tasmania has a rich forest estate covering extensive areas of both public and private land. The forests are highly valued as important wildlife habitats, as a source of clean water, as tourism and recreational assets and for the various forest products which they offer.

Forestry is an important and dominant industry in the state and can have major environmental implications, including loss of biodiversity, habitat fragmentation and water interception. For this reason, protection and sustainable management of forests continues to be a contentious public issue in Tasmania.

8.1 Forestry Definitions

In order to interpret forestry laws it is important to understand a few key definitions:

What are 'Forest Practices'?

Forest practices include:

- establishing forests (including regeneration of native forests);
- growing or harvesting timber (including plantations);
- clearing trees (for any purpose);
- clearing and converting threatened native vegetation communities;
- harvesting tree ferns; and
- works associated with growing, harvesting or clearing trees, such as constructing roads and operating quarries.



What are 'Trees'?

Trees are defined as woody plants with a height or potential height of 5 metres or more that are native to Tasmania or introduced and used for harvesting (such as plantation species). The definition also includes tree ferns.

What are 'Threatened Native Vegetation Communities'?

Vegetation communities listed in Schedule 3A of the *Nature Conservation Act 2002* (including things like E. ovata forest and woodland, riparian scrub and wetlands). This list protects particular forest types, rather than individual species.

What is 'Clearing'?

This includes clearing, cutting, pushing, removing or destroying trees.

What is 'Clearing and conversion'?

Clearing and conversion means deliberately removing all or most of a threatened native vegetation community from an area of land and:

- leaving the area of land cleared; or

- replacing the threatened native vegetation with another species, agricultural works (such as farm sheds, dams, fencing and access roads), residential, commercial or other development.

Management practices such as applying fertilizers, burning off, slashing, removing weeds and grazing livestock do not constitute 'clearing and conversion' unless they are carried out with the intention of removing the vegetation community.

What legislation applies?

Two principal Acts regulate the commercial use of forests in Tasmania:

1. Forestry Act 1920

This Act sets up the public forestry corporation, *Forestry Tasmania*, to have 'exclusive management and control of all areas of forest reserves, state forest and the products thereof.' In practice, *Forestry Tasmania* has responsibility for managing 1.5 million hectares of State forest and controls forest practices, including harvesting, tourism activities, research and management practices such as planned burns.

🕒 After a recent government commissioned review of Forestry Tasmania, the Resources Minister Bryan Green announced a plan to split the functions of the organisations into commercial operations (to be managed by Forestry Tasmania) and non-commercial operations (to be transferred to Parks and Wildlife Service).

2. Forest Practices Act 1985

All forest practices, including activities in State forests and on private land, are subject to the *Forest Practices Act 1985*.

This Act deals with the regulation of forest practices, both on public land and private land. The Act:

- establishes a *Forest Practices Authority* (and delegated *Forest Practices Officers*) to oversee forest practices
- provides for *Private Timber Reserves* to be established
- establishes a *Forest Practices Tribunal* to hear some disputes in relation to forestry matters
- requires forest practices to be carried out in accordance with the *Forest Practices Code* and specific *Forest Practices Plans*

8.2 The Forest Practices System

Generally, the forest practices system operates outside the [Resource Management and Planning System](#) which regulates most other land uses in Tasmania. The forest practices system is not subject to the same objectives and, significantly, public participation in the forest practices system is generally limited to those who are directly affected (such as adjoining property owners).

Important elements of the Forest Practices System are explained below:

Forest Practices Plans (formerly known as Timber Harvesting Plans)

Forest Practices Plans (**FPPs**) are site-specific operational plans that describe how forestry activities must be carried out for specific areas (known as 'coupes'). FPPs describe the proposed location of roads, how the land will be restocked with trees, measures for the protection of soils, water and natural and cultural



values, the estimated time for completion of the activities and the name of the intended timber processor.

Subject to a few exemptions, forest practices cannot take place until a Forest Practices Plan has been certified for the land (see [below](#)). FPPs must be prepared in accordance with the *Forest Practices Code 2000*.

Forest Practices Code

The [Forest Practices Code](#) is a comprehensive set of guidelines for measures to provide 'reasonable protection' for areas subject to forest practices. For example, the Code sets out minimum buffer distances for watercourses and guidance on designing access routes.

All forest practices must be conducted in accordance with the Forest Practices Code (see [below](#)).

⚠ The Forest Practices Code has been under review for a number of years. In April 2009, an expert scientific panel reviewing the biodiversity provisions of the Forest Practices Code reported to the Forest Practices Authority. The report identified a lack of guidance regarding implementation of the provisions of the Code. The Review recommended a number of changes, including providing better protection to high biodiversity forests.

A number of the recommendations are being progressed through Forest Practices Authority guidelines, however the Code has yet to be formally updated.

➡ For more information, including the full Report, go to the [Forest Practices Authority website](#).

Forest Management Plans

Under the *Forestry Act 1920*, *Forestry Tasmania* can prepare a *Forest Management Plan* for any state forest or forestry district. Forest management plans are prepared after consultation with statutory authorities (such as the *EPA Division*, the *Conservation Branch* and the Department of Infrastructure, Energy and Resources), industry stakeholders and others who have registered an interest in making submissions (see Section 22D). You can generally only register your interest during specific periods, so look out for public notices in the newspaper calling for interest.

ⓘ A statewide Forest Management Plan, "[the Sustainability Charter](#)", was released in August 2008. A new [draft Forest Management Plan](#) was released for comment in March 2014, and will be reviewed later in 2014.

Permanent Native Forest Estate Policy

As part of its commitments under the Regional Forest Agreement, the Tasmanian government has developed a [Permanent Native Forest Estate Policy](#), outlining its agreed approach to phasing out broad scale clearing and conversion of Tasmania's native forest.

The Policy initially provided for broad scale clearing and conversion of native forest on private land to be phased out by 2015. To achieve this, clearing on private land was limited to 40 hectares per property, per year. However, an amended Policy released in September 2011 allows the Forests Minister to authorise a higher clearing limit, where he is satisfied that there is a 'substantial public benefit'.

Assessment of applications for clearing in excess of the policy limit were previously managed by the independent Forest Practices Authority. Under the revised Policy, decisions in relation to clearing assessments are made by the Forests Minister.

Forest Practices Authority

The [Forest Practices Authority \(FPA\)](#) is an independent statutory body that is responsible for overseeing and enforcing compliance with the forest practices system. The FPA develops the *Forest Practices Code*, trains Forest Practices Officers and oversees the administration of [Private Timber Reserves](#) (with support from Private Forests Tasmania).

The FPA also investigates alleged breaches of the *Forest Practices Code* or of any Forest Practices Plan, and can impose fines or suspend forestry operations where appropriate.

Each year, the FPA conducts audits of FPPs and reports on the results of these audits in its annual report. The FPA also produces an annual State of the Forests report.

Forest Practices Officers

Forest Practices Officers are authorised by the FPA to investigate breaches of forest practices. Some officers are also authorised to prepare and certify Forest Practices Plans.

Forest Practices Tribunal

The Forest Practices Tribunal hears objections in relation to a limited range of forest practices disputes, primarily where forest operators are unhappy with decisions in relation to their forest practices plans, three year plans or applications for private timber reserves.

Adjoining neighbours of a proposed Private Timber Reserve can also object on limited grounds of "direct and material disadvantage" (☛ see [below](#)). There are no formal opportunities for third parties to object to provisions in a Forest Practices Plan, though the Forest Practices Tribunal has the power to join any party to proceedings once they are instituted. The Tribunal is not **required** to accept any applications to join.

The Forest Practices Tribunal has been incorporated into the Registry of the [Resource Management and Planning Appeal Tribunal](#).

The Tribunal is generally made up of three members, including a lawyer and two members with experience in harvesting, road construction and forest management. Where an appeal is likely to raise questions about threatened species or the protection of threatened native vegetation communities from clearance and conversion, the Tribunal must include a person with experience in agriculture and forestry (approved by the *Tasmanian Farmers and Graziers Association*) and a person with a conservation science background (nominated by the Minister).

General requirement to prevent environmental harm

Forest practices must comply with the provisions of the *Environmental Management and Pollution Control Act 1994* (☛ go to [Chapter 6](#) for more information about this legislation).

8.3 What is the Tasmanian Forests Agreement?

On 7 August 2011, the state and Federal governments signed the Tasmanian Forests Intergovernmental Agreement (**IGA**). The IGA was intended to give effect to a Statement of Principles developed by key stakeholders from the forest industry and environmental groups, seeking a more sustainable balance between commercial and conservation interests in Tasmania's forests. The IGA aimed to facilitate this objective by increasing protection for identified high conservation value forests, while providing continued certainty for the forest industry (having regard to global economic downturn) and compensation and re-training for affected workers.



Legislation to give effect to the IGA, the [Tasmanian Forests Agreement Act 2013](#), commenced on 3 June 2013. The TFA Act provides for:

- A reduction in the current minimum wood supply requirements, from 300,000m³ to 137,000m³;
- Establishment of a Special Council, comprised of signatories to the Tasmanian Forests Agreement and government representatives, to advise the Minister on implementation of the agreement;
- Immediate suspension of forestry activities on approximately 490,000 ha of State forest; and
- A staged process for the creation of reserves in areas of State forest currently available for harvesting. A flowchart explaining this complex process is available on the [EDO Tasmania website](#).

Any orders in relation to proposed reserves are required to pass through both houses of parliament a second time. If proposed reserve orders are rejected by either house of parliament, the legislation will be revoked (though any reserves created prior to the revocation will remain in force).

The TFA Act had a tumultuous history, and remains subject to controversy. Some of the contentious amendments to the Act made by the Upper House prior to its commencement include:

- Allowing access to reserves for small scale harvesting of specialty timber;
- Preventing the creation of reserves over many of the identified areas until Forestry Tasmania has achieved Forest Stewardship Council certification;
- Requiring the 'durability report' submitted with each proposed reserves order to address any significant protest action or market campaign activity, if requested by either House of Parliament. The durability report, prepared by the Special Council, will assess the ongoing implementation of the TFA.

 Following its election in March 2014, the Tasmanian Liberal government advised that it would introduce legislation to 'tear up' the TFA Act. Details of this legislation have yet to be released.

 For more information about the agreement, go to the [Tasmanian Forests Agreement website](#).

Special Council

The responsibilities of the Special Council are to:

- Promote the Tasmanian Forest Agreement (TFA) vision
- Advise the Minister on the implementation of the TFA;
- Advise the Minister on the administration of the TFA Act
- Advise the Minister on the need to harvest special species from certain areas set out in the TFA Act.
- Prepare "durability reports".

Durability report

These reports must cover all aspects of the TFA and whether it is being effectively implemented. The durability reports will also address whether there "has been substantial active protests or substantial market disruption".

The first [durability report](#) was released in July 2013.

8.4 What is the Regional Forest Agreement?

Regional Forest Agreements (**RFAs**) are 20-year agreements between the Commonwealth Government and various State governments to address the goals of the National Forest Policy Statement. The objectives of RFAs are to establish a Comprehensive Adequate and Representative (CAR) Reserve System (based on agreed criteria – the JANIS criteria), to assess forest values and protect biodiversity and to provide secure access to wood resources.

In 1997, the Tasmanian and Commonwealth Governments signed the *Tasmanian Regional Forest Agreement* (which is formally recognised under the *Regional Forest Agreement Act 2002* (Cth)). The agreement covers the whole of Tasmania – identifying reserve areas and areas which are available for harvesting, conversion and other uses.

The Tasmanian RFA has been amended on a number of occasions, and was supplemented by the Tasmanian Community Forests Agreement in 2005. You can find the RFA, the Community Forests Agreement and all supporting documents on the [Department of Agriculture, Fisheries and Forestry website](#).

Logging operations in Tasmania are required to be undertaken in accordance with the terms of the RFA. Tasmania's forest practices system is recognised in the RFA as the mechanism to implement appropriate protections for forest practices on public and private land.

Forestry operations that are undertaken in accordance with an RFA are exempt from some export controls and from additional assessment and approval requirements under the *Environment Protection and Biodiversity Conservation Act 1999*.

The RFA versus the EPBC Act

In [Brown v Forestry Tasmania](#), Senator Bob Brown challenged whether proposed logging in the Wielangta State Forest would be carried out "in accordance with the RFA", particularly clause 68 which provides: "*The State agrees to protect Priority Species [listed threatened species]...through the CAR reserve system or by applying relevant management prescriptions.*"

Specifically, the case challenged whether the Forest Practices Plans issued in respect of particular forestry coupes were sufficient to protect the threatened wedged-tail eagle, swift parrot and Wielangta stag beetle (all listed as 'Priority Species' under the RFA).

Justice Marshall examined the management prescriptions included in the Forest Practices Plans and the system of monitoring, adaptation and enforcement in place for forestry operations in State forests. Justice Marshall was not satisfied on the evidence that the management prescriptions were adequate to actually protect the three threatened species. As a consequence, the forestry operations were not "*in accordance with the RFA*" and were not exempt from the operation of the *EPBC Act*.

The Court granted an injunction to halt the logging until the necessary approvals were obtained. Forestry Tasmania appealed against this decision.

→ The court summary for this case is available at the [Austlii website](#).

In February 2007, the Tasmanian and Commonwealth Governments amended the Tasmanian RFA to state that the parties were satisfied that the CAR Reserve System and management strategies adopted under the Tasmanian Forest Practices System were adequate to protect rare and threatened species.

In November 2007, the Full Court held that the RFA required only that regard be given to the assessment of environmental, social, cultural and economic values, that a CAR reserve system be established and management practices be put in place for the ecologically sustainable management and use of forests. The RFA embodied a compromise between environmental and economic considerations—the compromise would necessarily limit forestry operations, but given the nature of forestry activities the RFA could not guarantee

that the environment, including threatened species, would be protected. Therefore, the Federal Court held that clause 68 could not represent a guarantee that the State would protect threatened species, only that the State would provide for the protection of threatened species.

In the view of the Court, the 2007 RFA amendment merely “clarified” the true intention of the RFA, that forestry operations be exempt from Commonwealth approval provided a management system was implemented which had regard to environmental, social and economic values. Their Honours were satisfied that the CAR reserve system and forest practices system provide a framework for the protection of threatened species, consistent with clause 68 of the RFA.

➤ The court summary of this decision is also available at the [Austlii website](#).

This decision narrows the potential to challenge the validity of a Regional Forest Agreement on the grounds that it does not satisfy either the definition of an RFA or the conditions of the RFA Act. Any forestry operations will be considered RFA forestry operations where they are carried out in any area covered by an RFA with the Commonwealth. Following this decision, RFA forestry operations will be exempt from the EPBC Act because the objectives of the EPBC Act are taken to be satisfied by the provisions of the RFA. The decision also highlights the level of responsibility placed on governments who are party to RFAs to ensure that forests are managed sustainably.

Senator Brown's application to the High Court for leave to appeal against this decision was refused.

➤ See [Chapter 15](#) for more information about the operation of the EPBC Act.

! The RFA is subject to five yearly reviews. The next scheduled review, the final before the current RFA expires, was due in 2012, but has yet to commence.

➤ The first two reviews of the Tasmanian RFA are available on the [DAFF website](#).

8.5 How is forestry regulated on private land?

Unless private land is declared as a [Private Timber Reserve](#), forest practices proposed for any particular area of private forest must comply with the relevant planning scheme and must obtain any necessary permits (➤ go to [Chapter 5](#)).

In many rural areas, forestry is a 'permitted use' and Council must therefore issue a permit for forest practices (but can do so subject to conditions). If forest practices are listed as a 'discretionary use', a permit will be required and the public will be given an opportunity to comment on the proposed forest practices before Council decides whether or not to issue the permit. If you make a representation in relation to proposed forest practices, you can appeal to the [Resource Management and Planning Appeal Tribunal](#) to challenge a decision to grant a permit.

! If a permit is required, it will be required in addition to a Forest Practices Plan for the land. Forest practices cannot take place on the land until both a permit and a certified FPP have been issued.

If private land is declared as a *Private Timber Reserve*, forest practices on that land (including access roads) are exempt from the *Planning Scheme* and do not require a development permit.

➤ The Forest Practices Authority has also published a very useful [“Guide to Planning Approvals for Forestry in Tasmania”](#).

8.6 How is forestry regulated on public land?

Forest practices in State Forests are exempt from the *Land Use Planning and Approvals Act 1993* and do not require any development permits. Forest practices must be carried out in accordance with the relevant Forest Management Plan and a Forest Practices Plan for the forest coupe.

Forest practices on other public reserves and Crown land are subject to the *Land Use Planning and Approvals Act 1993* and the *Forest Practices Act 1985*.

8.7 Private Timber Reserves

Any landholder may apply to the Forest Practices Authority to have their land or part of their land declared a Private Timber Reserve (**PTR**). A PTR must be used only for establishing forests, harvesting timber and compatible activities.

In practice, the assessment of Private Timber Reserve applications is delegated to [Private Forests Tasmania](#). An application must include a description of the relevant land (preferably with a map), and a list of all persons holding a legal or equitable interest in that land, or in the timber on that land.

Notice that an application for a PTR has been made must be given to the relevant local council and also advertised in the local newspaper. You can inspect applications for PTR status at the Private Forests Tasmania office – you may be charged a fee for this.

If land is declared as a PTR, a notice must be published in the Government Gazette and the PTR status is recorded on the title deed. You can search for declared PTRs on the [LIST](#) maps.

What are the criteria for Private Timber Reserves?

When assessing an application for a PTR, Private Forests Tasmania and the FPA will consider a number of criteria.

Before approving the application, the FPA must be satisfied that:

- the land is suitable for forestry activities (this is generally limited to an assessment of land capability);
 - no-one with an interest in the land (such as tenants) will be disadvantaged;
 - adjoining landowners, and those within 100 metres, will not be “directly and materially disadvantaged”;
 - the local Planning Scheme does not prohibit forestry activity on the land.
- ! Forest practices are not “prohibited” just because you need a permit for the activities;
- the application is not contrary to the public interest.

Who can object to an area being declared a Private Timber Reserve?

Only the following people can make an objection to an application for a PTR:

- any person with a legal interest in the land (e.g. a lessee, mortgagee, co-owner)
- any owner of property that adjoins, or is within 100 metres of, the proposed PTR
- the local Council or a State authority.

Neighbouring owners are restricted to objecting on the grounds that the declaration of a PTR will “directly and materially disadvantage” them (see Section 8(2)(f) of the Act). The Forest Practices Tribunal has held that direct and material disadvantage can include issues such as reduced property values and residential amenity, traffic impacts, impacts on water supply (both quality and quantity) and increased bushfire hazards resulting from forest practices.

The local Council is able to make an objection and an appeal on “public interest” grounds. If you do not have a direct interest in the property, you should lobby your local council to make an objection.

🔴 Objections must be made within 28 days of notice of the application appearing in a newspaper. Objections must be sent to the Forest Practices Authority and to the applicant.

The applicant and any person who made an objection can appeal to the *Forest Practices Tribunal* against the FPA's decision in relation to the PTR application.

🔴 This appeal must be made within 14 days of the decision.

If you have made an application for PTR status and it is refused on the basis of the impact on natural and cultural values, the FPA may require you to enter into a conservation covenant to protect those values (👉 see [chapter 7](#)) and may provide compensation for any loss of value of your property.

8.8 Forest Practices Plans

Subject to a few exceptions discussed below, a Forest Practices Plan (**FPP**) must be approved before any forest practices can be carried out. This includes establishing forests, harvesting timber, clearing trees, clearing and conversion of threatened native vegetation communities, harvesting tree ferns and any associated quarrying or roading.

A harvester who operates without a certified FPP may be fined up to \$130,000. It is also unlawful for a timber processor to purchase timber that has been harvested from land without a certified FPP.

When can you operate without a Forest Practices Plan?

The Forest Practices Regulations set out a number of exemptions for small scale operations that do not require a forest practices plan. These include:

- Clearing less than 100 tonnes or 1 hectare of timber in one year, provided the land is not ‘vulnerable land’ (see below);
- Clearing native vegetation regrowth from an area that has previously been cleared and converted to a non-native forest use;
- Clearing reasonable buffers for existing infrastructure (to protect the infrastructure from damage or for public safety);
- Clearing associated with approved dam works;
- Clearing necessary for creating and maintaining easements for electricity infrastructure and associated tracks
 - 🕒 the clearing must be carried out in accordance with an approved environmental management plan;
- Clearing associated with construction and maintenance of gas pipelines, railway corridors and public roads;
- Clearing associated with buildings and related development approved under a planning permit;
- Clearing carried out in accordance with an approved conservation covenant, vegetation management plan or a fire management program;
- Harvesting up to 6 tree ferns annually in an area (with the consent of the owner);
- Establishing trees in areas less than 10 hectares which have not had trees on them for at least 5 years (provided you do not need to build any roads or quarries).

'Vulnerable land' includes:

- Land within a streamside reserve or machinery exclusion zone (check the [Forest Practices Code](#). These reserves are 10-40m on either side of a watercourse, depending on the catchment area)
- Steep land (exceeding the landslide threshold slope in the Forest Practices Code)
- Land which is highly erodible
- Land which contains threatened native vegetation community
- Land inhabited by threatened flora or fauna (➡ Go to [Chapter 7](#))
- Land which contains vulnerable karst soil (as defined in the [Forest Practices Code](#))

Who can submit a Forest Practices Plan?

Any person may prepare a Forest Practices Plan for an area of forest and submit it to a certifying Forest Practices Officer. A copy must also be sent to the local council with the development application (unless the land is a PTR).

A Forest Practices Plan must contain the following information:

- location of any watercourses within, or in the vicinity of, the coupe
- details of the forest practices to be carried out on the land
- measures to protect natural and cultural values
- in the case of a PTR, or where the FPP includes provision to revegetate an area, specifications of how the land is to be restocked with trees
- an estimated time period for the completion of the operations
- the name of the intended timber processor

How are Forest Practices Plans approved?

The Forest Practices Authority must determine an application for a Forest Practices Plan within 28 days of receiving the application. The FPA (generally, by a delegated Forest Practices Officer) can approve, amend or reject the proposed FPP.

A Forest Practices Plan must be in accordance with the Forest Practices Code and be subject to appropriate management prescriptions to protect threatened species (➡ see below and [Chapter 7](#)). If you have applied for a FPP, you can appeal to the Forest Practices Tribunal against a decision to refuse or to amend your FPP. In contrast, there is no opportunity for the public, including adjoining neighbours, to appeal against the approval of a FPP.

8.9 Threatened species and the Forest Practices System

Under the Forest Practices System, there are agreed procedures for the management of threatened species. The FPA and the DPIPWE have joint roles and responsibilities in relation to managing threatened species within Tasmanian forests. In particular, before it can certify a Forest Practices Plan for activities which will impact on a threatened species, the FPA must include management prescriptions to protect the species (usually, these are developed in consultation with DPIPWE officers).

Activities carried out under a certified FPP do not require a permit under the *Threatened Species Protection Act 1995* in relation to any harm that may be caused to affected species.

In addition, the DPIPWE must coordinate and monitor research into the impacts of land use on threatened species' habitat and populations. The FPA also have the responsibility to train Forest Practices Officers who supervise and plan forest operations, about threatened species.

➡ You can download the *Agreed Procedures for the Management of Threatened Species under the Forest Practices System* from the [DPIPWE website](#).

What happens if a Forest Practices Plan is breached?

The following activities are offences under the *Forest Practices Act 1985*:

- carrying out forest practices which require a Forest Practices Plan without a FPP
- breaching a condition of a Forest Practices Plan
- a timber processor purchasing timber which has not been harvested in accordance with a Forest Practices Plan

The maximum fine for these offences is \$130,000. For continuing offences, you can also be fined \$6,500 for each day that you operate illegally. Details regarding recent enforcement activities are available in the [FPA Annual Report](#).

Unlike the [Resource Management and Planning System](#), there are no civil enforcement provisions to allow the public to take action for breaches of the *Forest Practices Act 1985*.

If you believe that someone is operating without a Forest Practices Plan, or not complying with the conditions of their plan, contact the Forest Practices Authority and ask them to investigate.

 For any forest practices which involve the harvesting of more than 100,000 tonnes of timber per year, the responsible person must lodge a compliance report with the FPA at the expiry of the FPP (☛ see section 25A of the Act). If the FPA suspects that the operator is not complying with the FPP, they can also ask the responsible person to submit a progress report. The responsible person can appeal against this request (☛ sections 25B and 25C).

The Forest Practices Authority can vary or revoke an approved FPP for any reason it considers sufficient. If you consider that a FPP should be varied or revoked (for example, if there is new evidence that the area is habitat for a threatened species), contact the FPA.

How can I view a Forest Practices Plan?

Draft FPPs

Applicants for an FPP are required to notify affected landowners at least 30 days prior to the commencement of operations. There is no statutory provision for consultation, but you can make your views regarding the proposed FPP known to the responsible Forest Practices Officer. A Forest Practices Officer is not to approve a proposed Forest Practices Plan unless the notification requirements have been met.

FPA policy also encourages Forest Practices Officers to consult with local government prior to certifying a FPP. In some instances, for example, if an area is zoned for landscape protection under a planning scheme, formal consultation is required.

Certified FPPs

If you are concerned about forest practices in your area, it is a good idea to try to get a copy of any relevant FPP. You can find out what FPPs have been issued for your area by checking the FPP Location Map on the Forest Practices Authority website. If you have any enquiries or complaints about particular forest practices, you should direct these initially to the responsible person listed on the front page of the relevant FPP.

 There is no specific legal requirement to provide copies of Forest Practices Plans. However, the Forest Practices Code states that '*relevant information within a Forest Practices Plan should be made available to interested parties in an effective and efficient manner.*'

The Forest Practices Authority has also released a [policy on public access to FPPs](#), recommending that people who are directly affected (such as landholders within 100 metres of a proposed FPP) should be provided with copies of plans free of charge. Parties who are not directly affected can apply to the FPA for a copy of the FPP. These requests will be referred to the applicant for response initially. If you do not receive a response from the

application, the Forest Practices Authority will respond and can provide you with a copy of the relevant FPP.

Personal information, such as the name and contact details of the applicant, and commercial-in-confidence information, such as wood supply volumes, are not generally released with the FPP.

8.10 Forest Practices Code

The Forest Practices Code aims to provide 'reasonable protection' for the environment and is in the form of a comprehensive booklet which is available to the general public.

(☛ You can purchase the Code from *Service Tasmania* outlets or you can download it from the [Forest Practices Authority website](#).

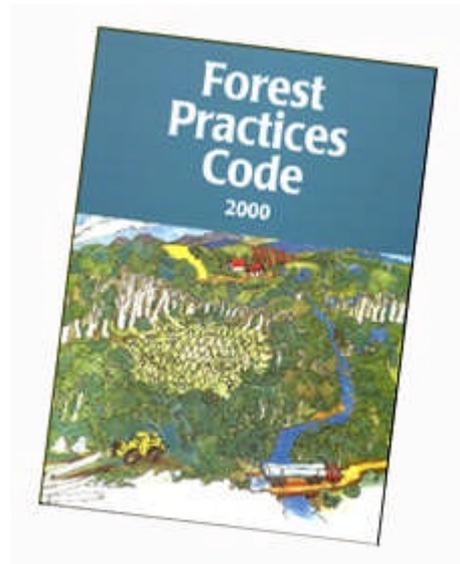
🕒 **The Forest Practices Code 2000 is currently under review.**

The Code sets out detailed standards, procedures and requirements for all forestry and incidental operations, including:

- standards for the planning of forest practices, harvesting and regeneration
- minimum buffer zones to protect watercourses, unstable areas, karst systems and threatened species
- guidelines for the design of access roads
- measures to protect natural and cultural values, such as karst systems
- provisions for chemical use, management of nuisances (such as dust and smoke)

🚨 Forest practices are still subject to the *Environmental Management and Pollution Control Act 1994* and legislation governing chemical use, such as the *Code of Practice for Aerial Spraying*

☛ go to [Chapter 10](#) for more information.



What should I do if the Forest Practices Code is being breached?

Failure to observe provisions of the Forest Practices Code for areas covered by FPPs is a breach of the *Forest Practices Act 1985*. The Forest Practices Authority is responsible for enforcing the Code and investigates complaints made by the public. You can check out the results of past investigations in the FPA's annual report (available on their website).

Unlike the [Resource Management and Planning System](#), there are no civil enforcement provisions to allow the public to take action if you believe that the Code is being breached. Instead, your best option is to make a complaint to the FPA. You can also lobby your local council to contact the [Forest Practices Authority](#) about breaches of the Code.

To help ensure that forest practices comply with the Forest Practices Act...

- Obtain a copy of the *Forest Practices Code* and request a copy of any relevant Forest Practices Plans. Try to understand what activities are allowed and what activities are prohibited - this will help you to work out the best approach to address your concerns. For advice about the forest practices system, contact the [Environmental Defenders Office](#).
- Check whether the land is a Private Timber Reserve. If not, check your local [Planning Scheme](#) to see if a permit is required for forestry operations in the area.

- Try to gather as much information as you can about the forest practices. Observe anything you think may be a breach - check the FPP and the Forest Practices Code to see what activities are authorised.
- Report **all** breaches to the Forest Practices Authority. It is always best to put your complaints in writing and provide as much detail as you can. Send a copy of your complaint to the relevant Forest Practices Officer and the Chief Forest Practices Officer [Download suggested form for public complaint](#)
- Ask the FPA to let you know what they have done to investigate your report – follow them up if you do not hear back from them.
- If you think the Code needs to be upgraded in any way to provide better protection for natural and cultural values, lobby the FPA for a review of the document.
- Keep an eye on the public notice section of the paper for notices about reviews of Forest Management Plans. When a review is announced, register your interest.

8.11 What legal remedies are available?

If you are concerned about the impact of forestry operations on your property or the natural environment, a number of legal options are available.

Under the Forest Practices Act

If you are an adjoining landowner, you can object to any Private Timber Reserve if you can demonstrate that the proposal will directly and materially disadvantage you.

Report all offences to the Forest Practices Authority.

Under LUPAA

If forest practices are a 'discretionary land use' under the Planning Scheme, they will require a development permit (in addition to an FPP). You will be able to make a representation to the council about the impacts of the forestry operations.

☛ Go to [Chapter 5](#) for more information about this.

If the council grants the permit, you can appeal to the [Resource Management and Planning Appeal Tribunal](#)

☛ Go to [Chapter 14](#) for more information about appeals.

If forestry is a 'prohibited use' under the Planning Scheme, or is being carried out without a permit, you should report this to the local council. Ask the Council to investigate and take action to stop any unauthorised forestry activities. If the council does not take action, you may be able to take [Civil Enforcement](#) action yourself in the Tribunal.

Under EMPCA

Forest practices must comply with provisions of the *Environmental Management and Pollution Control Act 1994*. If your property or water supply is polluted as a result of forest practices, you may be able to take action under EMPCA to stop the Environmental Harm.

☛ Go to Chapters [6](#) and [10](#) for details.

ⓘ There is a [Memorandum of Understanding](#) between the EPA and the Forest Practices Authority that complaints regarding environmental harm caused by forestry activities will be investigated by the FPA. The EPA will forward any complaints it receives to the FPA for action.

Under the EPBC Act

If you believe that forest practices are not being carried out “in accordance with the RFA”, you may be able to apply for an injunction under the *EPBC Act* on the basis that the forest practices are not exempt and need approval under that Act.

🕒 Please note, as demonstrated in the [Wielangta decision](#), it is extremely difficult to establish that forest practices are not consistent with the RFA if the works comply with Tasmanian legislation.

➡ Go to [Chapter 15](#)

Under common law

Proprietary and other rights in land can be generally protected by common law by an action in 'nuisance' or 'trespass'. These are usually relatively time consuming and expensive but can be useful as a last resort.

➡ Go to [Chapter 6](#)

For more information about these options, contact the [Environmental Defenders Office](#).

8.12 How are threatened species protected in logging areas?

A significant problem in Tasmania is that most threatened vegetation communities are not in national parks and reserves – they often occur in areas of public and private land that are subject to forest practices. Therefore, it is necessary to ensure that protection of these species is considered when developing and enforcing forest practices plans.

Threatened species processes

- The Director of Parks & Wildlife has power to enter into agreements and make land management plans with both private landowners and public authorities such as Forestry Tasmania to protect natural values.
- Where forest practices are proposed, special values in the forest (including threatened native vegetation communities and threatened species) are identified during the preparation of the Forest Practices Plan. These values may be protected in reserves within the coupe or by management prescriptions (such as not operating within line of sight of an eagle nest during the breeding season).
- The Forest Practices Authority and the Biodiversity Conservation Branch (formerly the Threatened Species Unit) have developed standard management prescriptions for a range of threatened species. These prescriptions will generally be included in forest practices plans where threatened species are likely to be impacted. The prescriptions are currently subject to review.
- Where a Forest Practices Plan has been approved, the forest operator will not be required to obtain any additional permits under the *Threatened Species Protection Act 1995*
➡ see [Chapter 7](#).

Successful protection of threatened species relies in part on comprehensive information about the location of these species. The Biodiversity Conservation Branch has a range of databases and predictive models to identify areas of known and potential habitat for threatened species. However, the system is not fool-proof. If you believe that forest practices may impact on a threatened species that has not been considered in the Forest Practices Plan, contact the Biodiversity Conservation Branch and the Forest Practices Authority.

You can also lobby these bodies to take appropriate action if you believe that the standard management prescriptions are not adequate to protect particular species.

Vegetation clearance controls

The management of vegetation clearance that fall outside the definition of 'forestry operations' is a significant issue in Tasmania.

One million hectares of native vegetation has been removed in Tasmania, predominantly in the lowlands of the north-west, midlands and the south-east. Flinders Island and King Island have also been significantly affected. Eucalypt open forests, eucalypt woodlands and eucalypt tall open forests are most affected by the clearing.

The *Forest Practices Act 1985* covers most activities that will involve clearing more than one hectare of trees or clearing on vulnerable land. However, clearing associated with approved building developments (including subdivisions) no longer need to obtain a Forest Practices Plan. Assessment and approval of such clearing is the responsibility of planning authorities, subject to the *Land Use Planning and Approvals Act 1993* (see [Chapter 5](#)).

In April 2007, the *Forest Practices Act 1985* was amended to also cover 'clearing and conversion' of threatened native vegetation communities (including non-forest communities such as wetlands, scrub and grasslands), even where less than 1 ha of the threatened community would be affected. Under the revised legislation, harvesting of threatened vegetation communities will be permitted (subject to a certified Forest Practices Plan), if the same vegetation type will be regenerated on the land. Clearing of a threatened vegetation communities and conversion to other uses (e.g. farmland, pine plantations) is generally prohibited.

However, the Forest Practices Authority can approve a Forest Practices Plan for 'clearing and conversion' if one or more of the following applies:

- the clearance and conversion is justified by exceptional circumstances (including physical safety, reducing bushfire risk, responding to a biosecurity risk or where the clearing is required by a court order);
- the activities authorised by the Forest Practices Plan are likely to have an overall environmental benefit;
- the 'clearance and conversion' is unlikely to detract substantially from the conservation of the threatened native vegetation community or conservation values in the vicinity of the threatened native vegetation community.

A Forest Practices Plan is not required to clear native vegetation regrowth on previously cleared and converted land, provided:

- the cleared land has not contained trees or threatened native vegetation communities for a period of at least 5 years; and
- the regrowth does not contain more than 20 eucalypts over 2 metres in height in any 0.5 ha area.

Exemptions also exist for clearing related to maintenance of existing infrastructure, construction of public roads, dams and power lines or clearing that is covered by an approved management agreement or bush fire plan.

The Forest Practices Authority "[Guide to planning approvals for forestry in Tasmania](#)" provides information on planning requirements for management of forested areas.

Regulating small scale clearing on private land is also a problem in Tasmania. Some local planning schemes include vegetation clearance controls, and most development applications require you to identify vegetation that will be removed as part of the development.

However, there are few restrictions on clearing native bush on private property if the cleared area is less than one hectare, and is not 'vulnerable land'. As outlined above, changes to the [Forest Practices Regulations 2007](#) exempted clearing associated with buildings or associated development from the requirement to obtain a Forest Practices Plan. Therefore,

Councils will be responsible for regulating vegetation clearing associated with these activities in future, even if the clearing involves threatened vegetation or is carried out on vulnerable land.

Some local councils, generally in urban areas, maintain a Significant Tree register and approval is required to remove or damage these trees. Check with your local council about any protected trees in your area.

If private land contains important habitat for threatened species, DPIPW E may issue an Interim Protection Order or enter into a land management agreement with the landowner to regulate land clearing on the property (☛ see [Chapter 7](#)).

8.13 Bushfire damage and smoke pollution

Many rural property owners, including farmers, forestry operators and government authorities (such as Parks and Wildlife and Forestry Tasmania) periodically undertake low-intensity burn offs to reduce fuel (dead wood, leaf litter, bark and understorey plants) to reduce bushfire risks and for forest regeneration.

Smoke and fire damage resulting from these planned burns raises a number of environmental and public health concerns.



How are planned burns regulated?

The Tasmanian Fire Service (**TFS**) can declare any day or period to be a ‘fire permit period’ – look out for notices in your local newspaper announcing that a fire permit period has commenced.

During a fire permit period, you need a permit to light any fire:

- within a State forest, Crown land or other reserve (other than in designated campfire areas); or
- that is likely to cause clearance of vegetation.

You can apply for a fire permit for a planned burn by submitting an application and a “Burning Plan” to the Tasmanian Fire Service for approval. Checklists and Burning Plan templates are available on the [TFS website](#).

Fire permits should not be issued where a fire officer believes that there is a significant risk that the fire may spread to other land or get beyond the control of the local fire brigade.

If a fire permit is issued, you must comply with the permit conditions and follow the approved burning plan (including not carrying out the burning in bad weather conditions). Provided you carry out the planned burn in accordance with the permit conditions, you will not be held responsible for any nuisance or damage caused by the fire.

Outside a fire permit period, permits for planned burns are not required. However, you may be liable for any damage caused by a fire you are responsible for. Therefore, it is advisable to contact the TFS to discuss your plans.

Forestry fires must also comply with the [Forest Practices Code](#) and any specific conditions in the relevant Forest Practices Plan. The FPA has smoke management guidelines that apply for each planned burn season.

How do I find out about planned burns in my area?

- Fire permit holders must generally contact all adjoining landowners and occupiers within 1.5 kilometres to give notice of the planned burn. This gives the property owner an opportunity to make plans to avoid the impacts of the fire (such as smoke and particulates).
- Public authorities (such as DIER) must give at least 7 days public notice of a planned burn by putting a notice in the Saturday newspaper and posting notices on the property where the burn will take place.
- The [Tasmanian forest industry website](#) is updated daily on the status of planned burning operations.

➡ Forestry Tasmania also upload details of their annual regeneration burning programme on their [website](#).

Can I object to a planned burn?

There is no formal way to object to a planned burn.

The best thing to do is to contact the property owner (including government authorities) and explain your concerns. You can also contact the TFS and ask for conditions to be included in the permit to address your concerns.

What can I do if I am affected by fire?

- If planned burning activities take place on neighbouring property and you did not receive notice, you can make a complaint to the EPA. Fire permit holders who do not give notice, can be fined up to \$3,380.
- You can also make a complaint to the Forest Practices Authority if you believe that planned burns in forestry coupes have not been carried out in accordance with the conditions of a Forest Practices Plan.

➡ You can download the FPA complaint form from [their website](#).

- If you are affected by fire damage, you may be able to take action against the person responsible for the fire. However, if the planned burn was carried out in accordance with a fire permit, the person will not be liable for damage as long as the conditions of the permit were complied with and they were not negligent.

📢 Taking legal action against wildfire damage is legally complex, so it is a good idea to talk to a lawyer before commencing any action.

What can I do if I am affected by smoke?

Smoke emissions can cause health and environmental problems. It is important to check the public notices to make sure, at least, that you know when to expect smoke in your area.

- The [Environment Protection Policy \(Air Quality\) 2004](#) requires people conducting planned burning, or granting approvals for fire permits, to take account of the health and amenity impacts of smoke pollution.
- Smoke nuisance caused by planned burns carried out in accordance with a fire permit is exempt from the provisions of general pollution law, such as the *Environmental Management and Pollution Control Act 1994*. If no permit has been issued for the fire, you may be able to claim that environmental nuisance has been caused. If the appropriate guidelines have been followed, the person responsible for the fire may be able to rely on the due diligence defence

➡ go to [Chapter 6](#) for information on pollution laws.

- For ongoing problems with smoke and particulates, you can also lobby the *Director of Public Health* to conduct an inquiry into the public health impacts of planned burns.

Domestic Smoke Management

Smoke caused from domestic wood heaters can also cause a problem for people living in population hubs in urban and regional areas. The particulate matter produced from domestic wood heaters can adversely affect health, depending on an individual's level of exposure, age and personal health.

The Domestic Smoke Management Program is currently being implemented by the EPA, in accordance with the Tasmanian Air Quality Strategy. This Program assesses air quality issues at strategic periods and looks at how to reduce the use of smoke from old or ineffective heaters.

Research so far has indicated that educative programs and regulations are the most effective way of improving air quality.

➔ More information on the *Tasmanian Air Quality Strategy* is available on the [EPA website](#).

8.14 Trespass in state forests

Trespass is a civil wrong, and you can be sued for doing it. The most common example of trespassing is when you go onto someone's land without their permission. If you deliberately or carelessly do something that directly causes interference with someone else's land, you may also be committing a trespass.

It is an offence to enter into any place or to remain in any place after being warned to leave by the owner, occupier or person in charge of the place (☛ See section [14B](#) of the *Police Offences Act 1935*).



Protesters in Farmhouse Creek forests

As managers of State forests, if Forestry Tasmania declares that an area of State Forest is off-limits to the public, they can rely on trespass offences under the *Police Offences Act 1935* to enforce an exclusion zone. The maximum penalty is currently \$650 or six months imprisonment.

Forestry Exclusion zones

In addition to general trespass laws, the *Forestry Act 1920* allows Forestry Tasmania to restrict or prohibit people from entering a forestry area.

In particular, Forestry Tasmania may:

- Prohibit public access where it is "incompatible with the management of State forest" (☛ see [section 20B\(1\)](#)).
- Prohibit a person from entering or remaining in any of the following areas (☛ see [section 20B\(2\)\(a\)](#)):
 - an area declared to be an area of extreme fire hazard; or
 - a restricted area declared in the relevant *Forest Management Plan*.
- Erect signs restricting or prohibiting access in respect of forest roads, forest reserves or other land within a State forest (☛ see [section 25](#)).
- Close a forest road or any section of a forest road (☛ see [section 26](#)).

Prohibiting access

Forestry Tasmania may restrict access to the public where the access is “incompatible with the management of State forest.” More specifically, Forestry Tasmania can prohibit any person from entering an area of State Forest contrary to a restriction in a Forest Management Plan.

Forest Management Plans can specify that all or any part of the land to which it applies is a restricted area. The plan may restrict public access completely, or at particular times or for particular purposes (☛ see [section 22C](#)).

A management plan for other kinds of state reserves can also declare that all or part of the reserve is a restricted access area (☛ see [section 37](#) of the *National Parks and Reserves Management Act 2002*).

Erecting signs

The *Forestry Act 1920* also allows the use of signs to control public access to State forests.

Forestry Tasmania can erect signs controlling access in respect of forest roads, forest reserves or other land:

- for the purposes of discharging its responsibilities; or
- in the interests of safety (☛ see [section 25](#)).

For the purposes of the Act, the responsibilities of Forestry Tasmania include delivery of sustainable forest management, exclusive control of state forest, forestry operations within Tasmania and granting permits, licences and other rights of occupation for State forests. Forestry Tasmania also has responsibility for the safety of its workers and visitors to State forests.

It is an offence to do anything on a forest road, reserve or other land contrary to the directions specified in the sign. It is also an offence to do anything contrary to the directions of a police officer in respect of the activity. You could be fined up to \$2,600 for these offences.

If a police officer is reasonably satisfied that you are disobeying a forestry sign, the officer can direct you to leave the State forest. It is an offence not to comply with this direction, again punishable with a fine of up to \$2,600.

Therefore, if you were to enter an area signed as an “exclusion zone”, you could be liable to criminal charges and a penalty of up to \$2,600. If you do not comply with the direction of a police officer to leave the area, you can also be charged with a separate offence and fined a further \$2,600.

Closing forest roads

Forestry Tasmania also has the power to close roads, temporarily or permanently, where it is necessary for “discharging its responsibilities” or “in the interests of safety” (☛ see [section 26](#) of the *Forestry Act 1920*). To close the road, Forestry Tasmania can simply erect a sign or other physical barriers (such as gates and fences).



Where a road has been closed, it is an offence to drive or use a vehicle on the closed forest road. Following amendment in 2009, it is also an offence to walk on closed roads. The offence is punishable by up to \$650.

Work Health and Safety

Forestry operators may also claim that you are committing an offence under the [Work Health and Safety Act 2012](#). Offences include intentionally or recklessly placing the health or safety of any person in the workplace (such as a forest site) at risk and interfering with equipment at a workplace.

🚨 Please note, forestry operators have an obligation to take all reasonable measures to minimise the risks to any person in the workplace and cannot do anything to deliberately put a protester at risk.

➡ For more information about any of these trespass offences, contact the [Legal Aid Commission of Tasmania](#).